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November 17, 2022

Mr. Eric Berger
Chief, Division of Coverage, Reporting and Disclosure
Office of Regulations and Interpretations
Employee Benefits Security Administration
200 Constitution Avenue NW
Washington, DC 20210

Clarification Requested on Scope of Pooled Employer Plan Annual Audits

Dear Mr. Berger:

Our firm and our affiliates serve as Pooled Plan Providers for numerous Pooled Employer Plans (PEPs) across the United States.

I read with interest your Information Letter 09-07-2022 pertaining to ERISA bond requirements for Pooled Employer Plans. I thank you for this guidance. As the Pooled Employer Plan market continues to mature, it is critical that there be continued clarification on items such as this from your agency to avoid confusion by plan fiduciaries.

I believe that guidance is also needed as it relates to the scope and nature of annual plan audits for Pooled Employer Plans that are filed in conjunction with their annual Form 5500 filing.

Currently, there appears to be no clear consensus as to whether adopting employers in a Pooled Employer Plan should be effectively treated in a similar – yet surprisingly even more restrictive – manner as employers who may be operating under a Defined Contribution Group (also commonly referred to as Group of Plans) structure.

Under a Defined Contribution Group structure, only employers who would normally be subject to an annual audit are required to undergo an individual audit. Smaller employers are excused from that requirement.

In an abundance of caution and without guidance to the contrary, it appears that Pooled Employer Plan auditors are including each adopting employer – regardless of the size of their group – as part of their audit review, thereby driving up the cost of the annual PEP audit and thereby losing many of the benefits and efficiencies anticipated by the Secure Act legislation.

We believe that this strategy is not the original intention of the annual audit requirements for Pooled Employer Plans.

A broad overreaching annual plan audit requirement of this type for a Pooled Employer Plan would have a chilling effect on one of the key advantages associated with an employer opting to join a Pooled Employer Plan. Without existing guidance from EBSA or another government agencies on this matter there is a serious need for clarification.

We anticipated the annual audit filed in conjunction with a Pooled Employer Plan Form 5500 would include sampling of the larger traditional "audit sized" adopters, and a dramatically smaller sampling percentage among adopters who were not normally subject to an audit as a stand-alone plan. Reviewing every single adopter is excessive, in our opinion.

For comparison purposes, we would suggest reviewing the scope and structure of the annual audits prepared for submission for hundreds of Professional Employer Organizations and Associations/Chambers of Commerce in conjunction with their own 413(c) multiple employer plan annual filings.

Thank you for your service to our industry and for your consideration of our position and comments. I respectfully would ask for a reply to this inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "Terrance P. Power". The signature is fluid and cursive, with the first name "Terrance" and last name "Power" clearly distinguishable.

Terrance P. Power, CFP, QPA, AIFA
President, The Platinum 401k, Inc.

Cc: The Honorable Vern Buchannan
Chairman-Elect, U.S. House of Representatives Ways and Means Committee.