



GEORGETOWN UNIVERSITY
McCourt School of Public Policy
Center for Retirement Initiatives

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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor (DOL)
200 Constitution Avenue N.W.
Washington, D.C. 20210

Attention: Definition of “Employer” under Section 3(5) of ERISA – Association Retirement Plans and Other Multiple-Employer Plans (RIN 1210-AB88)

Dear Assistant Secretary Rutledge:

The Georgetown University Center for Retirement Initiatives (“Center”) appreciates the opportunity to comment on the proposed rule: *Definition of “Employer” Under Section 3(5) of ERISA— Association Retirement Plans and Other Multiple-Employer Plans*, 83 Fed. Reg. 53,534 (Oct. 23, 2018) (Proposed Rule).

The Center for Retirement Initiatives is a research center of the McCourt School of Public Policy. The Center was founded with the mission to strengthen the retirement security of American families by developing and promoting the bipartisan adoption of innovative state policies, legislation, and administrative models to expand the availability and effectiveness of retirement solutions.

The Center performs a vital role assisting states by connecting state policymakers, scholars, and industry experts; analyzing legislative and regulatory developments and assisting with program design; sharing research, best practices, and success stories with state policymakers; and serving as a resource to all states and stakeholders in addressing the challenge of achieving retirement security for more Americans and promoting policies that will strengthen the economy.

Retirement security is a critical issue for all Americans. As the DOL notes in its Preamble to the Proposed Rule, millions of workers across the country lack access to employer-sponsored retirement

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plans, and millions more fail to take full advantage of employer-supported plans. Without access to easy and affordable retirement savings options, far too many workers are on track to retire with little more than Social Security as their primary source of retirement income.

As you know, both Vermont and Massachusetts have decided to implement Multiple Employer Plans (MEPs) based on interpretations provided in the Employee Benefits Security Administration's (EBSA) *Interpretive Bulletin Relating to State Savings Programs That Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974*, 80 Fed. Reg. 71,936 (Nov. 18, 2015) (2015 Bulletin). Massachusetts is implementing an "open-MEP" for certain employers doing business in that state and Vermont also is in the process of implementing an open MEP for certain of its local employers.

While we believe that the Proposed Rule has no effect on a state's ability to sponsor a MEP, we are concerned that the use of the term "subregulatory guidance" in the Preamble to the Proposed Rule potentially may cause some confusion. We respectfully request that DOL reaffirm in the Final Rule that a state's ability to sponsor a MEP, as outlined in the 2015 Bulletin, is unaffected by this rule.

COMMENTS

EBSA published the Proposed Rule in the *Federal Register* on October 23, 2018. We understand the purpose of the Proposed Rule is to expand access to "affordable quality retirement savings options by clarifying the circumstances under which an employer group or association or professional employer organization (PEO) may sponsor a workplace retirement plan" and providing for certain working owners without employees to participate in MEPs.

We commend EBSA for its focus on this important issue and to facilitate MEPs. The MEP structure allows for cost efficiencies through economies of scale, allowing small businesses to provide a workplace retirement solution for employees at a cost that is competitive for both employers and employees.

While we read and interpret the Proposed Rule as not having any effect on the ability of a state to sponsor a MEP, there is some language in the Preamble to the Proposed Rule that may create some confusion. In particular, the Preamble refers to prior subregulatory guidance regarding groups or associations that can sponsor a MEP. Specifically, the Proposed Rule states that it "would supersede subregulatory interpretative rulings under ERISA section 3(5)...." Proposed Rule, 83 Fed. Reg. at 53,536. Furthermore, in describing the proposed regulatory text setting forth the requirements for "bona fide groups and associations," the Proposed Rule states, "[t]his paragraph would replace and supersede criteria in prior subregulatory guidance." *Id.* at 53,539.

We do not believe the "subregulatory guidance" referred to in the Proposed Rule extends to the 2015 Bulletin for several reasons. First, the Proposed Rule makes no explicit mention of the 2015 Bulletin. Second, the 2015 Bulletin is not considered "subregulatory guidance" and does not fall within the scope of this Proposed Rule. Third, the Proposed Rule focuses on the private sector and does not apply to state-sponsored MEPs. Finally, the objective of the Proposed Rule is to expand the accessibility

of MEPs by clarifying and expanding, rather than restricting, the types of groups, associations, and professional employer organizations that may sponsor a MEP.

We respectfully request that in issuing a Final Rule, EBSA confirm and clarify that, given the unique characteristics of a state MEP sponsor—specifically its “unique representational interest in the health and welfare of its citizens that connects it to the in-state employers that choose to participate in the state MEP and their employees,” 2015 Bulletin, 80 Fed. Reg. 71,936, at 71,939—the proposed regulatory language set forth in the Proposed Rule does not apply to state sponsors of MEPs.

Again, please accept our sincere appreciation of EBSA’s efforts to expand access to workplace retirement savings plans.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Angela M. Antonelli". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Angela M. Antonelli
Executive Director
Center for Retirement Initiatives