



December 20, 2018

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Attention: Definition of Employer—MEPs RIN 1210-AB88

To whom it may concern:

The American Society of Association Executives (ASAE) and the National Association of Manufacturers (NAM) appreciate the opportunity to provide comment to the Department of Labor (DOL) on *MEPs RIN 1210-AB88*, the proposed rule from the Employee Benefits Security Administration (EBSA) to expand the use of Association Retirement Plans (ARPs) pursuant to Executive Order No. 13847.

ASAE is a non-profit professional society representing over 42,000 individuals who serve through 7,300 membership organizations in every state. ASAE supports its members' work to advance the country and the world by improving the industries and professions they represent by providing them with resources otherwise not available to them.

The NAM is the largest industrial trade association in the United States, representing small, medium, and large manufacturers across a wide range of economic sectors. Manufacturers employ more than 12 million Americans and contribute more than \$2 trillion to the U.S. economy each year. Manufacturing has the largest economic impact of any major sector and accounts for more than three-quarters of all private-sector research and development in the United States.

Employees at small businesses constitute the backbone of our national workforce, and they are facing a retirement savings crisis. According to the 2018 National Compensation Survey conducted by the Bureau of Labor Statistics, just 53 percent of workers at companies with fewer than 100 employees have access to a workplace retirement plan. Only 37 percent of small business workers participate in such a plan.

The proposed rule would address this crisis by allowing small businesses to offer retirement benefits to their employees via a multiple employer plan (MEP) facilitated by a trade association or local business group. An MEP gives small businesses access to the flexibility and lower costs that are currently available only to large employers. Small businesses could thus offer more competitive benefits to retain and recruit employees without the costly burden of administering a retirement plan.

We appreciate the opportunity to provide comments on this significant step toward allowing small businesses to offer competitive retirement benefits and help ensure the financial security of American workers.

1. Benefits of a Pooled Retirement Program

There are already opportunities under current law for pooled retirement programs, which underscore the benefits of the shared costs and other efficiencies that these plans allow. For instance, ASAE provides a Revenue Ruling 81-100 group trust to “employers of individuals who qualify as regular members of ASAE and such other employers as may be designated by ASAE.” The pooled retirement plan structure offers numerous compelling benefits, including:

- A Plan Sponsor experienced and knowledgeable in the underpinnings of retirement plans;
- Group pricing in investments, recordkeeping, and fiduciary services, resulting in reduced total plan costs to the membership organization and its members;
- A central committee delegated with the responsibility of oversight of providers;
- A large, strongly financed recordkeeper with capacity for and experience in working with small plans;
- A discretionary investment manager professional organization respected in the investment industry and familiar with fiduciary duties;
- Access to Plan Administrators that are highly respected and experienced in fiduciary duties;
- Coordination of services, streamlined paperwork and required disclosures distributions, and the efficient resolution of common issues;
- The provider’s understanding of the industry to whom the plan is being provided; and
- The flexibility to design each individual plan within the group trust to meet the needs of its individual members.

The ARPs proposed by the DOL would have additional benefits for participating employers, allowing small businesses to band together and benefit from the economies of scale available to larger companies. Two key improvements offered by the DOL proposal are that 1.) the MEP Plan Sponsor would be responsible for the Plan Administrator fiduciary duties rather than the individual employer, and 2.) the plan would only be required to file one Form 5500. These additional benefits could further reduce the costs for participants.

2. Commonality of Interest

The proposed rule clarifies that a “bona fide group or association of employers” may act as an “employer” in order to sponsor an ARP. In order to qualify as a “bona fide” group, associations must fulfill seven criteria – one of which is a “commonality of interest” requirement. This requirement can be met if the employers either share a “trade, industry, line of business or profession” or have a “principal place of business in the same region that does not exceed the boundaries of a single State or a metropolitan area”.

The NAM believes that its membership meets the commonality of interest test predicated on a common industry. NAM membership qualifications are established in the bylaws of the association and include three distinct categorizations:

- Manufacturing members with manufacturing operations in the United States;
- Manufacturing association members that represent entities engaged in manufacturing in the United States; and
- Cooperating members that specialize in services that support manufacturing members.

In total, the NAM represents approximately 14,000 members, approximately 85 percent of which are small and medium-sized businesses. There are also hundreds of association members, state association groups, and cooperating members that belong to the NAM; as detailed above, these organizations are considered full members of the NAM. The NAM believes the manufacturing sector’s commonality of interest fulfills criterion (v) in the employer definition for the purpose of offering an ARP. However, in a narrow reading of the commonality of interest test, associations like

the NAM – those with members from allied or supporting industries – could erroneously be excluded from the definition. Therefore, we urge the DOL to adopt a broad reading of commonality of interest under the industry-focused test, including by considering factors such as a shared economic interest, a genuine organizational relationship, organized cooperation, and/or a common purpose between employer members.

3. State-Level Barriers to Employer Participation

ASAE and the NAM are, like many of the associations that would consider sponsoring an ARP, broad-based, national organizations with members dispersed throughout all 50 states. As DOL moves toward implementation of a finalized ARP rule, we encourage EBSA to be mindful of the state-level requirements and regulations that might be encountered by a national organization sponsoring an ARP and/or a local business participating in one. As a general rule, it is critical that companies not face barriers to or penalties for offering their employees ARP-based retirement benefits that are not required of their competitors that offer non-ARP retirement benefits. ARP and non-ARP employers should likewise be treated equally if a state has a mandate or incentive-based program for offering retirement benefits to employees.

4. Stability of Association Retirement Plans

To ensure the long-term success of ARPs offered by groups or associations, regulatory certainty and stability are critical. The benefits planning horizon is a long-term, multi-year endeavor, and these decisions are critical for staff retention and recruitment. As such, we encourage EBSA to review comments thoroughly but efficiently so that associations can implement an ARP for the benefit of their members in the near term. We also encourage clear, stable implementation of the final rule so that associations, employers, and employees can be sure it can be relied upon on a going forward basis.

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We believe that the proposed Association Retirement Plans rule is an important step toward reducing the cost of retirement plans for small businesses across the country. Nearly 85 percent of manufacturing workers have access to workplace retirement benefits, as do 68 percent of all workers – but effective implementation of the proposed rule will further broaden the universe of smaller employers for whom offering competitive retirement benefits is a cost-effective employee benefit.

Thank you for your attention to these comments, and we look forward to working with you to ensure effective implementation of these important reforms.

Sincerely,



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