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December 24, 2018
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Ave., NW
Attn: RIN 1210-AB88

Re: Definition of Employer—MEPs (RIN 1210-AB88)

To Whom It May Concern:

TCATA appreciates the opportunity to comment on the proposed rule on the Definition of “Employer” Under Section 3(5) of ERISA—Association Retirement Plans and Other Multiple-Employer Plans published by the U.S. Department of Labor’s Employee Benefits Security Administration (“DOL” or the “Department”).¹ The Proposed Rule is a significant step toward expanding retirement coverage for employees of small employers and for working owners.

We support the Proposed Rule and encourage the DOL to finalize it to allow the implementation of Association Retirement Plans as quickly as possible. Small businesses with less than 100 employees cover more than 19 million American workers.² Nonetheless, small businesses have their own unique issues and can face significant financial and administrative burdens when faced with implementing and maintaining a retirement plan. Multiple Employer Plans (MEPs) are a possible tool to help small businesses overcome these burdens in maintaining and implementing retirement plans. MEPs can promote better retirement savings behavior for employees by providing them a menu of investment options, better ensuring that plan participants will be able to tailor their portfolios to their needs and retirement goals. MEPs can also provide small businesses with enhanced opportunities for cost-effective retirement planning education programs for employees through the pooling of resources with other small businesses. Another key advantage of a MEP is the centralized functions that the MEP sponsor can provide. Costs are shared among the adopting employers, regardless of the number. This translates to substantial economies of scale and cost efficiencies over stand-alone plans for small businesses.

However, there are currently significant disadvantages to participating in a MEP. A significant concern is the commonality requirement that currently exists. The Proposed Rule expands the definition of commonality under the employer definition to include employers with a principal place of business in the same region that does not exceed the boundaries of a single state or metropolitan area.³

¹ 83 Fed. Reg. 53534 (Oct. 23, 2018).

² Patrick J. Purcell, Congressional Research Service (CRS) Report for Congress, Social Security Individual Accounts and Employer-Sponsored Pensions, February 3, 2005, Table 2. Employee Characteristics by Employer Retirement Plan Sponsorship, 2003 at CRS-5.

³ 83 Fed. Reg. 53560.

We appreciate that the DOL has expanded this definition which will allow more associations to establish MEPs. In particular we believe that this expansion can reach a potentially different audience than other plan designs because organizations (such as state Chambers) would be able to offer them to members. Thus, the use of MEPs could be expanded through trade associations and other organizations that work closely with small businesses.

The DOL asks for comments on whether any notice or reporting requirements are needed to ensure that participating employers, participants, and beneficiaries of MEPs, are adequately informed of their rights or responsibilities with respect to MEP coverage and that the public has adequate information regarding the existence and operations of MEPs. Since participants will receive the same fiduciary protections as they would under a 401(k) plan – just under a different structure – it seems unnecessary to provide additional notification on this point. Moreover, adding unnecessary burdens counteracts the simplicity MEPs are meant to provide.

In keeping with the idea of simplicity, we appreciate that the preamble to the Proposed Rule states that the MEP sponsor, and not the individual employer, will be responsible for all notice and disclosure requirements but it is not in the regulation itself.⁴ To ensure that this position receives full regulatory authority, it should be included in the rule itself.

Thank you for your consideration of these comments. We look forward to continuing to work with you to strengthen retirement security.

Sincerely,

A handwritten signature in black ink that reads "David Gots". The signature is written in a cursive style with a long horizontal stroke extending to the right.

⁴ 83 Fed. Reg. 53535.