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December 24, 2018

VIA ELECTRONIC SUBMISSION: <http://www.regulations.gov>

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Attn: RIN 1210-AB88  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

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

To Whom It May Concern:

On behalf of the Associated General Contractors of America (hereinafter “AGC”), I thank you for the opportunity to submit the following comments on the U.S. Department of Labor (hereinafter “DOL” or “Department”) Employee Benefits Security Administration’s (hereinafter “EBSA”) notice of proposed rulemaking (hereinafter “NPRM”) on the Definition of “Employer” Under Section 3(5) of ERISA—Association Retirement Plans and Other Multiple-Employer Plans. The NPRM was published in the Federal Register on October 23, 2018.

AGC is the leading association for the non-residential construction industry, representing more than 27,000 firms, including over 6,500 of America’s leading general contractors and over 9,000 specialty contracting firms. More than 11,500 service providers and suppliers are also associated with AGC, all through a nationwide network of 90 chapters (hereinafter “AGC Chapters”). These firms, both union and open-shop, engage in the construction of buildings, shopping centers, factories, industrial facilities, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, municipal utilities and other improvements to real property.

AGC appreciates the Department’s efforts to increase retirement coverage through expanding access to Multiple Employer Plans (MEPs) for small businesses (which describes the vast majority of firms in the construction industry). Currently, small businesses are finding it exceedingly difficult to offer quality retirement options to their employees due in large part to the significant financial and administrative burdens involved with implementing and maintaining a retirement plan. Many small businesses end up not establishing retirement plans at all and never participate in the private retirement system.

A number of our AGC Chapters across the country have recognized the need to offer retirement tools to their members. In response, these AGC Chapters have established MEPs that offer retirement options to employees of their members. However, there are currently significant disadvantages to participating in a MEP, such as the joint liability for the qualification failures of every other employer in the MEP (known as the “one bad apple rule”). While this provision is not the jurisdiction of the DOL, we ask the agency to encourage the Treasury Department and Internal Revenue Service to address this issue as quickly as possible.

Additionally, AGC supports the comments submitted by the U.S. Chamber of Commerce (“Chamber”) related to the proposed rule and encourages the Department to consider them wholeheartedly. The Chamber’s recommendations suggest that the Department:

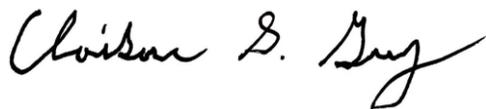
- Allow Open MEPs;
- Formalize the inclusion of Professional Employer Organizations (“PEOs”);
- Reduce additional notice or reporting requirements;
- Consider expanding to other types of plans in addition to defined contribution plans;
- Provide a safe-harbor to protect ARP members from joint-employer liability;
- Treat an MEP as one plan for purposes of notice and disclosure requirements; and
- Modernize Department standards on electronic delivery.

AGC and its Chapters are supportive of the opportunities the Department is seeking to provide to small employers and self-employed individuals with no employees (hereinafter referred to as “working owners”) to make it easier for them to establish MEPs. We believe this opportunity could allow AGC and its Chapters to further examine the opportunity of banding together to provide new retirement options to their respective members on a regional or national basis. By addressing our concerns, as well as the other recommendations identified by the Chamber, MEPs can add to the success of the private retirement system and further strengthen retirement security for many American workers.

## **Conclusion**

AGC reiterates its appreciation of the Department’s efforts to expand retirement plan options to small businesses in the construction industry and hopes it will consider the impact the NPRM might have on our ability to currently provide retirement coverage to our member companies. AGC also appreciates the opportunity to engage in the rulemaking process and looks forward to working with EBSA as it continues to amend regulations that impact construction employers. If we can aid in any way, please do not hesitate to contact me.

Sincerely,



Claiborne S. Guy  
Director, Employment Policy & Practices