

I am writing to express my support for the DOL Conflicts of Interest rule proposal that will increase the standard of care and protection that consumers will receive from financial/investor brokers/dealers and advisors in regard to planning and managing their retirement savings by having them act in the best interest of their clients and not their own interests. However, I am concerned that the proposed rule has left a giant loophole through which the companies and individuals for whom this rule is designed to apply to might be able to exploit to avoid compliance with the rule. That loophole involves the role that Professional Employer Organizations, more commonly known as PEOs, might play as the co-employers of small business owners who offer their employees retirement savings plans. PEO's are authorized by the IRS to provide retirement benefits and often promote that right as one of the major benefit of their use is the opportunity they provide for a worker of a small business in a PEO arrangement to receive Fortune 500 quality employee benefits like retirement saving plans, which absent the PEO, a small business can neither afford nor manage these benefits. Therefore, I would submit that before finalizing the proposed rule, the Department specifically clarify that this rule would apply to PEOs and their clients so as to avoid any potential for abuse or exploitation of a loophole through which compliance with this rule can be avoided, thus thwarting its intended objectives.

According to the National Association of Professional Employer Organizations, PEOs give small-group markets access to many benefits and employment amenities they would not have otherwise including retirement benefits. It is estimated that 2-3 million Americans are currently co-employed in a PEO arrangement. The average PEO has grown more than 20 percent per year for each of the last six years and about 700 PEOs offer a wide array of employment services and benefits and are operating today in all 50 states. The PEO industry generates approximately \$68 billion in gross revenues annually and have an 88 percent client retention rate. The average client of a PEO is a business with 19 worksite employees but, increasingly, larger businesses also are finding value in a PEO arrangement, because PEOs offer robust Web-based HR technologies and expertise in HR management and as such, PEOs can partner with companies that have 500 or more employees and work in conjunction with their existing human resources department. PEO clients include many different types of businesses ranging from accounting firms to high-tech companies and small manufacturers. Many different types of professionals, including doctors, retailers, mechanics, engineers and plumbers, also benefit from PEO services. In fact, forty percent of businesses that use PEOs upgrade their benefit packages as a result and, while only 27% of small businesses offer employee retirement plans (according to the NFIB), approximately 98% of PEO's offer retirement benefits to their small business worksite employees.

The professionals at the PEO provide critical assistance with employer compliance, which helps protect the client against liability. In many cases, the PEO co-employment relationship provides employees with an expanded employee benefits package, including retirement savings plans (401(k)) where the client company contracts with a PEO, and the PEO co-employs the client's worksite employees.

In the arrangement among a PEO, a worksite employee and a client company, there exists a co-employment relationship in which both the PEO and client company have an employment relationship with the worker. The PEO and client company share and allocate responsibilities and liabilities. As co-employers with their client companies, PEOs contractually assume substantial employer rights, responsibilities, and risk through the establishment and maintenance of an employer relationship with the workers assigned to its clients. More specifically, a PEO establishes a contractual relationship with its clients whereby the PEO: co-employs workers at client locations, and thereby assumes responsibility as an employer for specified purposes of the workers assigned to the client locations; reserves a right of direction and control of the employees; shares or allocates with the client employer responsibilities in a manner consistent with maintaining the client's responsibility for its product or service; pays wages and

employment taxes of the employee out of its own accounts; reports, collects and deposits employment taxes with state and federal authorities; establishes and maintains an employment relationship with its employees that is intended to be long term and not temporary; retains a right to hire, reassign and fire the employees.

In this PEO contractual employment relationship, the PEO assumes much of the responsibility and liability for the business of employment while the client company retains responsibility for and manages product development and production, business operations, marketing, sales, and service. The PEO and the client share certain responsibilities for employment law compliance. As a co-employer, the PEO will often provide a complete human resource and benefit package including a retirement savings plan, for worksite employees and as such, should be held to the higher standard of care that is called for in this rule for those who sponsor or advise customers with regards to retirement plans. A PEO should not be permitted to contract away any liabilities that may arise from the implementation of the proposed rule.

As employers, both the client and the PEO have compliance obligations. However, PEOs provide worksite employees with coverage under many employment laws and regulations, including federal, state, and local laws. In many cases, these laws would not apply to workers at small businesses without the PEO relationship. Once included in the PEO's workforce, the workers are protected by these laws and therefore, in the case of PEOs providing retirement plans this rule should apply to PEOs and provide a higher standard of fiduciary responsibility to the PEO for both its client co-employer and all the employees of the PEO clients company who are receiving the benefit of retirement savings plans.

Therefore, since PEOs create an employment relationship with their workers and this relationship exists in fact, not just in form PEOs should be held to the fiduciary standard of care called for in the proposed rule when they offer retirement benefits to their clients and the client's employees. The PEO relationship involves a contractual allocation and sharing of employer responsibilities between the PEO and the client and as such the PEO that offers retirement benefits should be contractually obligated to abide by the higher standard of care called for by the proposed rule as the PEO and the client company have established employment relationships with worksite employees. The PEO directs and controls worksite employees in matters involving human resource management and compliance with employment laws to which this new proposed rule should be included as one that is applied to PEOs. If PEO's continue to offer to the employees of small businesses to gain access to big-business benefits such as retirement plans that they might not typically receive as employees of a small company, then they should also have to abide by the provisions of the proposed rule and not be allowed the potential to create a loophole through which compliance with the proposed rule may be avoided.