



National Association of Insurance
and Financial Advisors

December 20, 2018

Preston Rutledge
Assistant Secretary, Employee Benefits Security Administration
Department of Labor
Office of Regulations and Interpretations
Room N-5655
200 Constitution Avenue NW
Washington, DC 20210

**RE: Proposed Rule on Definition of “Employer” under Employee Retirement
Income Security Act—Association Retirement Plans and Other Multiple-
Employer Plans
RIN 1210-AB88**

Dear Mr. Rutledge:

The National Association of Insurance and Financial Advisors (NAIFA) appreciates this opportunity to comment on the Department of Labor’s (“Department”) proposed rule expanding access to affordable quality retirement savings options by revising the definition of “employer” under ERISA for purposes of association retirement plans and other multiple-employer plans (collectively, “MEPs”).¹ As a general matter, NAIFA applauds the Department’s efforts to make MEPs more accessible and practical for employers—particularly small employers who may not otherwise offer a retirement plan for their employees. Our concern, however, is that the proposed rule does not address some of the longstanding obstacles deterring employer adoption of MEPs and may not go far enough to attract new employer participants.

Founded in 1890 as The National Association of Life Underwriters (NALU), NAIFA is the oldest, largest and most prestigious association representing the interests of insurance professionals from every Congressional district in the United States. Our mission – to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members – is the reason NAIFA has consistently and resoundingly stood up for agents and called upon members to grow their knowledge while following the highest ethical standards in the industry.

Many NAIFA members work with small-employer clients and encourage them to implement retirement savings plans for themselves and their employees. In general, employees are far more

¹ Department of Labor, Employee Benefits Security Administration, *Definition of “Employer” Under Section 3(5) of ERISA – Association Retirement Plans and Other Multiple-Employer Plans*, 83 Fed. Reg. 53534 (Oct. 23, 2018).



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likely to participate in an employer-sponsored retirement plan than to open an Individual Retirement Accounts (IRA). Expansion of access to MEPs will allow more employers to offer these important retirement benefits to employees. Improving access to and adoption of MEPs would, we believe, increase overall retirement savings and be a positive step toward solving the retirement savings crisis in the U.S.

Today, significant hurdles exist for small employers who may want to participate in a MEP. Among them:

- The “nexus” or commonality requirement for MEPs;
- The “one bad apple” rule that can disqualify the entire plan on the basis of the actions or inactions of a single adopting employer; and
- Requirements that the employers control the MEP in form and in substance and that there must be a substantial business purpose other than the providing of benefits to employees.

Unfortunately, the proposed rule does not fully address these challenges and therefore may not materially increase employers’ comfort level with MEPs. We recognize the Department has limited authority as compared to Congress’ legislative proposals from the 114th and 115th Congresses. However, the Department should seek, within its scope of authority, to remove these substantial impediments, many employers who now are reluctant to offer a plan due to costs, administrative burdens and a lack of expertise would be more likely to adopt into a multiple employer plan. The ease and cost efficiencies of having a professional trustee, Plan Administrator, third-party record keeper, investment advice fiduciary, etc. would be motivating factors for plan implementation.

We believe more employers would implement plans and encourage employee participation if they were not required to establish a nexus with other employers adopting into the plan. The proposed rule, however, retains a “commonality of interest” requirement for employers which may undermine the usage and effectiveness of the proposal.

Once the business nexus rule is removed, it follows that the requirement that the employers control the MEP would need to be modified. A better approach would be to allow employers to assign control and management of the plan to a fiduciary MEP Plan Sponsor (with employers keeping their fiduciary obligation in selection of the MEP/Plan Sponsor). Likewise, there should be no need to adopt into a MEP other than to provide the stated benefits to the employers’ employees.



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Compounding employers' concerns about the risks associated with MEPs is the "one bad apple" rule referenced above. Again, the proposed rule does not contain relief from this obstacle and employers may still be unwilling to adopt into MEPs with this substantial risk in place.

Again, we appreciate this opportunity to provide comments and applaud the Department's efforts to expand MEP accessibility and practicality for employers – a move we believe could result in more employees receiving retirement benefits and increase overall savings. Please do not hesitate to contact me if I can provide further information or answer any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill Judd". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Jill Judd, LUTCF, FSS
NAIFA President