



The Center for Association Leadership

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) appreciates 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.

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. A 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 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. These additional benefits offered by the DOL proposal are that 1.) the MEP Plan Sponsor is responsible for the Plan Administrator fiduciary duties and not 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”.

ASAE believes that its membership meets the “commonality of interest” test in the proposed rule. For example, ASAE has a sufficiently close economic and representational nexus to employers in the business of operating both professional and trade associations. And in particular, a sufficiently close economic and representational nexus to employees in the business of operating a professional or trade association. As a result, ASAE's members include employees of employers in “the same trade, industry, line of business, or profession,” thereby satisfying the “commonality of interest” test.

In the case of employees in the business of operating a professional or trade association, these employees are oftentimes a member of ASAE although their actual common law employer is not a member. In our opinion, however, this does not break the close economic and representational nexus we have with our employee-members. A strong argument can be made that this nexus can and should be imputed to our employee-member's common law employer, provided the employer is in the business of operating a professional or trade association. In this case, not only would our employee-member share a “commonality of interest” with ASAE, but so to would the employee-member's common law employer, which would therefore allow this common law employer – along with its employees – to participate in, for example, an ARP sponsored by ASAE.

The Department explains that it intends to construe the terms “industry” and “profession” broadly when determining whether a “commonality of interest” exists in order to “expand employer and employee access to MEP coverage.” We ask the Department to do just that in the context of ASAE's ARP sponsorship. It is important to emphasize that many of ASAE's employee-members are employed by small professional or trade associations that may find it difficult to offer competitive retirement benefits to their employees. These associations are supporting industries and causes in their local communities, and the ability to offer retirement benefits would allow them to competitively attract talent, hire, and grow.

3. State-Level Barriers to Employer Participation

ASAE, like many of the associations that would consider sponsoring an ARP, broad-based, national organizations with members dispersed throughout all 50 states. As the 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,

A handwritten signature in black ink that reads "John H. Graham IV". The signature is written in a cursive, flowing style.

John H. Graham IV
President and CEO