



**FINANCIAL  
SERVICES  
INSTITUTE**

VOICE OF INDEPENDENT  
FINANCIAL SERVICES  
FIRMS AND INDEPENDENT  
FINANCIAL ADVISORS

## VIA ELECTRONIC MAIL

December 21, 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

**Re: Definition of “Employer” Under Section 3(5) of ERISA – Association Retirement Plans and Other Multiple-Employer Plans RIN 1210-AB88**

Dear Director Canary:

On October 23, 2018, the Department of Labor’s Employee Benefits Security Administration (EBSA) published a request for public comment on its proposal to expand access to affordable quality retirement saving options by clarifying the circumstances under which an employer group, association, or professional employer organization (PEO) may sponsor a workplace retirement plan. The proposal would treat the employer group, association, or PEO as an employer in order to establish an employee pension benefit plan within the meaning of ERISA.<sup>1</sup> (Proposed Rule).<sup>2</sup> The Proposed Rule would allow employer groups and associations to sponsor a defined contribution retirement plan for their members, or a PEO to sponsor a plan for client employers (collectively, multi-employer plans or MEPs). It is intended to expand access to retirement savings plans, especially for small employers and the self-employed.

The Financial Services Institute<sup>3</sup> (FSI) appreciates the opportunity to comment on this important proposal. We commend EBSA’s efforts to allow employer groups, associations and PEOs to participate in MEPs, and we urge EBSA to adopt this important Proposed Rule. FSI offers general comments below but largely defers to and supports the more specific comments made by the Insured Retirement Institute (IRI).

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<sup>1</sup> Employee Retirement Income Security Act §3, 29 U.S.C. §1002 (2006).

<sup>2</sup> Definition of “Employer” Under Section 3(5) of ERISA-Association Retirement Plans and Other Multiple-Employer Plans, 83 Fed. Reg. 53534 (proposed Oct. 23, 2018) available at: <https://www.federalregister.gov/documents/2018/10/23/2018-23065/definition-of-employer-under-section-35-of-erisa-association-retirement-plans-and-other>.

<sup>3</sup> The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

## **Background on FSI Members**

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the US, there are more than 160,000 independent financial advisors, which account for approximately 52.7 percent of all producing registered representatives.<sup>4</sup> These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (IBD).<sup>5</sup>

FSI's IBD member firms provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners and job creators with strong ties to their communities. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the affordable financial advice, products, and services necessary to achieve their investment goals.

FSI members make substantial contributions to our nation's economy. According to Oxford Economics, FSI members nationwide generate \$48.3 billion of economic activity. This activity, in turn, supports 482,100 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly \$6.8 billion annually to federal, state, and local government taxes. FSI members account for approximately 8.4% of the total financial services industry contribution to U.S. economic activity.<sup>6</sup>

## **Discussion**

FSI strongly supports EBSA's efforts to expand access to workplace retirement plans through MEPs. Allowing employers to pool resources through MEPs allows them to reduce costs and share the administrative burden of sponsoring a retirement savings plan. Costs and regulatory complexity prevent many employers, particularly small businesses, from offering retirement savings plans to their employees. The Proposed Rule will provide small and mid-size businesses more affordable and less burdensome retirement savings plan alternatives than are currently available. Many small businesses do not have the resources to administer a retirement plan, particularly given the extensive plan sponsor recordkeeping requirements. Participating in a MEP would allow firms to outsource the management of a retirement savings plan to professional fiduciaries, leaving them free to focus on managing their business and serving their clients. In addition, pooling resources to have greater assets under management allows small businesses to offer the same low-cost funds that large employers offer. As discussed above, because every financial advisor member of FSI is a small business owner, the Proposed Rule could potentially benefit hundreds of thousands of individuals.

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<sup>4</sup> Cerulli Associates, Advisor Headcount 2016, on file with author.

<sup>5</sup> The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a dual registrant. The use of the term "investment adviser" or "advisor" in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

<sup>6</sup> Oxford Economics for the Financial Services Institute, The Economic Impact of FSI's Members (2016).

As previously mentioned, FSI largely defers to and supports the comments made on the Proposed Rule by the Insured Retirement Institute.<sup>7</sup> We are in full agreement with IRI on their comments and recommendations. We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with EBSA on this and other important regulatory efforts.

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 393-0022.

Respectfully submitted,

A handwritten signature in blue ink that reads "Robin Traxler". The signature is written in a cursive style with a long horizontal line extending to the right.

Vice President, Regulatory Affairs & Associate General Counsel

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<sup>7</sup> Letter dated December 21, 2018 from IRI and signed by Jason Berkowitz, Vice President & Counsel, Insured Retirement Institute to the Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor.