



# *The Commonwealth of Massachusetts*

*Office of the State Treasurer*

*Defined Contribution Plans*

*Boston, Massachusetts 02108-1608*

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Via [www.regulations.gov](http://www.regulations.gov)

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

Commonwealth of Massachusetts Office of the State Treasurer and Receiver General  
Comments on RIN 1210-AB88

Issued by the Employee Benefits Security Administration (EBSA), U.S. Department of Labor

Thank you for the opportunity to comment on the proposed rule: *Definition of "Employer" Under Section 3(5) of ERISA—Association Retirement Plans and Other Multiple-Employer Plans*, 83 Fed. Reg. 53,534 (Oct. 23, 2018) (Proposed Rule). I write today as Treasurer and Receiver General of the Commonwealth of Massachusetts (Treasury) on behalf of the Massachusetts Defined Contribution CORE Plan (CORE Plan), an Internal Revenue Code §401(k) plan for which my office is sponsor.

We recognize and applaud the intent of the Proposed Rule to further expand retirement security to those throughout the country who are without this most important option for future savings. Moreover, the Proposed Rule is in line with my own long-held belief in expanding access to retirement benefits. We thus see the Proposed Rule (including its Preamble) as a welcome expansion of existing regulations, and guidance on the kinds of entities and under what circumstances various groups, associations, and professional employer organizations may sponsor a MEP.

Increased retirement security for all has long been a goal in the Commonwealth and, as discussed in greater detail below, we are taking bold steps to achieve it with the implementation of the CORE Plan.

## Background

Pursuant to Chapter 60 of the Acts of 2012, codified at Massachusetts General Law (M.G.L.) Chapter 29, Section 64E, my office was tasked to establish an ERISA-compliant, Internal Revenue Code Section 401(k) plan for nonprofit employers with twenty or fewer employees, which are established, chartered or organized and doing business in the Commonwealth. (M.G.L. c. 29, § 64E(a)). Following the Employee Benefits Security Administration's (EBSA's) issuance of the *Interpretive Bulletin Relating to State Savings Programs That Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974*, 80 Fed. Reg. 71,936 (November 18, 2015) (2015 Interpretive Bulletin) that has been codified at 29 C.F.R. § 2509.2015-2, and consistent with said 2015 Interpretive Bulletin, our office structured the CORE Plan as a MEP within the meaning of Code Sections 401(a) and 413(c) for specified eligible employers in the Commonwealth, with the Office of the Treasurer as MEP Sponsor and Named Fiduciary.

After years of careful development and plan design, the CORE Plan launched in October of 2017 and began accepting contributions at the beginning of 2018. The target employer population, nonprofit organizations, represent approximately 17% of the Massachusetts workforce, employing over five hundred thousand individuals.

## Comments

My office has reviewed the Proposed Rule published by EBSA in the Federal Register on October 23, 2018. We understand and support the purpose of the Proposed Rule to expand workplace access to retirement plans by clarifying requirements for groups, associations, and professional employer organizations to sponsor MEPs, and by allowing certain working owners without employees to participate in MEPs. I applaud EBSA's shared commitment on this very important issue that, if not addressed, could continue to negatively affect so many residents in Massachusetts and throughout the country.

In its Preamble to the Proposed Rule, "[t]he Department acknowledge[d] that the term "multiple employer plan" is used to refer to different kinds of employee-benefit arrangements" but specified that the Proposed Rule "addresses only two kinds of arrangements: Sponsorship of a MEP by either a group or association of employers or by a PEO." 83 Fed. Reg. at 53536. *See also* 83 Fed. Reg. at 53539-42. A state that sponsors a MEP would not fall into either of these categories because it is neither a group of employers nor an association of employers, nor is it a PEO. We therefore read the Proposed Rule as directed to the private sector and not intended to cover state-sponsored MEPs. Furthermore, our understanding is that the Proposed Rule would not conflict with but rather supplement EBSA's existing interpretive guidance as it relates to state-sponsored MEPs.

We recognize, however, that in one instance, the Preamble to the Proposed Rule states that "[t]he Department . . . concluded that it should clarify through regulation that **an employer group or association or a PEO** [emphasis added] that meets certain conditions may sponsor a single MEP under title I of ERISA (as opposed to providing an arrangement that constitutes multiple retirement plans). The Department, therefore, is proposing to issue a regulation interpreting the term "employer" for purposes of ERISA section 3(5). The proposed rule would supersede subregulatory interpretive rulings under ERISA section 3(5). ..." 83 Fed. Reg. 53,534, at 53,536. In another instance, the Preamble goes on to state that "[p]aragraph (b) of the proposal would

define and clarify the criteria for a “bona fide” group or association of employers capable of establishing a MEP. This paragraph would replace and supersede criteria in prior subregulatory guidance ...” Proposed Rule, 83 Fed. Reg. at 53,539.

On behalf of the Treasury, the CORE Plan, and its eligible CORE Plan participants, and in continued support of MEP programs, I address this language from the Proposed Rule solely out of an abundance of caution. Thus, this letter is sent to confirm that the Proposed Rule does not conflict with or was not intended to conflict with our understanding.

The intent seems plain that the Proposed Rule would not apply to a state-sponsored MEP. That is because the 2015 Interpretive Bulletin does not relate to an employer group or association or to a PEO. Further, in our view the 2015 Interpretive Bulletin is not “subregulatory” guidance or ruling for the types of private sector MEPs falling within the scope of the Proposed Rule. I therefore write to ensure that EBSA address any uncertainty here with respect to the continued applicability of guidance as it relates to state-sponsored MEPs, including but not limited to that set forth in the 2015 Interpretive Bulletin.

I respectfully request that in adopting a Final Rule on this matter, EBSA confirm, such as in the Preamble to such Final Rule, that a state’s ability to sponsor a MEP is unaffected by the Proposed Rule, or that the final version of the Proposed Rule provide that its impact does not adversely affect and does not apply to state-sponsored MEPs.

Sincerely,



Deborah B. Goldberg  
State Treasurer and Receiver General