



BIPARTISAN POLICY CENTER

December 24, 2018

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Re: RIN 1210-AB88: Definition of "Employer" under Employee Retirement Income Security Act

To Whom It May Concern:

The Bipartisan Policy Center¹ (BPC) appreciates the opportunity to provide comments on the U.S. Department of Labor's proposed rule to clarify the types of entities that are permitted to sponsor workplace retirement plans under the Employee Retirement Income Security Act (ERISA).

We commend President Trump for his executive order that brings attention to the critical issue of retirement security. Tens of millions of Americans lack access to payroll-deduction, tax-preferred retirement savings accounts. Those who are self-employed or work at small businesses are especially vulnerable, with less than half of them having access to any retirement benefits through the workplace.²

In 2016, BPC's Commission on Retirement Security and Personal Savings – co-chaired by former Senator Kent Conrad and the Honorable James B. Lockhart III – released bipartisan findings and recommendations for improving U.S. retirement security.³ The lack of access to well-designed workplace retirement savings accounts was one of the most significant challenges highlighted and the target of many of their proposals.

The Department's proposed rule is generally consistent with the BPC Commission's recommendation to expand and enhance open multiple employer plans (MEPs). These plans hold the promise of making it simpler and less costly for employers – particularly small ones – to offer their workers retirement savings vehicles. Clarifying the definition of entities permitted to sponsor open MEPs may make them more widely available and accessible. It is important

¹ The Bipartisan Policy Center is a non-profit organization that combines the best ideas from both parties to promote health, security, and opportunity for all Americans. BPC drives principles and politically viable policy solutions through the power of rigorous analysis, painstaking negotiation, and aggressive advocacy. <https://bipartisanpolicy.org/>.

² U.S. Department of Labor, Bureau of Labor Statistics, Current Population Survey. Table 2. 2018. Available at: <https://www.bls.gov/ncs/ebs/benefits/2018/ownership/private/table02a.pdf>.

³ Bipartisan Policy Center, *Securing Our Financial Future: Report of the Commission on Retirement Security and Personal Savings*. 2016. Available at: <http://bipartisanpolicy.org/retirement-security>.

that consumer protections remain in place to ensure that these plans carry reasonable fees and investment options and are being sponsored by responsible fiduciaries.

Additionally, the rule should avoid inadvertently deterring states from moving forward with facilitating MEPs for their residents.⁴ In the absence of federal action that dramatically increases access to retirement plans, state offerings could at least temporarily fill the policymaking void and make workplace retirement plans more accessible to the tens of millions who lack such opportunity to save today.

The Department deserves praise for its work to release a robust rule that has the potential to serve as a key step towards improving retirement savings in the U.S. It will not by itself, however, solve the nation's retirement security challenge. Further action is needed, such as legislation along the lines of the pending bipartisan Retirement Enhancement and Savings Act of 2018 (RESA).⁵ Along with other meaningful reforms, this legislation would enable "pooled employer plans" – a type of open MEP that could be sponsored by a broader swath of entities – and remove barriers to their adoption.

We hope that the administration will continue to focus on this vital public policy issue and work with the 116th Congress to identify additional opportunities that can improve retirement security for Americans across the country.

Thank you for the opportunity to provide comments on this proposed rule. We look forward to working with the Department on these and other efforts in the year ahead.

Respectfully,



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Director of Economic Policy
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⁴ The states of Vermont and Massachusetts have already enacted legislation to establish state-facilitated MEPs. The statutory language can be viewed here:

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT069/ACT069%20As%20Enacted.pdf>;

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIII/Chapter29/Section64E>.

⁵ Text of the Retirement Enhancement and Savings Act of 2018 can be viewed here: <https://www.congress.gov/bill/115th-congress/senate-bill/2526/text>.