



December 21, 2018

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Attention: Definition of Employer—MEPs RIN 1210-AB88

For over 20 years, Slavic Integrated Administration, Inc. has been a service provider to multiple employer plans (MEPs) and plan sponsors across the United States. By all indications, a retirement funded by Social Security will soon become a thing of the past, leaving only those who properly prepared in a position to enjoy a secure and stable future. Our participant-investors have entrusted us with a significant portion of their earnings; a portion of their work, and therefore a portion of their livelihood. Our stewardship of that livelihood is something we do not take lightly and it is with that mindset that we release the comment below to the DOL's proposed regulation impacting 401(k) MEPs.

The Department is called upon to consider more generally whether businesses or organizations other than associations of employers and Professional Employer Organizations ("PEOs") should be able to sponsor a single MEP. Given the structure of the MEP, whereby the MEP sponsor is the trustee and retains primary fiduciary liability, it would be challenging for a bank or similar financial-services firm to simultaneously fulfill their ERISA 3(16) duties without giving back primary fiduciary responsibility to the employers. In the PEO multiple employer context, most DOL audits and lawsuits target the MEP sponsor and its responsibility for the shared on-going fiduciary responsibilities that the MEP structure permits—allowing client-employers to outsource the primary responsibilities of sponsoring or administering its own retirement plan.

Unlike an association, whose purpose is to give support to its industry, a financial-services firm's primary objective is to profit from the plan. This creates an inherent conflict of interest with their duty to act solely in the best interest of the participant. It is the PEO's unique ability as a professional employer to "stand in the shoes of the participating client-employers," that allows for them to sponsor retirement plans that address the economic challenges and administration complexities its client-employers encounter. PEOs take on substantial employment functions on behalf of its client-employers beyond offering a retirement plan. This relationship allows them to be responsive to its client-employers' needs. Absent an employment relationship, it is difficult to construct a scenario in which a financial-services

firm's business goals would align with such objectives without conflicts of interest. The employer/co-employer relationship is integral to the American benefit structure.

Plan sponsors may recover certain non-settlor direct expenses related to sponsoring an MEP. Recent DOL audits have underscored the importance of the accounting of these direct expenses charged to the plan to ensure they do not exceed the non-settlor administrative cost associated with operating a plan. The practice of recovering direct expenses would be heightened in the context of a financial-services firm. Their independence is diminished when, as a plan sponsor, it monitors itself or a related entity. The DOL would have to increase their resources to properly monitor the compounded vulnerability to mishandling of plan assets, charging excessive fees, self-dealing and prohibited transactions.

An MEP sponsored by an association or PEO does not derive income from the plan itself. Furthermore, PEOs can pass along cost savings benefits to the plan because of the integration of its services (i.e. payroll functions, human resources). We would also note that administrative and record-keeping expenses rise in proportion to the size of the participating client-employer. The cost advantage for a client-employer participating in a MEP rather than sponsoring a single plan is borne out of the MEP structure allowing for client-employers and employees to proportionately share in administrative cost.

A level free arrangement is discriminatory and does not recognize the reality of retirement plan administration and economics. Tiered pricing structures are a better solution because arguably it levels the playing field between large and small employers by equitably distributing cost among client-employers. Aggregation of assets will create cost-effective economies of scale for asset protection, but it will not provide similar results for small and mid-size employers administratively.

We offer our comment in support of the DOL's position to limit the sponsorship of MEPs to bona fide employer groups, associations, and PEOs since they are the entities who authentically accept primary fiduciary responsibility and act in the best interest of the employees. PEOs have been acting in this capacity for decades.

If you have any questions, please feel free to contact us.

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