



National Association of Insurance  
and Financial Advisors

October 28, 2019

**Submitted Electronically – [www.regulations.gov](http://www.regulations.gov)**

Mr. Preston Rutledge  
Assistant Secretary, Employee Benefits Security Administration  
U.S. Department of Labor  
Office of Regulations and Interpretations  
Room N-5655  
200 Constitution Avenue NW  
Washington, DC 20210

**RE: Request for Information -- “Open MEPs” and Other Issues Under Section  
3(5) of the Employee Retirement Income Security Act  
RIN 1210-AB92**

Dear Mr. Rutledge:

The National Association of Insurance and Financial Advisors (NAIFA) appreciates this opportunity to comment on the Department of Labor’s (“Department”) request for information on defined contribution retirement plans maintained on behalf of multiple unrelated employers (“open MEPs”).<sup>1</sup> As a general matter, NAIFA applauds the Department’s efforts to make MEPs more accessible and practical for employers—particularly small employers who may not otherwise offer a retirement plan for their employees. More detailed responses to the Department’s request are below.

Founded in 1890 as The National Association of Life Underwriters (NALU), NAIFA is one of the nation’s oldest and largest associations representing the interests of insurance and financial services professionals. NAIFA members assist consumers by focusing their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, retirement planning, multiline, and financial advising and investments. NAIFA’s mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members.

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<sup>1</sup> U.S. Department of Labor, Employee Benefits Security Administration, Request for Information, “*Open MEPs*” and Other Issues Under Section 3(5) of ERISA, 84 Fed. Reg. 37545 (July 21, 2019).

*RFI Question 1: Should the Department revise its regulations to expressly permit open MEPs? If so, why?*

NAIFA would support the Department allowing open MEPs because they present a viable option for small employers who want to offer retirement benefits to their employees, but also are highly impacted by administrative burdens and costs.

Many NAIFA members work with small-employer clients and encourage them to adopt retirement savings plans for themselves and their employees. In general, employees are far more likely to participate in an employer-sponsored retirement plan than to open an Individual Retirement Account (IRA). Expansion of access to MEPs – with the ease and cost efficiencies of having a professional trustee, Plan Administrator, third-party record keeper, investment advice fiduciary, etc. – would allow more employers to offer these important retirement benefits to their employees.

Open MEPs – those without nexus/commonality requirements between participating employers – are particularly attractive options for small employers. We believe more employers would implement retirement plans and encourage employee participation if they were not required to establish a nexus with other employers adopting into a plan (especially if other barriers to small employer adoption of MEPs were also addressed, as discussed below). Overall, therefore, improving access to and adoption of open MEPs would likely increase retirement savings in the U.S.

*RFI Question 5: What approach should the Department take to facilitate open MEPs?*

Today, significant hurdles exist for small employers who may want to participate in a MEP. Among them:

- The “nexus” or commonality requirement noted above;
- The “one bad apple” rule that can disqualify the entire plan on the basis of the actions or inactions of a single adopting employer;
- The requirement that the employers “control” the MEP in form and in substance; and
- The requirement that there be a substantial business purpose other than providing benefits to employees for adopting into a MEP.

To maximize take-up rates of open MEPs by small employers who are currently reluctant to offer a plan due to costs, administrative burdens, and lack of expertise, the Department should choose an approach that minimizes these impediments to the greatest extent possible.

The Department should modify the requirement that individual employer members control the plan, especially if the nexus requirement is no longer in place. A better approach would be to allow employers to assign control and management of the plan to a fiduciary MEP Plan Sponsor (with employers keeping their fiduciary obligation in selection of the MEP/Plan Sponsor). Employers should also be allowed to adopt into an open MEP for the sole purpose of providing retirement benefits to their employees.

Compounding employers' concerns about the risks associated with MEPs is the "one bad apple" rule reference above. Without relief from this substantial risk, employers may still be unwilling to adopt into MEPs.

Again, we appreciate this opportunity to provide comments and applaud the Department's efforts to expand MEP accessibility and practicality for employers – a move we believe could result in more employees receiving retirement benefits and increase overall savings. Please do not hesitate to contact me if I can provide further information or answer any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill Judd", with a long, sweeping horizontal flourish extending to the right.

Jill Judd, LUTCF, FSS  
NAIFA President