

Association Retirement Plans: Regulatory Overview and Next Steps

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U.S. CHAMBER OF COMMERCE

Agenda

Where We Were

- Prior Guidance

Where We Are

- Final Regulations

Where We Will Go

- DOL Request for Information
- IRS Proposed Regulations
- Resources



Where We Were



Prior Guidance

Bona fide groups or associations could act as an employer to sponsor a retirement plan for member employers based on a facts and circumstances test, including:

- How members are solicited
- Who in the association is eligible to participate
- How the association was formed and for what purpose
- What are the rights of member employers
- Whether members employers control the benefit program
- Whether there is a nexus or commonality between employers (e.g. industry, trade, line of business or profession)



Where We Are



General

- Association Retirement Plan (ARP) regulations finalized July 31, 2019
- Effective September 30, 2019
- Limited to defined contribution retirement plans
- Bona fide employer groups or associations and bona fide PEOs may act as an “employer” under ERISA for sponsoring an ARP
- Financial services firm, such as a bank, trust company, insurance issuer, broker-dealer or other similarly financial services firms (including a record keeper or third-party administrator) are not allowed to be the group or association that establishes the ARP



Bona Fide Group or Association of Employers

- Must have at least one substantial business purpose unrelated to offering and providing ARP coverage:
 - Standard met if the group or association would be a viable entity without the ARP
 - Business purpose includes promoting a common business interests or the common economic interest of the members
 - Compelling evidence of a substantial business purpose exists if an organization were operated with active members before sponsoring the ARP
- Each member acts directly as an employer of at least one employee under the plan;
- Must have a formal organizational structure with a governing body and by-laws or other similar documentation;



Bona Fide Group or Association of Employers

- Members control the functions and activities, and the members that participate in the plan control the plan, in form and substance, taking into consideration whether employer members:
 - Regularly nominate and elect directors, officers, and trustees of the group or association and plan;
 - Have authority to remove any director, officer or trustees with or without cause; and
 - That participate in the plan have the authority and opportunity to approve or veto decisions or activities that relate to formation, design, amendment and termination of the plan, such as changes in coverage, benefits, or vesting
- Plan participation is only available to current and former employees of employer members;



Bona Fide Group or Association of Employers

- Employer members must have a commonality of interest
 - Employers are in the same trade, industry, line of business or profession
 - DOL ordinarily will not challenge any reasonable and good faith industry classification or categorization adopted by the group or association
 - DOL will not challenge the inclusion of support or allied business members of the group or association
 - Each employer has a principal place of business in the same region that does not exceed the boundaries of a single state or metropolitan area (even if the area includes more than one state)



Dual Treatment of Working Owners

- Working owner is a any person who:
 - Has an ownership right in a trade or business, including a partner; and
 - Is earning wages or self-employment income from the trade or business, either by:
 - Working on average at least 20 hours per week or at least 80 hours per month; or
 - In the case of a ARP that is not a PEO, having wages or self-employment income that is at least equal to coverage for participation for the owner and any covered beneficiaries in any group health plan sponsored by the group or association

Note: a working owner without common law employees may qualify as both an employer and an employee for purposes of participating in an ARP that is not a PEO



Where We Will Go



DOL: Request for Information (RFI)



- **Open Multiple Employer Plans (MEPs)**

- Should a commercial entity be allowed to establish? If so, what entities, what limitations, what are the conflicts, and what mitigating circumstances exist?
- What would be the impact of removing the commonality and control requirements on existing groups or associations? Would removal destabilize current arrangements?
- What are the costs and complexity of qualification requirements on open MEPS and would these otherwise offset other savings?
- What is the impact of open MEPS by commercial entities on the implementation, administration or enforcement of State or federal laws other than ERISA or the Code?

- **Corporate MEPs**

- Should these be addressed?
- What is a meaningful level of ownership other than at the controlled group level?
- Should this be in addition to a facts and circumstances test, and, if so, what are they?



• **Economic Impact**

- What are the costs/benefits of open MEPs?
- What type of business entities have the motives to sponsor open MEPs and what are the advantages/disadvantages of each?
- What type or size of employers would join open MEPS?
 - How many would join that did not previously offer coverage and how many would switch from another type of plan to an open MEP?
- What is the cost/fee comparison of:
 - Open MEP;
 - MEP sponsored by a bona fide group or association;
 - MEP sponsored by a PEO; and
 - Single-employer plans sponsored by a small business



IRS: Proposed Regulations



One Bad Apple Rule

- Current rule: if one employer in a MEP does not meet certain Internal Revenue Code qualification requirement, the entire plan is disqualified (i.e. benefits are taxable and contributions are not deductible)
- Proposed rule provides an exception if a defined contribution MEP:
 - Satisfies certain eligibility requirements;
 - Provides notice of non-compliance and cure requirements to the unresponsive participating employer, participants, DOL and IRS;
 - Implements a spinoff/termination of the assets related to an unresponsive participating employers; and
 - The MEP plan sponsor complies with any information request from the IRS or a representative of the spun-off plan



Other Considerations

Administrative Considerations	Fiduciary Considerations
<ul style="list-style-type: none">• Plan design• Vendors (record keeper, administrator, investment advisor, trustee)• Notice and disclosure• Plan documents and participation agreements• Qualification requirements• Compliance• Nondiscrimination testing	<ul style="list-style-type: none">• Vendor selection• Investment selection• Contribution timing• Bonding



Resources

- U.S. Chamber of Commerce
 - Association Retirement Plan Portal (under construction)
- Department of Labor
 - [401\(k\) Plans for Small Businesses](#)
 - [Meeting Your Fiduciary Responsibilities](#)
 - [Reporting and Disclosure Guide for Employee Benefit Plans](#)
- Internal Revenue Service
 - [Retirement Plan FAQs Regarding Multiple Employer Plans](#)



Contact Information

Chantel Sheaks

Executive Director, Retirement Policy

csheaks@uschamber.com

Office: 202-463-5458 / Mobile: 202-375-3138

