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

Regarding: Definition of "Employer" Under ERISA-Association Retirement Plans and Other Multiple Employer Plans, RIN 1210-AB88

Dear Assistant Secretary Rutledge:

The Pew Charitable Trusts' retirement savings project studies the challenges that American workers are facing in trying to save for retirement, the barriers that employers experience in trying to offer retirement savings plans for their workers, and the public policy initiatives that would address these challenges and barriers. We have published reports and other material on several topics related to retirement security, including "Employer Reactions to Leading Retirement Policy Ideas," "Few in Temporary or Alternative Jobs Have Access to Employer-Provided Retirement Plans," and "Many Small Business Leaders Express Limited Knowledge of Retirement Plan Fees."

For many Americans, setting aside money in a workplace retirement plan has become a critical component of ensuring financial security in their later years. Still, more than 40 percent of full-time private sector workers say they lack access to either a pension or an employer-based retirement savings plan such as a 401(k) and just under half—49 percent—say they participate in one. Pew's analysis of Census Bureau data shows broad differences in retirement plan coverage across the nation.

We appreciate the opportunity to comment on the Department of Labor's (Department) proposed rule 29 Code of Federal Regulations section 2510.3-5, regarding the definition of 'Employer' under ERISA with regard to association retirement plans and other multiple employer plans (MEPs). MEPs allow employers to join together to offer a single plan to achieve economies of scale and lower costs. Despite covering multiple businesses, MEPs are structured similarly to a traditional plan, which includes allowing employers to make matching contributions. Under a MEP, service providers take on much of the fiduciary responsibility, which reduces, but does not eliminate, an employer's own fiduciary duties.

In the preamble to the proposed rule, the Department stated that it "invites comments on all aspects of this proposal, including its scope, as well any data, studies or other information that would help refine and improve the proposal's estimated costs, benefits, and transfers." Through the retirement savings project's ongoing research, we have conducted surveys and focus groups with both employers and employees to understand how different policy initiatives will impact them. Our intention in submitting this public comment is to share our research of how the Department's proposed rule might impact small to midsized employers. We are not advocating for or against any particular approach in the final regulation to be issued.

Employers within a state or metropolitan area. The proposed rule states: “Paragraph (b)(2) of the proposal sets forth standards for determining whether employers have sufficient commonality of interests for purposes of the commonality requirement in paragraph (b)(1). Specifically, this paragraph would allow employers to band together for the express purpose of offering MEP coverage … if the employers have a principal place of business within a region that does not exceed the boundaries of the same state or the same metropolitan area (even if the metropolitan area includes more than one state).”

As is well-known, many states are considering several approaches for increasing retirement plan coverage of private sector workers without a plan at their workplace. One approach includes encouraging—but not requiring—business owners to join a state-sponsored MEP that covers workers at a group of unrelated employers or simplifying the process for employers to adopt existing private sector retirement plans. A MEP would be open to all employers in the state and provide a low-cost option with minimal employer responsibility and liability. Because employers take a more active role in a MEP, states cannot require participation—unlike a state-sponsored auto-IRA where employer responsibilities are more limited. Currently, Massachusetts and Vermont are sponsoring MEPs for private sector or nonprofit employers.

A key to the success of any policy initiative will be how it is received by small and midsize businesses and their workers. To help inform policymakers considering different policy approaches, Pew in 2016 surveyed over 1,600 small and medium-size private sector businesses (those with five to 250 employees). The survey was designed to help better understand the barriers to and motivations for offering retirement plans, and to get employers’ views on policy initiatives, including MEPs; few similar surveys have been conducted over the past decade.

The survey first asked how helpful a state-facilitated MEP would be for small businesses in general. The research shows that, overall, 85 percent of employers said they would find such a MEP somewhat or very helpful. Most businesses without a plan strongly or somewhat supported each of the individual elements of the MEP. Ninety-two percent liked the idea that the plan would allow employees to have choices in how their contributions are invested. The survey found lower levels of support, but still majorities, for the concept of a MEP sponsored by the state treasurer’s office or the state handling record-keeping, financial reporting, and communication for the plan (57 percent).

The statistical modeling of support for MEPs indicates that for each additional benefit offered, businesses without plans were 44 percent more likely to say a MEP program would be very helpful rather than not helpful. In addition, businesses leaders who were somewhat or much more likely to start a plan in the next two years were more than 2 ½ times more likely to say the MEP would be somewhat helpful and over three times more likely to say it would be very helpful compared with those who said it would not be helpful. Conversely, older businesses were more likely to say the program would not be helpful instead of very helpful. A year-old business has a 47 percent chance of saying a MEP would be very helpful; that drops to 36 percent for a 15-year-old enterprise.

Although employers said they would find such a plan helpful to small businesses generally, such support may not translate into actual participation. Therefore, the survey next asked if the small business leader would voluntarily join a MEP if offered. Some 61 percent of employers without plans said they would definitely be or might be interested in participating in such a program. In statistical modeling, businesses that offered more benefits were more likely to say they definitely or might be interested in participating in a MEP. For each additional benefit offered, the likelihood increased by 29 percentage points. Additionally, those likely to start a plan in the next two years were more than 2 ½ times more likely to say they were interested in participating in a MEP than were businesses not likely to start a plan in the next two years.

We thank the Department of Labor for the opportunity to provide relevant research on this important issue. We are available to discuss these findings or any other aspect of our research.

Sincerely,

John C Scott

John C. Scott
Director
Retirement Savings Project