Response to Department of Labor
Employer Benefits
Proposed Regulations

December 23, 2018

Professional Administrative Co-Employers (PACE) is a national association made up of Professional Employer Organizations (PEOs) across America. PACE was originally founded in 1991 as the National Association for Alternative Staffing (NAAS) in the state of Texas. It has now grown to a highly respected association of PEOs across our nation.

Our purpose is to see this industry grow for the good of all, we equip PEOs to choose their own destiny and go from surviving to thriving. We endeavor to develop to a vibrant community, open forum, accountability and a chief concern that we are friends before competitors.

As a national association representing PEOs across our nation we are responding to some concerns and making suggested changes to the proposed regulations 29 CFR Part 2510, RIN 1220-AS88. Definition of "Employer" under Section 3(5) of ERISA- Association Retirement Plans and other Multiple-Employer Plans.

We respect the leadership and vision of President Trump to expand access to workplace retirement plans, to help more American workers financially prepare to retire and understand the role PEOs can play in fulfilling that vision.

In reviewing the regulations, we have found several areas that we feel like should be clarified.

- There are several places in the regulations that refer to "former employee". Please describe what your definition is of a former employee. How long is a PEO held responsible for a former employee.

- We support your definition of an "employer" on page 12. However, Under the definition of a PEO on page 15 we believe it should be made clear a PEO is an Employer for administrative and compliance issues that they are in

control of and know about. At no time, should the PEO be responsible for a client's actions that is on their own without consulting the PEO or not following direction given by the PEO.

- Many states have passed legislation which use the term Co-Employer when defining PEOs, their functions, actions and responsibilities. We would like to see consistent use of the term Co-Employer and clear recognition of the differences between Co-Employer and Joint Employer.

- On page 11 of the DOL's document it states "The Department also notes that nothing in the proposed rule is intended to suggest that participating in a MEP sponsored either by a bona fide group or association of employers or by a PEO gives rise to joint employer status under any federal or State law, rule or regulation." We believe that joint employer issues should be addressed further in a part of any final rule and clear differentiation made between Co-Employer and joint employer criteria and definitions.

- We have a concern on page 24 you use the term "stand in the shoes" of the participating client employers - by assuming and performing substantial employment functions that the client employers otherwise would fulfill with respect to their employees. It should be made clear a PEO is an Employer for administrative and compliance issues which they are contractually in control of and know about. At no time, should the PEO be responsible for a client's actions that are taken on their own without consulting the PEO or not following direction given by the PEO.

- On page 26 under the list of "substantial employment functions". The responsibility of PEOs are listed with 9 responsibilities. Every PEO contract spells out the employment functions and responsibilities which are taken by the PEO, which are retained by the client and those that are shared and specifically how they are shared. We suggest that the PEO's service contract be the defining document when determining that the PEO has "substantial employment functions."

- On page 26, of the PEO responsibilities, **Number 3**, suggesting that a PEO is responsible for recruiting, hiring, and firing workers. We have a concern

with making the PEO responsible for the firing of an employee. We believe the person doing the firing is responsible for their actions, not the PEO unless a State statute requires a PEO to acknowledge responsibility in the PEO-Client agreement.

- On page 26, of the PEO responsibilities, under **number 4** of the PEO responsibilities. We have a concern of the PEO being responsible for the supervising of the employees in addition to the client-employer responsibilities to perform the same functions. The PEO cannot supervise each individual employee. We believe it should be made clear a PEO is an Employer for administrative and compliance issues, that they are in control of and know about. At no time, should the PEO be responsible for a client's actions that is on their own without consulting the PEO or not following direction given by the PEO. We would like to see the term supervising employees removed.

- On page 26, **number 7** of the PEO responsibilities. We believe this could be made simple by PEOs contractually requiring their clients to comply with all administrative and compliance issues as already in place by state and federal law**.**

- Page 26, of the PEO responsibilities **Number 8**. of the PEO responsibilities. We don't see a need for this responsibility if you approve **number 7** because it requires all PEOs to comply with all administrative and compliance issues as already in place by state and federal law. This would make it so simple and not get into the management of a client outside of the agreed contract.

- We believe regulations that are currently in place by existing state and federal law are sufficient for compliance of a PEO.

- On page 27, first paragraph it is stated that the provisional provides that, depending on the facts and circumstances of the "particular situation", even one of these criteria alone may be sufficient to satisfy the requirement that the PEO performs substantial employment functions on behalf of the client employers. We believe it should be made clear on what is meant by "particular situation".

- We believe on the bottom of page 27 under safe harbor that it should be made clear there is no difference between a CPEO and a PEO. Limiting qualification to offer MEPs to only CPEOs would contradict the objective of bringing this proposal to make quality retirement options available to more employees. We should make this easy for a PEO to offer a MEP and remove the mention of CPEO criteria. CPEO is voluntary.

- We believe the "working owner" is an employee and should be entitled to participate in a MEP.

- We believe if a PEO has performed substantial employment functions and has met the requirements to comply with all administrative and compliance issues already in place by state and federal law should be "grandfathered in under the compliance of these proposed regulations". They have been in Business as a PEO, serving their clients and are ready to offer MEP to their clients.

- On page 95, to qualify to become a Bona Fide Professional Employer Organization a (PEO) must meet certain requirements as describe on page 96 and 97. We believe a CPEO and a PEO should be treated the same to satisfy a safe harbor, and organization shell be considered to perform substantial employment functions behalf of its client employer. Under the proposed regulations a CPEO only must meet two or more of the criteria set forth in paragraph (C)(2)(ii) through (I) of the section; At the same time, you require a PEO to meet five or more requirements. We've believed there should be no discrepancies between a CPEO and a PEO.

- We believe on page 97. The five criteria listed with respect to client-employer employees participating in the plan: We have a concern with (C). We believe a PEO is an Employer for administrative and compliance issues, that they are in control of and know about. At no time, should the PEO be responsible for a client's actions that are on their own without consulting the PEO or not following direction given by the PEO. We believe who ever fire~~r~~s an employee takes on the responsibility of the actions of the firing.

- We strongly support your view on Page 95, (vii), banks, trust company, insurance issuer, broker-dealer, or similar financial services firm (including pension record keepers and third-party administrators), or owned or controlled by such an entity, subsidiary or affiliate participates in the group or association in its capacity as an employer member of the group or association. All above should not be in the business of providing MEP, it would create a conflict of interest.
  A PEO is the best opportunity to provide MEP to the largest number of employees.

We commend the Department of Labor for the outstanding work you did to give PEOs the guidance and opportunity to provide affordable quality retirement savings through a PEO. Please feel free to contact us for any clarification of our proposed suggestions to improve the regulations you have proposed.