THE ASPEN INSTITUTE
FINANCIAL SECURITY PROGRAM

December 23, 2018

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attention: Definition of Employer—MEPs RIN 1210-AB88

RE: Comments on Department of Labor Proposed Rule Regarding the Definition of "Employer" Under Section 3(5) of ERISA - Association Retirement Plans and Other Multiple-Employer Plans (RIN 1210-AB88)

To Whom It May Concern:

The Aspen Institute's Financial Security Program (FSP) appreciates this opportunity to provide comments on the U.S. Department of Labor's (DOL) Proposed Rule Regarding the Definition of "Employer" Under Section 3(5) of ERISA - Association Retirement Plans and Other Multiple-Employer Plans (RIN 1210-AB88).

Aspen FSP's mission is to illuminate and solve the most critical financial challenges facing American households and to make financial security for all a top national priority. We aim for nothing less than a more inclusive economy with reduced wealth inequality and shared prosperity. We believe that transformational change requires innovation, trust, leadership, and entrepreneurial thinking. FSP galvanizes a diverse set of leaders across the public, private, and nonprofit sectors to solve the most critical financial challenges. We do this through deep, deliberate private and public dialogues and by elevating evidence-based research and solutions that will strengthen the financial health and security of financially vulnerable Americans.

As such, Aspen FSP was encouraged by President Trump's Executive Order on Strengthening Retirement Security in America.[1] We are pleased to see the growing chorus of federal and state leaders committed to enhancing retirement security for American families, including the President's statement that expanding workplace retirement plans is a priority of his administration.[2] The coverage gap is the most fundamental challenge facing our current

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retirement system, leaving roughly 55 million Americans without access to the type of tax-advantaged, payroll-facilitated savings plans that are proven to increase retirement security.[3] Employer-based plans are particularly rare for employees of small businesses and contingent workers, both of whom were rightly targeted by the President's Order.

Aspen FSP is also encouraged by DOL's recent proposal in this area, which would expand the universe of similarly-situated employers who can claim the "commonality of interest" required to offer a multiple employer plan (MEP); allow professional employer organizations (PEO) to sponsor MEPs on behalf of their client-employers; and make certain independent workers eligible to participate in MEPs.

While it is unlikely that the expanded availability of MEPs, or "association retirement plans," will single-handedly close the coverage gap, there is reason to be optimistic that, by lowering the cost and administrative burden of plan sponsorship, MEPs could increase the number of workers with access to and enrolled in a plan.

The United Kingdom (UK) and Australia have been experimenting for many years with open-MEP-like structures, and to good effect. In the UK, "master trusts" – trust-based defined-contribution plans involving multiple employers – have proven to be an effective way to expand coverage. According to the Executive Director of the research division of the UK's government-facilitated master trust, the National Employer Savings Trust (NEST), "The experience of smaller employers in the UK in complying with their auto enrollment duties, and of NEST and others like them in helping them, suggests that the open-MEP structure can definitely help smaller organizations establish good pensions for their workers."[4] And in Australia, many supernannuation funds – the cornerstone of the private savings system there – are organized on a multiple-employer, portable basis. Even before the government mandated participation in superannuation funds in 1992, a number of non-profit, industry-specific funds gained

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[1] Ida Rademacher, "Executive Order on Strengthening Retirement Security in America," Aspen Institute Blog, 5 September 2018, https://www.aspeninstitute.org/blog-posts/executive-order-on-strengthening-retirement-security-in-america/.

[2] President Trump, Executive Order on Strengthening Retirement Security in America, 31 August 2018, https://www.whitehouse.gov/presidential-actions/executive-order-strengthening-retirement-security-america/.

[3] David John and Gary Koenig, "Workplace Retirement Plans Will Help Workers Build Economic Security," AARP Public Policy Institute Fact Sheet, October 2014, https://www.aarp.org/content/dam/aarp/ppi/2014-10/aarp-workplace-retirement-plans-build-economic-security.pdf.

[4] Will Sandbrook, "What the US Can Learn from British Pension Plans," Aspen Institute Blog, 26 September 2018, https://www.aspeninstitute.org/blog-posts/what-the-us-can-learn-from-british-pension-plans/.

considerable heft and efficacy, laying the groundwork for today's more universal system.[5]

Closer to home, Massachusetts and Vermont have recently launched or are in the process of launching open MEPs of their own.[6] Though it is too early to judge the success of these new plans, their existence speaks to the broad appetite for experimentation with low-cost retirement alternatives. Aspen FSP strongly believes that states should be allowed to continue to experiment with open MEPs and that DOL's recent proposal should not supersede the previous interpretative bulletin supporting state-sponsored open MEPs.[7] Indeed, the purpose of DOL's currently proposed rule is wholly consistent with that interpretive bulletin: "to expand the retirement savings options available to private sector workers through ERISA-covered retirement plans."[8]

Another reason to be optimistic about MEPs comes from a research project that Aspen FSP has spearheaded, in partnership with the Toronto-based mission-driven firm Common Wealth, on the potential of non-employer plan sponsors. That research will be officially published in the coming months, but one key preliminary finding is that the US is well-positioned to expand its market of portable retirement benefits sponsored by non-employer institutions like professional associations, trade associations, PEOs, faith communities, labor unions, new worker organizations, payroll firms, and gig platforms. We believe these groups could be effective plan sponsors for a number of reasons, including:

- Workers may remain attached to these institutions for longer than they remain attached to employers. Longer periods of attachment are well aligned with the long time-horizon associated with retirement finance.
- The large size of many of these organizations means they are capable of creating larger-scale retirement benefits. Scale is an important value driver when it comes to pensions and retirement plans.[9]

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[5] For example, the Labour Union Co-operative Retirement Fund (LUCRF) was established by the Storeman and Packer's Union in 1978, and today has about 160,000 members, 22,000 employers, and USD $4.3 billion in assets under management.

[6] In Massachusetts, the Massachusetts Nonprofit Network partnered with the state government to launch CORE, a MEP for Massachusetts nonprofits with 20 or fewer employees. And in Vermont, the Green Mountain Secure Retirement Plan, which will be open to all Vermont employers with 50 or fewer employees, is scheduled to launch in 2019.

[7] Department of Labor, Employee Benefits Security Administration, "Interpretive Bulletin Relating to State Savings Programs That Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974" 80 FR 71936, 18 November 2015, codified at 29 CFR § 2509.2015–02, https://www.govinfo.gov/app/details/FR-2015-11-18/2015-29427.

[8] Ibid.

[9] See, for example, Dyck & Pomorski, "Is Bigger Better? Size and Performance in Pension Plan Management," International Centre for Pension Management Working Paper (July 2011); Alserda, Bikker & van der Lecq, 2017, "X-efficiency and economies of scale in pension fund administration and

- For many associations, creating value and economic security for members is a key priority, meaning they may be more likely to spend the effort and resources necessary to provide a high-quality retirement benefit than many employers are.
- Many of these groups have some combination of tools and/or associational bonds that can help them be more effective at encouraging participation in a retirement plan, compared to workers navigating the financial services marketplace in more of a do-it-yourself environment.

Of course, not all of these non-employer institutions will qualify as plan sponsors under the proposed rule, and some may not even qualify under pending "open MEP" legislation.[10] We recognize that DOL was constrained in this regard by the statutory language of the Employee Retirement Income Security Act of 1974 (ERISA) and, presumably, by the legitimate concern that allowing non-employers to act as plan sponsors, plan fiduciaries, and plan service providers all at once would create conflicts of interest and opportunities for abuse that ERISA was not built to combat. But even modestly expanding the definition of "employer" under Section 3(5) of ERISA, as this proposed rule does, could help spur positive action.

Ultimately, more sweeping changes to ERISA, or even an entirely novel regulatory structure, may be necessary to usher in a new occupational safety net for the 21st century, one that is less dependent on employer-provided benefits. Such a future does not seem as far-fetched as it did even a few years ago, given the evolving nature of work and the growing wariness of employers to the legal liability – however minimized – that comes with retirement plan sponsorship. Of course, before large-scale policy changes such as these are enacted, additional research and debate will be needed. Aspen FSP believes DOL could play a critical role in those areas by hosting public events that contribute to the discourse, organizing working groups to advise the agency, issuing guidance that clarifies the regulatory limits for would-be experimenters, and funding competitive grant programs to seed innovative pilots. These activities cold ultimately help achieve a key goal for both DOL and Aspen FSP: expand retirement plan coverage to those currently left out of the nation's savings system.

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investment," DNB Working Paper 547 (2017); J.P. Morgan Investor Services, "The bigger, the better? The cost benefits of scale in the Australian and international pension landscape" (September 2013).

[10] See, for example, the Retirement Enhancement and Savings Act of 2018 (S.2526 & H.R.5282). For one analysis of that bill, see Pete Swisher, "What 401(k) RESA Legislation Means For MEPS and PEPS" Pentegra Retirement Services White Paper, March 2018, https://www.pentegra.com/wp-content/uploads/2018/03/What-401k-RESA-Legislation-Means-for-MEPs-and-PEPs.pdf (noting that "there is nothing in the Bill to suggest that current law will change with respect to who can be the plan sponsor…it must be an employer or a 'group or association' of employers").

Thank you for your consideration of these comments. Please contact David Mitchell at David.Mitchell@aspeninstitute.org or 202-736-3561 should you have any questions.

Sincerely,

Ida Rademacher
Vice President, Aspen Institute
Executive Director, Aspen Financial Security Program