
Department of Labor Issues Final Association Retirement Plans Rule

By Katila L. Howard / Aug 09, 2019

The new Department of Labor final rule (DOL) concerning association retirement plans (ARP) is intended to pave the way for small businesses to offer retirement benefits comparable to those offered by large employers. The DOL announced the ARP final rule on Monday, July 28, 2019. The final rule permits small businesses to offer defined contribution retirement plans to employees through ARPs. The final rule is mainly unchanged from the proposed rule and is modeled after the Association Health Plans (AHP) guidance.

Background

In August 2018, President Donald J. Trump issued Executive Order 13847, directing the DOL and Treasury to clarify and expand when employers can sponsor or adopt an ARP or multiple employer plan (MEP). ARP is a variation of a MEP, which have been around for years. An ARP or MEP is a plan sponsored by one entity and in which other unrelated entities may participate. The sponsoring entity is responsible for determining who can or will participate in the ARP or MEP. The proposed rule, introduced last October, provided that an association, under certain conditions, could serve as the employer for purposes of sponsoring the defined contribution plan for members of the association, similar to the AHP concept, in which an association provides health coverage opportunities for its members.

Final Rule

The Final Rule allows associations of employers in the same geographic area (such as a city, county, state) or in a particular industry nationwide to offer ARPs. The association must have at least one substantial business purpose unrelated to providing coverage.

Working owners without employees, including sole proprietors, can participate in ARPs if the individuals: (1) work at least 20 hours per week or 80 hours per month; or (2) earn wages or self-employment income above a certain level.

ARPs can also be sponsored through a Professional Employer Organization (PEO). A PEO is a human-resource company that contractually assumes certain employment responsibilities for its client employers. The rule creates a safe harbor for PEOs, which offer PEOs clarity in administering retirement plans and in their role as PEOs.

The final rule is designed to enable small businesses to offer benefit packages comparable to those offered by large employers. This advantage for small businesses comes with a cost for associations and PEOs, which must take on additional burdens under the Internal Revenue Code and ERISA as plan sponsor and/or administrator. These roles come with significant obligations, the most significant of which concern ERISA fiduciary duties. There are also reporting and disclosure requirements.

For associations and PEOs, the additional burdens may be worth it, especially if a critical mass of participating employers can be assembled from existing or targeted members or clients. For small businesses, the benefits can be significant. Among the greatest of the benefits is the ability to offer a defined contribution retirement plan with lower costs and administrative burdens.

The Internal Revenue Service (IRS) recently issued a proposed rule addressing the risk posed to an MEP by one member's bad actions. The proposal provides an exception to the unified plan rule for certain defined contribution MEPs. Under the IRS' proposal, an exception to the unified plan rule is permitted for certain qualification failures due to actions or inaction by a participating employer, if the conditions outlined in the proposed regulations are satisfied. The proposed rule would apply to MEPs, ARPs and PEOs and further increase both the availability and the attractiveness of MEPs.

The full text of the final rule is available at <https://www.federalregister.gov/documents/2019/07/31/2019-16074/definition-of-employer-under-section-35-of-erisa-association-retirement-plans-and-other>. The final rule will go into effect on September 30, 2019.

Employers interested in joining an ARP should consult with benefits counsel regarding the new rule before implementation. Should you have any questions concerning the new DOL final rule, please contact Katila L. Howard at khoward@clarkhill.com or any other member of Clark Hill's Employee Benefits and ERISA retirement team.