

MEMO# 32030

October 29, 2019

ICI Comment Letter to DOL Responding to Request for Information on Open MEPs

[32030]

October 29, 2019 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: ICI Comment Letter to DOL Responding to Request for Information on Open MEPs

ICI filed the attached comment letter responding to the Department of Labor's request for information (RFI) on open multiple employer plans (MEPs).[\[1\]](#) The RFI was issued in connection with a final rule expanding access to MEPs sponsored by employer associations and professional employer organizations.[\[2\]](#) The RFI is intended to further develop the public record on a broad range of issues related to open MEPs (i.e., MEPs adopted by otherwise unrelated employers), including the potential conflicts of interest raised if a commercial entity, such as a financial services firm, could sponsor an open MEP and how to mitigate those conflicts.

Consistent with prior ICI comments relating to MEPs,[\[3\]](#) we explain that permitting financial services firms to sponsor open MEPs is essential to ensuring a robust competitive marketplace for MEPs. The letter makes the following supporting points:

- We urge the Department to interpret the definition of "employer" under section 3(5) of ERISA more broadly, specifically by expanding the category of persons able to act indirectly in the interest of employers, to allow financial services firms to sponsor open MEPs.
- Such an interpretation would be within the Department's statutory authority and would be consistent with other Department interpretations.
- Financial services firms are a logical choice to sponsor open MEPs, with deep expertise in the retirement plan services and asset management areas.
- Any concerns the Department may have with respect to permitting MEP sponsorship by financial services firms can be mitigated by using established methods for ensuring both the legitimacy and qualifications of the MEP sponsor and protection from conflicts of interest. The letter discusses existing DOL prohibited transaction relief that would be relevant for DOL to consider in crafting any exemptive relief for financial institutions sponsoring open MEPs.

- The recently finalized regulation on association MEPs will not have a meaningful impact on retirement plan coverage and failure to expand the regulation likely will result in market distortions and inefficiencies, to the detriment of retirement savers.

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Associate General Counsel - Retirement Policy

[Attachment](#)

endnotes

[1] The RFI is available at: <https://www.govinfo.gov/content/pkg/FR-2019-07-31/pdf/2019-16072.pdf>. For a description of the RFI, see ICI Memorandum No. 31881, dated August 1, 2019. Available at: https://www.ici.org/my_ici/memorandum/memo31881.

[2] For a description of the final rule, see ICI Memorandum No. 31881, dated August 1, 2019. Available at: https://www.ici.org/my_ici/memorandum/memo31881.

[3] ICI submitted a comment letter on the Department's proposed rule regarding Association Retirement Plans. For a copy of the ICI comment letter, see ICI Memorandum No. 31534, dated December 21, 2018. Available at: https://www.ici.org/my_ici/memorandum/memo31534.

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