



June 21, 2016

PSCA Supports Multiple Employer Plan Legislation

The drumbeat in support of “open” multiple employer plans (“MEPs”) in Washington, D.C. is growing louder. An open MEP is essentially a single retirement plan adopted by two or more unrelated employers that enables plan sponsors to offer retirement coverage with lesser administrative and compliance burdens than single employer plans. In a time when policy makers in Washington are looking for ways to encourage employers to offer retirement plan coverage, the positive attributes of MEPs become more noteworthy. We believe the time finally has come to revise our country’s laws to remove the barriers that have prevented MEPs from growing and prospering, and the Plan Sponsor Council of America (“PSCA”) supports bi-partisan proposals to do so.

While MEPs have been around for years, certain statutory provisions and regulatory interpretations have significantly hindered their growth. The first impediment is a statutory rule that has come to be known as the “one bad apple” rule, under which one employer within a MEP failing to meet tax-qualified plan criteria can disqualify the tax-qualified status of the entire MEP (even if the other employers are fully compliant). It is easy to see why this sort of provision can be crippling – and seems to be devoid of any legitimate policy goal. Another problem that has hindered the growth of MEPs is an interpretative position of the Department of Labor, which has ruled that a MEP can only be used when there is a common nexus among participating companies (this position has become known as the “commonality requirement”). As a practical matter, this interpretation has prevented unrelated employers from participating in a single MEP.

Events over the past year demonstrate that there is bi-partisan agreement to change the rules applicable to defined contribution MEPs to make them more useful – particularly in the small employer market. Leaders in both the Senate and the House have indicated support, and President Obama signaled his support by the inclusion of language in his annual budget message supporting MEPs.

These developments began with the issuance on July 7, 2015 of a report by the Savings & Investment Bipartisan Tax Working Group of the Senate Finance Committee, which was co-chaired by Senators Mike Crapo (R-Idaho) and Sherrod Brown (D-Oh). That report favorably cited past legislative efforts to expand the MEP rules and referenced the advantage of these plans as a means to providing lower cost retirement plan coverage. The report recommended that the Finance Committee consider proposals that allow employers to join open MEPs via the elimination of both the commonality requirement and the bad apple rule. The working group concluded these changes would limit the administrative burdens related to plan sponsorship and allow employers to benefit from certain economies of scale.

In his last budget message with respect to Fiscal Year 2017, issued on February 9, 2016, President Obama also embraced the concept of MEPs. Intended to expand access to retirement benefits, the budget called for the creation of open MEPs so that employers could offer benefits with lower costs and less fiduciary burden. In particular, the budget proposed that the commonality requirement be eliminated. Finally, and to complete the trifecta, House Speaker Paul Ryan released a report entitled “Poverty, Opportunity, and Upward Mobility” on June 7, 2016. Although this report covered many

topics, it included a section on retirement plan matters that specifically supported MEPs. The report noted that MEPs “reduce administration and compliance costs, making it more cost effective to offer retirement plans,” and concluded that Congress should eliminate the bureaucratic restrictions that prevent businesses - particularly small businesses - from offering MEPs.

PSCA applauds the positions taken in support of MEPs both by the Obama administration and, as noted above, by Congress. True bi-partisan support for legislative initiatives is both essential and regrettably rare, and when consensus exists the opportunity should not be squandered – particularly in light of a widely recognized need to expand retirement plan coverage in our country. Therefore, PSCA strongly urges the Obama administration and Congress to work together to enact legislation this year that would assist plan sponsors in providing defined contribution retirement plan coverage to their employees by resolving the problems that have hindered the expansion of MEPs.