

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5665
U.S. Department of Labor
200 Constitution Avenue, NW. Washington, DC 20210

Re: Form 5500 Proposed Changes, RIN [1210-AB63](#)

Dear Sir or Madam;

TAG Resources is one of the country's leading providers of "aggregated plan services," under which we provide the start-up and small plan markets the advantages of scale which is otherwise unavailable to them. We call the program the "Multiple Employer Aggregation Program (MEAP)," which is designed to mimic the most favorable aspects of multiple employer plans (MEPs)-without those plans' inherent risks. The MEAP is well described in 29 C.F.R. § 2509.2015-02, the DOL's Interpretive Bulletin relating to state savings programs, in which it labels the MEAP-type of program a "Prototype Plan." In our experience, as much as 40% of the companies utilizing the Prototype Plan approach are start-up plans, which would otherwise have significant difficulty in obtaining well priced services, investments, and professional fiduciary management for their plans without this arrangement.

Prototype Plans currently exist in the marketplace, being constructed using traditional contract and fiduciary allocation processes. They offer a significant opportunity to expand retirement plan coverage within the current regulatory structure without needing complicated legislative changes to the MEP rules. Prototype Plans provide MEP-like benefits by centralizing and simplifying plan administration. Furthermore, they provide expert level fiduciary and administrative support which may otherwise be unavailable to such small employers while, at the same time, providing access to well-priced investments with a large selection of investment fund families typically available only to larger plans. They simply open up the availability of enhanced participant financial services to all companies, no matter the demographic. Ultimately, it also provides the leverage necessary to implement cost effective QLAC and lifetime income programs.

Summary of Comment

Prototype Plans avoid the complications and exposures related to the establishment and operation of a MEP, chief among them including cross-counting of years of service for all participating employers; the challenge of allocating forfeitures properly; the logistic and fiduciary difficulties in unwinding abandoned and "difficult" plans; and meeting the Department's "indirect control" requirements.

The main issues which keeps Prototype Plans from providing the full benefit of scale which is otherwise provided by a MEP is the Form 5500 filing requirements and the cost of the related audit. Should a Prototype Plan be permitted to file annual reports in the same manner on the same basis of a Group Insurance Arrangement (which would put it on par with MEP reporting), including a single audit for participating employers. By additionally modifying the Form 5500 proposed changes, under RIN 1210-AB63, the Department would be able to effectively enable broad scale use of Prototype Plans (and expand coverage), while serving as a better “scale” tool than MEPS. It accomplishes this without the need for legislative change, and the related regulatory complications which inevitably follow such a change.

The Prototype Plan is a substantially better, and safer, alternative to expanding coverage than those available under MEPs. Each plan in the Prototype arrangement still maintains its status as a single employer plan, and the individual sponsor still has a measure of accountability (and regulatory tracking) which can be lacking in the MEP. This extends the regulatory safety net to participants in those plans, while still giving them the advantages of scale which a MEP otherwise offers. It would provide audit controls over small plans for which audits typically are not performed, and provides greater controls and accountability than applies required under a DFE or MEP filing. It would also enable the centralization and critical review, through the Plan Administrator, of the IQPA audit function in an audit firm which specializes in employee benefit plan matters. This is a creates a much more compliant audit than those developed using auditing firms chosen by smaller employers with no expertise in making such a selection.

The Prototype’s organizer accepts full responsibility as the Plan’s Administrator, including responsibility for the Form 5500, while also being accountable for other fiduciary responsibilities related to each plan’s investment and administrative operations. As previously noted, it brings affordable fiduciary expertise and the advantages of scale, without the inherent downsides of a MEP.

Comments

We propose that the Department utilize its authority under 29 CFR 2520.104-23(a)(2) to adopt an alternative method of reporting for Prototype Plans, providing them the ability to achieve scale in order to expand retirement plan coverage. This method would be similar to those adopted for Group Insurance Arrangements for welfare plans under 29 CFR 2520.104-21. Under this proposal, plans participating in a Prototype arrangement would rely upon the single annual report filed by the Prototype Administrator, subject to requirements similar to that required of the GIA under 2520.103-2, including a single audit report by a single IQPA selected by the Plan Administrator.

We propose that the Department define a Prototype Plan as one which registers with the Department, with the Administrator certifying that the arrangement is one in which participating plans:

- appoint the same Plan Administrator with full responsibility to file the Form 5500, while maintaining complete oversight responsibility for the consolidated fiduciary compliance related to the participating employers;
- adopt the same form of volume submitter plan issued by the same document vendor with the same approval from the IRS;
- chooses to adopt the same investment platform vendor under which multiple, unrelated employers can participate, such as pooled separate accounts or 81-100 collective trusts; which is chosen by the same investment manager, as defined under ERISA Section 3(38);
- contributions, loans, withdrawals and distributions would all be administered through the same investment platform;
- contract with the same third party administrator to provide a centralized financial recordkeeping and compliance system, with similar terms; and which is monitored by the Plan Administrator;
- the audit completed by an IQPA chosen by the Plan Administrator, which would be responsible for oversight of the IQPA;
- disclose to plan participants the plan's participation in such an arrangement
- maintain the same plan year; and
- are covered by the same umbrella bond.

Participating employers will still be considered plan sponsors under this arrangement, with the ongoing responsibility to oversee the Plan Administrator's activity which, in turn, would be responsible to report to the participating plans on the operation of the GIA. The Plan Administrator would be required to provide complete 408(b)(2) disclosures to the employers choosing to participate. and the operation.

We believe that this change virtually eliminates any barriers to providing expanded coverage to the small plan markets; provides an opportunity to safely and effectively provide scale; while also giving small employers access to well-priced lifetime income products. It would fully equip the marketplace to compete with state run MEPS on an equal footing, without the need for legislative change and all of its inherent conditions and unforeseen ramifications.