



DOL Proposes Registration Requirements for Pooled 401(k) Providers

Proposed rule paves the way for pooled employer plans to launch in 2021

By Stephen Miller, CEBS

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As the new year approaches, benefits managers may find they're being pitched to jump into a "pool"—by jettisoning their current 401(k) plan in favor of a plan shared with other employers.

The Setting Every Community Up for Retirement Enhancement (SECURE) Act, which became law in December 2019, created a new type of multiple-employer 401(k) plan called a pooled employer plan (PEP). Under the act, "pooled plan providers" may start operating PEPs beginning on Jan. 1, 2021, although benefits brokers and financial services firms are already marketing soon-to-launch pooled plans and seeking to sign-up employers.

PEPs allow unrelated employers that don't share a common industry or location to participate in a single, shared 401(k) plan so they can take advantage of their collective purchasing power to negotiate lower fees and better services. The aim is to help organizations, especially small and midsize employers, offer low-cost retirement plans to their workers with fewer compliance burdens than stand-alone defined contribution plans.

PEP Up

On Aug. 20, the U.S. Department of Labor (DOL) issued a proposed rule (<https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/secure-act/pooled-plan-provider-registration.pdf>) on how to register as a pooled plan provider. The DOL also posted a fact sheet (<https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/pooled-plan-provider-registration>) on the proposal.

"By allowing small businesses to pool their resources into plans, the [proposed rule] will make cost-effective retirement options available to even more employees across the nation," said Secretary of Labor Eugene Scalia.

The National Association of Plan Advisors, a trade group, noted that under the SECURE Act a pooled plan provider must "be a named fiduciary of the PEP, must be responsible as the plan administrator, and must register with the DOL/IRS (<https://www.napa-net.org/news-info/daily-news/dol-proposes-registration-requirements-pooled-plan-providers>)—and that requirement underlies the new proposal."

[SHRM members-only toolkit: Designing and Administering Defined Contribution Retirement Plans (www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/designingandadministeringdefinedcontributionretirementplans.aspx)]

Fiduciary Responsibilities

While a pooled plan provider may be affiliated with a benefits brokerage or financial services firm, for instance, as a plan fiduciary it must act in the best interests of plan participants.

Decisions about PEP investment options may be made by the pooled plan provider, participating employers or another designated third party such as an investment advisory firm.

As a PEP fiduciary, the pooled plan provider is subject to standards and restrictions under the Employee Retirement Income Security Act (ERISA) and the tax code, including prohibited transaction provisions restricting fiduciaries from engaging in transactions that might involve a conflict of interest.

PEPs with fewer than 1,000 participants are exempt from a potentially expensive audit requirement, as long as no single employer exceeds 100 participants.

PEPs and MEPs

Multiple-employer plans (MEPs), which existed before the SECURE Act was passed, allow related businesses, such as those in the same industry or region, to band together in a manner similar to PEPs but with somewhat different rules. MEPs can be sponsored by employer groups or associations—which the DOL refers to as association retirement plans—or by professional employer organizations.

Prior to the SECURE Act, the idea for a PEP of unrelated employers was referred to as an "open MEP," while "closed MEP" described a plan limited to employers in the same industry or location.

Electronic Filing

The proposed rule requires those applying to register as a pooled plan provider to electronically file a new Form PR using the electronic filing system that employee benefit plans use to file their Form 5500 Annual Return/Report.

The proposal includes a 30-day comment period and instructions for submitting comments through www.regulations.gov (<https://www.regulations.gov/>).

Vendors Enter the PEP Market

Firms that provide 401(k) services have begun to market PEPs to employers. In June, for example, professional services firm Aon announced the launch of a PEP (<https://aon.mediaroom.com/2020-06-24-Aon-Launches-New-Pooled-Employer-Plan-for-Retirement-Savings>) for which AON will serve as plan provider and named fiduciary (<https://retirement-investment-insights.aon.com/defined-contribution/aon-pooled-employer-plans-article>). Voya Financial will handle record-keeping for participant transactions across all employers for the plan, which will be available Jan. 1, 2021.

"We believe PEPs will transform the retirement landscape, similar to how 401(k) plans transformed the pension landscape 40 years ago" by giving employers a way to provide retirement plans with fewer compliance and administrative burdens, said Paul Rangelcroft, North America retirement practice leader for Aon.

Lockton, a national benefits broker and consulting firm, announced on Aug. 20 that it will launch a series of PEPs (<https://www.lockton.com/newsroom/post/lockton-launches-retirement-outsourcing-practice#:~:text=Lockton%20will%20launch%20a%20series%20employees%20a%20single%20retirement%20plan,>) initially in the Northeast and then nationally. PEPs are often considered small-plan solutions, the firm noted, but a new Lockton unit will target the large-plan market as well.

"The new rules create huge opportunities for retirement plan sponsors," said Sam Henson, director of legislative affairs for Lockton Retirement Services. "Before, these programs were limited to affiliated organizations. Now any employer can pool their plan's assets with other employers."

Related SHRM Articles:

PEP Up: DOL Wants to Hear Employers' Views on 401(k) Pooled Retirement Plans (www.shrm.org/resourcesandtools/hr-topics/benefits/pages/dol-wants-to-hear-employers-views-on-pooled-retirement-plans.aspx), *SHRM Online*, June 2020

PEPs, MEPs and GoPs in the SECURE Act (www.shrm.org/resourcesandtools/hr-topics/benefits/pages/secure-act-unscrambling-peps-meps-and-gops.aspx), *SHRM Online*, March 2020

SECURE Act Alters 401(k) Compliance Landscape (www.shrm.org/resourcesandtools/hr-topics/benefits/pages/secure-act-alters-401k-compliance-landscape.aspx), *SHRM Online*, January 2020

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