

DOL Final Rule Paves the Way for 2021 Launch of Pooled 401(k) Plans

New guidance sets registration requirements for pooled plan providers

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November 16, 2020

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

On Nov. 16, the U.S. Department of Labor (DOL) published a final rule (<https://www.federalregister.gov/documents/2020/11/16/2020-25170/registration-requirements-for-pooled-plan-providers>) explaining how 401(k) service providers can register as a pooled plan provider, which clears the way for PEPs to get underway starting Jan. 1, 2021.

"Pooled employer plans will give employers, especially small unrelated employers, a way of offering their employees a workplace retirement savings option with reduced burdens and costs," said Jeanne Klinefelter Wilson, acting assistant secretary of labor for the Employee Benefits Security Administration. "This final rule lays the groundwork for a sensible registration process so that providers can get pooled plans up and running."

PEPs and MEPs

The bipartisan Setting Every Community Up for Retirement Enhancement (SECURE) Act, signed into law in December 2019, created PEPs as a new, more widely available type of 401(k) multiple employer plan (MEP).

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 intent is also 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.

Old-style MEPs, which existed before the SECURE Act was passed and which can remain in place, 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 (<https://www.dol.gov/general/topic/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.

Vendors Enter the PEP Market

The National Association of Plan Advisors, a trade group, noted that 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>)." These requirements underlie the new guidance.

Under the SECURE Act, pooled plan providers may start operating PEPs beginning in 2021, although some benefits brokers and financial services firms are already marketing soon-to-launch pooled plans and signing-up employers.

In June, for example, professional services firm Aon announced the upcoming launch of a PEP (<https://aon.mediaroom.com/2020-06-24-Aon-Launches-New-Pooled-Employer-Plan-for-Retirement-Savings>) for which it 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.

"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 Rangecroft, North America retirement practice leader for Aon.

Lockton, a national employee benefits advisory and brokerage firm, announced in August 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, senior vice president of legislative and regulatory 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."

Mercer, an HR consultancy that offers outsourced retirement plan services, plans to launch a companion PEP (<https://www.mercer.com/newsroom/mercer-collaborates-with-empower-retirement-as-recordkeeper-for-its-fast-growing-mercer-wise-401-k-retirement-solution-as-it-plans-to-launch-companion-pooled-employer-plan-in-early-2021.html>) in early 2021.

Expect more service providers to join the fray. On Nov. 16, for instance, Principal Financial Group, a global financial investment and insurance company, announced it was launching a PEP (<https://www.principal.com/about-us/news-room/news-releases/principal%20announces-new-pooled-employer-plans-help-more-businesses-provide-workers-access-retirement-benefits>) as well. "By shifting liability to designated fiduciaries with specific knowledge and skills, employers benefit from investment management as well as reduced administrative tasks and risks," said Jerry Patterson, senior vice president of retirement and income solutions at Principal.

[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.

What Employers Should Consider

Henson explained that "under a properly built PEP," employers can in most cases remove themselves from responsibility (<https://www.lockton.com/insights/post/pooled-employer-plans-the-benefits-considerations-for-employers>) over:

- Investment selection and monitoring.
- Annual report Form 5500 filings.
- Annual plan audits.
- Plan documents.
- Participant notices.
- Annual testing.
- Hardship distributions.
- Participant loans.
- Distributions and rollovers.

"Employers with consistent compliance failures, a lack of retirement expertise, limited HR resources, and a fear of the regulatory and litigation risk could be great fits for a PEP," Henson noted. "However, not all employers are, and not all PEPs will be structured to deliver all of an employer's needs," such as an investment-fund menu tailored to a specific workforce, he pointed out. "Employers will need to approach PEPs much as they do other retirement plan considerations: Identify the challenges their plan currently presents and determine if a PEP can meet them."

Related SHRM Articles:

For 2021, 401(k) Contribution Limit Unchanged for Employees, Up for Employers (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/2021-irs-401k-contribution-limits.aspx), *SHRM Online*, October 2020

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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