



## DOL RULE TO EXPAND MULTIPLE-EMPLOYER DC PLANS ADVANCES AMID LEGAL ISSUES

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Department of Labor (DOL) regulations making it easier to form defined contribution (DC) multiple-employer plans (MEPs) are under [review](#) by Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA). This move typically signals that final rules are near, since OIRA generally has 45 days to complete its review. However, legal questions may complicate that timetable, since the 2018 [proposed MEP rules](#) largely track provisions in the final DOL rules for association health plans (AHPs). A federal district court struck down key portions of the AHP rules earlier this year ([New York v. US Dep't of Labor](#), No. 18-1747 (D.D.C. March 28, 2019)), but DOL is appealing that decision.

### PROPOSED MEP RULES

In August 2018, President Trump issued an [executive order](#) directing DOL and the Treasury Department to expand access to workplace retirement plans. DOL responded with [proposed MEP rules](#) that would allow unrelated employers in certain geographic areas to join "association retirement plans" (ARPs). The rules would also allow MEPs sponsored through professional employer organizations (PEOs) — companies that contractually assume certain employment-related functions for their clients. "Working owners," such as sole proprietors and "gig" or contingent workers, could also join ARPs under certain conditions.

The ARP and working-owner provisions largely mirror portions of DOL's final AHP rule. In March, the US District Court for the District of Columbia ruled those provisions of the AHP rule violate ERISA's requirement that only employers — not working owners — with a common interest unrelated to providing benefits can join together to offer benefit plans. As a result, a lawsuit could lead to a court blocking the MEP rule, though the outlook is unclear.

### CONGRESS CONSIDERING OPEN MEPS

DOL's proposal stops short of allowing "open" MEPs by requiring, among other things, a commonality between participating employers. However, Congress has been working on legislation that would allow open MEPs called "pooled employer plans." One bill providing for these plans, the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) ([HR 1994](#)), passed the House on May 23 and could gain Senate approval as early as this month. If the SECURE Act becomes law before the MEP

rule goes into effect, DOL could decide to chart an entirely new regulatory path forward as the agency develops guidance to implement the law.

### TREASURY ALSO WORKING ON PROPOSED MEP RULES

On May 13, Treasury [submitted](#) a notice of proposed rulemaking on MEPs to OIRA. That regulation would provide relief from the “one bad apple” rule that says a violation of the plan qualification rules by one participating employer can jeopardize the tax qualification of the entire MEP. However, the SECURE Act’s pooled employer plan provisions would provide relief from the one bad apple rule. So it’s unclear if these proposed MEP rules will remain a priority for Treasury if the SECURE Act becomes law.

### RELATED RESOURCES

#### Non-Mercer Resources

- [FAQs on Court Ruling in \*New York v. US Dep’t of Labor\*](#) (DOL, April 1, 2019)
- [New York v. US Dep’t of Labor](#), No. 18-1747 (D.D.C. March 28, 2019)
- [Proposed DOL Rule on Definition of “Employer” Under Section 3\(5\) of ERISA – Association Retirement Plans and Other Multiple Employer Plans](#) (Federal Register, Oct. 23, 2018)
- [Executive Order on Strengthening Retirement Security in America](#) (White House, Aug. 31, 2018)

#### Mercer Law & Policy Resources

- [House Passes SECURE Act To Bolster Retirement Plans](#) (May 24, 2019)
- [Senate Reintroduces Expansive Retirement Bill](#) (May 20, 2019)
- [Litigation, Legislation Leave AHP Guidance in Flux](#) (May 2, 2019)
- [Retirement Bills Multiply in Congress](#) (April 16, 2019)
- [Bipartisan Retirement Reforms Pass Key House Panel](#) (April 3, 2019)
- [Bill Seeks 'Open' MEPs, New 401\(k\) Safe Harbor With Higher Deferral Rate](#) (March 8, 2019)
- [2019 Legislative and Regulatory Outlook for Retirement Plans](#) (Feb. 5, 2019)

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