

Law &amp; Policy Group

GRIST



# DOL seeks input on pooled employer plans and open MEPs

By Margaret Berger and Brian J. Kearney  
June 19, 2020

The Department of Labor (DOL) has issued a [request for information](#) (RFI) about pooled employer plans (PEPs) and other multiple-employer plans (MEPs), seeking input on potential prohibited transaction issues for these plans. The RFI also notes that DOL is considering proposing a class exemption for prohibited transactions involving PEPs and MEPs. Comments are due by July 20.

## Recent expansion of MEPs

Recent years have seen significant legislative activity involving defined contribution (DC) MEPs. In addition, regulatory action on these plans has come in response to a 2018 [executive order](#) encouraging DOL and IRS to enhance retirement security — particularly by expanding the availability of MEPs to small employers.

PEPs. The Setting Every Community Up for Retirement Enhancement (SECURE) Act (Division O of [Pub. Law No. 116-94](#)), enacted in December 2019, lets unrelated employers join DC plans maintained by pooled plan providers acting as the plans' administrator and named fiduciary. Employers can join these PEPs starting in 2021. IRS and DOL have yet to issue any implementation guidance, but employers and providers may comply in good faith with the law's requirements until regulatory guidance is available. The RFI is DOL's first attempt to gain information about prohibited transaction concerns involving PEPs.

Association, PEO MEPs. The SECURE Act followed DOL's [2019 final rules](#) allowing two types of MEPs:

- Association retirement plans sponsored by employers in the same geographic area or the same trade or industry that share a substantial business purpose unrelated to providing benefits
- MEPs sponsored by professional employer organizations (PEOs) for their clients

DOL accompanied the 2019 final rules with a [RFI](#) seeking input on whether to amend its regulations to facilitate the sponsorship of open MEPs. That RFI sought input on the potential conflicts of interest for entities operating the MEPs and their need for additional prohibited transaction exemptions. But the RFI didn't specifically ask about the types of plans later authorized as PEPs by the SECURE Act.

## Concern about prohibited transactions

The new RFI covers PEPs in addition to the MEPs covered by DOL's 2019 final rules. DOL is seeking information on the possible parties, business models, conflicts of interest and prohibited transactions that might exist for PEPs and MEPs. The RFI is split into three sections:

- **Pooled plan providers and MEP sponsors.** DOL asks several questions about the types of entities likely to act as PEP providers; their business models and whether they will offer proprietary funds; conflicts of interests; and fees and compensation — including the extent to which providers will be able to unilaterally set their compensation. The RFI also asks whether current prohibited transaction exemptions will be sufficient or additional relief is needed — and, if so, what specific transactions would need new exemptions — and whether MEPs have unique prohibited transaction issues requiring additional relief.
- **Plan investments.** The RFI asks about the types of investment options that PEPs and MEPs would offer. Questions include whether the plans would offer at least as many options as single-employer plans, and what role PEP providers and MEP sponsors would serve with respect to the available investment options.
- **Employers in the PEP or MEP.** DOL is also trying to gauge employer interest in PEPs and MEPs. The RFI asks about the numbers of employers that would join the arrangements and how many employers and participants would migrate from single-employer plans. DOL is also interested in whether large employers would join the plans, and what types of prohibited transactions might arise in PEPs and MEPs with multiple participating employers of varying size (e.g., whether large employers will have greater influence) or by the transfer of assets out of a PEP or MEP.

## Related resources

### Non-Mercer resources

- [Request for information on pooled employer and other multiple-employer plans](#) (Federal Register, June 18, 2020)
- [Press release](#) (DOL, June 17, 2020)
- [Pub. Law No. 116-94](#), the SECURE Act (Congress, Dec. 20, 2019)

- [Final rule on association retirement plans and other multiple-employer plans](#) (Federal Register, July 31, 2019)

#### [Mercer Law & Policy resources](#)

- [SECURE Act set to become law](#) (Dec. 19, 2019)
- [Rules for DC multiple-employer plans eased as DOL seeks input on open MEPs](#) (July 31, 2019)

Note: Mercer is not engaged in the practice of law, accounting or medicine. Any commentary in this article does not constitute and is not a substitute for legal, tax or medical advice. Readers of this article should consult a legal, tax or medical expert for advice on those matters.