



## POOLED EMPLOYER PLANS – WHERE DO WE STAND?

The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) included provisions introducing the new concept of “pooled employer plans” (PEPs). The new PEP rules become effective on January 1, 2021.

PEP legislation was designed to provide a more cost effective and efficient method of providing retirement plans to small and mid-sized companies. Generally, PEPs will provide similar advantages as “open” Multiple Employer Plans (MEPs) without some of the administrative burdens. Many TPAs, financial institutions, investment advisors, and others in the retirement plan industry are excited to add PEP services to their current lines of business.

At this time, we have received only limited guidance on PEPs from the federal agencies. In June, the Department of Labor (DOL) solicited comments on potential prohibited transaction (PT) issues confronting PEPs, pooled plan providers (PPPs), participating employers, and others. The DOL has not issued further guidance on this issue; however, they recently issued proposed rules on registration requirements for a PPP. The DOL is considering practitioner comments on its proposal before finalizing the rules.

Unfortunately, the Internal Revenue Service (IRS) and the DOL (both of which have some jurisdiction over PEPs) have not issued much-needed comprehensive guidance on PEPs. With such a short time before the rules become effective, practitioners are worried that we may not have timely guidance to make decisions regarding the addition of PEP services to their businesses.

**ASC Insight** – Of course, like many practitioners, ASC is anxious for the issuance of PEP guidance. We are most interested in helping our clients deal with the plan document, compliance, and administrative requirements for PEPs and PPPs. Since PEPs are similar to Multiple Employer Plans (MEPs), ASC is well positioned to assist our clients with the new PEP document requirements, compliance testing, and administration requirements. ASC has offered plan document, compliance, and administrative services for MEPs for over 15 years. Our pre-approved plans include comprehensive MEP provisions. The ASC Software Systems, including our ASC DC/401k Valuation, Compliance Testing, Plan Document, and 5500 Systems, are already built to accommodate our clients who are or will become MEP/PEP providers.

### WHAT WE KNOW

At this time, most of the “guidance” we have on PEPs is provided by the SECURE Act itself. Section 101 of the SECURE Act sets forth the new PEP rules and amends provisions of both the Internal Revenue Code and Title I of ERISA.

### What is a Pooled Employer Plan?

Under parallel Internal Revenue Code and Title I provisions, a pooled employer plan (PEP) is:

- A type of multiple employer plan that is an individual account plan (i.e., defined contribution plan);
- Established by a PPP for the purpose of providing benefits to employees of two or more employers;
- Described in Code §401(a) (i.e., a qualified retirement plan) or Code §408 (i.e., an IRA); and
- Includes certain specified terms in its plan document.

### What is a Pooled Plan Provider?

A pooled plan provider (PPP) is a “person” who:

- Is designated by the terms of the plan as a Named Fiduciary, as the Plan Administrator, and as the person responsible to perform all administrative duties (including conducting proper testing) to ensure the PEP meets ERISA and Code requirements and takes action as required by the DOL, including providing disclosures;
- Registers as a PPP;
- Acknowledges its status as a Named Fiduciary;
- Ensures fiduciaries and others handling assets are bonded as required under ERISA; and
- Is subject to audit, examination and investigation by IRS and DOL.

The statute mandates that the IRS and DOL provide guidance on the PEP and PPP rules, including the identification of administrative duties and other actions to be performed by a PPP, as well as the procedures to terminate a plan which fails to meet the requirements and what shows a “lack of commitment to compliance” by the PPP.

**ASC Insight** – As mentioned earlier, except for proposed rules regarding the registration requirement, the IRS and DOL have not provided guidance on the PEP and PPP rules. The DOL issued the proposed registration rules on September 1, 2020 and provided for a 30-day comment period. The registration rules are quite extensive (79 pages) and would require significant disclosures by the PPP. The registration would be done electronically only. The proposed rules raise numerous issues. ASC is participating with other industry practitioners in submitting comments and suggestions for the final rules. We would not expect DOL to issue final rules until near the end of the year. Remember that the statutory PEP rules become effective January 1, 2021.

## Plan Document Requirements

The PEP plan document must include the following terms:

- Designation of the PPP and that the PPP is a Named Fiduciary;
- Designation of one or more trustees responsible for collecting contributions to, and holding assets of, the plan and to implement written contribution collection procedures;
- Each employer in the PEP retains fiduciary responsibility for the selection and monitoring of the PPP and, unless otherwise delegated to another fiduciary, the investment and management of the plan assets attributable to its employees;
- Employers, participants, and beneficiaries are not subject to unreasonable fees or penalties for ceasing participation, receiving distributions, and transferring assets;
- PPP must provide disclosures and other information required by IRS;
- Employer will take necessary action to assist in the administration of the plan;
- Electronic media allowed; and
- If the employer fails to meet its obligations under the PEP, assets attributable to that employer will be transferred out of the PEP to another retirement plan and the employer will be responsible for any associated liabilities.

**ASC Insight** – A PEP cannot exist without a proper plan document. Although the IRS has not officially announced that pre-approved plans will be allowed to include PEP provisions, ASC expects this will be permitted. Under the SECURE Act, the IRS is mandated to issue “model plan language” that meets the PEP requirements under the Internal Revenue Code and ERISA. Our understanding is that the IRS is working on this model plan language, but it has not provided an expected issuance date. Although the SECURE Act provides a delayed date for plan documents to be amended to incorporate the mandatory PEP terms (i.e., by the end of the 2022 plan year), immediate guidance on the plan amendment requirements would be helpful. For instance, must the IRS “model plan language” for PEPs be used without modification for pre-approved plans?

## CONSIDERATIONS FOR POTENTIAL POOLED PLAN PROVIDERS

Some practitioners are anxious to begin the process of becoming a Pooled Plan Provider, while others are waiting until the IRS and DOL provide more guidance. Certainly, PEPs will offer numerous advantages for small and mid-sized employers. PEPs will look like “open” MEPs without many of the current limitations. For example, to participate in a PEP, there is no “nexus” or “commonality” needed for the participating employers. Also, the Form 5500 filing requirements are simplified. Other PEP advantages include:

- Participating employers can use a single plan document
- Cost sharing of expenses
- More efficient administration and compliance

- Some reduction of fiduciary responsibility for participating employers

However, the IRS and DOL must address numerous issues before practitioners will be comfortable becoming PPPs and adding PEPs to their lines of business. Although the SECURE Act allows “good faith compliance” with the law before the IRS and DOL issue guidance, most practitioners need more information before moving forward. The list of outstanding issues is long:

- Final rules for registration as a PPP
- What constitutes good faith compliance?
- Prohibited transaction exemptions for PPPs
- Guidance on the “mandatory” duties and responsibilities of PPPs and ability to outsource these duties and responsibilities
- Information that PPPs must disclose to employers
- Consequences of failure to have proper plan terms for a PEP
- Converting status from a MEP to a PEP
- Fiduciary responsibility for selecting and monitoring PPPs
- Process for transferring assets when employer or PPP fails to meet PEP requirements
- Simplified annual reporting
- Status of proposed regulations on unified plan rule (“one-bad-apple” rule)
- Model plan language for PEPs
- Ability of Cycle 3 pre-approved plans to include a PEP interim amendment or to file a Form 5307

## ADMINISTRATION OF MEPS/PEPS

In assessing whether PEPs (and/or MEPs) fit into their business models, in addition to the numerous outstanding issues listed above, practitioners must prepare for certain document, compliance, and administration requirements. PPPs must set up their plan document, compliance, and administration systems to support MEPs/PEPs. Administrative systems must track employee service and properly allocate plan contributions. Plan documents must include proper terms. Compliance testing must meet special MEP/PEP requirements. Forms 5500 must be properly filed. Ideally, these systems should work together for greatest efficiency. In addition, practitioners must register with the DOL (once the rules are finalized) before they can begin operations as a PPP.

**ASC Insight** – ASC will keep you up-to-date on regulatory developments relating to MEPs and PEPs. As previously mentioned, ASC is well positioned to assist our clients with the new PEP document and administrative requirements. The ASC Software Systems, including our ASC DC/401k Valuation, Compliance Testing, Plan Document, and 5500 Systems, are already built to accommodate our clients who are or will become MEP/PEP providers. If you have questions about how ASC can help you enter the MEP/PEP line of business, please contact [Sales@ASC-net.com](mailto:Sales@ASC-net.com).

ASC Alerts are published as an information service for ASC clients. Articles are general in nature and are not a substitute for professional advice or opinion in a particular case.

To access ASC Alerts go to [www.asc-net.com](http://www.asc-net.com)

ASC provides software and web applications for retirement plan professionals including: DC/DB Software, Plan Documents, EFAST2 5500 System and ERISA consulting. To contact ASC, email: [info@asc-net.com](mailto:info@asc-net.com)