

Regulation Moves to Expand MEPs

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President Trump issued an executive order in August directing the U.S. Department of Labor (DOL) to examine policies that expand the circumstances where employers, especially small- and mid-sized businesses, may sponsor or adopt a multi-employer plan (MEP) as a workplace retirement savings option, subject to appropriate safeguards. In response, the DOL issued a [proposed regulation](#) on October 23 that clarifies who can sponsor or adopt an MEP. The regulation is meant to expand the use of open multiple employer plans, allowing different businesses to join an MEP.

(Estimated reading time: 3 min 14 sec)

The proposed regulation highlights some alarming data (according to the U.S. Bureau of Labor Statistics):

- **23%** of all private-sector, full-time workers have no access to a workplace retirement plan.
- The percentage of private-sector workers without access to a workplace retirement plan increases to **32%** when part-time workers are included.
- Among workers who do not have access to a workplace retirement plan, only about **13%** regularly contribute to individual retirement accounts.

MEPs are a structure under which different businesses can adopt a single retirement plan. In addition to expanding coverage, encouraging the development of MEPs also serves to reduce the cost of administration and investments by pooling participants and assets into one large plan. With increased scale comes lower cost.

Right now, the lack of clarity around sponsorship and adoption remains a key stumbling block to further adoption of MEPs. The proposed regulation takes steps to clarify what entities are treated as “employers” for the purposes of the Employee Retirement Income Security Act (ERISA), and institutes more flexible standards and criteria for sponsorship of MEPs.

ERISA Section 4 explains that retirement plans covered by ERISA must be sponsored by “an employer.” The proposed regulation looks to clarify the current definition by noting that both employer groups and professional employer organizations (PEOs) can serve as “employers” for the purposes of ERISA Section 4.

The regulation defines employer groups as meeting the following criteria:

1. Must have a formal organizational structure.
2. Be controlled by its employer members.
3. Have at least one substantial business purpose unrelated to offering and providing

employee benefits.

4. Members limit plan participation to employees and former employees of employer members.
5. Members must have a commonality of interest.
6. Employers must act directly as an employer of at least one employee participating in the MEP.

From a fiduciary standpoint, the regulation would clarify some of the questions around MEPs. Under the proposal, an employer would execute an agreement that spells out the rights and obligations of the MEP sponsor and participating employer. As such, the individual participating employers would not be viewed as the sponsor, plan administrator, or named fiduciary under ERISA, but would retain some fiduciary responsibility for choosing and monitoring the arrangement, and forwarding required contributions to the MEP.

Additionally, the MEP would constitute “a single employee benefit plan for the purposes of Title I of ERISA,” including reporting, disclosure, and fiduciary obligations. This effectively transfers substantial legal risk to professional fiduciaries responsible for the management of the plan.

Significantly, the regulation prohibits “banks, trust companies, insurance issuers, broker-dealers and any other similar financial-services firm (including pension record keepers and third-party administrators)” from serving as, owning, or controlling an employer group.

The regulation defines PEOs as meeting the following criteria:

1. Perform substantial employment functions on behalf of the client employers.
2. Exercise substantial control over the functions and activities of the MEP, and assume certain statutory roles under ERISA.
3. Each client-employer participating in the MEP has at least one employee who is a participant covered under the MEP.
4. Ensure that participation in the MEP is limited to current and former employees of the PEO and of client-employers, as well as their beneficiaries.

Bottom Line: This proposed regulation marks one of the first steps in implementing President Trump’s August executive order. Although the stated intent was to support small- and mid-sized businesses, the expansion of MEPs may ripple through the retirement plan landscape.

You can find the complete proposed regulation [here](#).