DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2510, 2520, 2550

RIN 1210–AC10

Pooled Employer Plans: Big Plans for Small Businesses

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Guidance and request for information.

SUMMARY: This document contains limited interpretive guidance to help small employers select high-quality, low-cost ''pooled employer plans'' or ''PEPs.'' This document also solicits information about prevailing pooled employer plan market practices. The Department will consider the responses as part of a process aimed at developing a potential regulatory safe harbor or safe harbors that comprehensively encourage market participants to offer and employers to join such plans. These efforts, taken pursuant to President Trump's January 20, 2025, Memorandum titled ''Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis,'' are designed to reduce investment costs for workers saving for their retirement, thereby improving their lives. These efforts also will help small employers provide more attractive benefits to potential hires, drawing discouraged workers into the labor force.

DATES: To be assured consideration, comments must be received at one of the following addresses no later than September 29, 2025.

ADDRESSES: The Employee Benefits Security Administration (EBSA) encourages interested persons to submit their comments on this request for information online. You may submit comments, identified by RIN 1210–AC10, by either of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attn: Pooled Employer Plans: Big Plans for Small Businesses Regulation RIN 1210–AC10.

Instructions: All submissions must include the agency name and Regulatory Identifier Number RIN 1210–AC10 for this request. If you submit comments online, do not submit paper copies. All comments received will be posted without change on *https://www.regulations.gov* and *https://www.dol.gov/agencies/ebsa* and will be made available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

Warning: Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records that are posted online as received and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: Scott Ness, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

In this document, the Department is taking initial steps to build on positive market developments to help small employers join high-quality, low-cost retirement plans called pooled employer plans (PEPs) and provide more attractive benefits to workers and potential hires. Because PEPs are relatively new, small employers may be unaware of PEPs, or may not understand the Employee Retirement Income Security Act of 1974 (ERISA) standards applicable to them. The Department hopes to address challenges such as these which may impede small employers from taking advantage of PEPs. In addition to promoting retirement savings and reducing participant costs, expanding the use of PEPs is aligned with the Department's broader economic goals, including improving job quality and increasing labor force participation, especially at small businesses. Section II of this document provides a general description of the ERISA framework applicable to PEPs. Section III contains limited observations of the PEP marketplace made by the Department based on reports filed with the agency. Section IV provides limited interpretive guidance to help small employers understand their responsibilities as fiduciaries in connection with joining a PEP. Section V includes a set of ''tips'' to assist small employers in selecting a PEP. Section VI solicits information about prevailing PEP practices, responses to which will be considered as a possible basis for a regulatory safe harbor that encourages market participants to offer and employers to join such plans. Section VII seeks input on information to assist the Department in developing the report to Congress required by section 344 of SECURE 2.0.

II. Background

Statutory Authorization for Pooled Employer Plans

Under ERISA, an employee benefit plan (whether a pension plan or a welfare plan) must be sponsored by an employer, by an employee organization, or by both. Section 3(5) of ERISA defines the term ''employer'' for this purpose as ''any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan, and includes a group or association of employers acting for an employer in such capacity.''

By regulation, 29 CFR 2510.3–55, the Department of Labor (Department) has interpreted the definitional provisions of ERISA to permit a multiple employer plan (MEP) to be established or maintained by a bona fide group or association of employers or by a bona fide professional employer organization. Although that regulation clarified and expanded the types of arrangements that can be treated as MEPs under Title I of ERISA, it does not extend to so-called ''open MEPs.'' The term ''open MEP'' generally refers to a single defined contribution retirement plan that covers employees of multiple unrelated employers.[1]

The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) removed possible legal barriers to the broader use of multiple employer plans by authorizing a new type of ERISA-covered defined contribution retirement plan—a ''pooled employer plan'' operated by a ''pooled plan provider.'' [2] The SECURE Act added sections 3(43) and 3(44) of ERISA to define and authorize these pooled employer plans, which offer benefits to the employees of multiple unrelated employers without the need for any commonality among the participating employers or other genuine organizational relationship unrelated to participation in the plan, thus enabling

[1] *See generally* Request for Information titled '' 'Open MEPs' and Other Issues Under Section 3(5) of the Employee Retirement Income Security Act'' at 84 FR 37545 (July 31, 2019) (referring to ''open MEPs'' as single defined contribution retirement plans that cover employees of multiple unrelated employers).

[2] The SECURE Act was enacted as Division O of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94) (December 20, 2019).

a type of open MEP.[3] A pooled employer plan arrangement can allow most of the administrative and fiduciary responsibilities of sponsoring a retirement plan to be transferred to a pooled plan provider. Therefore, a pooled employer plan can offer employers, especially small employers, an efficient workplace retirement savings option with reduced burdens and costs compared to sponsoring their own separate retirement plan. New section 3(44) of ERISA establishes requirements for pooled plan providers, including a requirement to register with the Department and the Department of the Treasury before beginning operations as a pooled plan provider. The effective date for these provisions allowed ''pooled employer plans'' to begin operating on or after January 1, 2021.

Statutory Requirements for Pooled Employer Plans

Under section 3(2) of ERISA, which defines the term ''pension plan'' generally,[4] a pooled employer plan is treated for purposes of ERISA as a single pension plan that is a multiple employer plan. A pooled employer plan, in turn, is generally defined in section 3(43)(A) as a plan which is an individual account plan established or maintained for the purpose of providing benefits to the employees of two or more employers.[5] A pooled employer plan may be a plan described in section 401(a) of the Internal Revenue Code (Code) which includes a trust exempt from tax under section 501(a) of such Code or in section 403(a) of the Code. A pooled employer plan may also be a plan that consists of annuity contracts described in section 403(b) of such Code. The terms of the pooled employer plan must meet certain statutory requirements described below.

Section 3(43)(B) of ERISA specifically provides that the terms of the pooled employer plan must contain certain requirements. For instance, the plan terms must designate a ''pooled plan provider'' and provide that the pooled plan provider is a named fiduciary of the plan. The terms of the plan also must designate a named fiduciary (other than an employer in the plan) to be responsible for collecting contributions to the plan and require such fiduciary to implement written contribution collection procedures that are reasonable, diligent, and systematic.

Section 3(43)(B)(iii)(I) of ERISA provides that the terms of the plan must provide that each employer in the plan retains fiduciary responsibility for the selection and monitoring, in accordance with ERISA fiduciary requirements, of the person designated as the pooled plan provider and any other person who is designated as a named fiduciary of the plan. Subparagraph (II) of this section also provides that each employer in the plan retains fiduciary responsibility for the investment and management of the portion of the plan's assets attributable to the employees of that employer (or beneficiaries of such employees) in the plan to the extent not delegated to another fiduciary by the pooled plan provider and subject to the ERISA rules relating to self-directed investments.

Section 3(43)(B)(iv) of ERISA states that the terms of the plan must provide that employers in the plan, and participants and beneficiaries, are not subject to unreasonable restrictions, fees, or penalties with regard to ceasing participation, receipt of distributions, or otherwise transferring assets of the plan in accordance with applicable rules for plan mergers and transfers.

Section 3(43)(B)(v) of ERISA provides that the terms of the plan must require the pooled plan provider to provide to employers in the plan any disclosures or other information that the Secretary of Labor (Secretary) may require, including any disclosures or other information to facilitate the selection or monitoring of the pooled plan provider by employers in the plan. This section also requires each employer in the plan to take any actions that the Secretary or pooled plan provider determines are necessary to administer the plan or to allow for the plan to meet the ERISA and Code requirements applicable to the plan, including providing any disclosures or other information that the Secretary may require or which the pooled plan provider otherwise determines are necessary to administer the plan or to allow the plan to meet such ERISA and Code requirements.

Section 3(43)(B)(vi) provides that any disclosure or other information required to be provided to participating employers may be provided in electronic form and must be designed to ensure that only reasonable costs are imposed on pooled plan providers and employers in the plan.

Pooled Plan Provider Defined

A pooled plan provider with respect to a pooled employer plan is defined in ERISA section 3(44) to mean a person that is designated by the terms of the plan as a named fiduciary under ERISA, as the plan administrator, and as the person responsible to perform all administrative duties (including conducting proper testing with respect to the plan and the employees of each employer in the plan) that are reasonably necessary to ensure that the plan meets the Code requirements for tax-favored treatment and the requirements of ERISA and to ensure that each employer in the plan takes such actions as the Secretary or the pooled plan provider determines necessary for the plan to meet Code and ERISA requirements. Such actions may include providing to the pooled plan provider any disclosures or other information that the Secretary may require or that the pooled plan provider otherwise determines are necessary to administer the plan or to allow the plan to meet Code and ERISA requirements.

Section 3(44) specifically provides that a pooled plan provider must acknowledge in writing its status as a named fiduciary under ERISA and as the plan administrator. In addition, this section also provides that the pooled plan provider is responsible for ensuring that all persons who handle plan assets or who are plan fiduciaries are bonded in accordance with ERISA requirements.[6]

[3] *See also* ERISA section 3(2)(C) providing that a pooled employer plan shall be treated as a single pension plan.

[4] Section 3(2)(A) of ERISA, in relevant part, defines a ''pension plan'' to mean ''any plan, fund, or program . . . established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program (i) provides retirement income to employees, or (ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond . . . .'' Section 3(2)(C) of ERISA, in relevant part, provides that a ''pooled employer plan shall be treated as—(i) a single employee pension benefit plan or single pension plan; and (ii) a plan to which section 210(a) applies.''

[5] The term ''pooled employer plan'' does not include a multiemployer plan or plan maintained by employers that have a common interest other than having adopted the plan. The term also does not include a plan established before the date the SECURE Act was enacted unless the plan administrator elects to have the plan treated as a pooled employer plan and the plan meets the ERISA requirements applicable to a pooled employer plan established on or after such date.

[6] The SECURE Act requires that pooled plan providers must ensure that all plan fiduciaries and other persons who handle plan assets are bonded in accordance with section 412 of ERISA. In the Department's view, the SECURE Act confirms the application of ERISA section 412 requirements to pooled employer plans, except that the Act establishes $1,000,000 as the maximum bond amount as compared to $500,000 for plans that do not hold employer securities. Thus, the normal section 412 rules for ERISA plans govern the bonding requirements for pooled employer plans and the pooled plan provider is subject to the provisions of ERISA section 412(b), which provides that ''it shall be unlawful for any plan official of such plan or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any plan official, with respect to whom the requirements of subsection (a) [of ERISA section

Continued

Section 3(44) also requires the pooled plan provider to register with the Secretary, and to provide to the Secretary such other information as the Secretary may require, before beginning operations as a pooled plan provider. In the Department's view, the primary purpose of the registration requirement is to provide the Department with sufficient information about persons acting as pooled plan providers to engage in effective monitoring and oversight of this new type of ERISA-covered retirement plan. In 2020, the Department published a final rule, titled Registration Requirements for Pooled Plan Providers, to enable pooled plan providers to register with the Department.[7]

To meet the registration requirements set forth by section 3(44), pooled plan providers must file a Form PR prior to beginning operations, as well as upon other events, such as when new PEPs are added or terminated, to amend or correct previously submitted registration information, or to signal that the pooled plan provider is ceasing operations.

Though the Form PR data provides important information about the universe of pooled plan providers, the Department relies on a combination of the Form PR and the Form 5500, Annual Return/Report of Employee Benefit Plan, submitted for each PEP to determine the number of PEPs, along with information about the participants and assets of those plans.

As reported through Form PR filings, 142 unique pooled plan providers remained registered with the Department as of the end of calendar year 2023. By matching Form 5500 data for the plan year ending in 2022 with data from the Form PR registrations, the Department has identified 190 PEPs in operation, which reported approximately 618,000 participants and nearly $5 billion in assets.

III. Common Elements of Effective PEPs

In advance of this RFI, the Department analyzed 2023 Form 5500 filings because these reports were the first to require new information about the number of participating employers in a PEP. While the 2023 Form 5500 data may not be fully complete, it does include all PEPs that filed a 2022 Form 5500 and reported more than $100 million in assets and offers a reasonable dataset to assess the nascent PEPs marketplace.

The PEPs market was highly concentrated according to the 2023 filings. The 12 largest PEPs identified by assets under management held nearly 70% of all PEP assets and the 4 largest PEPs held more than 40% of all PEP assets.[8] However, upon review, the Department found that these 12 PEPs show a diversity of business models and serve different kinds of employers. For example, the largest of these 12 PEPs held $1.68 billion in assets in 2023 but only served 63 employers and approximately 56,000 participants. The next largest PEP as of 2023 held $1.08 billion in assets but served 33,773 employers and approximately 538,000 employees. More broadly, the average number of participants per participating employer in each of these 12 PEPs ranged from 16 to 884, with half of the PEPs serving employers that averaged at least 188 participants per participating employer.

Many of these PEPs appeared to be delivering on Congressional intent by offering diversified investment lineups at a lower cost than small plans could likely negotiate on their own behalf. For example, Morningstar finds that the median total cost for each participant in a small retirement plan is 84 basis points, accounting for likely investment expenses and other administrative costs charged directly to participants. In contrast, based on the same data source, the Department estimates that the total costs to participate and invest through one of the three largest PEPs reviewed were between 23 and 42 basis points for a typical participant in 2023.

In fact, some of these 12 PEPs have gathered enough assets to access investment types that would typically be inaccessible to small plans, such as collective investment trusts (CITs) and separately managed accounts. These CITs are almost always cheaper than similar, or even identical strategies, offered as registered open-end mutual funds.[9] A 2023 report by Morningstar found that retirement plans with less than $25 million in assets held less than 10% of their assets in CITs.[10] In contrast, more than 40% of the largest 12 PEPs' assets are held in CITs; however, 5 PEPs held no CIT assets at all. Of the 7 PEPs holding CITs, the median percent of assets in CITs was 65%, but the minimum was just 1% of assets.

Most—although not all—of the 12 PEPs we examined offered limited investment lineups that appear to be designed to be accepted in their entirety by participating employers. These lineups generally covered major asset classes without overwhelming participants by offering overlapping or arcane designated investment alternatives. (These limited lineups could also help PEPs gather enough assets in specific pooled investment strategies to gain the scale necessary to lower costs for participants.) The median number of funds offered by these PEPs was 17 designated investment alternatives, not including target-date funds (TDFs).

All but one of the largest PEPs offered TDFs, and collectively participants invested the majority of their assets in these vehicles. Fifty-eight percent of assets among the largest PEPs were invested in TDFs. TDFs can be a simple way for plan participants to reasonably manage the asset allocation of their investment portfolio. The 12 largest PEPs hold a greater proportion of assets in TDFs than is true of the plan universe more generally. EBSA estimates that about 30% of 401(k) plan assets are held in TDFs as of 2023. Some of this difference may be due to the fact that some legacy plans did not offer TDFs or automatic enrollment in the past. Nonetheless, those PEPs that the Department reviewed appear to be successfully channeling participants into simple, low-fee TDFs, which can help participants who do not wish to set their asset allocation mix themselves and do not use a managed account or other advisory service.

About half of the 12 largest PEPs that the Department reviewed seemed to avoid investments offered by parties in interest (sometimes referred to as ''conflicted investments''). Seven of the 12 largest PEPs entirely avoided party-in-interest investment strategies (*i.e.,* investments offered by the pooled plan provider or an affiliate) according to Form 5500 filings. Of the other PEPs, 29% of their assets were held in party-in-interest investments, and two of these 5 PEPs exclusively held party-in-interest investments.

412] have not been met.'' *See* 29 CFR 2550.412–1, 29 CFR part 2580; *see also* Field Assistance Bulletin 2008–04 (providing a general description of statutory and regulatory requirements for bonding). The Department does not read the SECURE Act as broadening the section 412 bonding rules to apply to persons who do not handle plan assets, funds or other property within the meaning of section 412. Similarly, the existing statutory and regulatory exemptions for certain banks, insurance companies, and registered broker-dealers continue to apply.

[7] 85 FR 72934 (Nov. 16, 2020); 29 CFR 2510.3–44 (Registration Requirement to Serve as a Pooled Plan Provider to Pooled Employer Plans).

[8] These calculations were based on data pulled on February 7, 2025, and subsequent or amended filings could result in different results.

[9] Mitchell, Lia, 2023 Retirement Plan Landscape Report: An In-Depth Look at the Trends and Forces Reshaping U.S. Retirement Plans (April 2023), *https://www.morningstar.com/lp/retirement-plan-landscape-2023.* Morningstar finds that CITs are generally half the cost of registered open-end mutual funds and that CITs are cheaper 88% of the time compared to mutual funds.

[10] *Ibid.*

IV. Interpretive Guidance for Investment Selection and Management

Section 3(43)(B) of ERISA sets forth certain requirements for plan terms relating to pooled employer plan investments. This section, in relevant part, provides that the terms of the PEP must provide that each employer participating in the plan ''retains fiduciary responsibility for the investment and management of the portion of the plan's assets attributable to the employees of the employer (or beneficiaries of the employees).'' [11] This provision, among other things, unmistakably places duties of selecting and monitoring plan investments squarely on participating employers in accordance with ERISA's fiduciary standards, including the duties of prudence and loyalty, rather than exclusively on the trustee of the plan as is ordinarily the default under ERISA.[12]

However, section 3(43)(B)(iii)(II) of ERISA explicitly provides that the terms of the PEP may grant the pooled plan provider, as a named fiduciary, the authority to delegate the investment and management functions ''to another fiduciary.'' The statute thus allows the pooled plan provider to transfer the investment and management functions and obligations of participating employers to another fiduciary. In such circumstances, the pooled plan provider, as a named fiduciary, is subject to and must ensure compliance with sections 402, 403, 404, 405, and 406 of ERISA to effect such a transfer. Among other things, this means that the pooled plan provider must prudently select the fiduciary who will be performing the investment and management functions, and the pooled plan provider also must monitor that selection at reasonable intervals, in such manner as may be reasonably expected to ensure that the appointment comports with the terms of the plan and statutory standards.

If a pooled plan provider, as named fiduciary, were to appoint an investment manager as defined in section 3(38) of ERISA, the manager would be responsible for the prudent investment and management of the plan's assets—not the participating employers. Further, in such circumstances, neither the participating employers nor the pooled plan provider would be liable for any acts or omissions of the investment manager, except for any potential co-fiduciary liability under section 405(a) of ERISA. In the Department's view, the risk to participating employers of fiduciary liability could be minimized greatly if the pooled plan provider, as named fiduciary, expressly assumed full responsibility for, and exercised sole discretion and judgment in selecting and retaining the manager and did not attempt to reduce its responsibility by relying on authorization or ratification from the participating employers for the selection and retention, such as through an adhesive participation agreement. In these circumstances, fiduciary liability of participating employers would be minimized because the pooled plan provider assumed full responsibility for selecting and retaining the investment manager. This means the pooled plan provider has the duty to directly monitor the investment manager. Participating employers, in turn, must prudently monitor the pooled plan provider.

V. Fiduciary Tips for Small Employers Selecting a PEP

Pending additional guidance, the Department has prepared the following tips to assist small business owners in picking a PEP.

1. *Consider what a PEP has to offer you and your employees.* Unlike establishing and maintaining your own retirement plan for just your employees and shouldering the day-to-day operations of the plan, PEPs can offer a turnkey retirement savings solution, managed completely by professionals. They can also offer you economies of scale. These features could leave you with the time you need to run your business while simultaneously providing your employees with an opportunity to save and achieve retirement security.

2. *Make sure you understand the type of PEP under consideration.* PEPs are a relatively new type of retirement plan, and although they all have certain things in common, they do not all operate the same way. For example, some PEPs are straightforward and offer uniform features to all participating employers and their employees. By contrast, other PEPs may offer flexibility and customization. Each approach is permissible under the law—the best fit depends on the needs and goals of your business and employees. Once you decide on the best fit, consider several similar PEPs before selecting one.

3. *Make sure you consider the experience and qualifications of the PPP.* Federal law requires all PEPs to be administered by a person called the ''pooled plan provider'' or ''PPP.'' Understanding the experience and qualifications of the pooled plan provider is one of the most important—if not the single most important—aspects of joining a PEP. Federal law generally holds the pooled plan provider accountable for all operations of the PEP. Therefore, it is crucial that you ask the pooled plan provider about its experience with employee benefit plans. Examples of relevant questions for pooled plan providers include questions relating to the quality of their services, customer satisfaction, prior litigation or government enforcement matters, and whether they are registered with the Department as is required by law. Other examples of relevant questions include queries about the number of employers and participants in the plan and the amount of its assets, to evaluate whether the PEP will offer economies of scale.

4. *Make sure you ask questions about the PEP's fees.* Operating a PEP involves services such as trustee services, custodial services, recordkeeping, audits, and other administrative services. Fees for these services are often quoted on a per-participant basis or based on the level of the employer's assets in the plan, or a combination of the two. There may also be start-up fees. It is important to understand all the fees and expenses that will be charged by the PEP and how they will be allocated among participating employers and their employees' accounts. Examples of relevant questions include asking the pooled plan provider for a breakdown by service of all the fees and expenses associated with joining the PEP. Also relevant is a breakdown by service of how much the pooled plan provider (and any affiliate) gets paid and who approves these fees and expenses. Another relevant question is whether the pooled plan provider receives any compensation from third parties in connection with the PEP, and whether it uses the data from participant accounts for cross-selling activities.

5. *Make sure you understand the investment options.* Examples of relevant questions include the number of fund options, whether they are diversified, how they perform relative to their benchmarks, and whether they have materially different risk and return characteristics. Also relevant is who selects the funds on the menu and how often their choices and process are reevaluated. You may want to ask about the default investment for employees who do not direct the investment of their account assets. TDFs have become an increasingly popular investment option in 401(k) plans and similar employee-directed retirement plans.

[11] ERISA Sec. 3(43)(B)(iii)(II).

[12] *See* ERISA Sec. 403(a) (upon acceptance of being named or appointed, the trustee or trustees shall have exclusive authority and discretion to manage and control the assets of the plan subject to two exceptions).

You may want to ask the pooled plan provider whether the PEP has TDFs. It is also important to understand the fees associated with the investments made available for employees. As discussed in #6 below, you may have fiduciary responsibility for the selection of the investment options for your employees.

6. *Ask questions about your exposure to fiduciary liability for investments.* Under federal law, employers joining a PEP are legally responsible as fiduciaries for the proper selection of investment options for their employees unless the pooled plan provider hires an investment professional to act as a fiduciary with respect to investment selection. Therefore, it is very important to know whether the PEP has a fiduciary for this purpose. If so, you may want to ask the pooled plan provider to name the fiduciary that is responsible for selecting the PEP's investment options and the person responsible for selecting this fiduciary. You have fiduciary responsibility for the investment and management of the portion of the PEP's assets attributable to your employees if no such delegation occurred.

7. *Ask questions about your exposure to fiduciary liability should you join the PEP.* Sometimes, through a subscription agreement, a PEP may purport to disclaim ultimate fiduciary responsibility for the service providers it hires, the fees it pays to these service providers, and the fees it pays to itself or affiliates internally. Therefore, an example of a relevant question is whether the PEP is structured to assume all plan administration, management, and operation functions. Put differently, you may want to ask whether the PEP's governing documents put any fiduciary duties on you.

8. *Don't forget to monitor your PEP on an ongoing basis.* Federal law requires employers in the PEP to prudently monitor the pooled plan provider and any other persons specifically designated as a named fiduciary of the PEP. This does not mean that you are required to oversee the day-to-day activities of these individuals. However, at reasonable intervals you should review the operations and performance of the PEP, including performance of the investments, to make sure it is operating the way you expected it to. This would include, as applicable, a review of the resolution of complaints about the PEP from your employees. This would also include checking to see if the fees that were charged are the same as the ones you agreed to, and if not, actively seeking out an explanation.

9. *Make sure you fully inquire about the implications of exiting the PEP.* Your company's business circumstances may change such that the PEP you have selected is no longer the best fit for you and your employees. For example, your company and the size of its workforce may grow, and you may decide to sponsor a single-employer plan, perhaps a defined benefit plan, or the company may downsize or even go out of business. Or you may conclude that the PEP simply is no longer the best PEP for your needs. Accordingly, when initially interviewing a PPP, examples of relevant questions include asking the pooled plan provider for an explanation of what would happen if you, as the employer, or any of your employees who separate from service, were to cease participation in the PEP and seek to transfer assets to another retirement solution. A good question to ask in this context can be whether the PEP imposes any restrictions (including fees, timing, penalties, etc.) on the ability of a participating employer or its separated employees to cease participating in the PEP. If the PEP does impose restrictions, an example of a relevant follow up question would include asking what they are and why do they exist? Another good question to consider asking is whether the PEP or any of its investments contain a market value adjustment that would be triggered when the employer or employee ceases participation, receives distributions, or otherwise transfers assets out of the PEP. You should also understand what happens to the unvested portion of your employees' account balances under the plan's forfeiture provisions if the employee ceases participation upon separation of service. You may want to also ask if, as the participating employer, you cease participating in the PEP and terminate your company's involvement with the PEP altogether, whether the accounts of your current and former employees remain in the PEP.

VI. Request for Information

In this Section VI, the Department solicits responses to questions primarily for the purpose of considering whether additional guidance to facilitate small employers joining PEPs would be helpful.

Shortly after the SECURE Act introduced PEPs, the Department began to examine PEP formations and operations. The point of the examination was to determine whether there is a need or demand for a new prohibited transaction class exemption or for amendments to existing prohibited transaction exemptions. The examination started on June 18, 2020, with the publication in the **Federal Register** of a Request for Information concerning the possible parties, business models, conflicts of interest, and prohibited transactions that might exist with PEPs (2020 MEP RFI).[13]

Responses to the 2020 MEP RFI reflected a broad range of views and included no consensus. Some individuals stated that there were no potential conflicts of interest implicated by a pooled plan provider offering an investment in which it has a financial interest. Others, however, stated that such arrangements should be prohibited because they are inherently and unlawfully conflicted.

Notably, many individuals stated that the nascent PEP marketplace was not yet ready for a class exemption because the need for such relief depends on the structure of PEPs and structures were still maturing. Considering the varied and inconclusive responses to the 2020 MEP RFI, coupled with the increased number of PPPs since then as well as the further development and maturation of the PEP marketplace, the Department requests information based on the questions below.

General Questions

1. The law does not limit the types of entities that may elect to serve as pooled plan providers. Which types of entities (for example, asset managers, third-party administrators, recordkeepers) are acting as pooled plan providers? Are these entities generally contracting out most administrative functions or performing these functions themselves?

2. How are PEPs marketed and distributed and by whom? Do marketing and distribution methods differ depending on the model? Do PEPs compensate third parties to advertise, distribute, promote, or otherwise supply access to and participation in PEPs? If yes, how is such compensation typically determined and from what source(s) is it paid?

3. Do vendors of pooled employer plans (including businesses that are themselves pooled plan providers but that are vending in a non-pooled-plan-provider capacity) also offer model single-employer plans or different PEP options? How do they determine which option to recommend to employers? To what extent and for what reasons do they offer customization and variations, such as different share classes, within the same PEP?

4. What barriers, if any, prevent small employers from becoming aware of, understanding, or trusting PEPs? Have employers with existing plans merged

[13] Prohibited Transactions Involving Pooled Employer Plans Under the SECURE Act and Other Multiple Employer Plans, 85 FR 36880.

their plans into PEPs? Are there specific challenges associated with doing so that could or should be addressed through guidance or regulatory intervention?

5. In the context of corporate transactions, are there specific challenges for the retirement plans of acquiring businesses to accept acquired businesses' assets from PEPs (*e.g.,* through plan spin-offs/mergers or through direct rollovers)? What are the challenges associated with preventing leakage when an entity participating in a PEP is acquired?

6. Have professional employer organizations (PEOs) offered PEPs or do they offer only traditional multiple-employer plans? Are there any obstacles or barriers that would prevent a PEO from offering a fully integrated HR platform with a PEP retirement solution?

Conflicts of Interest and Mitigation

7. What percentage of pooled plan providers are using independent 3(38) investment managers pursuant to the delegation permitted by section 3(43)(B)(iii)(II) of ERISA? For this purpose, independent means not affiliated with the pooled plan provider. When 3(38) investment managers are used, are the agreements entered into between the 3(38) investment managers and the pooled plan providers, or do the 3(38) investment managers contract directly with the participating employers?

8. When independent 3(38) investment managers are used for investment and management of assets, how often do the managers provide services to the PEP or pooled plan provider other than investment management services, and what type of other services?

9. Do pooled plan providers purport to limit authority of their 3(38) investment managers to choose the funds or arrangements in which they invest? To what extent do pooled plan providers encourage or require investments from a limited menu of options? To what extent do pooled plan providers purport to limit the range of options to those in which the pooled plan providers have a financial interest?

10. Are PEPs offering investments with revenue sharing arrangements that offset the costs of recordkeeping or other plan services? Are PEPs offering investments that are proprietary to the pooled plan provider, its affiliates, or any other PEP service provider?

11. How do pooled plan providers manage potential conflicts of interest in cases in which they offer investments in which they have a financial interest?

12. Are there any potential conflicts of interest in PEP distribution models? If so, how are they managed?

13. What existing prohibited transaction exemptions (statutory or administrative) do pooled plan providers rely on, if any?

14. Based on the business models that pooled plan providers have developed, is there a need for additional prohibited transaction exemptions? If so, explain why they are needed, what conditions should be included, and why they would be in the interest of, and protective of, affected plans.

Safe Harbor Considerations

15. Should the Department codify a regulatory safe harbor based on the guidance and tips in Sections IV and V of this RFI, respectively, for small employers to satisfy their fiduciary responsibilities for selection and monitoring pooled plan providers and other named fiduciaries referenced in section 3(43)(B)(iii)(I) and their fiduciary responsibilities for the investment and management of the portion of the PEP's assets attributable to their employees referenced in section 3(43)(B)(iii)(II)? Why or why not? Are there additional considerations or conditions, apart from the guidance and tips in Sections IV and V, that the Department should consider with respect to the design or adoption of such a safe harbor?

16. Would the safe harbor referenced in question 15 encourage the growth of high-quality PEPs? Would such a safe harbor help pooled plan providers market PEPs to participating employers while simultaneously encouraging small businesses to join PEPs?

17. Should the safe harbor referenced in question 15 require the PEP to use a 3(38) investment manager that is not affiliated with the pooled plan provider?

18. What disclosures should be provided to participating employers as part of such a safe harbor? Have employers experienced difficulties in obtaining information about PEPs before joining and, if so, what types of information?

19. Should arrangements between an independent 3(38) investment manager and participating employers be permitted, encouraged, or discouraged as part of the safe harbor referenced in question 15—for instance, should the safe harbor encourage or discourage arrangements under which each participating employer in a PEP has a different investment menu for its own employees, or create special protective conditions for such arrangements? Should the safe harbor include conditions designed to ensure that the PPP gives all participating employers and plan participants the same investment options and fee structures on the same terms? Why or why not?

20. Should such a safe harbor exclude PEPs that offer investments in which the pooled plan provider has a financial interest?

21. Should such a safe harbor create any specific requirements regarding the offer of TDFs, the offer of managed accounts, the acceptable number of pooled investments offered as designated investment alternatives, or the asset class coverage of designated investment alternatives available to participating employers in a PEP?

22. Should such a safe harbor designate a permissible range of total fees for participants in the PEP? For this purpose, the safe harbor could define total fees as an average percent of assets.

23. Are there any issues specific to registered investment company funds or collective investment trusts that such a safe harbor should address? If so, what are they and why are they relevant for the safe harbor?

24. Should such a safe harbor require the use of written representations or certifications by the pooled plan provider about the PEP and the pooled plan provider's diligence in meeting the requirements of ERISA. Could any such written representations help participating employers satisfy their duty to prudently monitor the pooled plan provider, working similar to the way the written representations work in the fiduciary safe harbor in section 408(e) of ERISA (safe harbor for annuity selection)?

25. In addition to the safe harbor referenced in questions 15 through 24 for participating employers, do market participants see a need for a safe harbor for pooled plan providers themselves to encourage the formation of high-quality PEPs? If so, which service provider relationships (*e.g.,* recordkeepers, consultants, trustees, investment managers) and which PEP model (*e.g.,* bundled or unbundled) are most in need of a safe harbor or safe harbors? What should such a safe harbor include?

VII. Report to Congress

Section 344 of SECURE 2.0 directed the Department, not later than five years after enactment, and every five years thereafter, to submit a report to Congress, and make publicly available on a website, the Department's findings from a study of the PEP industry, including recommendations on how PEPs can be improved, through legislation, to serve and protect retirement plan participants. On August 11, 2023, the Department issued a

Request for Information (August 2023 RFI) with a series of questions aimed at developing this report.[14] After studying the responses to the August 2023 RFI, the Department solicits responses to the following additional questions primarily for the purpose of assisting the Department with this report. The Department recognizes potential limitations in existing Form 5500 and Form PR data, including inconsistent reporting and a lack of participant-level cost and service detail. Commenters are encouraged to recommend improvements to plan data collection and public reporting that would facilitate more accurate monitoring and evaluation of the PEP market.

26. What information can commenters provide on the range of investment options provided in PEPs, both in terms of the number and type of investments? The ''range of investment options'' means the specific investment options the responsible plan fiduciary has selected as ''designated investment alternatives'' under the PEP, without regard to the amount of assets invested in each. This excludes investments available through a brokerage window or similar arrangement.

27. What types of fees are assessed in PEPs and what is the range of the amount of such fees?

28. How do employers select a PEP? Do they tend to use third parties to assist in the selection process? How do employers monitor PEPs? Specifically, which aspects of PEPs are periodically reviewed? How often do employers conduct reviews of the PEPs they have joined?

29. What disclosures are provided to participants in PEPs? Are they generally the same disclosures that are required to be disclosed under ERISA to participants in other defined contribution plans? Responses to the August 2023 RFI stated that disclosures to PEP participants should not be any different than disclosures in other defined contribution plans. Do those responses represent the current view of the public?

Signed at Washington, DC, this 24th day of July 2025.

Janet Dhillon,

Acting Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2025–14281 Filed 7–28–25; 8:45 am]

BILLING CODE 4510–29–P

[14] 88 FR 54511, 12 (August 11, 2023).

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[ED–2025–OPE–0151]

Intent To Establish Negotiated Rulemaking Committees; Correction

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Proposed rule; correction.

SUMMARY: On July 25, 2025 the U.S. Department of Education published an intent to establish negotiated rulemaking committees in the **Federal Register** Page 35261, Column 1, 2, and 3; Page 35262, Column 1, 2, and 3; Page 35263, Column 1, 2, and 3; Page 35264, Column 1, 2, and 3 seeking public comment for the Public Hearing; Negotiated Rulemaking Committees; Department's intention to establish two negotiated rulemaking committees to prepare regulations for the Federal student financial assistance programs authorized under Title IV of the Higher Education Act (HEA) of 1965, as amended (Title IV, HEA programs). ED is requesting a correction to the Docket ID Number ED–2025–0151. Docket ID should read as ED–2025–OPE–0151.

The Acting Assistant Secretary, Office of Postsecondary Education, hereby issues a correction notice as required by the Paperwork Reduction Act.

Signing Authority: This document of the U.S. Department of Education was signed on July 25, 2025, by Christopher J. McCaghren, ED.D, *Acting Assistant Secretary, Office of Postsecondary Education.* That document with the original signature and date is maintained by the U.S. Department of Education. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned has been authorized to sign the document in electronic format for publication, as an official document of the U.S. Department of Education. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Tracey St. Pierre,

Director, Office of the Executive Secretariat, Office of the Secretary, U.S. Department of Education.

[FR Doc. 2025–14333 Filed 7–28–25; 8:45 am]

BILLING CODE 4000–01–P