



Regulatory Alert

Financial Services Regulatory Insight Center



November 2018

U.S. Department of Labor proposes to expand 401(k) access

Key points

- The U.S. Department of Labor proposed a new rule that would permit small businesses to join together to offer 401(k) plans through a multiple-employer plan.
- The proposal is designed to help small businesses offer benefit packages comparable to those offered by large businesses.

Summary

The U.S. Department of Labor [proposed](#) a new [rule](#) that would permit small businesses to join together to offer 401(k) plans. The proposal responds to an August 2018 [Executive Order](#), which included a directive to review rules to expand access to multiple-employer plans (MEPs) and other retirement plan options.

The proposed rule would clarify when an employer group, association (such as trade associations or chambers of commerce), or a professional employer organization (PEO) may sponsor a MEP. Some specific provisions in the proposed rule would:

- **Clarify "employers" under ERISA:** The proposal would clarify that employer groups or associations and PEOs that satisfy certain criteria constitute "employers" for purposes of establishing or maintaining an "employee pension benefit plan."
- **Establish criteria for "employers":** The proposal would establish seven criteria for

determining what constitutes a "bona fide" group or association of employers. It would also establish four criteria for determining what constitutes a "bona fide" PEO. A qualifying MEP or PEO could then establish an employee benefit plan on behalf of its employer members.

- **Allow working owners to be both employers and employees:** The proposal would allow working owners (ex: sole proprietors) to elect to act as employers for purposes of participating in a bona fide employer group or association and also be treated as employees of their businesses for purposes of being able to participate in the MEP.

The proposal would primarily affect groups or associations of employers, PEOs, plan participants, and plan beneficiaries. It could also impact banks, insurance companies, securities broker-dealers, record keepers, and other commercial enterprises that provide retirement-plan products and services.

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