# Pooled Employer Plans (PEPs) – Should Employers Dive In?

by Tyler Polk, Partner and Senior Consultant

February 2024

## What are PEPs?

The Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 and the subsequent Securing a Strong Retirement Act of 2022 (SECURE 2.0) established the most meaningful (and often misunderstood) retirement plan legislation in 15 years. Among the many provisions enacted by these laws, one that may have the most momentous impact on the retirement industry is the creation of the Pooled Employer Plan (PEP), effective January 1, 2021.[1]

PEPs allow for multiple unrelated employers of various sizes to participate in a single retirement plan. Regardless of the total number of participating employers, the Internal Revenue Service (IRS) considers a PEP as a single, unique 401(k) plan with one 5500, one audit and one ERISA bond.[2] The PEP allows all employers to band together under one third party (the Pooled Plan Provider or PPP) to offer a competitive retirement savings vehicle.[1] While delegating the day-to-day administration and fiduciary liabilities to the PPP, the employer can keep autonomy over plan design such as employer contributions, eligibility and distribution options.

We believe this innovative plan structure can allow for significant economies of scale, streamlined plan administration, lower potential fiduciary exposure and a decreased need for employer resources. All of these factors can result in improved participant outcomes.

## Cost Savings

The biggest litigation risk to an employer who sponsors a retirement plan is excessive fee claims. By merging the retirement assets of many employers into a single plan, employers have the ability to access investment management, administrative and recordkeeping services on a lower-cost basis than what would be available under a standalone employer plan. Since all of the employers in the PEP share the same investment vehicles, recordkeeper, advisors and administrator, the negotiated fee savings can be significant. Another benefit to pooling assets may be the ability for employers to access low-cost collective investment trust (CITs). Some

---

[1] *Source: Ropes & Gray, Pools Employer Plans ("PEPs"): Putting a little PEP in a 401K retirement plan could help to protect your Portfolio Companies. April 19, 2022*
[2] *Source: The National Law Review. PEPs and MEPs: Compliance and Fiduciary Considerations Under the SECURE Act. July 20, 2021*

single employer plans may not have the required assets to meet prohibitive minimums for CITs, yet the pooling of assets under one plan can help alleviate this challenge.

Similarly, pooling employer assets may offer cost savings for plan audits. Audit costs to employers have only increased over the years and since the IRS only requires a single audit, all of the employers share this reduced cost as well.

## Administrative Efficiencies

The Pooled Plan Provider's role is to serve as the 3(16) operational fiduciary for the PEP. The function of a 3(16) fiduciary centers around the administration of the retirement plan.[3] These functions include tracking employee eligibility, managing and approving all plan distributions, maintaining required plan information and plan documents, fulfilling reporting requirements and furnishing the required disclosures to all plan participants and beneficiaries.[4]

Under a single plan model, failure to accurately complete these administrative responsibilities can have costly consequences. In the PEP, since the administrative liability is outsourced to the PPP, employers are relieved of most of these operational duties. The employer's primary responsibility shifts to providing accurate payroll information to the PPP and timely contributions to the retirement plan. This structure allows the third-party administrative experts to handle the day-to-day running of the retirement plan and can minimize the potential for costly errors.[4]

## Reduced Fiduciary Risk

Given the increasing litigation related to excessive fees and investment imprudence, the ability to offload such risks has gained greater importance. A key benefit of a PEP lies in the ability to transfer a significant portion of fiduciary responsibility and liability to the PPP. Because the PPP takes on the 3(16) administrative duty for the day-to-day operations, it bears the responsibility for any operational errors as long as the employer has followed its role in providing accurate payroll and timely contributions.[4]

The PPP is also responsible for the engagement of a 3(38) investment fiduciary which oversees selecting, managing, monitoring and benchmarking the investment offerings.[4] While no plan structure can completely eliminate all fiduciary duties and these third parties must be closely monitored, PEPs provide a means to delegate many of the responsibilities and potentially alleviate fiduciary risk.

---

[3] *Source: The National Law Review. PEPs and MEPs: Compliance and Fiduciary Considerations Under the SECURE Act. July 20, 2021.*

[4] *Source: Ropes & Gray, Pools Employer Plans ("PEPs"): Putting a little PEP in a 401K retirement plan could help to protect your Portfolio Companies. April 19, 2022*

## Fewer Employer Resources Needed

Numerous businesses face challenges in dedicating time, required technology or necessary infrastructure for effective retirement administration and oversight. Some employers decide against offering a plan at all because of the significant resource burden. To tackle this issue, PEPs offer a "do it for you" approach which operates with the PPP managing tasks such as administration, monitoring and reporting.

This means employers are relieved of time-consuming responsibilities like plan setup, coordination with vendors, employee enrollment and the intricate aspects of 401(k) plan management and governance.

Employers allow the PPP to oversee these tasks but retain control over aspects like defining matching levels, setting contribution limits and ensuring that the plan aligns with their employees' needs. While some employers may prefer a more hands-on approach, many employers recognize the benefits of a plan that can run efficiently with minimal operational involvement.

## Deciding if a PEP is the Right Alternative for You

Fiducient Advisors can assist employers in addressing the question of whether or not a PEP would be an appropriate benefit for their employees, instead of a standalone plan. Our consultants can review considerations such as plan size, current organizational structure, existing resources and technology to help employers decide if the PEP is indeed a solution for their retirement plan offering.

Additionally, Fiducient Advisors established a PEP with Newport/Ascensus serving as the PPP. Our firm provides the 3(38) discretionary services and fiduciary consulting for PEP clients. Our goal in establishing the PEP is to offer our clients another option so that they can choose the most beneficial retirement plan structure for their employees.

Please contact Tyler Polk or any of the consultants at Fiducient Advisors to discuss any questions or for assistance in determining if joining the PEP is the right fit for your organization.

## About the Author

**Tyler Polk, AIF®**

*Partner and Senior Consultant*

As a Partner and Senior Consultant, Tyler services institutional clients by providing advice and counsel on all areas of fund oversight including fiduciary liability, plan benchmarking, vendor analysis, participant educational planning, fee analysis, and plan design strategy. His focus is on defined contribution retirement plans, both corporate and tax-exempt, with decades of experience in 401(k), 457(b), 401(a), 403(b) and non-qualified plan consulting. Additionally, Tyler is a member of the Defined Contribution Business Council and co-chairs the Recordkeeper Oversight Committee. Tyler joined Fiduciary Investment Advisors, LLC in 2011, which combined with Fiducient Advisors in 2020. Prior to joining the firm, he was a consultant at Lindberg & Ripple Inc. (M Financial firm). He earned his BA from Williams College. Tyler serves on the Kingswood-Oxford School Board of Trustees, the Hartford Foundation for Public Giving Scholarship Committee and Board of Ambassadors, the Executive Board of Hartford CT's Camp Courant (the oldest and largest free summer day program in the country) and the Executive Board of the Nutmeg State Games Connecticut Sport Management Group. In his free time, Tyler enjoys fly fishing, golf, paddle tennis, trying new bourbon, cooking and bird watching with his wife and three children.