Retirement in the 21st Century—Individual Responsibility in the Age of the 401(k)
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Today’s speakers:

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**Presenters**
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- Michael Sinacore
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  Economic Policy Adviser for Senator Rob Portman
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Next-Generation Retirement Plans: The Future of Pooled Employer Plans (PEPs)

November 6, 2020

Prepared by Aon
Pooled Employer Plans

SECURE Act encourages employers from all industries and sizes to band together and participate in a Pooled Employer Plan (PEP)

- **Lower fees and improved outcomes** for employees
- **Better governance** for plan fiduciaries
- **Streamlined administration** for HR and benefit teams
Some Detail on the SECURE Act and PEPs

New Legislation
Starting in 2021, SECURE allows organizations to move their 401(k) plan into a pooled plan run by a third-party expert; Not applicable yet for 403(b) and 457 plans

PEPs Remove Two Historical Issues
- Common nexus requirement
- “One bad apple” rule
Some History

Open MEPs
- Closed MEPs have been used for some time
  - Defined benefit and defined contribution
- RESA and broad support for Open MEPs in 2016
- SECURE Act and ultimate passage in December 2019, resulting in Pooled Employer Plans (PEPs)

Regulatory Environment
- No specific IRS or Treasury Guidance
- DOL has requested information on
  - Conflicts/prohibited transactions
  - Registration process for Pooled Plan Providers (PPPs)
Pooled Employer DC Plans: A Global Trend

United Kingdom
- Master Trusts are fastest growing market

United States
- SECURE Act allows Pooled Employer Plans
- PEPs effective 1/1/2021

EMEA
- $75B in cross border plans covering DB and DC
- 73 active plans (53% DB, 33% DC, 14% DB/DC)

Australia
- Multiple Employer Plans dominate the market
Evolution of Employer-Sponsored DC Plans

1970s
Birth of the 401(k)

1990s
Investment responsibility shifts to employees

2010s
Sponsors outsource responsibility for investments

1970s  1980s  1990s  2000s  2010s  2020s

1980s
Add match; outsource recordkeeping

2000s
DC becomes more common than DB

2020s
Employers join PEPs to outsource DC plan management
DC Plan Litigation Targets & Trends

**Targets**

- Historically, the plaintiff’s bar targeted large for-profit company plan sponsors (e.g., Fortune 500) with significant amounts of DC plan assets.
- More recently, their targets include smaller companies (even some DC plans with less than $100M in plan assets).
- Thus far in 2020, there have been at least 40 new cases brought against DC plan fiduciaries and sponsors.

**Commonly litigated issues**

![Figure 3. Number of Complaints Related to 401(k) Plans by Type of Complaint, 2006-2017](image)

**2018-2019 Updates**

- Class settlements in employee benefit disputes:
  - 2018: $291 million
  - 2019: $449 million

PEP Ecosystems

- Compliance
- Investments
- Recordkeeping and Customer Service
- Innovation
- Trustee & Custodian
- Audit
Plan Designs Can Vary and Will Evolve

- **Freedom**
  - Eligible group
  - Employer contribution levels

- **Flexible**
  - Participation
  - Automation
  - Vesting
  - Service
  - Compensation

- **Fixed**
  - Investment choices
  - Contribution types
  - Loans and withdrawals
  - Distribution options
SECURE (Setting Every Community Up for Retirement Enhancement) Act
Guidance

• IRS Notice 2020-68
  – Section 105: Small employer automatic enrollment credit,
  – Section 107: Repeal of maximum age for traditional IRA contributions,
  – Section 112: Participation of long-term, part-time employees in 401(k) plans,
  – Section 113: Qualified birth or adoption distributions, and
  – Section 116: Permitting excluded difficulty of care payments to be considered as compensation for determining certain retirement contribution limitations,
  – Section 104 of the Miners Act: Reduction in minimum age for in-service distributions, and
  – Guidance on deadlines for plan amendments.

• Proposed Regulation: Registration Requirements for Pooled Plan Providers
• Interim Final Regulation: Lifetime Income Disclosures
Key Open Issues: Pooled Employer/Multiple Employer Plans

GUIDANCE BY STATUTE
- Identify the administrative duties and other actions required to be performed by a pooled plan provider;
- Identify actions needed where an employer does not take the actions to meet the qualification requirements, including transferring the assets related to that employer’s employees to a separate plan.

OTHER GUIDANCE
- One bad apple rule process and procedure/interaction with proposed rules
- Pooled provider failures
- What entities can be a pooled provider
- Compensation for pooled provider
- Prohibited transaction exemptions (PTE)
- Disclosures to employers/notice to participants
- What are the parameters on “unreasonable restrictions, fees, or penalties for leaving the plan or transferring assets”
- Participation termination/asset transfer
- Form 5500 reporting
- Request for Information published June 18, 2020, asked for information related to types of entities, PTE issues, investments, and employer participation
Key Open Issues: Other

• Fiduciary safe harbor for selection of lifetime income provider.
  – Although technically this could be self-implementing, most plan fiduciaries will want to wait for guidance, which could be extensive

• Participation of part-time employees in 401(k) plans
  – IRS’ position is that periods before January 1, 2021, count for vesting in employer contributions unless the service may be ignored under the general rules; however, it may be difficult to have the data on this

• Qualified birth or adoption distributions
  – Repayment (although Notice 2020-68 addressed repayment to different plans)
  – Notice (availability/repayment)
  – Taxation/reporting

• Combined annual report for group of plans
  – Plans eligible to file
  – Revised Form 5500
Other Regulation
Other regulation from Trump Administration

- Electronic Disclosure
- Investment Duties
- Proposed Prohibited Transaction Exemption (PTE) Class Exemption (Investment Advice) Fiduciary Status
- Proxy Voting
Regulations: 2021 and beyond

• Coronavirus Aid, Relief, and Economic Security (CARES) Act
  – Coronavirus-Related Distribution (CRD) repayments (such as: Is it mandatory? May there be restrictions?)

• Missing participants

• Plan data is not a plan asset

• Education versus fiduciary (e.g., lifetime income and other modelling)

• Notice and disclosure review and simplification
Legislation
Legislation in the 117th Congress

• SECURE 2.0
• Administrative simplification
• No employer or plan design mandate
Contact Information

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