

# Pooled Employer Plans

Presented by The Platinum 401k, Inc.

The Platinum  
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## Terrance Power, CFP, QPA, ERPA, CRPS *President, The Platinum 401k, Inc.*

- 39 years of experience in the retirement plan industry.
- Industry thought-leader on multiple employer plans.
- Frequent speaker at retirement plan industry conferences and quoted in many leading national financial service publications.
- Has provided testimony to the United States Department of Labor and the Internal Revenue Service on multiple employer plans and 401k outsourcing issues.
- 30 years of experience in working with multiple employer plan clients. 10 years of experience serving as a 3(16) Plan Administrator for 413(c) Multiple Employer Plans.
- Fee-for-service third party administrator.

# About Us

Experienced, integrity, highly qualified



# The SECURE Act Retirement Plan Legislation

Legislation signed into law December 20, 2019

Establishes Pooled Employer Plans effective January 1, 2021.

- Allows Pooled Plan Providers to establish Pooled Employer Plans.
- Provides for pricing discounts due to consolidation of plan assets of many separate companies.
- Eliminates individual Form 5500 filings and audits.

## But first, let's take a walk down memory lane....

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- IRC Section 413(c) Multiple Employer Plans have been around for over 50 years in one manner or another.
- Originally used to pool together related companies whose ownership percentages didn't rise to the level of a "control group".
- MEPs became a useful program for Associations to use for their members, even with some liability issues.
- IRS Rev. Proc. 2002-21 required Professional Employer Organizations to utilize MEPs for plans they sponsored for their client companies.

## But first, let's take a walk down memory lane....

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- By 2010, the traditional “closed MEP” (multiple employer plans made up of adopters with some sort of “nexus” or commonality) opened the door to “Open MEPs”.
- On May 25, 2012, the Department of Labor issued Advisory Option 2012-04A and took away many of the key benefits association with an “Open MEP”.
- The SECURE Act has effectively reversed that Advisory Option while simultaneously enhancing many of the features associated with unrelated companies joining what will now be known as a Pooled Employer Plan (“PEP”).

# Previous Barriers Have Now Been Removed!

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- The SECURE Act removes the former “one bad apple” concern with non-compliant adopting employers. This important change will be effective in 2021 for PEPs.
- Employers who adopt into a Pooled Employer Plan will eliminate their annual Form 5500 filings, individual annual plan audit, and will be able to aggregate their assets for significant pricing leverage beginning in 2021.
- Advisers will determine whether to serve as the 3(38) Investment Manager or simply as the Plan Adviser or 3(21) Fiduciary to the Pooled Employer Plan.

## Department of Labor P3 RFI Issued June 18, 2020

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- On June 17, 2020, the Department of Labor issued a Request for Information pertaining to Pooled Plan Providers (“P3”).
- There were 30 responses to the RFI, but perhaps none is carrying as much weight as that of the Chairman of the House Ways and Means Committee, Hon. Richard Neal, as you will see....

# Comment Letter from Chairman Neal

RICHARD E. NEAL  
FIRST DISTRICT, MASSACHUSETTS



CHAIRMAN  
COMMITTEE ON WAYS AND MEANS  
DEAN  
MASSACHUSETTS AND  
NEW ENGLAND CONGRESSIONAL  
DELEGATIONS  
DEMOCRATIC LEADER  
FRIENDS OF IRELAND CAUCUS

June 24, 2020

The Honorable Eugene Scalia  
Secretary of Labor  
U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, DC 20210

Dear Secretary Scalia:

Last year, Congress passed the most important retirement legislation in over a decade, the Setting Every Community Up for Retirement Enhancement Act of 2019 (the SECURE Act). Thanks to this legislation, millions of hard-working Americans will now have access to retirement plans at work, helping them prepare for a financially secure retirement.

One of the centerpieces of the SECURE Act is a provision to allow unrelated small employers to join together in an "open multiple employer plan," called a pooled employer plan (PEP) under the law. This provision will allow small employers to achieve the economies of scale available to large employers, thus reducing costs and expanding coverage among small employers.

In this regard, I am concerned about the Request for Information published by the Department of Labor (Department) on June 18, Docket ID number: EBSA-2020-0001, stating that the Department is seeking information about (1) possible conflicts of interest that financial institutions may have in operating PEPs and other multiple employer plans, and (2) the possible need to provide prohibited transaction exemptions to permit these conflicts of interest to exist.

In my view, any conflicts of interest would be entirely inconsistent with congressional intent. Congressional intent with respect to this provision is that the pooled plan provider should not be the fiduciary responsible for overseeing itself as the provider of investment products and services to the plan. No financial institution should be overseeing itself.

During consideration of the SECURE Act, the suggestion that conflicts of interest be permitted was proposed to the Congress on many occasions. This idea was repeatedly rejected as is clear in the statutory language enacted that did not include any exemptions permitting conflicts of

interest. Now, less than six months later, the Department is considering an idea specifically and repeatedly rejected by Congress.

The Department should not consider promoting and permitting conflicts of interest. My understanding is that many retirement plan service providers have for many years run multiple employer plans without conflicts of interest. Moreover, I further understand that these conflict-free arrangements are actively being adapted to form conflict-free PEPs, which become effective in 2021. With flourishing conflict-free business models in existence and being developed, the Department should reconsider permitting conflicts of interest that can undermine the interests of both plan participants and small businesses.

I ask that you not allow harmful and unnecessary conflicts of interest to undermine PEPs, a centerpiece of this landmark legislation. Hard-working Americans and the small businesses of this country deserve better.

Thank you for your consideration to this matter. If you have any questions, please contact Kara Getz from my Ways & Means Committee staff at 202-226-6781 or kara.getz@mail.house.gov.

Sincerely,

Richard E. Neal  
Chairman

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# Seems pretty clear.....

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# Department of Labor Proposed Rule

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- The Department of Labor recently issued a Proposed Rule (NPRM) pertaining to Registration Requirements for Pooled Plan Providers.
- Once the requirements are finalized, they will open the registration process to sign up as a Pooled Plan Provider. We are hopeful that this will occur before November 1<sup>st</sup>, 2020.
- Once approved by the Department of Labor, Pooled Plan Providers will be able to establish Pooled Employer Plans that will be effective January 1, 2021.

# Department of Labor Estimates of P3's

## **Estimated Pooled Plan Provider**

	Universe	Expected Share	Estimated Number
Unique Record Keepers and Plan Administrators for existing DC Plans <sup>a</sup>	2,378	50%	1,189
Professional Employer Organization <sup>b</sup>	907	25%	227
Chambers of Commerce <sup>c</sup>	4,000	5%	200
Large Broker-Dealers <sup>d</sup>	173	5%	9
Registered Investment Adviser Firms <sup>d</sup>	30,246	5%	1,512
Direct Annuity Writers (Insurance Companies) <sup>e</sup>	386	25%	97
<b>Total</b>	<b>38,090</b>	<b>8%</b>	<b>3,233</b>

<sup>a</sup> 2017 Form 5500 Schedule C Data.

<sup>b</sup> National Association of Professional Employers, <https://www.napeo.org/what-is-a-peo/about-the-peo-industry/industry-statistics>" <https://www.napeo.org/what-is-a-peo/about-the-peo-industry/industry-statistics>.

<sup>c</sup> Association of Chamber of Commerce Executives reports that there are 4,000 Chambers with at least 1 full-time staff person.

<sup>d</sup> 2019 FINRA Industry Snapshot. FINRA reported 3,607 FINRA registered firms in 2018. There were 173 with 500 or more registered representatives.

<sup>e</sup> National Association of Insurance Commissioners.

# Benefits of Pooled Employer Plans for Employers And Plan Participants

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- Eliminates Plan Trustee and many other fiduciary duties.
- Eliminates Annual Form 5500 filings.
- Eliminates Annual Plan Audit costs.
- Eliminates Plan Document/Restatement fees.
- Gain economies of scale by combining assets with other adopting employers under one plan for significant pricing discounts.

## Benefits of Pooled Employer Plans for Advisers

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- Custom-Branding for Adviser of a plan for their own clients (*"XYZ Advisers Pooled Employer Plan"*).
- Advisers can serve as the plan's 3(38) Investment Manager or outsource that role to a qualified third party.
- Advisers benefit from a custom branded, exclusive program that they can tailor to their own individual book of business.

# Benefits of Pooled Employer Plans for Associations

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- Custom-Branding for Association Members (*"Big Association Members Pooled Employer Plan"*).
- Advisers can serve as the plan's 3(38) Investment Manager or outsource that role to a qualified third party.
- Associations benefit from a custom branded, exclusive program without having to serve as the named fiduciary.
- Association Retirement Plans (ARP's) are still available for those Associations that want to serve as the plan sponsor of their own proprietary program.



# Responsibilities and Pricing

Remaining Duties of Adopting Employer  
and Internal Plan Charges



# Employer Duties – Traditional Single Employer Plan verses a Pooled Employer Plan

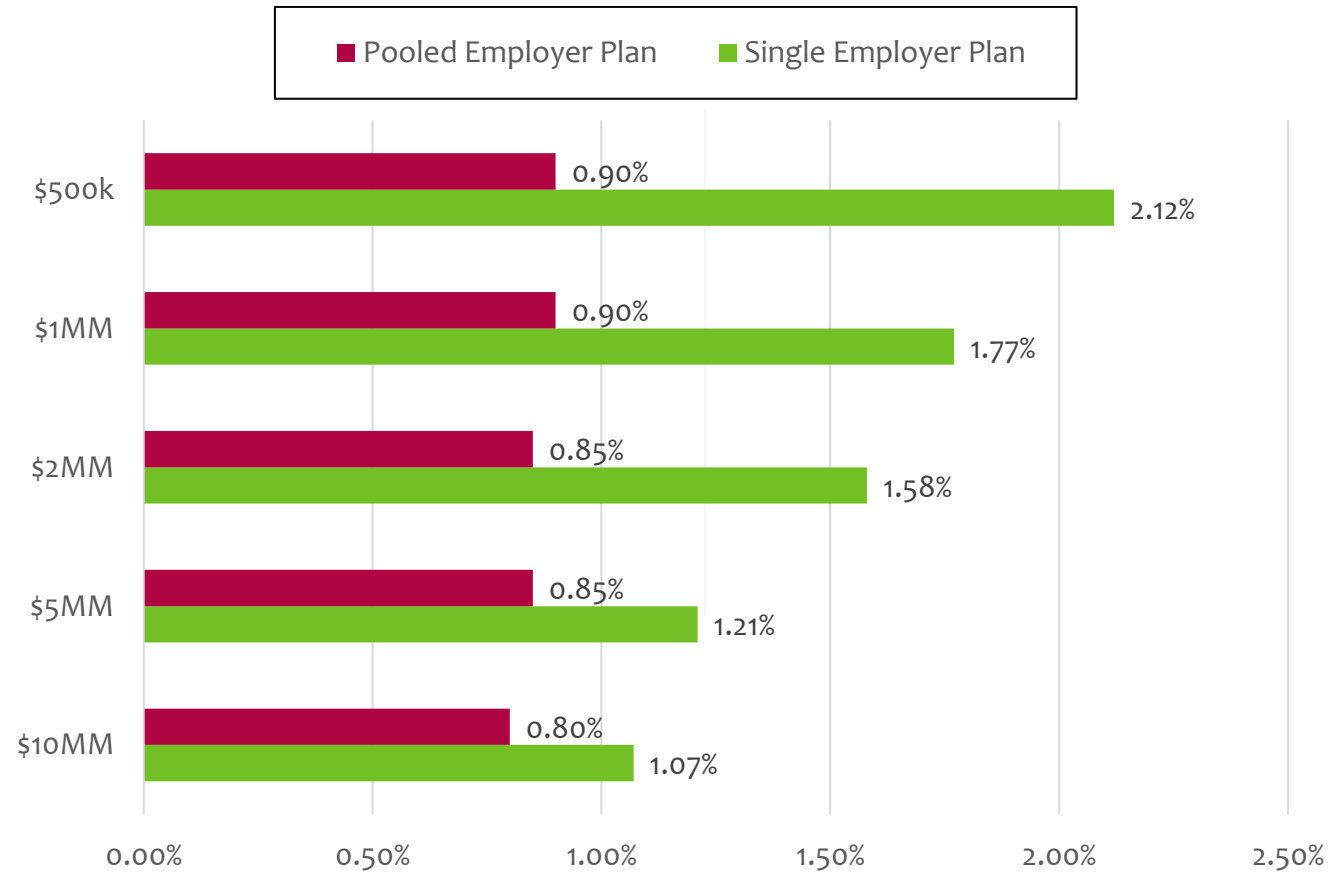
## Employer Duties

## Single Employer

## Pooled ER Plan

Engaging and Monitoring Plan Service Providers	REQUIRED	NOT APPLICABLE
Quarterly Investment Committee Meetings	REQUIRED	NOT APPLICABLE
Investment Fund Selection and Monitoring	REQUIRED	NOT APPLICABLE
Investment Policy Statement and Compliance	REQUIRED	NOT APPLICABLE
Annual Individual Plan Form 5500 Filings	REQUIRED	NOT APPLICABLE
Annual Individual Plan Audit (if over 100 participants)	REQUIRED	NOT APPLICABLE
Plan Document Amendment/Restatement Fees	REQUIRED	NOT APPLICABLE
Plan Trustee Responsibility	REQUIRED	NOT APPLICABLE
Review and Approval of All Plan Withdrawals/QDROs	REQUIRED	NOT APPLICABLE
Annual participant Notice Distribution	REQUIRED	NOT APPLICABLE
Internal Pricing Benefits Due To Aggregation	NOT APPLICABLE	YES

# Pooled Employer Plans Can Drastically Lower Plan Operating Costs



Sample retirement plan operating costs are for illustrative purposes only. Your actual plan costs may vary. Personalized cost comparisons are available upon request.



# Implementation and Next Steps

Retirement Plan

# Establishment of Pooled Employer Plan Effective January 1, 2021

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- Finalize Plan Design and Recordkeeper selections.
- Decisions on Pooled Plan Provider and 3(38) Investment Manager.
- Identify existing clients who are prospects for the new Pooled Employer Plan.
- Establish marketing program for the adviser to target prospective new adopters.



# Thank You

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