

# DOL set to give 401(k) advisers' businesses a boost

Labor's proposed rules on multiple-employer plans would let advisers aggregate clients in a single retirement plan

By **Greg Iacurci** | *December 1, 2018 - 6:00 am EST*

The Department of Labor is expanding what retirement plan advisers can offer small-business clients courtesy of new rules the agency proposed around multiple-employer plans.

Although the regulations are narrower than some industry members had hoped, experts believe the rules could still be a growth accelerator by giving advisers more leeway to aggregate new and existing clients in the same geographic area into one common 401(k) plan.

"It puts in motion more pools of capital that couldn't be put in motion before," said Peter Swisher, national sales director for Pentegra Retirement Services.

The Labor Department [proposed rules](#) around multiple employer plans, or MEPs, in October to expand retirement-plan coverage by broadening the circumstances under which small businesses can aggregate participant assets in [a common workplace retirement plan](#).

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About a quarter of private-sector workers don't have access to a workplace retirement plan, according to The Pew Charitable Trusts. Loosening rules around MEPs is viewed as a way to reduce that "coverage gap," which disproportionately affects employees of small businesses.

Not all employers can easily be part of a MEP, however. One restriction is a "nexus" requirement that essentially allows only businesses with a common bond (a group of law firms, for example) to take part in the same MEP. The DOL's proposal clarifies that employers don't have to have a common business line, necessarily. They can have a principal place of business within the same state or metropolitan area and join such a MEP.

"I think the lowest-hanging fruit for how an adviser can take advantage of the new MEP regulations is the regionalization opportunity," said Aaron Pottichen, senior vice president of retirement services at Alliant Retirement Consulting.

Advisers with a big share of their book of 401(k) business in a certain geographic region would potentially be able to convert them to a MEP, Mr. Pottichen said.

MEPs can help reduce investment and administrative costs and allow employers to offload much of the fiduciary responsibilities associated with 401(k)s. An employer that's part of a MEP would no longer have to file a Form 5500 or pay for a plan audit — which aren't big hurdles to sponsoring a 401(k) plan but may deter or annoy some, experts said.

[Under the proposed rules](#), advisers would be able to prospect for clients by talking to local chambers of commerce, which would be logical plan sponsors for regional businesses, experts said.

"If you're an adviser in a particular community and the chamber of commerce sponsors a MEP or endorses one for members, that might work," said Frederick Reish, partner at law firm Drinker Biddle & Reath. "It gives the adviser one more tool to work with."

Mark Iwry, former deputy assistant secretary for retirement and health policy at the Treasury Department during the Obama administration, believes there's a debate

about the value of the MEP proposal for advisers. Some advisers can likely already do the same things touted by a MEP.

Advisers could gain similar economies of scale and efficiencies even through multiple 401(k) plans by using a standardized plan design and plan document and a single, simple, low-cost investment lineup, said Mr. Iwry, a nonresident senior fellow at the Brookings Institution. They could also delegate most plan administration responsibilities to a common provider, he said.

Although the loosening of MEP rules is somewhat "optical," there is still value for advisers from a client-prospecting perspective, he said.

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"It would be a new bounce, a new reason to knock on the door of potential clients and say we can now provide you an even more efficient solution," Mr. Iwry said.

The DOL's proposal, however, still falls short of what most industry stakeholders had wanted: so-called "open MEPs," which would eliminate the nexus requirement and allow completely unaffiliated employers to join a single retirement plan. They also wanted financial institutions, such as broker-dealers, registered investment advisers and record keepers, to be allowed to sponsor a MEP, which they cannot do under current rules.

A few bills circulating in Congress would legislate open MEPs. Experts expect one of the legislative measures will be passed sometime next year.

In the meantime, the DOL seems to be hinting at open MEPs as a future priority, since it asked for comments on open MEPs in its most recent rule proposal, Mr. Iwry said.

Mr. Pottichen, who currently advises a 403(b) MEP, said the vehicles aren't for all clients. For example, advisers need to look at whether clients would benefit from a pricing standpoint and at the liability the employer group would incur by participating in the MEP (an employer that's not on top of its 401(k) administration responsibilities could potentially disqualify a MEP).

"I think the fact that you can make an argument for both sides is a good thing," Mr. Pottichen said. "I think it means you have to really do your homework to make sure it's the right thing for your clients."

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