

ISSUE BRIEF

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DOL Rule to Expand Multiple Employer Plans: A Positive Step, But Broader Savings Options Needed

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The Department of Labor (DOL) is currently considering new rules to facilitate retirement saving in qualified¹ workplace retirement accounts for sole proprietors and the owners and workers of small businesses. While these rules are a small step in the right direction, the Administration should work with Congress to simplify saving for retirement and other needs for all Americans.

Expanding Access to 401(k)s Among Small Businesses and the Self-Employed

The new DOL rules would clarify under which conditions an employer group, association, or professional employer organization qualifies to sponsor a multiple-employer retirement plan.² The DOL seeks to facilitate participation in a group retirement plan, especially among those individuals and small employers who are currently deterred by the high administrative burden and regulatory complexity of setting up their own plan.

The new rules have the potential of increasing retirement account participation among small businesses and sole proprietors by allowing these entities to join other employers in a so-called multiple employer plan (MEP). The new rules only pertain to defined contribution retirement accounts, such as 401(k) plans.

The vast majority of businesses with 100 and more employees already offer qualified retirement accounts to their employees. According to the Bureau of Labor Statistics, nearly nine out of 10 establishments with at least 100 workers offer a retirement plan. Among establishments with fewer than 50 employees, less than half offer a retirement plan.³

There are many reasons why some self-employed individuals and most small businesses with fewer than 50 employees choose not to establish a qualified retirement account plan for themselves and their employees.

These include concerns regarding the businesses' longevity and stability. The DOL cites research by Amy Knaup and Merissa Piazza in the *Monthly Labor Review* that fewer than half of new establishments survive for more than four years.⁴ Small and especially new business owners are primarily concerned with profit-generating business operations, with the establishment of employee benefit plans being an afterthought. For those who do want to expand benefits, the current system's complexity and resulting cost create additional barriers to adoption.

According to a 2017 Pew survey, most small and mid-sized businesses reported being at least somewhat familiar with 401(k) accounts, but two-thirds were mostly unfamiliar with the myriad options for setting up a retirement account for their business. More than half of respondents cited set-up expenses or administrative costs as their primary reasons for not offering a plan.⁵

Joining an MEP would reduce set-up and administrative costs for participating businesses and sole proprietors. Workplace retirement plans provide a prime example of economies of scale, with dimin-

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ishing marginal costs. While it is very expensive to set up a retirement plan—including significant time, legal expenses, and investment fees—it costs very little to add more workers to an existing plan. This is why the DOL proposal seeks to offer businesses a simpler and less costly option by joining an MEP.

Expanding Retirement Benefits to More Workers in Small Businesses

The proposed DOL rules would allow more associations, such as chambers of commerce and trade associations, as well as other groups, such as professional employment organizations, to sponsor an MEP that would provide access to all of the benefits of an employer-sponsored 401(k) to the owners and employees of participating businesses.

This potential expansion in retirement plan options could particularly benefit workers whose employers do not currently sponsor a qualified plan, assuming those employers participate in, or are considering joining, an association plan. The current retirement savings system disadvantages these workers due to an inequity in the tax treatment of their non-workplace retirement savings options.

Whereas employees with workplace-sponsored 401(k)s may save up to \$18,500 in 2019 in a tax-deferred account, individual retirement accounts (IRAs)—the widely available 401(k) alternative for most workers—limit contributions to less than a third that amount, at \$5,500.⁶

While there are other account options for the self-employed and small businesses, including the Simplified Employee Pension (SEP) IRA, the Savings Incentive Match Plan for Employees (SIMPLE) IRA,

and Solo 401(k) plans, among others, setting these accounts up can seem like a daunting task for smaller business entities.

Congress should treat all Americans saving for retirement or any other needs and priorities equitably. The current tax treatment favors retirement savings accounts among mostly large employers who can shoulder the administrative burdens of setting up and maintaining a qualified retirement account. Small businesses and the self-employed are largely left out. The new rules help to close some of this equity gap.

How Would the Proposed MEPs Work?

The new proposed rules for MEPs build on the “association health plan” model the Administration rolled out earlier in 2018. Whereas previously only those groups and associations with “sufficient common economic or representational nexus” could sponsor an MEP, under the new rules, an association or group would also be eligible to sponsor a qualifying plan using a regional tie criterion.

Groups serving employers with a common principal place of business in the same region—not to exceed state boundaries unless the region represents a metropolitan area that includes more than one state—could set up an MEP.

Under the expanded MEP proposal, more businesses could tap into existing workplace retirement accounts. This would cut out most of the initial set-up costs and result in significantly lower costs per employee. Workers would benefit, too, because investment expenses decline as more workers join a plan.

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1. In accordance with IRS rules.
 2. U.S. Department of Labor, Employee Benefits Security Administration, “Definition of ‘Employer’ Under Section 3(5) of ERISA—Association Retirement Plans and Other Multiple-Employer Plans,” Proposed Rule, *Federal Register*, Vol. 83 (October 23, 2018), p. 53534, <https://www.federalregister.gov/documents/2018/10/23/2018-23065/definition-of-employer-under-section-35-of-erisa-association-retirement-plans-and-other> (accessed December 19, 2018).
 3. Bureau of Labor Statistics, “National Compensation Survey: Employee Benefits in the United States, March 2018,” Table 1. Establishments offering retirement and healthcare benefits: private industry workers, Bulletin 2789, September 2018, <https://www.bls.gov/ncs/ebs/benefits/2018/employee-benefits-in-the-united-states-march-2018.pdf> (accessed December 19, 2018).
 4. Amy E. Knaup and Merissa C. Piazza, “Business Employment Dynamics Data: Survival and Longevity, II,” *Monthly Labor Review* (September 2007), pp. 3-10, <https://www.bls.gov/opub/mlr/2007/09/art1full.pdf> (accessed January 3, 2019).
 5. The Pew Charitable Trusts, “Employer Barriers to and Motivations for Offering Retirement Benefits,” June 21, 2017, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/06/employer-barriers-to-and-motivations-for-offering-retirement-benefits> (accessed December 19, 2018).
 6. U.S. Internal Revenue Service, “IRS Announces 2018 Pension Plan Limitations; 401(k) Contribution Limit Increases to \$18,500 for 2018,” <https://www.irs.gov/newsroom/irs-announces-2018-pension-plan-limitations-401k-contribution-limit-increases-to-18500-for-2018> (accessed January 3, 2019).
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DOL Action Needed

The new DOL rules follow President Donald Trump's Executive Order No. 13847 from August 31, 2018, which seeks to expand access to workplace retirement plans for American workers. The Administration is using its powers to interpret the Employee Retirement Income Security Act (ERISA) of 1974 statutes wisely, to meet the goal of greater access to retirement plans at work, by clarifying eligibility for establishing and joining MEPs. The DOL should:

- **Broaden eligibility.** The DOL should consider broadening eligibility even further. There is no particularly compelling reason why participants in an MEP must be tied together either by significant economic or representational interests, or confined to a particular geographic region. The DOL should reconsider allowing MEP participation for employers located in the same state or metropolitan area, and allow employers to join an MEP regardless of their location. The broader the eligibility, the greater the likelihood that most employers and the self-employed will find an MEP retirement option that meets their needs.
- **Specify eligibility for 501(c)(6) nonprofit organizations.** The regulation should explicitly provide that any organization exempt from taxation pursuant to Internal Revenue Code 501(c)(6) is a bona fide group or association of employers for the purpose of these proposed rules. Under Treasury regulations, an organization that is tax exempt under IRC §501(c)(6) must have “some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit.” This is substantially similar to the requirement that is set forth in the proposed regulation. Explicitly clarifying that these nonprofit organizations are eligible to establish an MEP would reduce uncertainty and potential delays, allowing the rule to take effect as intended.
- **Provide a safe harbor for the “unified plan rule.”** One major drawback of joining an MEP is the “one bad apple” rule, officially the unified plan

rule. Under this rule, an MEP only maintains its qualified status as long as all employers participating in the MEP comply with all relevant federal rules. This means that if any employer violates any of the MEP-related federal rules, the entire MEP could be called into question. That could be a major deterrent to joining an MEP, and the DOL should consider a safe harbor to protect compliant employers from becoming liable for one bad actor over whose business practices they exercise no control.

Congressional Action Needed

Legislative changes are necessary in order to expand savings options even more. While they are a step in the right direction, MEP expansions are merely tweaking the edges of an overly complex retirement system in need of fundamental congressional reform. MEPs could even risk entrenching the current broken system, while taking pressure off legislators to pursue real reform. Expanded MEP plans could make future reforms more difficult, as MEPs will create an expanded industry of providers who will profit from the still-fragmented and silo-ed system.

Chambers of commerce, trade associations, and professional employment associations may be able to attract some members by offering access to retirement saving accounts and health plans that they otherwise would not be able to attract. By being able to offer their members an exclusive benefit, this industry may stand in the way of more far-reaching reforms that enable all Americans to save for retirement and any other priorities in savings accounts that do not penalize savers with multiple layers of taxation, as the current system does. Congress should:

- **Adopt Universal Savings Accounts (USAs).** USAs would offer an immediate benefit for most workers, especially for low-income and middle-income earners who are deterred by complex and restrictive rules imposed on retirement savings accounts today. Penalties for early withdrawals are an impediment to saving for workers who may need access to savings to meet more immediate needs.⁷ USAs would offer all Americans a single, simple, flexible way to save for their own needs.

7. Adam N. Michel, “Universal Savings Accounts Can Help All Americans Build Savings,” Heritage Foundation *Backgrounder* No. 3370, December 4, 2018, <https://www.heritage.org/taxes/report/universal-savings-accounts-can-help-all-americans-build-savings>.

- **Establish a retirement task force.** Congress and the Administration should establish a retirement task force to review the myriad options that exist to set up retirement accounts today and whittle those options down to a single, universally applicable account that would create a fairer system for all Americans, regardless of their employment status. The inequitable tax treatment of current plan options is unfair to many workers, especially the self-employed, part-time workers, and those in small businesses.

A First Step

The Administration's efforts to increase access to retirement savings for workers via new rules governing MEPs represent a step in the right direction. Congress and the Administration should work together to simplify saving for all Americans. USAs should be first on their agenda.

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