

# PENTEGRA SECURE ACT SMART TIPS™



## Making Way for MEPs, PEPs and GoPs

The Setting Every Community Up for Retirement Enhancement (SECURE) Act has several provisions designed to broaden retirement coverage and make it easier for small businesses to offer a retirement plan.

SECURE eases the regulations for Multiple Employer Plan “MEP” establishment and goes a step further and expands the MEP concept by allowing groups of unrelated plans to join together to form Pooled Employer Plans “PEPs” and Groups of Plans “GoPs” making it easier for small businesses to offer a retirement plan.

### How Does SECURE Change the Rules for MEPs?

The SECURE Act makes it easier for completely unrelated employers to participate in a multiple employer plan or “open MEP”. MEPs can be structured as ‘open’ or ‘closed’ MEPs.

Closed MEPs have a nexus, or commonality. They are considered a single plan for reporting and audit purposes. They recognize “shared service” among participating employers for eligibility and vesting purposes.

Open MEPs have no nexus requirements, allowing completely unrelated employers to participate. Open MEPs are not considered a single plan for reporting, audit or shared service purposes. This is designed to make it easy for any size business to offer a retirement plan economically and easily.

In addition, the “one bad apple rule” (all employers participating in a MEP may face penalties and tax consequences if one employer fails to satisfy the qualification rules for the MEP) has been eliminated under SECURE.

A MEPs’ governance structure is different from PEPs or GOPs. MEPs—both open and closed—are available today.



## What is an Advisor's Role in a MEP?

Advisors may be able to consolidate multiple existing clients into their own sponsored MEP, which may be helpful in aggregating small business client retirement plans. That's because MEPs deliver scale. Scale helps lower costs and ultimately delivers better margins—something all advisors want to leverage to be successful.



Advisors can also work through associations to market MEPs for groups of small businesses that are either linked by a common nexus or geography. Unlocking this opportunity, however, requires a long term outlook, persistence and ongoing education. There is a significant learning curve for smaller organizations as they evaluate the pros and cons associated with participating in a MEP and the start-up time and establishment process can be lengthy. Typically the advisor partners with other providers to offer a MEP. Advisors can serve as an ERISA 3(38) investment manager or an ERISA 3(21) investment advisor.

## What are PEPs and How Do They Work?

SECURE authorizes PEPs. PEPs are Pooled Employer Plans. Technically, a PEP is a type of Open Multiple Employer Plan since it does not require commonality or nexus. However, a PEP is considered a single plan for reporting and audit purposes and also consider shared service among participating employers for eligibility and vesting purposes. A "Pooled Plan Provider" is required to run a PEP. A PEPs' governance structure is different from a MEP or GoP. PEPs are available beginning in 2021, however we are still awaiting guidance related to non-complying employers.



## What Is a Pooled Plan Provider "PPP" and What Role Do They Play In PEPs?

A Pooled Plan Provider is required in order to run a PEP. The PPP serves as its named fiduciary and 3(16) administrator. The PPP likely hires an investment adviser as a 3(38) investment manager to choose and monitor the investments on the platform. PEP assets must be held by a bank or trust company as the trustee, with responsibility for safeguarding the assets and for collecting deferrals and contributions. As a result, the responsibilities of the named fiduciary, the administrative fiduciary, the trustee and the investment manager will be transferred from the employer to the PPP and other fiduciaries. The PPP must obtain an ERISA bond and ensure ERISA bonding requirements are met, as well as register with Department of Labor.

The PPP is the named fiduciary responsible for administration, drafting the plan document and filing a 5500, including a list of all participating employers, as well as responding to any Department of Labor audits or investigations.

Participating PEP employers are still responsible for monitoring the PPP.

## What Should a PEP Plan Document Specify?

A PEP plan document should designate the PPP, detail the different parties involved, name one or more trustees responsible for collecting contributions and holding assets and make it clear that the employer is responsible for monitoring PPP and for decisions about investment funds unless that responsibility is delegated. It must also state that certain disclosures will be provided and participating employers agree to take actions necessary for compliance with tax laws.

## How are Decisions Related to PEP Investment Options Handled?

Decisions related to PEP investment options may sit with the PPP, or participating employers, or the entity who has investment authority, depending on how the PEP is structured.



## What is an Advisor's Role in a PEP?

Advisors can work through associations to market PEPs for groups of small businesses. Unlike a MEP, the start-up time and establishment process for a PEP are expected to be less onerous. PEPs may also be a good solution for employers setting up their first plans as well as employers that switch from individual plans to PEPs.

Advisory firms with significant retirement plan practices will likely establish PEPs as a convenient solution for their smaller plan clients, which may be helpful in aggregating this business. Other advisory firms will work with PEP sponsors to provide the 3(38) investment management services for the investments on the PEP platform. Advisors can also serve in a 3(21) investment advisory role with a PEP.

## What are GoPs and How Do They Work?

GoPs are a Group of Plans. With a GoP, there is no nexus or commonality requirement. The GoP is not considered a single plan, However, a GoP is an aggregated plan that can file a consolidated annual return/report. GoPs do not offer shared service among employers or audit relief.

Six specific features are required in order to be part of a GoP. In order to be considered a GoP, eligible for consolidated filing, plans must be:

- Defined contribution plans
- Have the same Trustee
- Have the same Named Fiduciary (or named fiduciaries),
- Have the same Administrator,
- Use the same plan year
- Provide the same investments or investment options to participants and beneficiaries

**GoPs will not be available until 2022.**

### What is an Advisor's Role in a GoP?

Advisors can work through associations to market GoPs for groups of small businesses. Unlike a MEP, the start-up time and establishment process for a GoP are expected to be less onerous. GoPs may also be a good solution for employers setting up their first plans as well as employers that are expected to switch from individual plans to GoPs.

It is our view that advisory firms will work with GoP sponsors to provide the 3(38) investment management services for the investments on the GoP platform. Advisors can also serve in a 3(21) investment advisory role with a GoP.

### Which Approach is Best?

The best solution always depends on the opportunity at hand. While there is no single best solution that will work for all clients, there are certain scenarios when these pooled arrangements certainly make sense. It's always best to consider all solutions, including more traditional solutions such as single employer plans along with non-qualified plan solutions. Pentegra is here to help you navigate the decision making process and offers consulting services to help guide you toward the solution that's right for your opportunity.

**Sales Tip:** SECURE encourages expanded retirement coverage opportunities, and with these changes come corresponding sales opportunities. Think about the role you see for your firm in MEPs, PEPs and GoPs. Determine if you can perform all duties required within the desired role, then define your specific role.

Consider partnering with other firms to outsource certain components of the role if you cannot fulfill all aspects of the role.



Create a sales and marketing plan. If you build it, they will come—but only if you have a sales and marketing plan in place to sell into the program and achieve scale.

Contact the Pentegra Solutions Center at [solutions@pentegra.com](mailto:solutions@pentegra.com)  
or 855-549-6689 for expert guidance on how to make the most of the new rules.

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