

# Your Fiduciary Considerations When Selecting a Pooled Plan Provider



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**Following the passage of the SECURE Act of 2019, the number of employers looking to offer a more robust, institutional-quality defined contribution plan to employees has risen steadily.<sup>1</sup> The introduction of Pooled Employer Plans (PEPs) has made it easier for businesses across all industries and at any stage of maturity to set up and administer a retirement plan for their employees.**

Given the recent proliferation of newly minted PEPs, an employer considering a PEP has two key fiduciary decisions to make. First, an employer must determine whether a PEP is the appropriate vehicle for its employees' retirement savings, considering such factors as fees, level of service and plan portability. An employer also must select and monitor a qualified Pooled Plan Provider (PPP) and other designated fiduciaries to run most of the PEP's administrative and fiduciary duties.

Under the provisions of the SECURE Act, a PPP may be an individual or corporate entity such as a third-party administrator, an insurance company, mutual fund manager or financial professional. As there are no qualification criteria beyond what appears in the SECURE Act, understanding and vetting a PPP's ability to set up and run a modern, flexible, compliant retirement plan is an essential fiduciary duty.

Here are five critical areas to explore when you hire a pooled plan provider.

## Experience

The qualified retirement plan landscape is littered with traps for the unwary. There is great complexity in running and maintaining a compliant plan.

Employers looking to explore a PEP should ask questions regarding the PPP's experience.

- How many associates are dedicated to the PPP's work?
- Does the PPP have resources dedicated to regulatory compliance? How many?

- What is the tenure of the PPP's account management and relationship management teams?
- How long has the PPP been involved in qualified retirement plan administration?
- What areas are beyond the expertise of the PPP that must be further outsourced?
- Does the PPP administer plans all over the country?

These and similar questions will assist in the employer's demonstration that it met its duty

<sup>1</sup> 2018 and 2023 Cerulli U.S. Defined Contribution Distribution Reports show the growth in defined contribution plans <\$5M in 2017 at 479,290 growing to 573,545 in 2022.

when engaging the PEP and the PPP. In addition, it will help to give the employer assurance that the administration of their employees' plan rests in capable hands.

### Diving Deeper into a Provider's Experience

As an employer, you should be confident that a PPP has deep, lived experience monitoring and managing both standalone and pooled plan arrangements, whether traditional 401(k)s or PEPs. A qualified PPP should be able to offer employers a flexible, consultative approach that meets its individual needs and plan objectives, including the following:

- **Access to highly rated investment options** to help employees retire confidently and on time;
- **Fiduciary services** delivered by an ERISA 3(16) fiduciary to ensure a higher level of administrative outsourcing as well as compliance with complex, evolving ERISA and Department of Labor regulations;
- **Flexible plan design** that allows employers to continue to have a plan that best aligns with the goals and needs of their organization; and
- **Excellent customer service** that demonstrates the staffing and ability to innovate to roll out new plan features and services without hiccups. A PPP's ability to help plan participants retire with confidence and on time is a serious responsibility that requires service excellence at all touchpoints.

### Strength and Expertise

An effective PPP must have deep knowledge of the retirement plan business and the ability to adequately resolve any issues that may arise.

- What is the institutional nature of your business?
- How strongly do you stand behind your decision to be a PPP?
- Do you have the systems and structure in place to manage the 3(16) fiduciary, the recordkeeper and the advisor? What is the governance process?

- How can you demonstrate the strength, scale and stability of your organization?

A capable PPP should demonstrate core competencies in recordkeeping or in selecting recordkeepers, showing that they process participant transactions and regulatory filings on a timely and accurate basis, and that they can accommodate most employers' custom plan-design features. In addition, the provider should have a long history of doing what's in the best interest of both employers and plan participants.

### A Word About Different PEP Structures

For PEPs where the PPP is separate from the recordkeeper, ERISA 3(16) fiduciary and TPA, employers should ask: "What systems and controls are in place to ensure that the PPP can monitor compliance?" and "What is the governance process for hiring all parties, and what is their documentation process?"

In another PEP structure, the PPP acts in the roles of recordkeeper, ERISA 3(16) fiduciary and TPA. In these situations, the responsibility of running the plan is native to their role as PPP, except what they delegate out in service agreements.

To monitor a PPP with this structure, employers should review these service agreements to make sure they understand what responsibilities are delegated back to them.

### Liability and Accountability

An employer needs to understand how accountable a PPP will be for its actions. The third area is around the amount of liability the PPP is taking.

Because the PPP is the plan sponsor of the PEP, they have a great deal of fiduciary responsibility. Save for the employer responsibilities discussed above, the PPP shoulders the burden, except where specific tasks or responsibilities are delegated

out to employers or third parties through service agreements.

- What does the service agreement look like?
- What responsibilities is the PPP taking?
- Is the PPP willing to take responsibility for planning and administration, and/or willing to take responsibility for hiring the advisor?

The size and financial strength of the PPP are legitimate issues for employers to consider. If the recordkeeper sponsoring the PEP is a large presence in the industry, employers may explore why this firm chooses to engage a less established and financially secure partner. For example, if a problem were to arise, would the more established and stronger recordkeeper step in and fulfill the obligations of the PPP?

Finally, in scenarios where the PPP is not also the recordkeeper hired by the PEP, employers should consider the independence of the PPP.

These and other items should be outlined in a service agreement and employers would be well served to read those agreements very carefully.

## Conflicts of Interest

You should understand how independent the PPP is and should carefully vet them through a fiduciary lens. They should be financially strong and avoid any conflicts of interest vis a vis their other lines of business.

Some PPP platforms partner with third-party service providers in an unbundled fashion, asserting that such arrangements benefit from best-in-class solutions. It is important to explore with the PPP how they can ensure efficiencies among the PPP, recordkeeper and 3(16) delegated administrative fiduciary.

Administratively focused PPPs that outsource non-recordkeeping functions like 3(38) investment services to non-affiliated registered investment advisors should be able to assure the delivery of independent advice without requiring the use of any particular investment to the PEP.<sup>2</sup>

## Use of Employee Data

In some instances, data that is mined by recordkeepers in order to cross-sell additional products or introduce high-margin IRA rollover solutions can be more profitable to the recordkeeper than what is charged for recordkeeping. For example, some asset managers have financial incentives to roll assets out of a PEP into higher-margin individual retirement arrangements such as IRAs and Roth IRAs. In such cases, the PPP may offer rock-bottom pricing, or even free, administrative and fiduciary oversight service as a loss leader to gain access to the rollover opportunity. This presents a fiduciary issue for employers seeking clarity on costs. Any pricing assumptions that are subsidized by the inclusion of these features should be fully disclosed to the employer, so that they can satisfy their fiduciary decision to join the PEP.

Clarity should be gained from the recordkeeper and the PPP as to whether employee data will be used for marketing purposes. If so and if subsidization exists, those costs should be considered by the employer when it makes the fiduciary decision to join a PEP.

In conclusion, a PEP vastly improves access to a professionally managed retirement plan for the right employer. By choosing a Pooled Plan Provider using the key criteria defined in this paper, the employer will not only reduce their administrative burden and fiduciary obligations but also be able to redirect time and resources into core business objectives.

<sup>2</sup> One way that employers can protect themselves from this risk is to insist within their service agreement that their recordkeepers not share or utilize participant data outside of the PEP or for product offerings not in the PEP.

If you're an employer, contact your financial professional or representative at The Standard to learn more. If you're a financial professional, contact our sales team at **844.239.3561**.

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