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**September 8, 2025**

**Office of Regulations and Interpretations**  
Employee Benefits Security Administration  
Attn: PEP RFI—RIN 1210-AC10  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

**Re: Pooled Employer Plans: Big Plans for Small Businesses (RIN 1210-AC10)**

To the Employee Benefits Security Administration (EBSA):

Thank you for the opportunity to comment on the Department's request for information (RFI) on pooled employer plans (PEPs). I am the Chief Executive Officer and Owner of Employee Fiduciary, LLC. Founded in 2004, Employee Fiduciary delivers cost-efficient and customized retirement plans to more than 5,000 small businesses nationwide. These plans cover more than 150,000 Americans and hold more than \$6 billion in assets.

I oppose creating a regulatory safe harbor that favors PEPs. Instead, I urge EBSA to create a safe harbor for small employers that adopt a cost-efficient single-employer 401(k) plan with an all index fund core menu, no hidden fees, and flat per participant pricing. The RFI frames a potential safe harbor to encourage employers to join PEPs; my comments propose a better path for small businesses.

**Executive Summary**

- The PEP market is concentrated; scale benefits are uneven for small employers.
- Lower costs and lower liability are not unique to pooled arrangements; a well-designed single-employer plan can match or beat both.
- PEPs often rely on layered, opaque, asset-based charges that make true all in costs hard to monitor.
- Employers still must prudently select and monitor the pooled plan provider (PPP) and other named fiduciaries; outsourcing does not erase that duty.
- PEP exit paths are complex; employers usually must spin off to a new single-employer plan and then terminate that plan to create a distributable event.

- Concentrating administration power in the PPP invites conflicts and increases the risk of abuse and opacity.
- A single-employer plan with an all index menu, no hidden fees, and flat pricing can cost less while offering more design flexibility and clearer oversight.

## **Our Case Against Pooled Employer Plans (PEPs)**

PEPs are marketed on two headline promises—lower fees and less employer liability. In practice, those claims distract from the real goal: control. Providers can abuse this control by standardizing terms, steering investment menus, and embedding revenue streams that make PEPs more profitable.

### **1. Economies of scale are not supported by market data**

PEP marketing leans on “economies of scale,” but the current market is concentrated. [EBSA’s inaugural PEP bulletin](#)<sup>(1)</sup> shows 190 PEPs with about 618,000 participants in statistical year 2022 and 142 registered Pooled Plan Providers (PPPs) at the end of 2023; the top 20 percent of PEPs held 87 percent of assets. Concentration and uneven bargaining power do not promise broad price relief for small plans.

### **2. A single-employer plan can deliver lower costs without pooling**

Index funds give even small plans access to very low expense ratios without pooling, and leading families do not pay revenue sharing. [Real fee comparisons](#)<sup>(2)</sup> show the advantage of a single-employer plan with an all index menu, no hidden fees, and flat pricing. In a [fee comparison](#)<sup>(3)</sup> of a 4-participant plan with \$670,268 in assets, the PEP’s “all in” cost (administration fees + investment expenses) was \$5,641.27 per year; while a comparable single-employer plan cost just \$2,834.15. As assets grow, the gap will widen because almost all of the fees charged by the PEP are based on a percentage of assets.

### **3. Pooled arrangements invite opaque, layered fees that rise automatically with assets**

[GAO](#)<sup>(4)</sup> has documented how [revenue sharing](#)<sup>(5)</sup> and [variable annuity “wrap” charges](#)<sup>(6)</sup> can obscure total costs and add fees on top of fund expense ratios. That opacity can easily mask higher costs than flat, explicit admin fees. This dynamic is common in pooled arrangements where the PPP and affiliates control menu design and fee flows.

Importantly, the [GAO’s 2024 review of fee-disclosure](#)<sup>(7)</sup> found that transparency—not pooling—has been the key driver of lower 401(k) fees over the last decade. EBSA should continue to lean into transparency rather than endorse a structure that often embeds nontransparent fees.

### **4. PEPs restrict employer plan design flexibility**

PEPs often impose standardized plan provisions across all adopting employers to streamline administration. This typically limits choices on eligibility rules, match formulas, vesting schedules, loans, and distribution features. While these restrictions reduce provider costs, they deprive small businesses of the ability to tailor their plans to workforce needs and business objectives.



A single-employer plan allows employers to implement features such as match designs that can improve employee participation or profit sharing designs that reward performance. By contrast, the “one-size-fits-all” approach of a PEP prioritizes administrative efficiency over meaningful plan customization.

#### **5. PEPs are a vehicle for proprietary and conflicted investment products**

By concentrating investment-menu authority in the PPP and its affiliates, PEPs create a structural opportunity for providers—particularly large insurance companies and financial conglomerates—to insert proprietary funds, annuities, or other high-fee products.

Employers who sponsor their own single-employer plans often reject these conflicted products in favor of simple investments. But in a PEP, employers cede menu control, making it far easier for providers to distribute proprietary offerings. These products frequently carry higher costs and embedded revenue streams that benefit the provider at participants’ expense.

This dynamic undercuts EBSA’s stated goal of promoting lower-cost, high-quality retirement savings for workers.

#### **6. Outsourcing does not erase employer fiduciary duty—and PPP control increases monitoring difficulty**

The Federal Register notice itself confirms that each participating employer retains the fiduciary duty to select and monitor the PPP and other named fiduciaries. Concentrating administration-related fiduciary roles in the PPP increases conflicts (e.g., appointing affiliates, steering to fee-rich features) and makes monitoring harder, not easier.

#### **7. PEPs are harder to exit cleanly**

By design, a participating employer cannot simply terminate its piece of a PEP<sup>(8)</sup> to create a distributable event. In practice, employers typically must spin off to a new single-employer plan and then terminate that plan to unlock distributions—time-consuming and costly steps that trap participants longer than necessary.

### **Our Recommendation: Create a Cost-efficient Single-Employer Plan Safe Harbor Instead**

If EBSA’s goal is to help small employers sponsor high-quality, cost-efficient plans with clear fiduciary guardrails, the most direct, competition-enhancing path is a safe harbor for single-employer plans meeting objective, auditable criteria. Suggested elements:

#### **Investments**

- **Option A:** Offer a core menu of broad market index funds that includes a target date index series (perhaps modeled after the [Federal Thrift Savings Plan<sup>\(9\)</sup>](#)) Keep the expense ratios  $\leq 0.15\%$ . Use unencumbered share classes only. No revenue sharing or variable annuity wrap fees.
- **Option B:** Engage an independent ERISA 3(38) Investment Manager to design and maintain a custom menu and asset allocation approach (e.g., target date series, model portfolios) under a written Investment Policy Statement (IPS). Benchmark annually against comparable index funds and target date index funds, net of all fees.

## Administration Fees

- Flat, per-participant fees for recordkeeping/TPA services (no asset-based admin fees).
- To further reduce the drag of fees on participant returns, employers may [pay fees from corporate accounts](#)<sup>(10)</sup> instead of plan assets.

## Conflicts of Interest

- Open-architecture investment access; any proprietary/affiliate options must be benchmarked, net of fees.
- Prohibit cross-subsidiary revenue sharing or “pay-to-play” arrangements.

## Fiduciary Process

- Simple monitoring checklist aligned with EBSA guidance.
- Plain-English participant fee table (admin dollars + investment basis points, with dollar examples) to demonstrate how much participants are paying.

This safe harbor would let small employers meet ERISA duties with less complexity, lower costs, and clean exit rights, aligning with EBSA’s stated objectives—without nudging the market into pooled structures where conflicts and opacity are harder to police.

## If EBSA Does Pursue a PEP Safe Harbor, Strong Consumer Protections are Needed

To mitigate structural risks, any PEP safe harbor should require:

- All-in fee disclosure (administration fees + investment expenses + revenue sharing + wrap charges), in dollars and % of assets, at plan and employer levels; require PEPs to file a standardized public attachment to Form 5500 showing these amounts to facilitate fee benchmarking
- Ban revenue sharing and ban asset-based admin fees in safe-harbor PEPs; mandate flat, per-participant admin pricing.
- Affiliate use test: affiliated service providers or proprietary products permitted only if documented net-of-fees performance and pricing are equal or better than unaffiliated alternatives.
- Exit rights: require PPPs to offer a no-penalty spin-off process with a defined timeline; provide model communications and a uniform process small employers can execute without additional advisory retainers.
- Monitoring tools: publish EBSA’s “fiduciary tips” as a one-page checklist aligned to actual PEP data filings so employers can monitor the PPP as ERISA requires.

## Conclusion

PEPs concentrate power in the PPP, create monitoring and exit frictions for small employers, and often embed layered, asset-based, and opaque fees that undermine the very cost reductions the Department seeks. The simplest, most durable path to lower participant costs and manageable fiduciary oversight is a cost-efficient single-employer plan safe harbor built on unencumbered



index menus, flat admin pricing, and conflict-free transparency. I urge EBSA to pursue that course.

### **Sources**

- <sup>(1)</sup> EBSA PEP Bulletin (2025): Pooled Employer Plans — Statistical updates for 2022/2023: <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/pooled-employer-plans>
- <sup>(2)</sup> Employee Fiduciary: Benchmark Your 401(k) Provider Fees: <https://www.employeefiduciary.com/sample-fee-comparisons/>
- <sup>(3)</sup> Employee Fiduciary: Pooled 401(k) Plan Fees: <https://www.employeefiduciary.com/blog/pooled-401k-plan-fees>
- <sup>(4)</sup> GAO-12-325 (2012): 401(k) plan fees and conflicts: <https://www.gao.gov/assets/gao-12-325.pdf>
- <sup>(5)</sup> Employee Fiduciary: 401(k) Revenue Sharing - 5 Reasons for Businesses to Avoid it: <https://www.employeefiduciary.com/blog/avoid-revenue-sharing>
- <sup>(6)</sup> Employee Fiduciary: 401(k) Variable Annuities - 5 Reasons to Avoid Them: <https://www.employeefiduciary.com/blog/401k-variable-annuities>
- <sup>(7)</sup> GAO-24-107125 (2024): 401(k) fees have declined; disclosure challenges remain: <https://www.gao.gov/products/gao-24-107125>
- <sup>(8)</sup> Employee Fiduciary: The Role MEPs Play in 401(k) Plan Termination: <https://www.employeefiduciary.com/blog/role-meps-play-401k-plan-termination>
- <sup>(9)</sup> Thrift Savings Plan: TSP investment options: <https://www.tsp.gov/investment-options/>
- <sup>(10)</sup> Boost Retirement Savings and Reduce Taxes by Paying Your 401(k) Fees from a Business Account: <https://www.employeefiduciary.com/blog/401k-plan-administration-fees-smallbusiness>

**Sincerely,**



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