

A Multiple Employer Plans primer: Exploring their potential to close the coverage gap

Introduction

At any given time, only about half of U.S. private sector workers are covered by an employer-sponsored retirement plan. As a result, roughly one-third of households end up completely reliant on Social Security at retirement, while others move in and out of coverage throughout their careers and end up with only modest balances in a 401(k) account.¹

The lack of consistent coverage—a pressing concern for the nation’s retirement income security—is driven by small employers. Small employers, defined here as those with fewer than 100 employees, account for the vast majority of businesses and 35 percent of private sector workers.² However, only about half of small employers offer a retirement plan compared to about 90 percent of employers with more than 100 workers.³ In an effort to lower the cost for small employers of providing a retirement plan and thereby reduce the coverage gap, the SECURE Act of 2019 made Multiple Employer Plans (MEPs) less restrictive and potentially more attractive for this group. This primer explores both the possibilities and the limitations of MEPs in improving coverage in employer-sponsored retirement plans.

The discussion proceeds as follows. The first section provides a brief history of MEPs and the creation in the SECURE Act of a less restrictive subgroup of MEPs, called Pooled Employer Plans (PEPs). The second section discusses the barriers small employers face in offering plans and how PEPs could help. The third section compares PEPs to existing plan options for small employers. The fourth section discusses how the advertised benefits of PEPs might differ from reality.

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1 Biggs, Munnell, and Chen (2019).

2 U.S. Bureau of Labor Statistics, *Business Employment Dynamics* (2022).

3 Center for Retirement Research (2023).

The final section concludes that while PEPs should be more attractive to small businesses, employers may be slow to adopt them. Historically, the PEP parent, the MEP, has been more expensive than single-employer plans. Growth in the number of providers after the SECURE Act could potentially introduce competition and reduce costs going forward. Future research should examine total fees and administrative expenses for PEPs to evaluate their potential for closing the coverage gap.

A brief history of MEPs

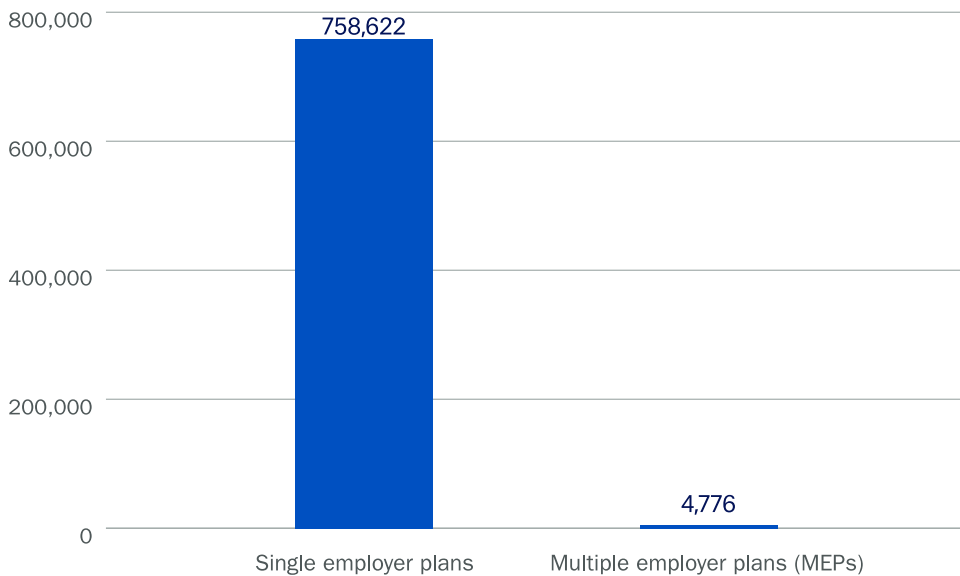
Most retirement plans, such as 401(k)-type defined contribution plans and defined benefit pensions, are sponsored and maintained by a single employer. The employer offering the plan is usually the named fiduciary and must, according to the Employee Retirement Income Security Act of 1974 (ERISA), “run the plan solely in the interest of participants and beneficiaries.” In addition to serving as a fiduciary, employers have to select a record-keeper, make decisions on

plan design, file a Form 5500, and cover the fees involved in starting and maintaining a plan. Managing all these tasks may be particularly challenging for small employers.⁴

Unlike single-employer plans, a MEP is a retirement plan adopted by two or more employers and administered by a MEP sponsor. Although a MEP can be either a defined benefit or defined contribution plan, the vast majority are 401(k)-type defined contribution plans. By allowing employers to join together to offer a plan, the MEP sponsor (typically a trade or industry group or professional employment organization) takes on the fiduciary burden and spreads the administrative, compliance, and cost burden of offering a plan across multiple employers. Participating employers in a MEP have their fiduciary responsibility limited to selection and oversight of the person or entity operating their plan.⁵

While MEPs have been around for decades, they have not moved the needle on coverage. In 2021, MEPs only represented 0.6 percent of total private-sector retirement plans (see Figure 1), covering roughly 5.7 percent of active participants.⁶

Figure 1. Number of private sector single-employer vs. multiple-employer retirement plans, 2021



Note: Participants include active workers, separated workers, retired workers who are not receiving benefits, and plan beneficiaries. Source: Authors’ calculations from U.S. Department of Labor, Form 5500 Datasets (2023a).

4 The Form 5500 is a form that employers or entities sponsoring retirement plans fill out that provides the government and public key details about the plan’s size, financial condition, investment, and operations. There are different versions of the form, the correct one depends on the type and size of plan. For example, plans with fewer than 100 participants are not required to file the full Form 5500.
 5 Borzi (2010).
 6 Data from 2019 Form 5500 filings. EBSA (2021)

Two main restrictions of MEPs may have limited their adoption: 1) employers had to share a common bond,⁷ and 2) the whole MEP could lose its tax-qualified status if one employer within the group was not in compliance (the “bad apple” rule).

The first restriction stems from provisions in ERISA, and specifically, the Department of Labor’s (DOL) interpretation of the term “group or association of employers.”⁸ To prevent arrangements that were not in the best interest of employees, the DOL required that plans be “tied together” by “genuine economic or representational interests,” known as the “common bond” rule.⁹ That restriction meant MEP participants had to share attributes such as being in the same industry or membership in the same trade organization. The guidance limited MEPs sponsorship to industry groups, professional employer organizations, and corporate MEPs (the result of mergers and acquisitions or reorgs), which substantially reduced the number of employers available for partnership.¹⁰

Despite the common bond rule, some employers still tried to join together to co-sponsor retirement plans without having any common bond other than the same retirement plan administrator. These plans are referred to as open-MEPs. Employers in open-MEPs thought they should be treated as a single-employer plan under ERISA.¹¹ However, the 2012 DOL Advisory Opinion concluded that the employment-based bond between participating employers was insufficient, and therefore, open-MEPs could not be considered single-employer plans but were rather a collection of individual plans.¹² Practically, it means that participating employers each had to ensure compliance with ERISA provisions, file a Form 5500, obtain an annual audit, and obtain a fidelity bond. While participating employers would still share the same investment menu and recordkeeper, the 2012 DOL opinion removed most of the benefits of open-MEPs.

DOL’s cautious approach likely arose due to earlier arrangements where employers joined together to offer other benefits that were not always in the best interest of participating employers and employees. In the health sphere, Multiple Employer Welfare Arrangements (MEWAs), like MEPs, allow multiple employers to access low-cost health coverage through a common provider. But in some cases, MEWAs have been used to defraud employers by charging high administrative fees that leave little money to pay promised health benefits.¹³ The experience with MEWAs raises the question of whether employers with no common bond will scrutinize plan operations as carefully as a group of companies with a common bond.

The second restriction—the “one bad apple” rule—also reduced the appeal of MEPs. Once established, participating employers were separately tested for compliance with coverage and nondiscrimination provisions to maintain their tax-advantaged status. However, if one employer within the MEP does not comply with provisions, the entire MEP could be disqualified, resulting in considerable tax penalties for compliant employers.

The SECURE Act and the creation of PEPs

The SECURE Act of 2019 removed the “bad apple” restriction and created a new subclass of MEPs, called PEPs, which are not limited to employers with a common bond. These new PEPs have additional regulatory requirements to address the DOL’s concerns about the absence of a common bond. PEPs can only be established by a pooled plan provider (PPP), which takes on the role of named fiduciary and attends to plan administration, compliance, and auditing. PPPs have to register with the DOL at least 30 and no more than 90 days before publicly marketing its services and operating a PEP. The additional regulatory requirement allows PEPs to be treated as a single plan under ERISA, unlike previous open-MEPs.¹⁴

7 This is sometimes referred to as “common nexus”.

8 Section 3(5) of ERISA defines employer as “any person acting directly as an employer or indirectly in the interest of an employer in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such a capacity.”

9 Other arrangements bringing together employers, such as multiemployer plans (Taft-Hartley plan) or multiple-employer welfare arrangements have had a spotty track record, including high premiums and fees. See Munnell et al. (2017) and U.S. DOL (2013).

10 For a discussion of different types of MEPs, see Shnitser (2020).

11 The Advisory Opinion addresses the MEP offered by TAG Resources LLC, a plan administrator, and 401(k) Advantage LLC, a plan sponsor.

12 U.S. Department of Labor. Employee Benefits Security Administration Advisory Opinion Letter 2012-03A and 2012-04A.

13 In response, the Affordable Care Act gave new authority to the DOL to stop this type of situation, and since 2010 the agency has pursued civil and criminal enforcement of MEWAs engaged in fraudulent practices (U.S. Department of Labor, 2013).

14 PEPs only need to file one Form 5500 for the entire plan. Annual audits are also not required if all participating employers in the PEP have fewer than 100 employees or if the number of total plan participants is fewer than 1,000.

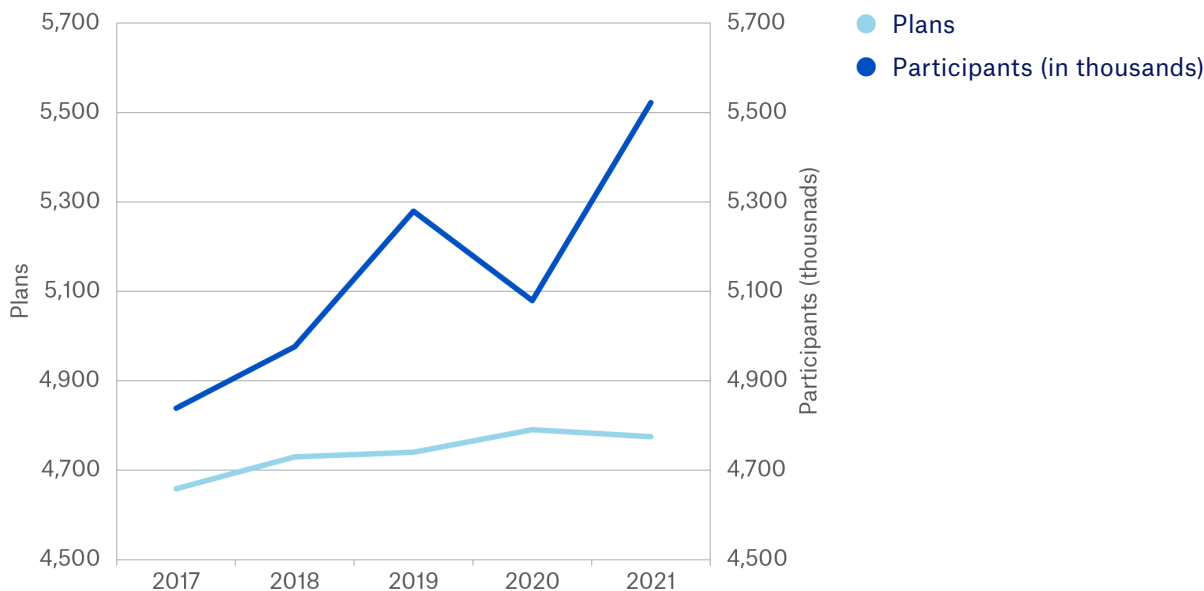
When thinking about the future multiple employer plans, existing MEPs based on a common bond are unlikely to expand in a meaningful way. The existing open-MEPs, which are not viewed as single-employer plans, would have to convert their plan to a PEP and comply with the additional regulatory requirements. The most likely route for expansion is the creation of new PEPs.

The market for MEPs and PEPs

The removal of the common bond and bad apple restrictions has generated a lot of excitement, particularly among financial services firms, about the potential of these new plans to

help close the coverage gap. The latest data from the DOL, however, show that initial take-up has been slow (see Figure 2). While the number of MEP plans continued to grow after the passage of the SECURE Act, the trend does not seem different from the growth in prior years, when MEPs required a common bond. The total number of active participants actually declined in 2020, likely due to the pandemic, but grew by close to 500,000 in 2021. This growth, however, is modest relative to the hundreds of millions of workers in the labor force.

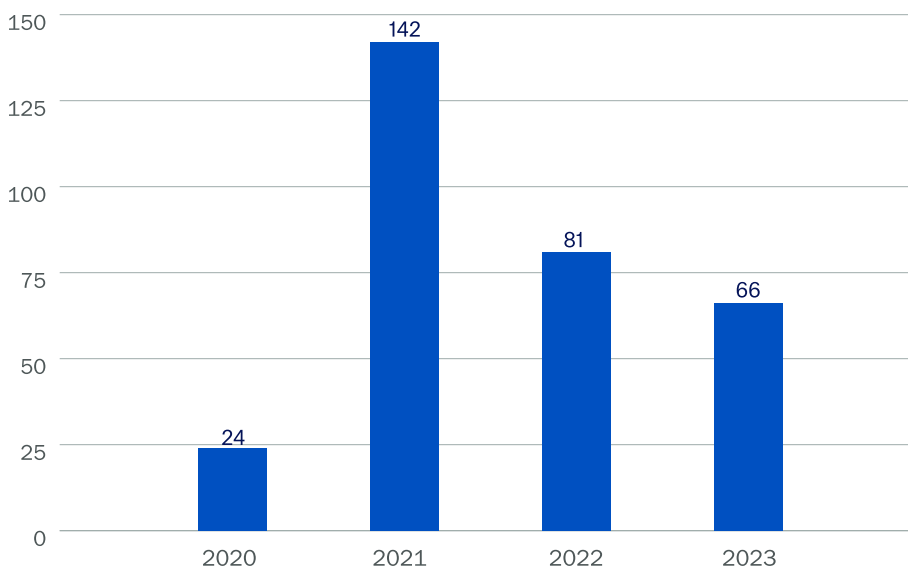
Figure 2. Number of plans and active participants in MEPs, 2017-2021



Sources: U.S. Department of Labor (2019-2022); and authors' analysis of U.S. Department of Labor, Form 5500 Datasets (2023a).

As noted, the newly created PEPs are likely where future growth in MEPs will be concentrated. New PPPs registering with the DOL provides some indication of future growth. The list of new PPP filings suggests some interest in PEPs (see Figure 3). New filings in the first year after SECURE was passed were low, but new plan filings ticked up in 2021. This momentum, however, slowed in 2022 and the first three quarters of 2023.

Figure 3. Number of PPP filings, January 2020–October 2023



Note: As of October 17, 2023.
Source: U.S. Department of Labor (2023b).

The SECURE Act 2.0 was passed in 2022 and extends the PEP structure to 403(b) plans, which are retirement plans for schools and non-profits. However, 403(b)s are unlikely to drive substantial growth as they only represent 4 percent of private sector plans.¹⁵ Regardless, PEPs offer the most potential for growth relative to other types of MEPs, so the rest of the discussion will focus on PEPs.

How can PEPs address barriers for small employers?

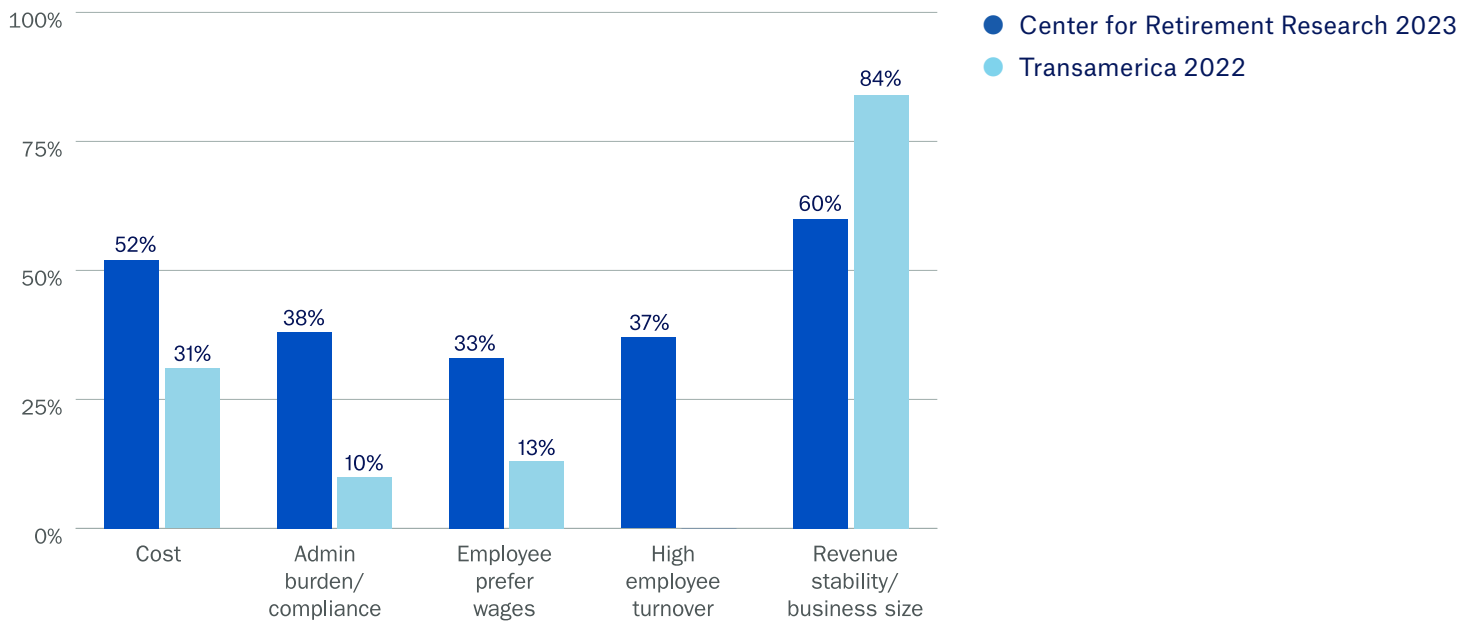
In order to evaluate whether PEPs can help close the coverage gap, it is important to understand the barriers small employers (under 100 employees) face in offering a plan. Recent surveys of small employers found that the top two barriers that

prevent small firms from offering a retirement plan are: 1) revenue concerns/business size, and 2) costs or administrative burden (see Figure 4).¹⁶ Some firms may be too small or new to consider offering a plan, but for the firms that feel firmly established enough but are concerned about costs and administrative burden, PEPs may be able to help.

¹⁵ Form 5500 data for 2021.

¹⁶ The smaller the firm, the more likely they are to cite revenue/business stability as a reason. Over 80 percent of firms with 0-4 employees cite revenue and size concerns. This share decreases to 54 percent for firms with 25-49 employees and 38 percent for firms with 50-100 employees.

Figure 4. Reasons for not planning to offer a retirement plan, 2023

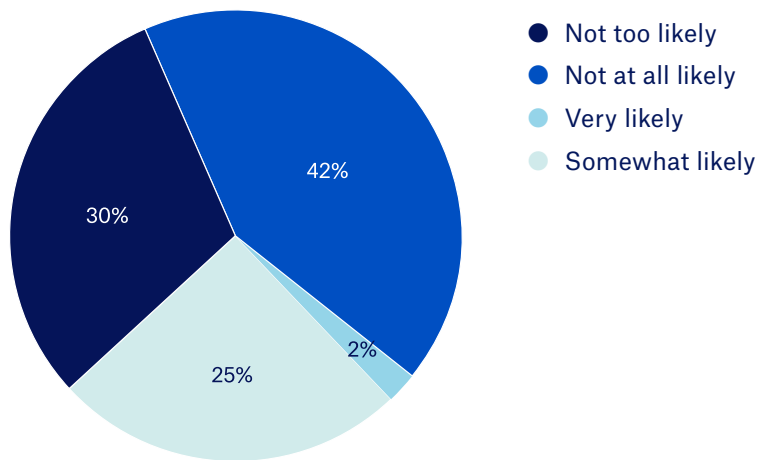


Note: "High employee turnover" was not included in the Transamerica (2022) survey. Sources: Center for Retirement Research (2023); and Transamerica (2022).

In fact, one recent survey found that among employers who were not currently offering a plan and unlikely to offer a plan in the next two years, almost 30 percent said they would

consider joining a MEP, PEP, or group of plans that handle many of the fiduciary and administrative duties at a reasonable cost instead (see Figure 5).

Figure 5. Likelihood of joining a MEP, PEP, or group of plans as an alternative, 2022



Source: Transamerica (2022).

Administrative and compliance burden

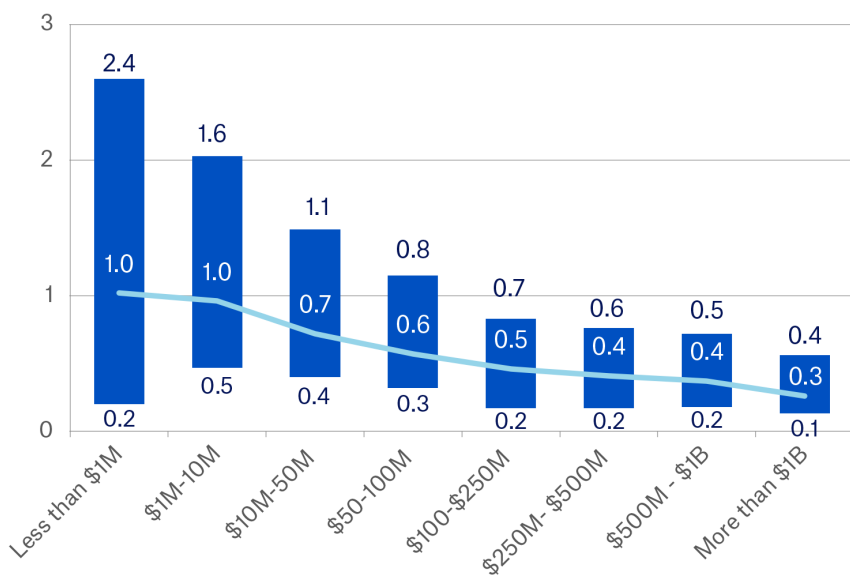
MEPs have always offered administrative and compliance benefits relative to single-employer plans. But prior to the SECURE Act, restrictions on MEPs outweighed the administrative benefits for employers. Now that these restrictions have been removed, joining a PEP can be a viable option for employers who want to limit the requirements of offering a plan. Joining a PEP allows employers to outsource most of the fiduciary responsibility of offering a plan to PPPs. These professionals also select investment funds, administer the plan, and conduct the daily operations of running a plan. While employers can outsource almost all of the administrative and compliance requirements, they are

still responsible for selecting and monitoring the PPP and investment options.

Cost

PEPs may be able to offer the economies of scale enjoyed by larger employers, making it more feasible for small employers to offer a plan. Data from the Investment Company Institute and BrightScope show that larger plans not only have lower average costs, but the range of costs across plans is also much smaller (see Figure 6). These cost savings, however, may take some time to materialize in that new PEPs need to reach a size where these economies of scale can be achieved.

Figure 6. Total 401(k) costs as a percentage of plan assets, by asset size



Notes: Total plan cost includes asset-based investment management fees, asset-based administrative and advice fees, and other fees from the Form 5500 and audited financial statements of ERISA-covered 401(k) plans. Total plan cost is computed only for plans with sufficiently complete information.
 Source: BrightScope and Investment Company Institute (2023).

Typical costs associated with offering a retirement plan include one-time set-up fees, administrative fees, investment fees, and, if applicable, audit fees.

- **Set-up fees:** One-time costs to set up a plan may be similar for single-employer and PEP plans. Single-employer plans may have higher set-up fees if employers want a highly customized plan.
- **Administrative fees:** The burden of administrative fees depends on how fees are structured and the level of plan assets. Fees based on a percentage of assets will be limited when plans are new and assets are low. In contrast, flat administrative fees can be burdensome for participants in new plans. However, over time as plan assets grow, flat fees will represent a smaller share of plan assets. How fees are structured can also matter for whether employers or employees are the ones that bear the cost. Fees based on a percentage of assets will invariably be paid for by employees through lower net returns. Flat fees can be paid for by employers upfront, by employees through lower returns, or split between both.
- **Investment fees:** Expense ratios for the same mutual fund can differ dramatically depending on the share class. A recent Pew study found that the expense ratio for different share classes of an identical midcap fund ranged from 0.75 percent to 1.45 percent.¹⁷ Lower-priced share classes are generally offered to investors with more assets, so small PPPs may not be able to offer the lowest fees on investment offerings (see Figure 6 on previous page).

- **Audit fees:** Employers with less than 100 participants are not required to conduct an audit if they have a single-employer plan. Small employers in a PEP are subject to an audit if the PEP has more than 1,000 participants, but these costs will be shared by all employers in the PEP.

How PEPs may be more attractive than existing options

PEPs are not the first retirement plan designed for small businesses. Federal policymakers have tried for decades to expand retirement plan coverage among small employers. Major initiatives include the Simplified Employee Pension IRA (SEP) and the Savings Incentive Match Plans for Employees of Small Employers (SIMPLE). Both initiatives have focused on minimizing the cost and administrative duties required by small employers. Adoption of either plan, however, has been low. Contributions to SEP and SIMPLE plans represent about 3 percent of assets in all private-sector defined contribution plans.¹⁸ SECURE 2.0 introduced the starter 401(k), another option aimed at reducing the costs of offering a retirement plan for small employers. Additionally, 14 states have launched or are preparing to launch programs requiring employers without a plan to automatically enroll their employees in an Individual Retirement Account (“Auto-IRAs”). While all of these plans are aimed at encouraging small employers to offer a plan, they all have slightly different designs (see Table 1).

¹⁷ Pew (2022).

¹⁸ In 2018, the latest data from the IRS, SEP and SIMPLE plans represent about 5 percent of assets in IRAs. IRAs represent about 60 percent of all private sector defined contribution assets (Financial Accounts of the United States, 2023).

Table 1. Comparison of retirement plan options for small businesses

	PEPs	SEP	SIMPLE	Auto-IRA	Starter 401(k)
Fund selection	Plan provider	Employer	Employer	Plan provider	Employer
Form 5500	Plan provider	N/A	N/A	N/A	Employer
Employer size	No limit	No limit	< 100 employees	No limit	No limit
Employer contributions	Not required but allowed	Only allows employer contributions	Employers must pay 3% match or 2% non-elective contributions	Not allowed	Not allowed
Employee contributions	Yes	No	Yes	Only employee	Only employee
Fees	Depends on plan	Employer responsible	Employer responsible	Employee responsible	Depends on plan
Fiduciary responsibility	Mostly plan provider	Employer	Employer	Plan provider	Employer

SEP/SIMPLE plans

PEPs may reduce the costs and the administrative burden relative to SEP/SIMPLE plans. PEPs do not have required contributions for employers while SEP/SIMPLE plans must be funded by employer contributions. PEPs may be able to share the fixed costs of establishing a plan, reducing fees relative to SEP/SIMPLE plans. Employers can outsource the selection of the fund menu to a PEP administrator.

Auto-IRAs

It is not clear whether PEPs reduce the costs and the administrative burden relative to auto-IRA programs. Employers have minimal costs in an auto-IRA as all fees are paid by employees. PEPs can also relieve employers of most fees by passing costs to employees. Whether total employer and employee costs are lower in PEPs, relative to an auto-IRA program, will likely depend on the number of participants and plan assets. Employers in PEPs still maintain the fiduciary responsibility of selecting and monitoring their administrators, while employers in auto-IRAs do not have that responsibility.

PEPs do have several benefits relative to auto-IRAs. First, PEPs are available in every state and not just limited to the 14 states that have launched or are preparing to launch an auto-IRA program. Employers are not allowed to contribute to an auto-IRA but can contribute to a PEP. This option can be helpful for hiring and retaining workers. Finally, employees in auto-IRA programs are subject to the much lower annual IRA contribution limits whereas PEPs are 401(k)s and have much higher limits.

Starter 401(k)s

PEPs offer several advantages over a starter 401(k). First, employers can outsource most of the fiduciary and administrative burden of offering a plan. Second, investment and administrative fees may be lower in a PEP as these fees can be spread across more employers. Finally, unlike starter 401(k)s, employers are allowed to contribute to a PEP, which can help with hiring. The main benefit of a starter 401(k) relative to a PEP is that employers are more familiar with 401(k)s generally than with PEPs.

Although small employers have a plethora of options, PEPs stand out because employers can offer a low-cost plan and limit fiduciary responsibility, while maintaining the ability to select the provider of their choice and offer employer matches.

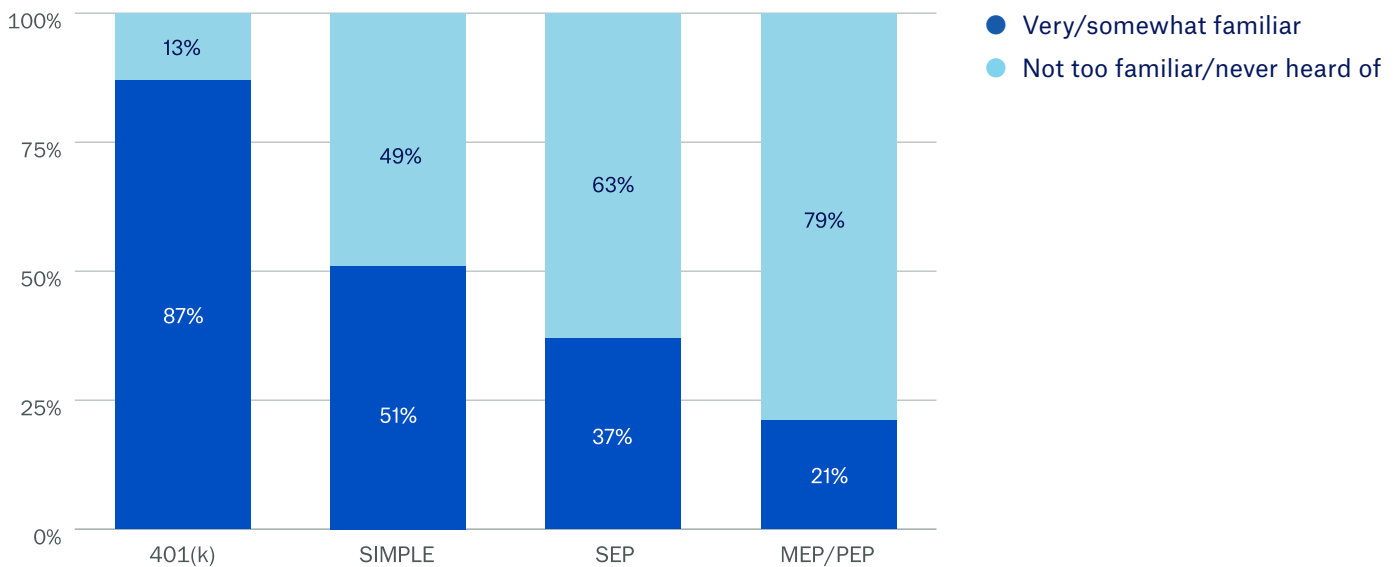
How might the advertised benefits of PEPs differ in reality?

PEPs seem to have many promising features that could make offering a plan for small employers more attractive. However, PEPs may have a limited impact on the coverage gap for a number of reasons.

Lack of awareness

The biggest limitation of PEPs may be the lack of awareness. The vast majority of small employers have never heard of PEPs or their parent, MEPs (see Figure 7). PEPs, like all retirement plans have to be sold. Providers will not only have to convince employers that offering a retirement plan is valuable, but that joining a PEP is the right option for them. This challenge might be a high hurdle to clear.

Figure 7. Familiarity with different retirement plans, 2023



Source: Center for Retirement Research (2023).

Cost

While PEPs advertise cost savings and economies of scale, these cost savings may not materialize. Two recent studies using data from before the SECURE Act compared the cost of MEPs and single-employer plans and found that MEPs are at least equally expensive, if not more expensive relative to single-employer plans of a comparable size.¹⁹ That is expected as a MEPs plan with \$10 million in assets from 100 employers will inherently be more complex than a single-employer plan with \$10 million. The relevant cost decision is instead whether a MEPs plan with \$10 million in assets from 100 employers is costlier than a single-employer plan with \$100,000 in assets. Data is lacking for this apples-to-apples comparison but most MEPs tend to remain small. About 50 percent of MEPs have less than \$10 million in assets and about 75 percent have under 100 participants total, and small plans are more expensive and there is a larger variance in fees. One estimate shows that least 30 percent of MEPs with less than \$10 million in assets charge more than 1.5 percent for combined administrative and investment fees.²⁰

Going forward, it could be possible that growth in PPPs after the SECURE Act will promote lower fees due to more competition and higher-quality investment products. But it could also be that employers with weak bonds to other employers in the MEP pay less attention to plan costs. In fact, one of the two studies cited above found that, among different types of MEPs, total expense ratios were higher for Professional Employment Organizations MEPs, which

have weaker employer bonds, than for association MEPs or corporate MEPs, which have stronger bonds. If the PEP market develops like their parent MEPs, it is not clear that PEPs will be cheaper than single-employer plans—especially given the growth in low-cost 401(k) plan options for small employers.²¹ If PEPs are not cheaper, their only main benefit will be less fiduciary responsibility.

Another cost consideration is how the fees are split between the employer and employee, particularly for small plans where fees tend to be higher. Some PEP sponsors advertise plans that have minimal fees for employers. However, retirement plans are not free. Plans that are free (or almost free) to the employers invariably pass on costs to plan participants.

¹⁹ Shnitser (2020) and Mitchell and Szapiro (2020).

²⁰ Mitchell and Szapiro (2020).

²¹ A quick Google search yielded several 401(k) options where annual employer costs would only be about \$2,500 for a firm with 10 employees and \$5,000 for a firm with 50 employees. The mid-tier plan offered by Guideline costs \$79 a month and \$8 a month per participant. The mid-tier plans from Betterment and Human Interest cost \$150 a month and \$6 a month per participant. Fidelity offers a small business retirement plan that charges a \$500 start-up fee and a \$300 per-quarter administration fee. However, it also requires employers to match employee contributions, which can increase costs.

If higher costs are passed on to employees, the question becomes how much higher are employee fees relative to single-employer plans? If employee costs are only slightly higher than stand-alone plans, PEPs could still be beneficial in helping workers who would otherwise not have access to a plan save for retirement. But if costs are substantially higher, PEPs could erode retirement savings for the most vulnerable workers and expose employers to excessive fee lawsuits.²²

Fiduciary responsibilities

While the PPP is the named fiduciary for a PEP, the employer retains the responsibility of selecting the right provider, monitoring the fees charged by the provider, and determining whether the services offered are beneficial. Examples of potential fiduciary responsibilities that the employer will need to monitor include fiduciary self-dealing, where the provider hires its own firm to provide additional services for additional fees. Or if the provider hires an investment firm that provides high-cost proprietary investment funds that may not be needed for participants.²³ This task could still be daunting for many employers.

Exit

If an employer grows bigger and wants to convert to a more customizable single-employer 401(k) or if they find that their chosen PPP is not providing adequate services, it may be difficult and time-consuming to terminate its portion of the PEP. While the SECURE Act requires that employers or participants leaving a plan are not subject to “unreasonable restrictions, fees, or penalties,” it is not clear what reasonable means. For example, PEPs’ parent, MEPs, generally have to be spun off into a separate SEP plan before being terminated.²⁴ This process takes time and legal paperwork.

Mergers and acquisitions

Similarly, PEPs can also make mergers and acquisitions more challenging. Regardless of if the employer wants to merge their plan with a buyer’s plan or if they want to fold an acquired employer’s retirement plan into their own plan, this process is much easier if the employer has a single-employer plan as fewer parties and paperwork are involved.²⁵

Coverage

The ultimate goal of PEPs is to help close the coverage gap, particularly among small employers. Some employers may switch from a single-employer plan to a PEP, but that does not represent a growth in coverage. One important question is whether future growth in PEPs represents a growth in employers offering retirement plans or merely employers opting to join a PEP rather than offer their own single-employer plan.

Conclusion

The lack of consistent coverage is a pressing concern for the nation’s retirement income security, and the coverage gap is driven by small employers. The SECURE Act created PEPs, a subclass of MEPs that are less restrictive and potentially a more attractive option for small employers. While PEPs offer several benefits—such as potential economies of scale and limited administrative and fiduciary responsibilities—small employers may be slow to join PEPs because they are a largely unfamiliar product.

An important selling point of PEPs is that they are advertised to be cheaper than stand-alone plans, particularly for small employers. However, as the PEPs market develops, it is not clear if PEPs will actually be cheaper. Prior research using data from before the SECURE Act has found that the PEP parent, MEPs, have remained small, and a large portion of these small MEPs are expensive. Growth in the number of MEP and PEP providers since 2019 could help reduce costs. Extending prior research on total fees, for both employers and employees, is important in understanding the full potential or limitations of PEPs for closing the coverage gap.

22 Several MEPs excessive fee lawsuits have been filed. A recent high-profile lawsuit includes *McLachlan v International Union of Elevator Constructors*.

23 Schneider (2023).

24 Cohen and Ferenczy (2020).

25 Cohen and Ferenczy (2020).

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