

A Review of MEPs - Multiple Employer Plans

by: Chuck Lynch, FSA

In the last two years, there have been many articles spelling out the advantages of MEPs – Multiple Employer Plans. However, we feel some of these articles have not been balanced enough to explain that there are both advantages and disadvantages. As an independent consulting firm that administers both MEPs and non-MEP qualified plans, we want to help balance the discussion.

First of all, a MEP is a single plan adopted by a group of two or more “employers”. There are several types of MEPs – “open MEPs”, “association MEPs”, and MEPs that are the result of some common ownership among companies but not enough for them to be considered “one employer.”

An “open MEP” is a plan covering two or more totally unrelated employers.

An “association MEP” is one adopted by an association and its members – e.g., a regional association of physicians. The only commonality in this case is that the employers (except for the association itself) are all in a similar industry and are all dues-paying members of the association.

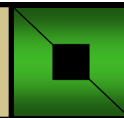
So what advantages are there to MEPs for employers?

The basic advantages most frequently associated with such arrangements include the following:

1) The outsourcing of some of the decision-making and fiduciary obligations.



- 2) The economies of scale of having fewer documents and possibly fewer IRS filings of the plan documents. (However, it should be noted that most employers not using MEPs now adopt pre-approved prototypes not requiring a separate IRS filing.)
- 3) The economies of scale of having a single Form 5500 and a single plan audit.
- 4) The bargaining power of a larger value of assets held in one trust, which allows for lower expense ratios on the underlying investments.



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What about disadvantages?

Despite these advantages, it should be recognized that there are also some disadvantages:

1) Lack of Department of Labor (DOL) guidance

In June of 2011, in a meeting with the Government Affairs Committee (GAC) of the American Society of Pension Professionals and Actuaries (ASPPA), the DOL expressed concern about what types of entities could qualify as “plan sponsors” for MEPs. In other words, there is currently some debate about whether to accept or require a “non-benefits based commonality” in order for an association to be a plan sponsor. We are awaiting further guidance from the federal government. (There are also other areas in which plan advisors would like to have Internal Revenue Service (IRS) and DOL guidance.)

2) Liability insurance

For an association to become a sponsor and fiduciary to the plan it must oversee the plan’s operation, the choice of investments offered to participants, and other matters. It will want to examine its liability insurance coverage for these duties.

3) Cookie cutter design

Some MEP vendors do not allow each adopter to have unique plan provisions – i.e., they use a “cookie cutter” approach to design whereby each adopter’s plan provisions must closely mirror those of the other adopters. However, there are some vendors who do allow that

each adopter can have its own unique choice of eligibility, vesting, matching formula, etc.

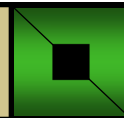
4) Disqualification matters

According to IRS Regulation 1.413-2: “... the failure by one employer maintaining the plan (or by the plan itself) to satisfy an applicable qualification requirement will result in the disqualification of the section 413(c) plan for all employers maintaining the plan.” In other words, one adopter’s error can disqualify the plan for all adopters. (Some commentators assume a special compliance filing with the IRS could fix most such problems.)

5) Service aggregation requirements

Service for any adopter must be recognized by all adopters – for eligibility and vesting purposes. Consequently someone leaving Company A (an adopter of the MEP) could immediately be eligible for participation at Company B (another adopter of the MEP) and already partially or fully vested in the first dollars contributed by Company B. Also, service at Company B is counted toward vesting in the benefit earned at Company A. These provisions will generally decrease the amount of forfeited dollars that could have otherwise been used to reduce company contributions.

6) **Audit expenses for small employers** When several small employers (under 100 participants each) merge into a MEP, creating a plan that has over 100 participants, then it becomes subject to audit requirements; even though separately no one small employer plan would have been subject to an audit. Small



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employers adopting into the plan will have to share in the audit expenses that would otherwise only have been borne by the large adopters.

7) Aggregation for contribution limits

For a given employee who works for two or more adopters in a single plan year, all contributions made on his behalf must be aggregated for purposes of overall contribution limits. In other words, all adopters are treated as a single employer for limit purposes; and the employers, through the plan administrators, must work together to determine that employees enter the plan timely and that individual contribution limits have not been exceeded.

8) Document Limitations

Regular standardized and non-standardized prototypes cannot be used for MEP purposes. So the documents are subject to special rules for determination letters. However, volume submitter plan documents can be used for MEPs, if properly worded.

9) Prohibited Transactions

As the MEP plan sponsor, an association can be reimbursed for reasonable expenses in sponsoring the plan, but cannot make a “profit” off of the plan. Making a profit would be a prohibited transaction. So, unlike what happens with other group benefit arrangements, the association would not be permitted to treat this as a money-making arrangement.

If you would like further information on MEPs, please contact our office and we will be happy to discuss your specifics.