

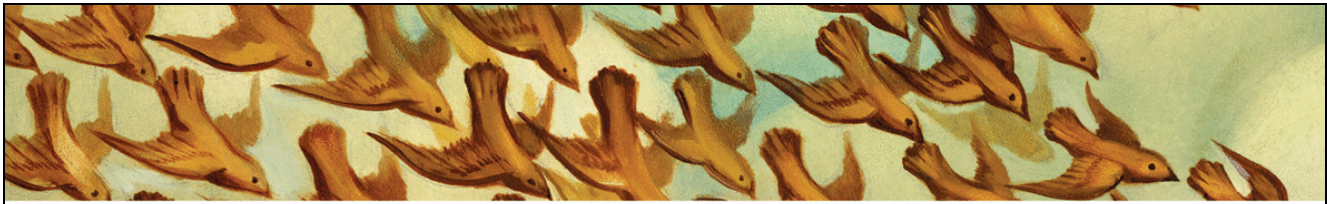
Three main reasons lead some employers to join a multiple employer plan (MEP), says Jim Kais, Vice President and Director of Institutional Sales and Special Markets at Trans-america Retirement Services.

First, these employers may not want to assume full fiduciary responsibility or do not have the expertise to assume it fully. “They want to mitigate that risk,” he says. Second, joining an MEP—not to be confused with the multiemployer plans often seen in unionized settings—means a large offload of administrative duties for adopting employers. In these challenging times, many want to focus their time and energy on top-line revenue generation, he says. Third, they want participants and themselves to get the leveraged buying power of a larger plan than these employers could have on their own.

MEPs—subject to Internal Revenue Code section 413(c) and defined as a single retirement plan maintained by more than one employer—have been around for many years. Their use picked up when, in 2002, the IRS issued Revenue Procedure 2002-21, ruling that defined contribution plans sponsored by professional employer organizations (PEOs) would be treated as MEPs. More recently, as fiduciary and fee concerns increased, and employers’ time demands in other areas grew, multiple employer plans have started getting more attention. These days, offering employees a retirement-savings option while not serving as a plan sponsor looks intriguing to some. Here are five things employers should know about MEPs:

strength in numbers?

As fiduciary concerns grow, multiple employer plans look compelling to some companies



1. MEPs attract mostly small employers.

AUL Retirement Services mostly sees employers with less than \$5 million in plan assets and around 100 employees drawn to multiple employer plans. Says Peter Welsh, Vice President of Product and Marketing Strategy, “For a relatively modest cost, they can offload a lot of the fiduciary responsibility.

“The majority are small employers who are just starting to understand the services they have received from their registered rep in particular,” Welsh continues. “They thought they were receiving investment advice and the registered rep was serving in a fiduciary capacity, and they were not. People are saying, ‘I thought I was getting something, but maybe I was not.’”

However, even amid heightened fiduciary worries, the MEP concept “is not a silver bullet for every plan sponsor,” Kais says. “Larger plan sponsors want to maintain all the flexibility, and there are times when the plan design of an MEP does not fit with that company.” Most of these plans provide employers some flexibility in plan-design factors such as establishing match levels, vesting, and eligibility criteria.

These plans usually have one investment menu, since having potentially hundreds of investment lineups in an MEP would pose a lot of pragmatic challenges, Kais says. “You usually do not see employer stock, illiquid investments, or self-directed brokerage,” he says. “From a prudence perspective, you want to make sure you are protecting employees.”

Whether an MEP makes sense “is a matter of how involved they want to be,” says Michael Montgomery, Managing Director of Montgomery Retirement Plan Advisors in Tampa, Florida. “There are employers that are actively engaged in the fiduciary process, that very much want to be in control of investment monitoring and fiduciary decisions, but many employers do not like the process of staying on top of the funds.”

2. They must be set up carefully.

Kais pegs the current number of defined contribution MEPs at about 2,900. They commonly are set up by industry associations, PEOs often affiliated with payroll-administration companies, and what Kais calls “non-controlled groups,” which could include situations like a car dealership that buys interests in other car dealerships, then has an MEP for the dealerships’ employees. “Open” MEPs with unrelated employers joining have become more popular recently. The organization setting up an MEP serves as plan sponsor and “has the same standards of duty that any plan sponsor would have,” he says.

Setting up and operating an MEP correctly requires close attention to regulations. “The challenge you always have if you go into the business of establishing an MEP is that the

prohibited-transaction rules come into play strongly,” says Robert Toth, a Fort Wayne, Indiana-based attorney specializing in employee benefits. “It is very difficult to do right, because of the details they have to pay attention to in structuring them.” If a third-party administrator (TPA) wants to start an MEP, for instance, who then approves the payments to the TPA for its plan work? “You always have to be careful about self-dealing or entering into a transaction where you would benefit,” says Bob Melia, Vice President, Product Development at Lincoln Financial Group.

The rapid growth of multiple employer plans leaves some in the industry worried. “I am very concerned that many are set up incorrectly by people with no background in MEPs,” says Terrance Power, President of American Pension Services, Inc. “There are very good MEPs in the marketplace, and there are several I have serious concerns about, in terms of their viability and structure.”

At a recent industry meeting, a U.S. Department of Labor (DoL) official reportedly said that a non-association MEP did not qualify as a single plan under ERISA. While Power says he has no firsthand knowledge about what happened at the meeting, “it is my understanding that the focus of these comments centered around new multiple employer plans that were being established by third-party administrators also acting as the plan sponsor,” he says. “We share a concern about these types of arrangements.”

Some think the DoL official’s comment hints at increasing regulatory scrutiny of MEPs. Power cautions that no government agency so far has flagged multiple employer plans as a potential concern, and he does not see that changing. “I would welcome some clarification from the Department of Labor as to procedural rules to ensure that certain prohibited-transaction rules are followed completely,” he says. “Advisers and third-party administrators who are not experienced in this market can unknowingly run afoul of the rules and jeopardize the qualified status of the entire plan.”

3. MEPs save joining employers time.

This is one of the biggest draws of these plans. The plan administrator, usually the plan sponsor, handles routine tasks like processing contributions, approving loans and distributions, and mailing legally required notices to participants. Many outsource investment responsibilities to a 3(38) fiduciary. For employers joining the plan, “by and large, most of that day-to-day responsibility is offloaded,” Kais says. Adds Montgomery, “The people doing the heavy lifting are the TPA or the 3(38) fiduciary.” Operationally, participating employers enroll newly eligible employees and remit new employees’ elections, “and that is pretty much it” for routine tasks, Welsh says.



“The adopting employer is not running the plan on a day-to-day basis, but there are some rules in the Code and ERISA that still apply to the company,” Melia says. “There is year-end testing that they still have to do on a plan-by-plan basis, but the employer will effectively outsource some of the normal fiduciary role.”

4. They may or may not lower costs much.

An MEP offers economies of scale that save money because of lower-cost funds and efficient administration, Melia says. “They can get better pricing on products and a better selection of products,” Toth says. “If they have 50 or 60 employees, they are not going to get good pricing (on their own), and sometimes they cannot get access to a good platform.”

An MEP counts as one plan for the year-end Form 5500 filing, Melia says. “For plans that have more than 100 participants and have to have an audit, it can be \$10,000 or more,” he says. “An MEP that files one 5500 only needs one audit.” The cost savings related to the audit “is not just the explicit cost of paying the auditor, but somebody inside the company has to take time out of his or her schedule to work with the auditor,” Power says.

The audit savings are the main cost reduction, Montgomery says. Beyond that, he adds, “The cost savings from an administrative standpoint are arguable. The buying public needs to know that sometimes the administrative savings have been

overstated. There is a great deal of setup work, implementation work, and required compliance testing that has to be done at the individual-adopter (employer) level.”

5. Employers still have fiduciary duties.

“We sometimes see MEP representatives claiming a 100% reduction in fiduciary liability, or implying it,” Montgomery says. “We do not believe that is the case, but if the level of fiduciary responsibility was 10 before, it is one or two now. One aspect of that (remaining responsibility) is the decision to adopt or leave an MEP. It needs to be based on documented due diligence.”

Kais agrees that employers make a fiduciary decision when adopting an MEP and adds that the responsibility does not end there. “Subsequently, they need to evaluate whether the MEP still meets the needs of the employer and, more importantly, the employees,” he says. “There is the same standard of prudence. They need to make sure that the fees are still reasonable, and that the platform still meets the needs of participants. They need to determine if plan-design changes are needed if the demographics change.”

Employers must make sure they get enough information on an ongoing basis to determine if the plan administrator is doing its job right, Toth says. “It is not the same thing as running a committee and all the work involved with that,” he adds. “I do not think that they can abdicate all responsibility, but it makes it more manageable.” —*Judy Ward*

What Is an MEP?

Last month, a panel at the PLANADVISER National Conference—moderated by James Sampson, Managing Principal, Cornerstone Retirement Advisors, and including Terrance P. Power, President, American Pension Services, Inc., and Keith J. Gredys, CEO & President, Kidder Benefits Consultants, Inc.—examined the topic of multiple employer plans (MEPs).

In the traditional plan, there is a single plan sponsor from one company. This sponsor has to take care of trustee liability, Form 5500, document fees, an annual audit, investment monitoring, and 408(b)(2) compliance. Of course, all of this usually is done with the help of an adviser and in tandem with the investment provider, an ERISA attorney, and a third-party administrator (TPA).

In an MEP, the single plan sponsor becomes one of many “plan adopters,” with the bulk of responsibilities falling to the MEP. The sponsor no longer has trustee liability, does not have to file a Form 5500, does not have to prepare for an audit, the investments are taken control of by a 3(38) investment manager, and,

because they do not file an individual Form 5500, the sponsor will not receive any more cold calls from advisers or providers. Each adopting plan sponsor still can have his own adviser to ensure the MEP is functioning properly; this fiduciary responsibility remains with the sponsor.

Typically, there is some commonality among employers in an MEP (physicians’ practices, law firms, etc.). However, it is not a requirement under section 413(c), according to Power, who noted that the law actually says “unrelated employers” can form an MEP. Adopting sponsors tend to be from the same industry, but “commonality” is still a gray design area.

If the plan sponsor has some very specific plan design aspirations in mind, an MEP probably will not be a great fit. The master document is at the MEP level, and sponsors only sign an adoption agreement. The flexibility of the master document can vary. —*Nicole Bliman*