

OPEN MEP AND PEP STRATEGIES

ANSWERS TO YOUR PRESSING QUESTIONS



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The Future

- Who will be setting up pooled employer plans (PEPs)?
- Who could be disadvantaged by PEPs? Why?
- Who will benefit from PEPs?
- From a business development perspective, what are the pros and cons of embracing ARPs, PEPs and Open MEPs? Rejecting them? Ignoring them?
- If you could look out 2-5 years from now, how do you think PEPs will do against state mandated plans for small employers?

Types of Plans

- Please give an example of an open MEP that is available today? I thought a true open MEP of unaffiliated employers could only be done through a PEP...is that right?
- How do I distinguished between ARPs, PEPs and MEPs so that I know when to recommend the right one?
- Can a PEP be restricted to a specific group like an ARP? And given the choice, which is the better design, PEP or ARP?
- Could you describe where you see a "Group of Plans" coming into play?

Operational Models

- Can you speak to the business models being developed to support PEPs? For example, recordkeepers offering a "turnkey" solution acting as the PPP and 3(38) for fund selection.
- Can you confirm that while the current DOL rules do not allow recordkeepers and investment companies to be the sponsor of a closed MEP, the SECURE Act will allow PEPs to be sponsored by a recordkeeper or an investment firm?

Fiduciary Issues

- What fiduciary responsibilities do participating employers retain in a PEP? In an ARP?
- We are a full service retirement provider for single employer plans. We are a 3(38) investment manager, and we also handle many 3(16) administrative fiduciary duties. Can we act as a pooled plan provider (PPP) and still be a 3(38)?
- There is some confusing language regarding who retains fiduciary responsibility of plan investments for the PEP. Can the Pooled Plan Provider acknowledge and retain discretion over the selection and monitoring of the plan investments or does this need to be delegated to another fiduciary (like a 3(38)) or else it reverts back to the individual adopting employer?

Service Provider Roles

- For a financial advisor, who is the client, the PEP sponsor or the individual participating employers? Should financial advisors limit their relationship to only one or the other?
- What if we can only do about 75% of the administrative roles... can we still be a PPP?
- How is the PEP sponsor compensated? How about the PPP?
- What are the general compensation limitations on a PPP? By way of example, could a PPP receive a commission on a fixed indexed annuity sold through a PEP?

Follow the Money

- Can PPPs hire a 3(38) and use their advisor force for distribution? How do we reconcile conflicts of a PPP (with service provider oversight) financially benefitting from a 3(38) who may be bringing in new plans through their advisor force?
- How do you foresee plan expenses being structured in PEPs? Asset based arrangements would result in one plan offsetting the costs of another, correct?
- What if a participating employer, who ends up being a bad apple, does not take the action to set up a separate plan so that the assets can be transferred from the PEP to a separate plan? What options are available for the PPP to remove the bad apple?

Plan Structures

- Can a PEP allow for multiple plan provisions? e.g. one employer has Safe Harbor matching, another participating employer has no matching at all and another participating employer has only discretionary profit sharing?
- In an association retirement plan, how much flexibility could participating employers have in their plans (i.e. safe harbor vs. non, eligibility, vesting, etc.) and would there be greater flexibility in a pooled employer plan?
- Are investment lineups and RIA fees required to be consistent for all employers participating in the PEP?
- Can you please elaborate around the wording regarding delegation and being subject to provisions of 404(c)?

Administrative Issues

- Does a PEP have one 5500 and one audit or a 5500 and audit, if required, for each adopting employer?
- Is a plan sponsor that adopts into a MEP/PEP eligible for the enhanced tax credits under SECURE? And with the new tax credits that are deducted over 3 years, will the new credits be available for a new plan that was adopted last year?
- For the audit relief test (under 1000 participants, with each employer under 100 participants), is "participant" defined as any eligible employee regardless of whether that employee is contributing or enrolled?
- If an employer joins a MEP, ARP, or PEP, are they still required to have an ERISA bond for their plan?

Final Questions

- Are there any securities law issues with aggregating assets of multiple employers in a MEP, ARP, or PEP?
- Would a CIT be a good low-cost solution within a PEP?