DrinkerBiddle

TIPS FOR TPAs

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MEPs: Compensating the Sponsor

By Fred Reish, Bruce L. Ashton and Joshua J. Waldbeser

Our partners Bruce Ashton and Josh Waldbeser – along with Fred Reish – just authored the first of a two-part article in the ASPPA's *Plan Consultant* about compensation for MEP sponsors. There is growing interest in multiple employer plans (MEPs) in order to expand the number of employers who provide 401(k) plans for their employees. MEPs can offer advantages to businesses – and particularly to small businesses – by reducing the complexity of offering retirement plans.

This begs the question . . . what is a MEP? Under the Internal Revenue Code, it is a plan adopted by multiple employers. But, under ERISA, the DOL says a MEP is a single plan only if there is a connection among those employers. Otherwise, the DOL treats the plan as a group of separate plans . . . that have to file individual Form 5500s, have separate bonds, and may have separate plan audits if a participating employer has over 100 covered participants.

Fortunately, it is likely that Congress will pass legislation this year that specifically permits MEPs to be treated as a single plan for those purposes . . . even where the adopting employers aren't related. These arrangements are known as Open MEPs.

One challenge for MEP sponsors is how to be compensated for the services they provide. First, the compensation must be reasonable. Second, the MEP sponsor is a fiduciary and, as a result, it cannot set, modify or monitor its own compensation. So, for example, if a MEP sponsor is entitled to an increase in compensation, it would need to have another fiduciary approve it. This approval can be accomplished through a "deemed consent" process that makes use of the procedure outlined by the DOL in the "Aetna Opinion" (Advisory Opinion 1997-16A).

Alternatively, there could be a governing board (of, *e.g.*, some of the adopting employers) who would be fiduciaries for overseeing the MEP sponsor and approving its compensation.

Our article discusses these complex issues in more detail. See the full article here.

Moral of the Story

Multiple employer plans (MEPs) are considered to be a solution for employers to transfer the fiduciary responsibility and administrative burden of plans to the MEP sponsor. MEPs may also reduce the cost of operating a plan. This article—and the longer article it links to—discuss important considerations for MEPs. It is likely that Congress will pass legislation this year authorizing Open MEPs. TPAs need to be aware of the promise and threat of that alternative.

A Message to Third Party Administrators

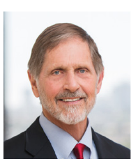
This is our fourth article for TPAs. The earlier articles can be found below:

- Missing Participants and Fiduciary Responsibilities: A Risk for TPAs
- TPA Issues in DOL Investigations of Client Plans
- TPAs as Fiduciaries . . . of Their Own Plans

Our goal is to provide TPAs with information about important issues and developments for retirement plans.

Employee Benefits and Executive Compensation Group

Primary Contacts



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