

Multiple Employer Retirement Plans and Multiple Employer Welfare Arrangements

The AICPA Employee Benefit Plan Audit Quality Center (EBPAQC) has developed this primer to provide members with a basic understanding of multiple employer retirement plans (MEPs) and multiple employer welfare arrangements (MEWAs). This primer provides a general overview of MEPs and MEWAs and includes discussions of applicable laws and regulations, plan structure and operations, and unique filing requirements, and also provides references to additional resources.

Introduction

MEPs

A MEP is a retirement plan that is adopted by two or more employers that are unrelated for income tax purposes (i.e., not members of a controlled group, commonly controlled group, or affiliated service group) but not treated as a multiemployer plan. A MEP may be a defined benefit pension plan or a defined contribution retirement plan.

Although MEPs are similar to multiemployer plans in that both types of plans cover employees of more than one employer, they are not the same. MEPs are maintained by two or more employers for the purpose of pooling investments and sharing administrative costs. Unlike multiemployer plans, MEPs typically maintain separate accounts for each of the adopting employers, can have different plan designs for each adopting employer, and are not subject to the terms of a collective bargaining agreement. This primer applies to MEPs; it does not address multiemployer plans.

MEPs enable small employers who otherwise may be unable to offer benefit plans to participate in a professionally administered plan by providing economies of scale, and can sometimes minimize fiduciary responsibility and streamline reporting and disclosure requirements. MEPs may be structured in one of the following ways: (1) a retirement plan sponsored by a Professional Employer Organization (PEO); (2) a closed MEP; (3) an open MEP; or (4) a common ownership MEP.

PEOs provide a means by which an employer can outsource employee management tasks, such as payroll, employee benefits, workers' compensation, recruiting, risk/safety management, and training and development. In these arrangements, the PEO often hires a client company's employees and becomes their employer of record for tax and insurance purposes. This practice is referred to as co-employment. A contract between a client and the PEO establishes the co-employment relationship. In accordance with the contract, the employees become co-employed by both the client and the PEO, and the PEO assumes certain aspects of the client's responsibilities. In these arrangements, a MEP is sponsored by the PEO and adopted by the PEO's clients.

A closed MEP is sponsored by an industry or trade group and adopted by the group's members. In a closed MEP, the employers must share a commonality (common interests and/or organizational relationships) beyond the provision of benefits, and the employers must have the ability to control or exercise authority over the MEP.

An open MEP is offered to employers that have no relationship or connection to each other except through their participation in the MEP. This type of MEP typically is open to any employer that wants to join, and often is established by an organization focused on providing benefits to smaller employers.

In a common ownership MEP, the adopting employers do have some common ownership, but the ownership is insufficient for them to be considered related employers under the Internal Revenue Code (IRC).

MEWAs

A MEWA is an arrangement where two or more employers pool their contributions to provide group health and other welfare benefits (such as dental, vision, life, and disability) to their employees. Welfare benefits under a MEWA may be self-insured or fully insured. Typically, employers make contributions to the MEWA based on their number of covered employees and the estimated costs associated with each employee. Employee contributions can also be made to a MEWA.

Similar to MEPs, MEWAs enable small employers that may otherwise be unable to offer welfare benefits to minimize fiduciary responsibility, including reporting and disclosure requirements, and provide better benefit packages to their employees due to economies of scale. The types of organizations that sponsor MEPs may also offer MEWAs.

Terms and Definitions

Adopting Employer: Any employer that participates in a MEP or MEWA by adopting the plan.

Employee Organization: Any labor union or any organization of any kind, or any agency or employee representation committee, association, group or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan.

Employer: Any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan, including a group or association of employers acting for an employer in such capacity.

Group Insurance Arrangement (GIA): An arrangement which provides benefits to the employees of two or more unaffiliated employers, fully insures one or more welfare plans, uses a trust or other entity as the holder of the insurance contracts, and uses a trust as the conduit for payment of premiums to the insurance company.

Lead Employer (Plan Sponsor or Controlling Member): The adopting employer that sponsors the MEP or MEWA.

Lead Plan (Controlling Plan): The plan submitted to the Internal Revenue Service (IRS) by the lead employer for a determination on its tax status. Such plan may be prepared with both IRS mandated language and various options to be selected by the adopting employers to customize their plans.

Multiemployer Plan: A plan maintained pursuant to one or more collective bargaining agreements which require contributions from more than one employer.

Multiple Employer Plan (MEP): A retirement plan maintained by two or more employers that are not related under IRC 414(b), (c) or (m), and which is not a multiemployer plan.

Multiple Employer Welfare Arrangement (MEWA): A plan or other arrangement that provides welfare benefits to the employees of two or employers that are not under common control. The term MEWA does not include any plan or arrangement established or maintained pursuant to a collective bargaining agreement, or by a rural electric cooperative or rural telephone cooperative association.

Related Employers: Employers that are members of a controlled group under IRC 414(b), trades or businesses under common control under IRC 414(c), or an affiliated service group under IRC 414(m).

Single Plan: A plan under which all of the assets, on an ongoing basis, are available to pay the benefits to employees who are covered by the plan and their beneficiaries.

Single Employer Plan: A plan maintained by one employer, or by employers that are related under IRC 414 (b), (c) or (m). Single employer plans generally are established by the management of one employer (or a controlled group of corporations) either unilaterally or through collective bargaining, and the employer is the plan sponsor.

Welfare Benefit Plan: Any plan, fund, or program established or maintained by an employer, or by an employee organization, or by both, to provide participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits; benefits in the event of sickness, accident, disability, death, or unemployment; vacation benefits; apprenticeship or other training programs; or day care centers, scholarship funds, prepaid legal services, holiday and severance benefits, or housing assistance benefits.

Laws and Regulations

IRC

MEPS and MEWAs are subject to certain provisions of the IRC and to rules and regulations enforced by the IRS. Except to the extent that a plan is subject to the unrelated business taxable income rules, MEPS and MEWAs are exempt from taxation as long as they maintain their tax-exempt status under the IRC. The plan document must be amended or restated periodically to comply with the changing tax laws and IRS regulations.

A MEP is a single plan under the IRC, and it must comply with the qualification rules under IRC 413(c). Certain qualification requirements, such as the exclusive benefit requirement, eligibility to participate, vesting, and limits on benefits and contributions are applied to the plan as a whole as if all employees of each adopting employer were employed by a single employer. If the plan fails to meet these qualification requirements, the plan will be disqualified for all adopting employers. Other qualification requirements (e.g., coverage, nondiscrimination, and top heavy rules) must be satisfied separately by each adopting employer as if that employer maintained a separate plan, and the failure by one employer to satisfy these requirements can jeopardize the tax status of the entire plan (commonly referred to as the “one bad apple” rule). These qualification rules under IRC 413(c) only apply to MEPS and not to MEWAs.

MEPS that are defined benefit plans also must comply with the provisions of the Pension Protection Act of 2006, which requires that they send annual funding notices to plan participants and the Pension Benefit Guaranty Corporation (PBGC). Defined benefit MEPs must pay a premium to the PBGC for each plan participant. In exchange for the premiums, the PBGC provides a guarantee that certain minimum pension benefits will be paid to the participants and beneficiaries if the plan becomes insolvent. The amount of the premium is a combination of a fixed per-participant premium plus a variable per-participant premium the amount of which depends on the funded status of the plan.

ERISA

MEPs and certain MEWAs are subject to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), which requires plans to file an annual Form 5500, *Annual Return/Report of Employee Benefit Plan* (Form 5500), with the U.S. Department of Labor (DOL) and establishes standards for eligibility, participation, reporting, and disclosures, along with rules that all fiduciaries of the plan must follow.

Although a MEP is a single plan under the IRC, it may or may not be treated as one plan under ERISA. The DOL has imposed a “common interest” requirement on employers adopting MEPs that must be met if the MEP is to be treated as one plan for ERISA purposes. Advisory Opinion 2012-04A establishes criteria the DOL examines in determining whether a MEP meets this requirement: (1) how members are solicited; (2) who is entitled to participate and who actually participates in the association; (3) the process by which the association was formed, the purposes for which it was formed, and what, if any, were the preexisting relationships of its members; (4) the powers, rights, and privileges of employer members that exist by reason of their status as employers; and (5) who actually controls and directs the activities and operations of the benefit program. In addition, the employers must, either directly or indirectly, exercise control over the plan, both in form and in substance.

Like a MEP, a MEWA may or may not be one plan under ERISA. If ERISA applies at the MEWA level, then only one ERISA plan exists; however, if ERISA applies at the adopting employer level, then many ERISA plans exist as each employer is deemed to maintain its own ERISA plan. A number of DOL advisory opinions have addressed this issue using the same common interest criteria described above.

If the common interest criteria is met, the MEP or MEWA is considered to be one plan for ERISA purposes and would file one Form 5500 with audited financial statements. The Form 5500 for the MEP or MEWA must include an attachment that provides a list of adopting employers and a good faith estimate of the percentage of total contributions made by each adopting employer during the plan year.

If the common interest criteria is not met (as is usually the case with open MEPs and many MEWAs), each adopting employer is considered to be maintaining a separate plan for the benefit of its own employees. Consequently, each adopting employer would have a Form 5500 filing requirement and potentially an audit requirement (depending on the number of plan participants). However, there is a special exception for a MEWA that qualifies as a group insurance arrangement (GIA). A GIA exists if the MEWA’s welfare benefits are fully insured, the insurance contracts are held by a trust or other entity, and a trust is used as the conduit for payment of the premiums to the insurance company. If a MEWA that meets these requirements files one Form 5500 with audited financial statements as a GIA, then the adopting employers do not need to file Form 5500.

In addition to the Form 5500, MEWAs are required to file an annual Form M-1, *Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)*, with the DOL.

State Laws

States also have authority to regulate all MEWAs and can treat them as insurance companies under state law, including MEWAs that qualify as ERISA plans at the MEWA level. For most types of MEWAs, states may apply and enforce any state insurance law requiring the maintenance of specific reserves or contributions designed to ensure that the MEWA will be able to satisfy its benefit obligations in a timely fashion. Therefore, states can subject MEWAs to licensing, registration, certification, financial reporting, examination, audit, and any other requirement of state insurance law necessary to ensure compliance with the state insurance reserves, contributions and funding requirements. Some state laws impose an additional layer of employer commonality or association requirements. For any MEWA that is self-funded or partially self-funded, any law of any state that regulates insurance may apply to the extent not inconsistent with Title I of ERISA. Accordingly, if a MEWA is self-insured, the only limitation on the applicability of state insurance law to the MEWA is that the law be consistent with Title I of ERISA.

Plan Structure and Operations

In a MEP or MEWA, the adopting employers typically are not the plan sponsor. Possible governance structures include lead employer sponsorship, board sponsorship, co-sponsorship, group or association sponsorship, or sponsorship by a third party.

Sponsorship by a Lead Employer

In this structure, one adopting employer takes the lead and sponsors the plan and appoints the fiduciaries. Sometimes the lead employer is the only named fiduciary for the plan under the plan documents. Sponsorship by a lead employer may create difficulties in meeting the DOL Advisory Opinion 2012-04A requirement that the adopting employers control the plan.

Board Sponsorship

A board of directors consisting solely of members may be appointed by the adopting employers to serve as plan sponsor. Alternatively, a board could be appointed solely to appoint and monitor fiduciaries on behalf of the sponsor.

Co-Sponsorship

The plan document can be drafted in such a way that each adopting employer is a co-sponsor of the plan. This approach can be combined with a board structure to ensure control by adopting employers. If a board is not used, each adopting employer must explicitly agree to the appointment, services, and compensation of each fiduciary and service provider.

Group or Association Sponsorship

Because a group or association of employers may be considered an employer for ERISA purposes, a MEP or MEWA may be sponsored by a governing body representing a group of employers or by a separate entity such as a not-for-profit association. However, the DOL has stated that association sponsorship does not automatically confer “employer” and “sponsor” status. In some cases, a board structure may be combined with association sponsorship.

Third Party Sponsorship

Some MEPs and MEWAs are created by advisors or professional fiduciaries who form alliances with organizations that sponsor the plan for a fee. Alternatively, a service provider, such as a recordkeeper or advisor, may be a third party sponsor. Sponsorship by a third party may create difficulties in meeting the DOL Advisory Opinion 2012-04A requirement that the adopting employers control the plan.

Additional Resources

DOL [MEWAs, Multiple Employer Welfare Arrangements under the Employee Retirement Income Security Act \(ERISA\): A Guide to Federal and State Regulation](#), addresses questions raised concerning the effect of ERISA on Federal and State regulation of MEWAs.

DOL [Advisory Opinion 2012-04A](#) addresses criteria the Department of Labor uses to determine whether a MEP is a single employee pension benefit plan within the meaning of ERISA section 3(2).

FASB ASC 960, *Plan Accounting—Defined Benefit Pension Plans*; 962, *Plan Accounting—Defined Contribution Pension Plans*; and 965, *Plan Accounting—Health and Welfare Benefit Plans*, provide the reporting and disclosure requirements for employee benefit plans.

FASB ASC 820, *Fair Value Measurements*, provides a framework for measuring fair value, and specifies required disclosures about fair value measurements.

AICPA Audit and Accounting Guide, *Employee Benefit Plans*, gives guidance on auditing plans and provides illustrative financial statements, including notes, for various types of plans.

Annual AICPA Audit Risk Alert, *Employee Benefit Plans Industry Developments*, highlights the hot topics in the employee benefit plans industry, including current issues related to MEPs.

AICPA Technical Practice Aids, *Technical Questions and Answers, TIS Sections 6931-6939*, address frequently asked questions about various employee benefit plan related topics.

AICPA Audit Guide, *Special Considerations in Auditing Financial Instruments*, provides background information and a discussion of audit considerations relating to financial instruments.

AICPA AU-C Sec. 620, *Using the Work of an Auditor's Specialist*, addresses the auditor's responsibilities relating to the work of an individual or organization possessing expertise in a field other than accounting or auditing when that work is used to assist the auditor in obtaining sufficient appropriate audit evidence.

AICPA *Employee Benefit Plans Accounting Trends & Techniques*, provides illustrative disclosures for financial statements of employee benefit plans, including MEPs.

AICPA EBPAQC Primer, *Employee Benefit Plans—Parties in Interest and Prohibited Transactions*, provides further general information about parties in interest and prohibited transactions.

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