

Fiduciary *focus*



Fiduciary Focus: MEPs, PEPs, and RESA

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It has been estimated that roughly a quarter of private-sector workers do not have access to a workplace retirement plan. The headwinds typically cited by employers are additional costs and administrative and fiduciary burdens. On August 31 2018, an executive order was signed by the President aimed at boosting retirement security assistance for this portion of workers. The order urges the Department of Labor (DOL) and other government agencies to promote and endorse Multiple Employer Plans (MEP) with hopes of closing the gap.

A MEP is a 401(k) plan under IRS code 413(c) that allows employers to join forces and comingle assets when offering a retirement plan. This structure primarily allows small to mid-size retirement plans to benefit from economies of scale.

The major advantages of participating in a MEP are generally the following:

1. Lower fees as a result of pooling assets
2. Reduction of fiduciary responsibility as a result of a centralized team tasked with overseeing functions
3. Administrative relief - single Form 5500s and a single audits

Over the past five years or so, unions and trade associations have been the primary users of MEPs, offering “closed” MEPs for affiliated parties only. More recently, unaffiliated MEPs or “open” MEPs are once again gaining traction in the industry.

What’s the Problem?

The advantages sound good, huh? Then why haven’t we seen a rush into more open MEPs? The primary reason is the DOL and legislation. At one point in the early 2000s, MEPs started to gain some traction in the private sector after they saw how the unions were benefiting. But then in 2012, the DOL stepped in and said “I don’t think so.” The DOL issued an opinion that is summarized as follows:

1. Open MEPs are not single plans for ERISA purposes
2. In order to be considered a single plan (which is where the major advantages apply), all members must have an affiliated relationship

After the option letter, the industry forgot about MEPs and existing open MEPs were unwound. The affiliated organizations maintained their structures, but the industry was scared to move forward.

Congress Gets Involved and RESA

Many members of Congress believe that MEPs can improve coverage, governance, and reduce long-term costs in the retirement system. Many legislators have jumped on board to override the DOL's opinion letter, most recently with the Retirement Enhancement and Savings Act (RESA) of 2016. This piece of legislation supporting MEPs unanimously passed the Senate Finance Committee but never went to the full chamber for a vote. RESA, which is now expected to pass soon after the President's recent encouragement and includes many other provisions to aid in retirement savings, places a favorable opinion on MEPs. Most notably, RESA outlines specific requirements to be able to participate in an open MEP.

Another Acronym

RESA, in an attempt to simplify, introduces a new acronym, PEP (Pooled Employer Plan), which is essentially the term for an open MEP. The nature of the PEP is that, if it meets certain requirements, it is viewed as a single plan for ERISA purposes thereby overriding the DOL's opinion letter. The requirements to qualify for PEP status in RESA are summarized below:

- The PEP must be overseen by a single provider that accepts responsibility for oversight of the plan (as defined by ERISA Section 3(16),
- Must identify trustees that are not participating employers,
- Impose no unreasonable restrictions, fees or penalties, and
- Employers remain responsible for investment selection and monitoring

What Should I Do if This Sounds Like a Solution for my Plan?

At this time we have to wait until RESA is passed. We also have to wait on clarifying language. For example, can a single investment adviser organize a single investment line-up? How do you qualify as a provider to run a PEP? Can trustees be individuals? Although we are still in the infancy stages for an open MEP, this may be the beginning to a new retirement plan offering, plan design, and service provider structures.

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