What Is A MEP?

- A plan that covers employees of two or more *unrelated* employer
  - Not the same as multiemployer plan
What Does “Unrelated” Mean?

• Not part of the same controlled group or affiliated service group*

• Degrees of unrelatedness
  – Partial overlap
  – No overlap
  – Commonality and control

*Check out workshops 26 (Advanced Affiliated Service Groups), 31 (Who’s The Employer, Part 1) and 38 (Who’s The Employer, Part 2)

That’s What The DOL Said...

(Advisory Opinion 2012-04A)

• No two, unrelated employers may co-sponsor a single ERISA retirement plan unless those employers are...
  – Members of a group with an "association" type of relationship, and
  – Members of that association control the plan, directly or indirectly

• Determination of commonalty and control is based on existing guidance, including MEWA rulings
The Two Cs

• Commonality
  – Participating employers must have a “common employment bond”
    • e.g., a group of YWCA chapters, which share close operating relationships separate from the participation in the MEP
    • Chambers of Commerce likely too broad

• Control
  – Exercised either directly or indirectly by participating employers
    • May be problematic for PEOs

Association MEPs

• No single MEP when members include non-employers (especially if non-employers can control the plan)
  – Participating entities must be employers or employee organizations
  – Issue when owner-only company joins an otherwise appropriate association plan
Open MEP - One Plan Or Multiple Plans?

• Yes
  – Multiple plans under ERISA
  – One plan for Code qualification

• Leads to some interesting disconnects in plan operation

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<tr>
<th>Canine Calling Productions</th>
<th>Dirty Dog Records</th>
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Controlled group = not a MEP
### Canine Calling Productions vs Dirty Dog Records

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Not a controlled group = Closed MEP

### Him vs Her

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<th>Him</th>
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Also not a controlled group = Open MEP
Commonality and Control??

Plan Documents
Plan Documents

- Lead employer adopts a plan
  - Others join as adopting employers using participation/joinder agreements
- No MEP prototypes prior to PPA restatement

Single “Master” Document

- Joinder/participation agreements for adopting employers
- Plan design limitations
- More typical in closed MEPs
Separate(ish) Documents

• Customized adopting agreement for each adopting employer
• Expand or limit design as needed
• Service provider can amend on behalf of sponsors
• More typical in open MEPs

Plan Documents

• Other (mainly open MEP) considerations
  – Disgorgement features
  – Allocation of responsibilities
• Participation/joinder agreement
  – What about members of a controlled group or affiliated service group?
• Merger and transfer agreement?

Exiting

• Can you get out?
  – Some MEPs limit the ability to exit
• Does exiting employer wish to maintain a plan?
  – Restate onto stand-alone plan document
  – Spin-off agreement to transfer assets
• Can employees get their money?
  – Likely no distributable event
  – Spin-off then terminate
Service and Compensation

Service

- Aggregation of all service with all adopting employers
  - Eligibility
  - Accruals
  - Vesting
  - Distributable events
Compensation

• Depends on the reason
  – Annual additions limit = aggregated
  – Pretty much everything else = separate
    • HCE determination
    • Key employee determination
    • Testing
    • Allocations

Testing
Nondiscrimination testing

• HCE and key employee determination
  – Separate for each employer
    • Includes ownership, comp and officer status

Nondiscrimination testing

• Each employer tested separately
  – Coverage
  – General nondiscrimination
  – ADP/ACP
  – Comp ratio, if applicable
  – Top heavy
# Government Filings

<table>
<thead>
<tr>
<th></th>
<th>Closed MEP</th>
<th>Open MEP</th>
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</thead>
<tbody>
<tr>
<td>Number</td>
<td>One (entire MEP)</td>
<td>Multiple (each employer)</td>
</tr>
<tr>
<td>IQPA Audit</td>
<td>One (entire MEP)</td>
<td>Multiple (each plan &gt;100)</td>
</tr>
<tr>
<td>80/120 Rule</td>
<td>Entire MEP</td>
<td>Each employer</td>
</tr>
<tr>
<td>Signature</td>
<td>Probably lead employer</td>
<td>Plan Admin?</td>
</tr>
<tr>
<td>Transfers in/out</td>
<td>Probably yes</td>
<td>Probably no</td>
</tr>
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Form 8955-SSA

• Closed MEP
  – Single filing for the entire MEP
• Open MEP
  – Separate filing for each employer
Bonding

• A single bond can cover multiple plans
  – See FAB 2008-04, Q&A 23
• Bond amount must be at least equal to the sum of the required bond amounts for each underlying plan
  – 10% of assets of each plan with $500,000 cap applied separately to each plan

Audit Risk

• IRS/DOL use Forms 5500 to select plans for audit
• 1,000 adopting employers with separate 5500s = 1,000 opportunities for plan to be selected for audit
  – Separate plans under ERISA, so DOL likely to look only at individual employer
  – Single plan under the Code, so IRS could look at entire plan including all adopters
One Bad Apple Rule

• Qualification failure by single adopter jeopardizes the entire plan
• EPCRS user fee determined on individual employer basis
• Lead employer must submit
Questions

• Employer is currently part of PEO and wants to change providers
• Questions
  – What plan documents are required?
  – What takeover information should you request?

Case Study #2
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Prior to 2012

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As of January 1, 2012
Other Details

- Canine Calling Productions 401(k) Plan established as January 1, 2007
  - Nonstandardized prototype
  - Timely restated for EGTRRA
  - Timely adoption of interims
- Employees of both companies covered since plan establishment
  - Dirty Dog never signed joinder/participation agreement
- Aggregated for testing since plan establishment

Questions

- MEP or not?
  - If MEP, open or closed?
- What about the plan document?
- What about testing?
Mid-Year Split

- No real guidance
  - Plan document
    - Is there a transition period?
    - What about safe harbor plans?
  - Coverage: probably 410(b)(6)(C) transition period
  - ADP/ACP: no transition period.

Mid-Year Split
Assume Ownership Change as of July 1st
Two Tests?

Test 1

- Canine Calling (January 1 – June 30)
- Dirty Dog (January 1 – June 30)

Test 2

- Canine Calling (July 1 – December 31)
- Dirty Dog (July 1 – December 31)

Three Tests?

Test 1

- Canine Calling (January 1 – June 30)
- Dirty Dog (January 1 – June 30)

Test 2

- Canine Calling (July 1 – December 31)
- Dirty Dog (July 1 – December 31)

Test 3

- Canine Calling (January 1 – June 30)
- Dirty Dog (January 1 – June 30)
Case Study #3

Plan Document Issues

• Each employer has own document
  – No master document
• Most adoption agreements are not signed
• Many have joinder/participation agreements
  – Very few are completely executed
• Many with pre-MEP plans have resolution to terminate and adopting of MEP
  – No/limited merger language
Plan Document Issues

• Pre-approved documents from multiple document providers used
  – Some prototypes and some volume submitters
  – Trust agreement from one provider used with adoption agreement from another
  – Some list plan name as MEP, others list it as individual employer, e.g. ABC Company 401(k) Plan

Forms 5500

• Separate forms filed for each employer
• Effective date
  – Some show date of MEP adoption, some show “prior” plan effective date
Questions?

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