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A Basic “Comparison Glossary” for MEPS and MEP Types After the SECURE Act

“Aggregating” plans has now taken center stage with the passage of the SECURE Act. We now often find ourselves a bit muddled by the new array of terms with which we now need to deal. Keep this as a (hopefully) handy glossary to guide when you find yourself caught in the middle of a conversation about “Multiple Employer Plans, and need to quickly summarize the different MEP types:

1. **MEP:** This is your plain vanilla, traditional “Multiple Employer Plan.” Yes, they will still exist after all is said and done, and if you have a MEP that meets all of the pre-SECURE Act rules regarding “commonality and control” (including the regs which also describe PEO MEPs (see #6) and Association MEPS (see #5)), you don’t need to do anything—EXCEPT that the (i) plan terms must provide for a simplified “One Bad Apple” (or unified plan rule, see #8) and (ii) there are new Form 5500 reporting requirements.

2. **PEP:** A PEP is a “Pooled Employer Plan.” Simply put, it’s a still MEP, (I guess you should call it a PEP MEP), but one that doesn’t fulfill the “commonality” requirement under #1. Instead, the PEP will qualify as a MEP as long as it has something called a “Pooled Plan Provider” (a PPP, see #3). Yes, the MEP that’s a PEP will also (i) have to have a simplified “One Bad Apple” (or unified plan rule, see #8) rule in its terms, and (ii) have special Form 5500 reporting requirements.

   *PS: IRAs can be PEP MEP, too.*

3. **PPP:** A PPP is the “Pooled Plan Provider” that has to be hired by the PEP in order to qualify as a MEP. A PPP is a “person” (it really can be anybody: TPA, and insurance company, a mutual fund management firm, a broker, or even just an individual!) that is

   - “a” named fiduciary (which simply means it is named as a fiduciary in the plan documents) which accepts full responsibility, in writing, for the plan meeting the terms of ERISA and the Code;
   - registers with the DOL as such, before becoming a PPP;
• the participating employer agrees to provide to the PPP the info needed to properly operate the plan; and
• the PPP makes sure all parties handling plan assets are bonded.

A traditional MEP (see #1) doesn’t qualify as a PEP. And until the DOL and IRS issue guidance on how you do a PEP, you can operate under a good faith basis after the effective date.

PS: Each Participating employer in the PEP is still considered a plan sponsor.

4. Group of Plans: A Group of Plans, as of yet, has no acronym (though I guess we can call them GOPs). It is neither a MEP nor a PEP MEP. It’s just a bunch of unrelated employers who can file a “combined” Form 5500 if they have the same:

• Trustee,
• Plan administrator,
• Plan year, and
• Investments or investment options.

The idea of a GOP is that if you don’t meet the MEP rules under #1, and you have no interest in joining a PEP under #2 by using a PPP under #3, you can still get economies of scale by entering into common contractual/ fiduciary arrangements with unrelated employers- by filing a single 5500 in the same way a MEP or PEP MEP can. This option may prove more valuable than a MEP or PEP.

5. ARP: This is an acronym for the “Association Retirement Plan.” This term was coined by the DOL’s new regulation on MEPS. All it does is refer to the traditional MEPS (see #1), under which the DOL somewhat expanded the definition of what constitutes an “association” (and therefore has “commonality”). They still exist after the SECURE Act.

6. PEO MEP: The “bona fide Professional Employer Organization” was permitted by the new DOL MEP reg to sponsor a traditional MEP (see #1) as long as it meets certain criteria. These still exist after the SECURE Act, but a PEO which questions whether they actually meet the DOL regs’ rules may want to consider operating as a PEP MEP instead.

7. Corporate MEP: This is another new MEP term coined by the DOL in its new reg, and which still exists after the SECURE Act. It simply refers to those plans which had once covered all the members of a controlled group, and the controlled group became “uncontrolled”(my term!) by a change in ownership; or refers to those closely associated groups (such as affiliated service groups) which are covered by the same plan. The DOL recognizes that these may or may not meet the ARP rules (see #5), and typically not the PEO MEP rules (see #6), but something needs to be done about them. They have asked for comments on what to do with them. A PEP (see #2) may work in these circumstances.

8. Unified Plan Rule, or "One Bad Apple Rule": This also has no acronym, but is worth putting in this glossary. The IRS put out extensive rules which would relieve MEP participating employers of the fear of on bad acting employer from “disqualifying” the plan for all the other
participating employers. The IRS coined the term “unified plan rule,” I assume because “One Bad Apple” sounds goofy in a reg. In any event, it was a complex set of rules which were proposed by the IRS. SECURE completely gutted that proposal, simply saying that to qualify for this relief, the plan must merely provide for a process to disgorge the “bad apple” from the plan.

9. Open MEPs®. Prior to the Secure Act, this term referred to at least two different things: either a MEP of unrelated employers, or a MEP that was treated as a single plan under the Tax Code, but also as multiple plans under ERISA. Because a plan of unrelated employers will now be technically a "PEP," and given that the Open MEP term is, after all, a registered trademark, I would expect the term PEP to supplant it's use except by its owners.

A caveat: this Glossary is highly simplified, and is designed to lay out the major concepts of these programs in an understandable form. Each rule described above has a number of important details which need to be followed which are not discussed here.

"Effective Dates" Listing for the SECURE Act Provisions

The SECURE Act will make substantial and highly technical changes to some very specific elements of retirement plan laws, many to which we have been putting a good deal of attention (and written about here) throughout the years-like distribution of 403(b) custodial accounts; aggregating 5500s of unrelated plans; MEPs (see the Multiple Employer Plans Topics Categories in this site's "Topics" sidebar); and the fiduciary safe harbor for annuity purchases. Before we try wrap our heads around the details of all of these changes, I thought it would be helpful to list-in chronological order-the effective dates for these changes to help in prioritizing what to pay attention to first. With one exception noted in bold below, the section references are to the SECURE Act which are picked up in "Division O" of the legislation. Note that some of these effective date provisions have certain caveats and conditions, so I recommend you look up the relevant date that interests you before making any determinative statement about that date!

Effective for years beginning before, on, or after the date of the enactment

Sec. 111. Clarification of retirement income account rules relating to church controlled organizations.

**Taxable years beginning after December 31, 2008.**

Sec. 110. Treatment of custodial accounts on termination of section 403(b) plans.

**Plan years beginning after December 31, 2013**

Sec. 205. Modification of nondiscrimination rules to protect older, longer service Participants. *(this effective date applies if elected by sponsor).*
2014 Calendar Year?

Sec. 401. Modification of required distribution rules for designated beneficiaries. (Effective date is the “first calendar year” to which the new 10 year rule applies, which includes any past beneficiaries who are currently subject to the old 5 year rule).

Plan years beginning after December 31, 2015.

Portion of Sec. 116 which provides past relief for plans which had excluded difficulty of care payments as compensation for determining the 415 limit.

Plan years ending after December 31, 2017.

Sec. 115. Special rules for minimum funding standards for community newspaper plans.

Distributions made after December 31, 2018

Sec. 302. Expansion of section 529 plans.

Date of Enactment

Sec. 108. Qualified employer plans prohibited from making loans through credit cards and other similar arrangements.

Sec. 116. Treating excluded difficulty of care payments as compensation for determining retirement contribution limitations (for contributions after date of enactment, except see relief provided to 2015, above).

Sec. 204. Fiduciary safe harbor for selection of lifetime income provider. (technically, there is no effective date, but applies as of the “date of selection” of the annuity, which can only meet these requirements once the Act is enacted....)

Sec. 205. Modification of nondiscrimination rules to protect older, longer service Participants (if earlier effective date not elected).

Plan years beginning after December 31, 2019.

Sec. 102. Increase in 10 percent cap for automatic enrollment safe harbor after 1st plan year.

Sec. 103. Rules relating to election of safe harbor 401(k) status.

Sec. 202(d, ). Clarification relating to numbering of returns for deferred Compensation plans (see separate effective date for 202a),(b) and (c).

Sec 104 of Division M—Bipartisan American Miners (allowing in-service withdrawals from governmental 457(b) plans at age 59 1/2)
Taxable years beginning after December 31, 2019.

Sec. 104. Increase in credit limitation for small employer pension plan startup costs.

Sec. 105. Small employer automatic enrollment credit.

Sec. 106. Certain taxable non-tuition fellowship and stipend payments treated as compensation for IRA purposes.

Sec. 107. Repeal of maximum age for traditional IRA contributions.

Sec. 109. Portability of lifetime income options.

Sec. 113. Penalty-free withdrawals from retirement plans for individuals in case of birth of child or adoption.

Sec. 114. Increase in age for required beginning date for mandatory distributions (for distributions required to be made after December 31, 2019, with respect to individuals who attain age 701/2 after such date).

Sec. 201. Plan adopted by filing due date for year may be treated as in effect as of close of year (for plans adopted after 12/31/2019).

Sec. 206. Modification of PBGC premiums for CSEC plans.

Sec. 301. Benefits provided to volunteer firefighters and emergency medical responders.

Calendar year after December 31, 2019

Sec. 402. Increase in penalty for failure to file (applies to return due dates after this date).

Sec. 403. Increased penalties for failure to file retirement plan returns (this includes the increased IRS Form 5500 non-filer penalty, applies to returns and notice due dates after this date).


Sec. 101. Multiple employer plans; pooled employer plans.

Sec. 112. Qualified cash or deferred arrangements must allow long-term employees working more than 500 but less than 1,000 hours per year to participate. (except that, for purposes of section 401(k)(2)(D)(ii)-which was added by the Act- the 12-month periods beginning before January 1, 2021, shall not be taken into account).

Plan years beginning after December 31, 2021.
Sec. 202(a), (b) and (c). Combined annual report for group of plans *(except that the modifications to the Form 5500 must implemented by the IRS and DOL not later than January 1, 2022).*

*Last day of the first plan year beginning on or after January 1, 2022, or such later date as the Secretary of the Treasury may prescribe.*

Sec. 601. Provisions relating to plan amendments.

*More than 12 months after the latest of the issuance by the Secretary of Labor of interim final rules, the model disclosure, and the assumptions upon which notices are based.*

Sec. 203. Disclosure regarding lifetime income.