

Taking Over A MEP
Workshop #54, October 20, 2015



Presented by:
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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)



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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



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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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Canine Calling Productions	Dirty Dog Records
50%	50%
50%	50%




Controlled group = not a MEP



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	Canine Calling Productions	Dirty Dog Records
	50%	34%
	50%	34%
	0%	22%

Not a controlled group = Closed MEP

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	Him	Her
	100%	0%
	0%	100%
		

Also not a controlled group = Open MEP

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Commonality and Control??

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Plan Documents

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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



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Plan Documents

- Other (mainly open MEP) considerations
 - Disgorgement features
 - Allocation of responsibilities



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- Participation/joiner agreement
 - What about members of a controlled group or affiliated service group?
- Merger and transfer agreement?



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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



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Service and Compensation



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Service

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



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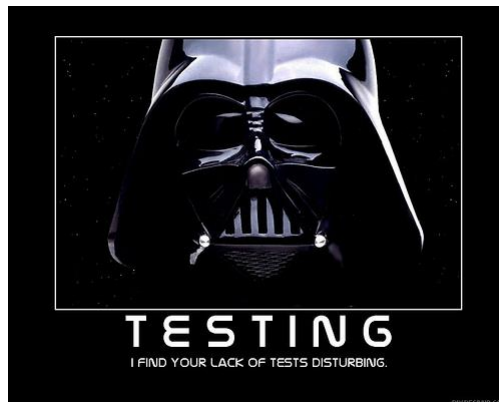
Compensation

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



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Testing



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Nondiscrimination testing

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



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Nondiscrimination testing

- Each employer tested separately
 - Coverage
 - General nondiscrimination
 - ADP/ACP
 - Comp ratio, if applicable
 - Top heavy



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Government Filings



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Form 5500

	Closed MEP	Open MEP
Number	One (entire MEP)	Multiple (each employer)
IQPA Audit	One (entire MEP)	Multiple (each plan >100)
80/120 Rule	Entire MEP	Each employer
Signature	Probably lead employer	Plan Admin?
Transfers in/out	Probably yes	Probably no



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Form 8955-SSA

- Closed MEP
 - Single filing for the entire MEP
- Open MEP
 - Separate filing for each employer



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miscellaneous[™]
stuff



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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



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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



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One Bad Apple Rule

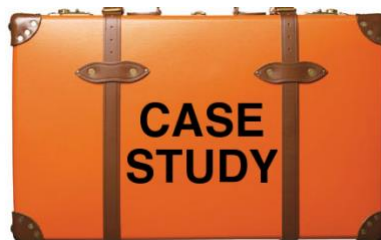


- Qualification failure by single adopter jeopardizes the entire plan
- EPCRS user fee determined on individual employer basis
- Lead employer must submit



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Questions

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



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Case Study #2



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	Canine Calling Productions	Dirty Dog Records
	50%	50%
	50%	50%

Prior to 2012

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	Canine Calling Productions	Dirty Dog Records
	50%	34%
	50%	34%
	0%	22%

As of January 1, 2012

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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.



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Mid-Year Split

Assume Ownership Change as of July 1st



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Two Tests?

Test 1



Test 2



Three Tests?

Test 1



Test 2



Test 3





Case Study #3



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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



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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



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Forms 5500

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



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Questions?

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