Everybody into the Pool?

By Kerry Pechter *Thu, Jun 28, 2018*

If pending legislation passes, retirement service providers could begin to sponsor 401(k) plans. Asset managers are especially keen on these 'pooled employer plans' or 'open MEPS.'

Imagine a future where employees from many different companies belong to a tax-deferred, auto-enrolled defined contribution savings plan at work whose sponsor is not an employer or an employees' union but by a plan recordkeeper or asset manager or retirement plan consultant.

We're talking here about "open MEPs" (open multiple employer plans) or "PEPs" (pooled employer plans). These would be omnibus DC plans that many small employers (or even many mid-size or large employers) without any "commonality," such as a shared union, could join.

In a series of stories in coming weeks, we'll explore this topic. There's some suspense and uncertainty surrounding these plans. That's partly because new federal legislation that would enable has stalled, despite lobbying by asset managers, as represented by the Defined Contribution Institutional Investors Association (DCIIA).

There's also a fair amount of conflicting information about MEPS. For instance, the Retirement Enhancement and Savings Act of 2018 (RESA), which would remove existing legal obstacles to these plans, states that "multiple employer plans (MEPS) provide an opportunity for small employers to band together to obtain more favorable pension investment results and more efficient and less expensive management services."

But, as you'll hear below, that's not how plans would work. The law would enable DC plan service providers to sponsor 401(k) plans and then invite employers to join. Importantly, employers would have fewer administrative chores, expenses and legal liabilities than they do when they sponsor a 401(k) plan themselves.

There's also some confusion over the acronyms used to describe these plans. In RESA (there are **House** and **Senate** versions), these plans are called MEPS. But the same acronym is also used to describe union-sponsored defined benefit (DB) plans, a dying concept. Many of those plans are currently underfunded and may eventually need a federal bailout.

To distinguish between the two acronyms, defined benefit MEPS are referred to as “closed multiemployer plans.” Closed, in this context, means that only employers with “commonality”—like being in the candy industry and employing members of a confectionary workers union—can join. The new MEPS are “open multiple employer plans.” Almost any employer could join one.

In addition, there’s some uncertainty about what these new provider-sponsored plans would accomplish. The Defined Contribution Investment Industry Association positions them as a partial remedy for the fact that tens of millions of small company employees don’t have access to a savings plan at work, a problem known as the “coverage gap.”

Currently, big asset managers say that the balances in small plans are too low and too widely dispersed to be financially attractive to manage. But that might change, it’s often said, if they could pool the assets of tens or hundreds of small or mid-sized companies.

RIJ will look more closely into all of these issues, including the success of a similar concept, call master trusts, in Britain. In this initial installment, we’ll clarify the source of the push for open multiple employer plans.

Industry-driven

Open MEPS are almost uniformly described as a path for small employers, with or without 401(k) plans at present, to collaborate and purchase retirement plan services more cheaply in bulk—the way 100 unaffiliated grocers in New York and Connecticut banded together in 1926 to create the Independent Grocers Association (IGA) to buy groceries in bulk.

“The question is, ‘Will [open MEPS] be employer-driven or will it be provider driven?’ and I think that it’s clearly going to be the latter,” said Seth Harris, a former Deputy and Acting Secretary of Labor in the Obama Administration, speaking at a recent Insured Retirement Industry conference.

“Smart third-party providers will come together and market plans to small and mid-sized companies to convince them to participate in their plans,” Harris told *RIJ*. “If we were going to see the first model, the employer-driven model, we would have already seen it. That’s not what’s happening now.”

Brad Campbell, a former head of the Department of Labor’s Employee Benefit Security Administration, agreed with Harris. “It will be provider driven,” he told *RIJ*. “I also think that open MEPs are a far better solution to the coverage problem than the state-based programs, which offer smaller opportunities for savers and which are prone to abuse by the states." But Campbell said he doubted that getting RESA passed will be easy.

Steve Saxon, a pensions expert at the Groom Law Group in Washington, D.C., told *RIJ*, "I agree that the open MEP phenomenon will be service provider driven. And I think that within two years after this thing passes you'll see enforcement initiatives at the Department of Labor."

Expanding on that point, he added, "There will be abuses in this space by conniving service providers who take advantage of small employers. The potential abuses are that (1) nobody is monitoring the plan administrator and (2) the fees paid for administration are too high. Both of these can be addressed by making sure the employers that participate in the MEP are made responsible for paying attention to these two things."

The precise amount of responsibility that employers would have in an open MEP is one of the issues we'll address in future installments of this series.

Next installment: The federal legislation that would make open MEPS possible.