

2020 MEP/PEP Conference

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All Hands on Deck!

How to Go From Zero to MEP in 60 (?) Days

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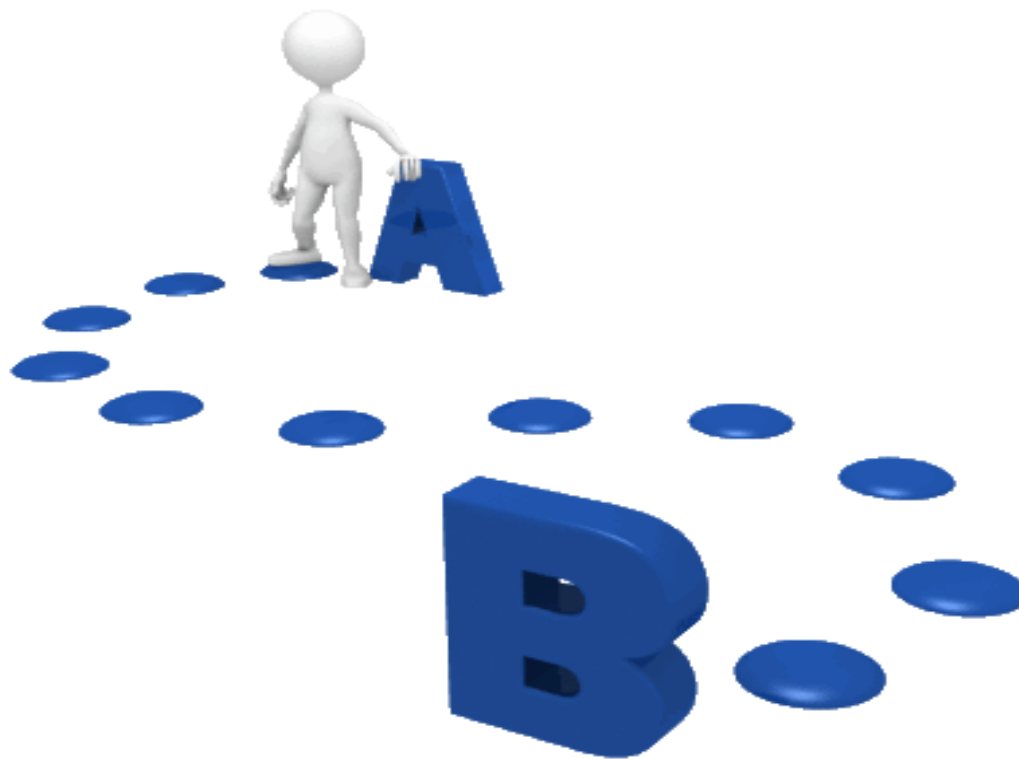


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Agenda

- Let's Do It! vs. How Will We Do It?
- Getting the Responsibility ... **BUT NOT MORE THAN YOU PLANNED ON!**
- How to Reach Agreement Between the Players Without **SQUEEZING OUT** All the Juice
- **STRICT BORDERS** vs. **Osmosis**: Acting For the Common Good



THE “LET’S DO IT!” VS. THE “HOW WILL WE DO IT?”

You May Have Noticed ...

- There are often two types of people behind a new initiative at a pension-related organization:
 - The Visionaries
 - The Practicals



Visionaries

- See an opportunity coming and appreciates when it can be a game changer
- Have great enthusiasm for new ideas and change
- Often impatient to get going
- Commonly “big picture” people who may not appreciate what needs to take place to realize the vision





When Visionaries See MEPs, They See ...

- The chance to be at the forefront of what is clearly a **quantum change** in the provision of pension benefits
- The chance to take advantage of a **friendly federal government attitude**
- The chance to **appeal to a whole new demographic** of clients
- The chance to convert smaller plans with minimal profit margins into **efficient profit centers**

Practicals

- Often see the same opportunities as the visionaries ... but also see that there are steps that need to be taken to reach the goal
- See potential downsides to change and unproven new ideas
- Often nervous about moving forward too quickly
- Very detailed, and sometimes see the trees and not the forest



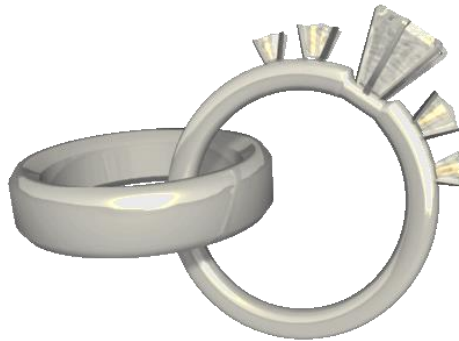


When Practicals See MEPs, They See ...

- The chance to be at the forefront of what is clearly a **quantum change** in the provision of pension benefits
- The **opportunities available** in the new endeavor
- The **challenges** associated with change and the **need to be careful**
- The **possibility of going down the wrong road** in the quest to being the first to reach goal

What Does This Have to Do With MEPs?

- To get a MEP going, you need a happy marriage between the visionaries and the practicals
 - Speed, enthusiasm, definite “green light” when we can go ahead for the visionaries
 - Well thought out process, attention to the planning details for the practicals



Here's a Suggestion

- Appoint a quarterback to run the process, who has the following characteristics:
 - Can talk to both visionaries and practicals
 - Good at project management
 - Has enough authority to keep people in line
 - Has enthusiasm for the project
 - Either knows about MEPs or can learn fast enough to lead the parade

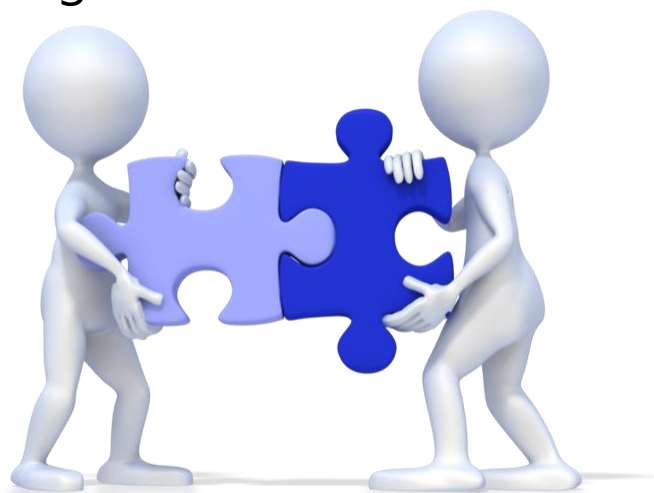


How to Get the Two Together

- **Step 1:** Visionaries Articulate Their Vision
 - MEP or PEP? (i.e., who will sponsor the plan?)
 - Intended “target” for the MEP: what kind of employers, what kind of plans?
 - E.g., smallest of employers, start up plans vs. mature plans vs. association plans
 - E.g., lots of flexibility in the plan vs. strong structure for ease of administration
 - Level of service intended?
 - E.g., high touch – very little left to the adopting employer
 - E.g., lower touch – lots of responsibility left to the adopting employer

How to Get the Two Together

- **Step 1:** Visionaries Articulate Their Vision
 - Intended partners in providing the MEP
 - Building a team vs. running a program?
 - Will determine level of buy-in by the parties
 - Shared vs. delegated responsibility: can affect liability level
 - BTW, do we already know who are partners are, or are we going shopping?

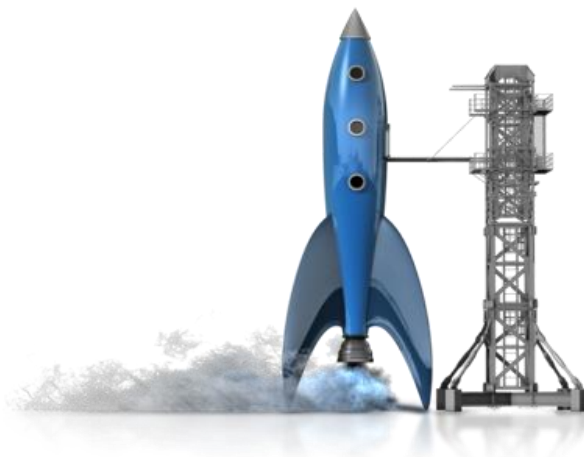


How to Get the Two Together

- **Step 2:** Work Together to Plan the Process
 - The more organized the planning is, the easier things will be and the better the chances that the MEP will get launched when intended
 - Key element: who is “in the know” that can drive the process?
 - Need to plan the team:
 - Sponsor (PPP if PEP)
 - Plan Administrator (PPP if PEP, but could hire 3(16))
 - Investment manager to choose portfolio for participants
 - Recordkeeper
 - Attorney
 - Auditor

Key Consideration

- Once you detail the process, you will be able to see whether the original “launch” date is realistic
 - The detailed plan will be compelling evidence of what can be done, even for those anxious to get moving
 - If needed, modify the launch timing



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How to Get the Two Together

- **Step 3:** Follow the Plan
 - Keep to the planned process and keep track of deadlines
 - Don't let anyone drag the process down or jump the gun





**GETTING THE RESPONSIBILITY ... BUT
NOT MORE THAN YOU PLANNED ON**

The Essence of MEPs is Delegation

- Although many intend MEPs to be cost savers, the real cost savings for the employers is likely to be in the delegation of duties and responsibilities
 - Freeing up HR staff that is mired in retirement plan minutiae to do other work
 - More efficient interface with service providers
- It is important to know what the MEP can and will take off the employer's plate ... and who will do that work

Critical Issues

- All the MEP documentation must support the relationships between the parties, the power and responsibility in the correct hands, and the structure of the program
 - Who is in charge?
 - Who is doing what?
 - Who resolves ambiguities?
 - Where does the buck stop?
 - Who interfaces with the adopting employers and participants?

What Will the MEP Providers Do?

- Who is the sponsor?
 - PEP/Open MEP: PPP (or service provider) is the sponsor and will run the show
 - All other service providers are delegates of the PPP (unless the PPP position is somehow shared ... if it can be)
 - Adopting employers will likely come into play as clients, not as participants in the design
 - Other MEPs (such as association MEPs or PEO MEPs)
 - The sponsor is the entity that is being serviced
 - The sponsor will retain overarching authority, but is delegating the hands-on work to others
 - All service providers are subject to termination

What You Need to Accomplish

- Design the MEP itself (plan provisions, relationships between service providers, fees to be charged, etc.)
- Assemble the correct team
- Fine-tune the goals
- Get the plan documents and other legal work to be signed by adopters done
- Get the service agreements between the providers done
- Design/generate the marketing materials
- Go sell!

MEPs Are New to Many

- It is possible that the MEP sponsor or the first service providers it turns to are not in the position to run the development of the plan
- Consider hiring someone else to be the “quarterback”
 - Someone who is experienced and who will be part of the team; or
 - A consultant that can help with the set-up

Example

- ABC Chamber of Commerce wants to sponsor a MEP for its members
- ABC contacts the TPA that handles its 401(k) plan to see if this is possible
 - The TPA has never worked on a MEP but is enthusiastic about getting involved
 - Can the TPA truly “run” the process or is someone else needed?
 - Does the TPA have any existing relationships that can be leveraged to get the MEP off the ground?

Example (cont'd)

- The TPA contacts a consultant he saw speak at a conference about MEPs and hires her to be the quarterback of the process
- The consultant takes charge of the process and helps:
 - The TPA get acclimated to MEP rules and practicalities;
 - The Chamber to understand its responsibilities;
 - Get the “team” together to handle the MEP; and
 - Ensure that everything gets off the ground.

Knowledgeable Team

- All the providers must be in a position (i.e., have both the knowledge and the tools) to service the MEP
 - Recordkeeping obligations
 - Investment manager needs to consider the unique aspects of the participating employers and employees, as well as the challenges caused by the diversity of these parties
 - TPA and auditor must understand what compliance is effected on an adopting employer level and what is done on the MEP level

Education/Systems

- The Plan Sponsor and Plan Administrator must make sure that:
 - All team members understand their responsibilities and undertake them
 - If they need education, how will it be handled and by whom?
 - How will their performance be monitored?
 - The adopting employers have proper expectations about the services to be provided and their respective responsibilities
 - They are able to manage the process appropriately



THE DETAILS ... REACHING AGREEMENT WITHOUT “SQUEEZING OUT ALL THE JUICE”

Division of Responsibility and Labor

- The Plan Sponsor needs to decide what to handle and what to delegate (and to whom)
- The Plan Sponsor needs to get service agreements with everyone to whom it is delegated
 - Just having an agreement isn't enough
 - You want to make sure that the agreement does its job

What Should Service Agreements Do?

- A good service agreement should:
 - Delegate the right stuff; retain the other stuff
 - Identify the parameters of a “good job”
 - Provide protections to the plan sponsor if a good job is not done
 - Protect the service provider from responsibilities it does not intend to take on
 - Clearly provide for charges and payment terms
 - Allocate risk and liability properly
 - Identify fiduciary status where appropriate

Should Someone Scrutinize the Service Agreements?

- **YES!**
- The key: be concerned about what is important and don't be concerned about what is not
 - Avoid wordsmithing for no reason (but be sure language is clear) and other over-lawyering problems
 - Make sure that the control of the tasks is in the correct hands (don't micromanage, but don't overdelegate)

Plan Document Structure

- What the documents should look like:
 - “Main plan”: the governing document for the overall MEP
 - Commonly preapproved plan or modified preapproved plan
 - Adoption Agreement outlines the changeable specifications for the plan sponsor
 - “Joinder Agreements”: the part of the plan where the adopting employers sign on and choose between their options

The Truth About Plan Documents

- Few or none of the plan document providers has a system that automatically generates a Main Plan and a Joinder Agreement that clearly delineates the options available to the adopting employer
 - Historically, someone will “modify” the preapproved document to turn it into the Joinder Agreement
 - Commonly, the documentation is inadequate
- The good news: most major providers are “working on it” in connection with PEPs

What You Should Do

- Get an ERISA lawyer involved Really!
 - Make sure that the plan document is not hopelessly ambiguous
 - Make sure that the respective responsibilities under the plan are properly delegated
 - Make sure that the adopting employer can only select plan provisions from approved choices
 - Make sure that the adopting employer's choices are not accidentally overridden by the main plan

Make Sure That the Goal Drives the Documents (and Not Vice Versa)

- With regard to the Plan documents and the service contracts, make sure that the lawyer understands what is expected:
 - The parties want a *practical* approach
 - No over-lawyering; but
 - No disregarding of the important
 - You want to make sure that the paperwork facilitates the process without leaving the plan sponsor and the service providers vulnerable to unexpected liability

The Process Requires Balance

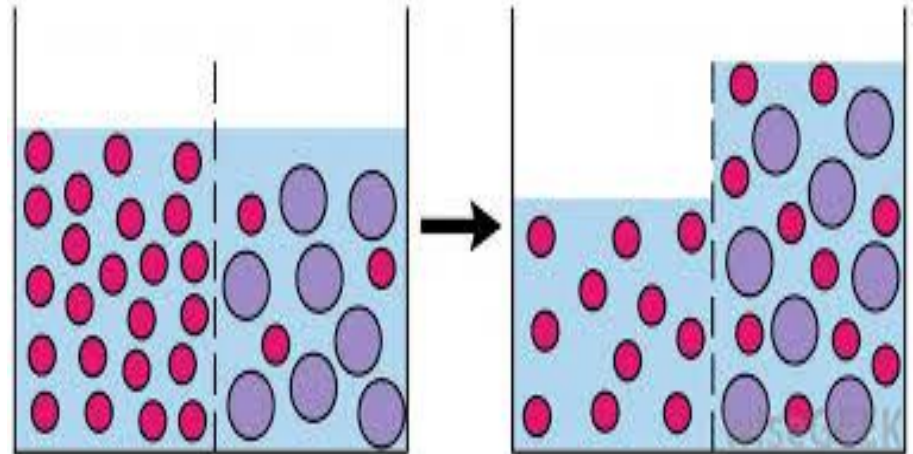
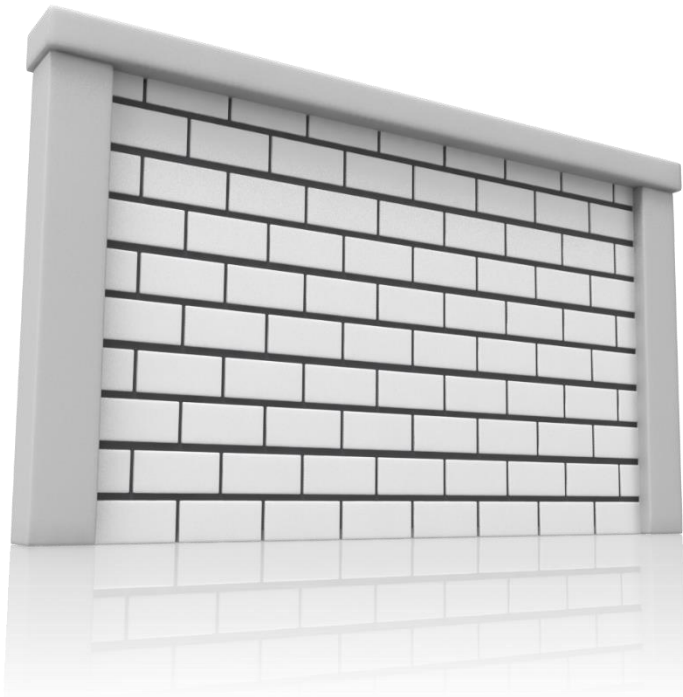
- The practical structure so the program can work
- The proper level of protection for all the parties
- The i's dotted and the t's crossed for plan qualification
- A product that is attractive to both the clients and those who will sell it to them

The Quarterback ... Again

- The person with authority to oversee the project must be someone who understands the balance between the practical and the visionary
 - If the MEP is all about the glitz, it will leave everyone in danger
 - If the MEP is all about the details, it will not be attractive to anyone

The Design Process, if Done Properly Will Help

- If the structure, the plan, and the subsidiary legal documents (such as the service agreements) are properly designed:
 - The sales process will not be hampered by the legal work
 - The legal structure will protect all parties
 - The practical operations will be facilitated
 - Noncompliant clients will have accepted the risk of such behavior
 - Everyone will “get along”



STRICT BORDERS vs. Osmosis: ACTING FOR THE COMMON GOOD

Boundaries That Help Not Hurt

- “Good fences make good neighbors” – Robert Frost
 - It is important that the various providers are allowed to do the work they have taken on
 - People stepping outside the lines sometimes complicate the situation and create havoc
 - You do not want to create a situation where no one knows who is “on first”



Strict Boundaries Can Deter Good Service

- It is also important that the MEP is able to handle the unexpected
 - If everyone stays too isolated, the clients can get lost in the middle
 - Everyone could say, “Not my job,” leaving the problem unresolved



Solutions to the Problem

- Someone who is the “clean up hitter”
 - The Plan Sponsor or Plan Administrator should have the job to make sure that the gaps are addressed
 - Assessment of the MEP’s successes and failures and adjust as needed
- Ongoing communication opportunities
 - The “team” of providers should have the ability to report and coordinate with each other so that things go smoothly as issues arise
 - Quarterly or monthly “team meetings”?

Coordinated Deliverables

- From the team members to the Plan Sponsor/Plan Administrator
- From the MEP (as a whole or by provider) to the Adopting Employers
- From the MEP or the Employer to the Participants



Consistency

- All parties to the MEP must understand what is expected
- All parties to the MEP must have a forum to communicate what they need and what problems need to be addressed
- This relationship must be capable of adjustment as time, the legal rules, and the relationships progress

The Buck Stops Here

- The Plan Sponsor or Plan Administrator is ultimately responsible for making sure the MEP runs properly
 - Must manage the MEP
 - Assess its operations
 - Assess the performance of the service providers
 - Determine if the fees charged by the providers is reasonable
 - Are documentary changes needed to the plan, the agreements, the administrative materials, the marketing materials



CONCLUSION

Questions?



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