# The Possibilities Of The 403(b) Association Multiple Employer Plan

In the current 403(b) landscape, plan sponsors face a number of challenges. Multiple employer plans  (MEPs) can provide a solution.

## The Landscape: What Do Nonprofit 403(b) Plan Sponsors Have In Common With Each Other?

### Strong Sense Of Community

A unique characteristic of nonprofit organizations is their strong sense of community. Nonprofits are typically mission driven organizations that exist to improve the quality of life in their communities and beyond. They also share a sense of common identity with other like-minded nonprofit organizations. Through this sense of community, nonprofits often belong to associations where they come together to impart best practices, share needed resources and provide advocacy for their causes.

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## Challenges

After spending close to 20 years in the nonprofit market and having hundreds of conversations with 403(b) plan sponsors and their advisors, it is evident they face very real challenges, particularly in the “small” (under $20M) ERISA market. Changes in 403(b) regulations required plan sponsors to play a more active role in their retirement plans—a role that most plan sponsors were not ready to take on.

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## Plan Document Requirement

Today all 403(b) plans must have a plan document. As 403(b) plan sponsors worked to get their documents in place, they realized they held designated roles such as “named fiduciary” and “plan administrator.” They were now responsible for specific tasks such as diversifying the plan’s investments and running their plan in accordance with the governing document. Many plan sponsors incorrectly assumed these responsibilities were handled by their recordkeeper. 403(b) sponsors are still getting used to these responsibilities and, not surprisingly, many plan sponsors are not operating their plan as their document dictates (i.e., monitoring eligibility, following the plan’s loan approval process, etc.). This may lead to multiple plan failures and required corrections, which can be a painful and expensive process.

## Plan Audit

Larger 403(b) plans are now required to complete a full Form 5500 and are subject to an audit. Nonprofits often struggle with the cost and labor associated with the audit process.

## Investment Menus

Many 403(b) plans have limited investment menus made up of proprietary funds that have been in place for several years. While these menus may be considered “diversified,” they may not be the best choices for participants.

## Limited Budgets

Smaller nonprofits are typically budget-constrained and do not have staffs dedicated to benefits. The staff member assigned to the 403(b) plan usually has several organizational responsibilities and does not have the time or expertise to effectively administer the fiduciary responsibilities of an ERISA retirement plan. They realize they need help and require the assistance of fiduciary advisors/administrators—but do not feel they can afford to pay them.

## Rather Be Doing Something Else

Nonprofit plan sponsors are altruistic individuals committed to enhancing their communities through their missions, leaving little time and enthusiasm for managing their 403(b) plans. Let’s face it: they would rather be doing something else.

If we pause and summarize the above, we know that nonprofit employers are comfortable working within associations to pool resources, accustomed to working with a board to provide oversight, and often do not have the means, expertise or desire to effectively administer their ERISA plans. We also know they want to work with fiduciary experts (advisors / administrators) but do not have the budget to pay them.

Now that we have established the nonprofit landscape and its challenges, we can look at the possibilities of the 403(b) Multiple Employer Plan (MEP).

## MEP As A 403(b) Solution

A MEP joins employers together to pool their purchasing power within a single plan. The costs and burdens of providing an ERISA retirement plan are shared among several employers. The primary advantage of a MEP is the economies of scale that make it affordable for employers to outsource the plan’s principal fiduciary roles and reduce the burden of operating a retirement program.

An association is a logical link for employers who want to come together and create a MEP. The association can make a 403(b) MEP available to its members and, in doing so, demonstrate added value to its membership by providing a high quality retirement plan to member employers who cannot afford one on their own and reducing their members’ risks, headaches and costs associated with maintaining an ERISA retirement plan.

## How It Works

### Basic Structure

Only a 501(c)(3) organization can sponsor a 403(b) plan. A 403(b) MEP can be structured by having an eligible lead sponsor or using a co-sponsorship arrangement. The plan sponsor's only responsibility is to appoint fiduciaries to run the plan. To fulfill this responsibility, the association, with its advisor's help, can create a board of directors made up of association members who would be early adopters of the MEP (the board of directors is similar to a retirement plan committee you typically find in a single employer plan). As mentioned earlier, nonprofits are comfortable with the board construct and understand the value of oversight.

### Professional Fiduciaries Run The Plan

The board of directors appoints plan fiduciaries, including an ERISA Section 3(16) plan administrator and either a Section 3(21) investment advisor or 3(38) investment manager for the MEP. The burden of overseeing the program is shared by the participating nonprofit organizations that are represented on the board, with all fiduciary duties other than oversight and monitoring being delegated to professional fiduciaries. Because the appointment and oversight of the MEP's fiduciaries are handled by a board of directors, the oversight burden of each participating nonprofit employer is dramatically reduced.

It should be noted that Section 413(c) of the Internal Revenue Code, which established MEP arrangements as a viable option for qualified retirement plans, does not mention 403(b) plans. I do not believe that the intent was to prevent 403(b) plans from entering into a MEP. Code Section 413(c) was written at a time when 403(b) plans were contracts between an individual and an insurance company. It was not anticipated that 403(b) plans would benefit from MEP arrangements. The "new" regulations that went into effect in 2009, required ERISA 403(b) plans to follow the same basic rules as other "qualified" plans. In this new environment, it is our belief that 403(b) plans would be given the same tools as their for profit counterparts to satisfy these requirements.

### Single Plan Document With Outsourced Compliance

The MEP has a single plan document where the administrator's role is clearly outsourced to a professional ERISA 3(16) plan administrator. This effectively removes the participating employers' names from the plan document and, more importantly, removes the majority of the burden as well—a burden they are glad to give up. The member employers no longer have to sign off on loans, sign the Form 5500, coordinate testing, review qualified domestic relations orders (QDROs), distribute notices, monitor eligibility, etc., all the things they did not have the time to do in the first place. Also, it is worth mentioning that an association MEP may, if certain conditions are satisfied, be considered a single plan for ERISA purposes and therefore have a single Form 5500 and plan audit. This can lead to additional cost savings for larger employers who are subject to the audit requirement.

## Investment Advice For The Plan As A Whole

The board of directors also hires an investment advisor to assist with the fiduciary requirement of maintaining a diversified investment menu. By consolidating the investment advisor's work within the MEP (one investment policy statement, one quarterly review process, one report that can be shared with all of the MEP members) the cost of the advisor can be spread across the MEP members. Members gain the advantage of working with a professional investment advisor, a service they may not have been able to afford on their own.

## Conclusion

A 403(b) association MEP allows small nonprofit plan sponsors to overcome the challenges of maintaining an ERISA plan by doing exactly what they have been doing for years: working together, utilizing a board structure and combining resources. The advisor who can properly deliver a 403(b) association MEP will attain significant and scalable 403(b) market share while bringing a smile to the faces of a lot of overworked 403(b) plan sponsors.

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