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Proposed Regulation Would Provide Compliance Relief to Administrators of Multiple Employer Defined Contribution Plans

Administrators of Multiple Employer Plans ("MEPs")–in which employers from different controlled groups participate–face a compliance challenge when one participating employer is out of compliance. Under the "unified plan rule" (also known as the "one bad apple rule"), issued in the 1977 regulations under Internal Revenue Code section 413(c), actions by one employer participating in a multiple employer plan could disqualify the plan for all participating employers. MEP administrators also face challenges when trying to determine if the plan is in compliance if a participating employer is nonresponsive and fails to provide necessary information on its employees.

This would change under regulations proposed July 3, 2019, that would provide an exemption from the unified plan rule to defined contribution MEPs for certain qualification failures if certain eligibility requirements are met. The exception generally would be available to a MEP if a participating employer in the MEP is responsible for a qualification failure that the employer is unable or unwilling to correct, or if the participating employer fails to comply with the MEP administrator's request for information. The proposed guidance only applies to defined contribution MEPs, but invites comments concerning whether the exemption should be extended to defined benefit MEPs as well.

In extreme cases, the proposed regulation would allow the MEP administrator to spin off the accounts of employees of the noncompliant or nonresponsive participating employer and terminate that spun off plan.

The proposed regulation was issued in the wake of an August 2018 Executive Order designed to strengthen retirement security. MEPs were specifically mentioned as an appropriate means to make retirement saving plans available to more employees, particularly for smaller employers who cannot bear the full cost of sponsoring their own plans and keeping them compliant. MEPs offer efficiencies to these employers, but the unified plan rule often made administration of these plans difficult where participating employers were uncooperative or nonresponsive and thereby jeopardized the qualification of the plan for all participating employers.

The exemption would be available to defined contribution MEPs if certain eligibility requirements are met, including having established practices and procedures to promote compliance. MEP administrators would be required to provide notices to noncompliant participating employers and afford them an opportunity to cure any qualification deficiencies. If a noncompliant participating employer's accounts were spun off and terminated, the MEP administrator would have a duty to comply with any IRS information request related to that spun off plan.

The proposed regulations will not be effective until finalized by Treasury, and MEPs may not rely on the proposed rules. Treasury has requested comments on the proposed rules, including comments on whether any action by the Department of Labor is needed. Comments are due by October 1, 2019.