



October 1, 2019

Submitted via electronic filing: <https://www.regulations.gov/docket?D=IRS-2019-0032>

Internal Revenue Service  
1111 Constitution Avenue NW  
Washington, DC 20224

**Re: Multiple Employer Plans, RIN 1545-B097** – Proposed Regulation to Internal Revenue Code (“IRC”) Section 413(c) – Qualification of Plan Maintained by More than One Employer (“MEPs”)

BlackRock, Inc. (together with its affiliates, “BlackRock”) respectfully submits its comments to the Internal Revenue Service (“IRS”) in support of the IRS’s proposed regulation (the “Proposal”).<sup>1</sup> The Proposal is intended respond to the President’s August 2018 Executive Order on Strengthening Retirement Security in America (the “Executive Order”), which outlined the Federal Government’s policy to “expand access to workplace retirement plans for American workers.”<sup>2</sup> More specifically, the Executive Order states that “expanding access to multiple employer plans, under which employees of different private-sector employers may participate in a single retirement plan, is an efficient way to reduce administrative costs of retirement plan establishment and maintenance and would encourage more plan formation and broader availability of workplace retirement plans, especially among small employers.”

BlackRock believes that an important goal of any change to the retirement landscape should be to make retirement planning easier and more accessible – both for employers to offer retirement plans, and for their employees to participate. Accordingly, BlackRock supports the IRS’s Proposal which provides an exception to the unified plan rule such that an uncooperative participating employer does not cause plan disqualification for all employers in the plan. Under the current requirements, if any one participating employer violates some qualification requirement, it can disqualify the plan for all the participating employers, which is harmful to the participating employers and thereby their employees who are saving retirement.

As we discuss in our January 2018 *ViewPoint* titled “Increasing Access to Open Multiple Employer Plans,” multiple employer plans (“MEPs”) present a promising way to encourage small employers to offer retirement plans.<sup>3</sup> MEPs allow businesses to share administrative and other responsibilities associated with establishing and maintaining a retirement plan.

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<sup>1</sup> 84 Fed. Reg. 31777-31795.

<sup>2</sup> Executive Order on Strengthening Retirement Security in America (Aug. 31, 2018), available at <https://www.whitehouse.gov/presidential-actions/executive-order-strengthening-retirement-security-america/>.

<sup>3</sup> BlackRock, *ViewPoint*, Increasing Access to Open Multiple Employer Plans (Jul. 2018), available at <https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-increasing-access-open-multiple-employer-plans-january-2018.pdf>.

We believe that MEPs can significantly reduce and simplify the burdens on employers, particularly smaller companies that would like to offer plans but are concerned about the costs, resources, complexity, and fiduciary risk associated with doing so. Thus, we urge the IRS to adopt the broadest possible exception to the IRC Section 413(c) “unified plan rule” to encourage and enable widespread use of MEPs to the benefit of employees of small and mid-sized businesses in particular. We believe the IRS should modify its proposed regulation in four critical ways: (i) streamline and simplify the role of the Plan Administrator, (ii) ensure that any notices to employees expressly indicate that the tax-qualified nature of the plan will remain, (iii) maintain the unified plan exception for cooperative plans under IRS examination, and (iv) clarify the spin-off and termination rules.

### **1. Streamline and Simplify the Role of the Plan Administrator**

In general, the Proposal places a significant burden on the Plan Administrator. We believe that Plan Administrators should have and maintain responsibility for plan administration. We appreciate that Plan Administrators, currently, have various policies and procedures which they follow and employ in-house systems or engage vendors to fulfill their responsibilities. The Proposal requires Plan Administrators to do even more to satisfy the exception to the unified plan rule. However, we are concerned that the exception to the unified plan rule, as proposed, will not substantially diminish marketplace fears, and we encourage the IRS to further streamline the role of the Plan Administrator to protect cooperative employers and employees of all plans.

The Proposal, in effect, presents an up to nine-month window to handle plan qualification failures. We suggest that such time frame be compressed to no more than six months, with staged notices being more frequent in order to effectively segregate cooperative from uncooperative participating employers.

### **2. Ensure that Any Notices to Employees Expressly indicate that the Tax-Qualified Nature of the Plan Will Remain**

We are concerned that employees in uncooperative participating plans may become unduly alarmed about the plans’ continuing tax-qualified status during the Notice(s) process. To address this, we recommend that the Third Notice<sup>4</sup> to employees expressly state something to the effect that “despite your receipt of this Notice relative to the Plan’s tax status, you will be able to rollover your account into another tax-qualified plan.”<sup>5</sup> It is critical that participating employees be assured that their assets are secure and they can retain their tax-advantaged status in all instances.

### **3. Maintain the Unified Plan Exception for Cooperative Plans Under IRS Examination**

We understand that the IRS is concerned about plan qualification failures that arise during its examination process, which have not been self-identified and voluntarily

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<sup>4</sup> Prop. Regs. Sec. 1.413-2(g)(3)(iii)(4)(iii).

<sup>5</sup> This statement is supported by the plain language provided in Prop. Regs. Sec. 1.413-2(g)(8)(ii)(B), exclusive of remedies against responsible parties which the IRS reserves under Prop. Regs. Sec. 1.413-2(g)(8)(ii)(C).

reported for relief under the IRS’s Employee Plans Compliance Resolution System (“EPCRS”).

This specific eligibility criteria appears to be unnecessary in the context of the Proposal because such type of relief<sup>6</sup> is not available anyway for failures that are attributable to the MEPs’ Plan Administrator or for plan-wide operational or plan document issues. More importantly, we are concerned that cooperative and fully compliant participating employers may be inappropriately punished by this provision. Again, the intent of this Proposal is to adequately handle issues associated with unresponsive participating plans. The “plans under IRS examination” exclusion may impede the more widespread adoption of MEPs, especially by small and mid-size businesses who are cooperative participating plans, as they may remain fearful of losing the benefits of the unified plan rules. Thus, we recommend that this condition be removed from the operation of the unified plan rule.

Alternatively, the final rules could more narrowly define that a plan is under examination for this purpose *only* if the portion of the plan that relates to the unresponsive employer is specifically identified by an IRS auditor in writing as under examination. Thus, in the interest of enhancing the use of MEPs, we do not think cooperative employers and their MEPs should be precluded from the unified plan exception when there is no direct IRS examination of the portion of a plan having cooperative participating employers.

#### **4. Clarify the Spin-Off and Termination Rules**

We appreciate the IRS’s perspective that an uncooperative participating employer should not “infect” the other participating employees and their employees. However, we question how the spun-off plan assets and their termination, shortly thereafter, will practically operate. For instance, does a separate sub-trust/new plan need to be established? Do Form 5500s and other filings need to be filed for a plan that will quickly be terminated? Is it necessary to require that the *same* Plan Administrator be used for both the continuing and terminated plan? We encourage the IRS to clarify these questions in the final rule.

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We thank the IRS for providing the opportunity to comment on the proposed regulations regarding the unified plan exception for MEPs. Please contact the undersigned if you have any questions or comments regarding BlackRock’s views.

Sincerely,

Harris Horowitz  
Managing Director, Global Head of Tax

Joe Craven  
Managing Director, Head of U.S. Retirement Policy

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<sup>6</sup> EPCRS limits eligibility for its voluntary correction procedures – whether the Self-Correction Program (“SCP”) or Voluntary Correction Program (“VCP”).