

**Supporting Statement**  
**OMB# [1545-XXXX]**  
Notice of Proposed Rulemaking [REG-121508-18]  
Multiple Employer Plans

**1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Under the existing regulatory “unified plan rule,” the qualification of a section 413(c) plan (a “multiple employer plan” or a “MEP”) is determined with respect to all employers maintaining the plan. Consequently, the failure by one employer maintaining the plan to satisfy an applicable qualification requirement will result in the disqualification of the MEP for all employers maintaining the plan. Executive Order 13847 (83 FR 45321 (Sept. 6, 2018)), “Strengthening Retirement Security in America” directs the Secretary of the Treasury to consider guidance regarding the tax qualification of a MEP, “including the consequences if one or more employers that sponsored or adopted the plan fails to take one or more actions necessary to meet those requirements.” These proposed regulations would create an exception to the unified plan rule in circumstances in which a qualification failure is due to the actions or inaction of a participating employer. Under the exception, a defined contribution MEP will not be disqualified on account of such a failure if certain conditions are satisfied. The collection of information in these proposed regulations is necessary in order for plans to satisfy those conditions.

**2. USE OF DATA**

The collection of information in these proposed regulations is necessary to fulfill certain conditions that must be satisfied for the exception to the unified plan rule to apply. The proposed rules that include a collection of information are: §1.413-2(g)(3)(i)(B) (requirement to adopt language in the MEP document that describes the procedures for addressing participating employer failures); §1.413-2(g)(4) (requirement to provide up to three notices to a participating employer, participants, and the Department of Labor, describing the qualification failure and the potential consequences if the employer fails to take action to address it); §1.413-2(g)(7)(i)(A) (requirement to provide notice of a spinoff-termination to plan participants and beneficiaries); and §1.413-2(g)(7)(i)(C) (requirement that spun-off plan have same substantive terms as MEP).

Any spinoff that occurs in accordance with the proposed regulations must be reported to the IRS, pursuant to the proposed rules at §1.413-2(g)(6)(ii) (filing a report with the IRS regarding an employer-initiated spinoff) and §1.413-2(g)(7)(iv) (filing a report with the IRS regarding a spinoff-termination), in the manner prescribed by the IRS in forms, instructions, or other guidance. Because the form or other guidance will have its own

paperwork burden, the burden for that collection is not included here.

### **3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Restructuring and Reform Act of 1998. IRS has no plans to offer electronic enabling because this is record keeping requirement.

### **4. EFFORTS TO AVOID DUPLICATION**

These proposed regulations would create a new exception to the unified plan rule, including new requirements that do not exist under current rules. Accordingly, there is no currently available information that could be used to satisfy these requirements.

### **5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

This collection is likely to impose only a minimal burden on small entities. Small businesses contribute to MEPs on behalf of employees who participate in those plans. MEP administrators will be responsible for most of the collection, and they are not likely to be small entities.

### **6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**

The plan-language requirement is a one-time requirement. With the exception of the notices to the unresponsive participating employer, the other collections occur only once with respect to each participating employer. The collection of information in these proposed regulations is necessary to fulfill certain conditions that must be satisfied for the exception to the unified plan rule to apply. If the information is not collected, the IRS will be unable to determine if the conditions required by the unified plan are in place.

### **7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(D)(2)**

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

### **8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS**

These regulations, and in particular the requirement to notify the Office of Enforcement of the Employee Benefits Security Administration (EBSA), Department of Labor, were coordinated with EBSA.

We received no comments concerning the burden during the comment period in response to the **Federal Register** notice (84 FR 31777), dated July 3, 2019.

## **9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

No payment or gift has been provided to any respondents.

## **10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Generally, tax returns and return information are confidential as required by 26 USC 6103.

## **11. JUSTIFICATION OF SENSITIVE QUESTIONS**

No personally identifiable information is collected.

## **12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

As noted under number 2 of this supporting statement, this application for approval describes the burden associated with the proposed rules at §1.413-2(g)(3)(i)(B), §1.413-2(g)(4), §1.413-2(g)(7)(i)(A), and §1.413-2(g)(7)(i)(C).

We estimate that between 926 and 3,704 recordkeepers will be subject to this collection. This estimate is based on the total number of defined contribution MEPs that are currently believed to exist, using data reported on the 2016 Form 5500, Annual Return/Report of Employee Benefit Plan, and percentages of those MEPs that we anticipate adopting amendments and having unresponsive participating employers that participate in the plan.

We further estimate that the average burden on a recordkeeper of this collection of information will be between 7 and 27 hours. The total burden of this collection of information is estimated to be 25,304 hours.

Most of this burden is anticipated to be imposed on MEP administrators. Cost estimates of this burden are not available at this time.

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
US Code 26 U.S.C. 413©  EO 13847	Multiple Employer Plans	1488	1	1488	17	25304
Totals						

**13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

Not applicable, as the collection of information under this NPRM is not estimated to require the purchase of additional outside services. No capital or start-up costs are necessary for this collection.

**14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT**

There is no estimated annualized cost to the federal government.

**15. REASONS FOR CHANGE IN BURDEN**

This is a new collection.

**16. PLANS FOR TABULATION, STATISTICAL ANALYSIS, AND PUBLICATION**

There are no plans for tabulation, statistical analysis and publication.

**17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE**

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT**

There are no exceptions to the certification statement for this collection.

**Note:** The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.