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McCourt School of Public Policy

Center for Retirement Initiatives

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**Efforts to Expand Retirement Plan Access:
An Overview of Recent Federal Rulemaking
Related to Multiple Employer Plans (MEPs)**

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Efforts to Expand Retirement Plan Access: An Overview of Recent Rulemaking Related to MEPs

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MEPs: ERISA Issues

- No definition of MEP in ERISA
 - One plan versus multiple plans
- DOL's historic position
 - Commonality
 - Interpretative Bulletin 2015-02
- Benefits of MEP status
 - One Form 5500
 - One audit
 - One bond

DOL Rulemaking

- September 3, 2018 – Executive Order 12857
- October 20, 2018 – Proposed ARP rule
 - 60 day comment period
- July 29, 2019 –
 - Final ARP rule
 - Request for Information

Final ARP Rule

- Limited to 401(k) and 403(b) plans
 - Does not apply to defined benefit plans
- Bona fide group or association
 - Organizational structure with a governing body and bylaws or other similar indications of formality
 - Controlled, in form and substance, by employer members
 - Substantial business purpose
- Participation
 - Employees and former employees of members
 - Commonality of interests

Final ARP Rule

- ARP governance
 - Control by members
 - Association is named fiduciary, plan administrator, responsible for fee disclosure
 - Fiduciary obligation of participating employers
 - Prohibition on financial institutions sponsoring plan
- Working owners
 - May elect to participate
- Special rule for PEO plans

ARP Rule Issues

- Interpretive Bulletin 2015-02
 - ARP rule has no effect on state-sponsored MEPs
- Association Health Plan litigation
 - ARP, AHP rules very similar
 - N.Y v. DOL, 2019 WL 1410370 (March 28, 2019)
 - Blocked key aspects of AHP rule
 - Impact on ARP rule uncertain

Request for Information

- “Open” MEPs
 - Should open MEPs be permitted?
 - Would ARPs continue?
 - What types of entities should be permitted to sponsor open MEPs?
 - Are there conflicts of interest?
- Corporate MEPs
 - Should DOL issue regulations re common ownership?
- Comments due October 29, 2019

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RULES, RULES & MORE RULES

- All retirement plans (including MEPS) covered by numerous Tax Code “qualification” rules.
- Violation can cause “disqualification,” the IRS nuclear option.
- Most qualification rules apply to entire MEP, so an error by one employer (Bad Apple) theoretically could disqualify entire MEP.

IRS TO THE RESCUE?

- *Existing* IRS procedures to fix mistakes:
 - Self correct;
 - Tell the IRS and negotiate correction/penalty;
 - If caught under IRS audit, negotiate correction and larger penalty.
- Not always clear how applied to MEP.
- Proposed reg. would add new correction method for MEPs.

THE BAD APPLE DANCE

- MEP administrator notifies Bad Apple employer.
- Employer either corrects or shows no violation.
- If Bad Apple does nothing, after 2 more notices and a 510 day process, either
 - Employer spins off to its own single employer plan; or
 - MEP forces a spinoff termination.
 - Plus administrator notifies government.
 - Participants protected (except, maybe, the boss).

REALITY CHECK

- Evaluating risk to Good Apples.
- What should MEP sponsors do?
- MEP administrator as IRS watchdog.
- Why so complicated?

Questions?

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