



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

7.11.7

JULY 31, 2023

EFFECTIVE DATE

(07-31-2023)

PURPOSE

- (1) This transmits revised IRM 7.11.7, Employee Plans Determination Letter Program, Multiple Employer Plans.

MATERIAL CHANGES

- (1) IRM 7.11.7.3 was updated to include provisions of the SECURE Act and the statutory exception to the “one-bad-apple” rule.
- (2) IRM was updated for plain language and current Revenue Procedures.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 7.11.7 dated October 13, 2022.

AUDIENCE

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7.11.7

Multiple Employer Plans

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7.11.7-1 Specific Law Provisions and How They Apply to a Multiple Employer Plan

7.11.7.1
(05-30-2017)
Program Scope and Objectives

- (1) Purpose: This IRM describes the procedures for reviewing Employee Plans (EP) Determination Letter (DL) applications for multiple employer plans.
- (2) Audience: EP Determinations and Quality Assurance (QA) staff
- (3) Policy Owner: Director, EP
- (4) Program Owner: EP
- (5) Program Goals: EP Determinations helps plan sponsors ensure their plans comply with the tax laws by issuing determination and opinion letters and protects the public interest by applying the tax law with integrity and fairness.

7.11.7.1.1
(10-13-2022)
Background

- (1) A plan is qualified if it meets the requirements of Internal Revenue Code (IRC) section 401(a) in form and operation. A qualified plan is entitled to favorable tax treatment.
- (2) To help taxpayers ensure their plans comply with the tax law, EP issues DLs and opinion letters on whether the plan's form meets the qualification requirements. See IRM 7.11.1.
- (3) A multiple employer plan (MEP) is maintained by two or more employers who aren't related under:
 - IRC section 414(b) (controlled groups).
 - IRC section 414(c) (trades or businesses under common control).
 - IRC section 414(m) (affiliated service groups).

Note: If a group of employers are related under these code sections, they'd be treated as a single employer.
- (4) Multiple employer plans aren't the same as multiemployer plans. For multiemployer plans, see IRC section 414(f), *Issue Resource Guide - Multiemployer Plans.docx (irsnet.gov) (Currently not available to the public)*, and IRM 7.11.6, Multiemployer Plans.
- (5) Multiple employer plans must comply with the qualification rules under IRC section 413(c).

7.11.7.1.2
(10-13-2022)
Authority

- (1) See table below for the relevant authority for EP DLs.

Legal Authority	Description or Delegated Authority to
Rev. Proc. 2023-4 (revised annually), section 14	DL filing procedures for individually designed multiple employer plans.
Rev. Proc. 2023-4 (revised annually), section 30	DL User Fee Requirements
Rev. Proc. 2016-37	Circumstances when a plan sponsor may submit a DL application to EP.

Legal Authority	Description or Delegated Authority to
Delegation Order 7-1	Issue DLs on the qualified status of pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans to the Director, EP. IRM 1.2.2.8.1
Delegation Order 7-16	Delegates authority to amend a plan after the expiration of its IRC section 401(b) remedial amendment period to the Director, EP Rulings and Agreements. IRM 1.2.2.8.16

- (2) Find a complete list of delegation orders governing EP Rulings and Agreements at *Delegation Orders by Process*.
- (3) See IRM Exhibit 7.1.1-1 for a complete list of the major EP revenue procedures currently in effect.

7.11.7.1.3
(10-13-2022)
Acronyms

- (1) Acronyms used in this IRM:

Acronym	Term
ACP	Actual Contribution Percentage
ADP	Actual Deferral Percentage
CARES Act	The Coronavirus Aid, Relief, and Economic Security Act
DL	Determination Letter
EP	Employee Plans
MEP	Multiple Employer Plan
PEP	Pooled Employer Plan
QA	Quality Assurance
RAC	Remedial Amendment Cycle
SECURE Act	Setting Every Community Up for Retirement Enhancement Act

7.11.7.2
(10-13-2022)
Definitions

- (1) Use these terms when working with MEPs:

Term	Definition
Controlling Member (Plan Sponsor or Lead Employer)	The participating employer who sponsors the MEP.
Controlling Plan (Lead Plan)	The plan submitted by the controlling member.
Single Plan	A plan under which all assets, on an ongoing basis, are available to pay the benefits to employees covered by the plan and their beneficiaries. Treasury Regulation (Treas. Reg.) section 1.414(l)-1(b)(1). A MEP is a single plan (not to be confused with Single Employer Plan). See Treas. Reg. section 1.413-2(a)(2) and then Treas. Reg. section 1.413-1(a)(2).
Single Employer Plan	A plan maintained by one employer. All employers related under IRC section 414(b), IRC section 414(c), or IRC section 414(m) are treated as a single employer. A Single Employer Plan isn't a MEP.

7.11.7.3
(07-31-2023)
Qualification Requirements for a Multiple Employer Plan

- (1) Multiple employer plans must comply with the qualification rules under IRC section 401(a), such as eligibility, vesting, distribution rules, etc. However, some rules are applied differently. Certain qualification requirements are applied as if all employees of each participating employer are employed by a single employer. These include:

- IRC section 401(a), exclusive benefit requirements;
- IRC section 410(a), eligibility to participate;
- IRC section 411, vesting; and
- IRC section 415, limits on benefits and contributions.
- Exhibit 7.11.7-1 Specific Law Provisions and How They Apply to A Multiple Employer Plan.

Example: An employee's service with one employer is treated as service with the other employers to determine if the employee is eligible to participate. See Treas. Reg. section 1.413-2(b).

Example: A participant's benefits/contributions and compensation received from all of the employers maintaining the plan must be counted when applying the IRC section 415 limits. See Treas. Reg. section 1.415(a)-1(e).

- (2) Other qualification requirements are applied to each participating employer as if that employer maintained a separate plan. These include:
- IRC section 401(a)(4), nondiscrimination;
 - IRC section 410(b), coverage;

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- IRC section 416, top heavy;
- Exhibit 7.11.7-1, Specific Law Provisions and How They Apply to A Multiple Employer Plan.

Example: The coverage requirements under IRC section 410(b) are applied to a MEP on an employer-by-employer basis. Therefore, each unrelated employer performs separate coverage testing for its part of the plan and they don't have to use the same testing rules. See Treas. Reg. section 1.413-2(a)(3)(ii), Treas. Reg. section 1.410(b)-7(c)(4)(i)(A), and Treas. Reg. section 1.410(b)-7(c)(4)(ii).

Example: The Actual Deferral Percentage (ADP) test under IRC section 401(k)(3) and the Actual Contribution Percentage (ACP) test under IRC section 401(m)(2) are also applied on an employer-by-employer basis. See Treas. Reg. section 1.401(k)-1(g)(11). Participating employers don't have to meet the same ADP/ACP testing rules. Review the plan document for testing and correction provisions.

Example: Top-heavy status under IRC section 416 is applied on an employer-by-employer basis. Each participating employer whose portion of the plan is top-heavy must apply the correct vesting schedule under IRC section 416(b) and provide the appropriate minimum benefit/contribution. See Treas. Reg. section 1.416-1, Q&A G-2 and T-8.

- (3) Pay careful attention to IRC section 415, limits on benefits/contributions and IRC section 416, top-heavy requirements, when an employer participates in a MEP and also sponsors other plans. You must consider all plans in which an employer participates when applying IRC section 415 limits and IRC section 416 top-heavy requirements. The MEP should state that when a participating employer sponsors another plan, the IRC sections 415 and 416 requirements include all plans of the participating employer.
- (4) For plan years beginning prior to January 1, 2021, under what is known as the "unified plan" or "one-bad-apple rule," the failure of any participating employer or the failure of the plan itself to satisfy an applicable qualification requirement, results in disqualification of the plan for all participating employers. See Treas. Reg. section 1.413-2(a)(3)(iv).
- (5) The Secure Act added IRC section 413(e)(1), which, for plan years beginning after December 31, 2020, creates a statutory exception to the unified plan rule, for certain types of MEPs. A MEP is eligible for the exception to the unified plan rule if it is an IRC section 413(c) defined contribution plan described in IRC section 401(a), or consists of individual retirement accounts described in IRC section 408, including by reason of IRC section 408(c), provided the MEP is maintained by employers that have either a common interest other than having adopted the plan, or has a "pooled plan provider," as defined in IRC section 413(e)(3)(A). Such plans are called pooled employer plans (PEPs).
- (6) Proposed Treas. Regs., released on March 25, 2022, provide that for the relief to apply, plan documents must contain language that describes procedures to be followed to address a failure caused by a participating employer. These procedures include a description of notices that the IRC section 413(e) plan administrator will send to the participating employer with a goal of correcting the failure; the actions the plan administrator will take if the employer does not remedy the failure or initiate a spinoff of its portion of the plan, and a

statement that participants will become fully vested in their benefits if the employer does not correct the failure or initiate a spinoff.

- (7) IRC section 413(e)(2)(A) provides that IRC section 413(e)(1) will not apply unless the terms of the plan provide that, in the case of any employer in the plan failing to take actions described in IRC section 413(e)(1),
 - a. The assets of the plan attributable to employees of that employer (or beneficiaries of those employees) will be transferred to a plan maintained only by that employer (or its successor), or
 - b. To another eligible retirement plan as defined in IRC section 402(c)(8)(B), or to any other arrangement that the Secretary determines is appropriate, unless the Secretary determines it is in the best interests of those employees (and their beneficiaries) to retain the assets in the plan.
- (8) IRC section 413(e)(2)(A) also provides that IRC section 413(e)(1) will not apply unless the terms of the plan provide that, in the case any employer in the plan failing to take actions described in IRC section 413(e)(1), the employer (and not the plan or any other employer in the plan) will be liable for any liabilities with respect to the plan attributable to employees of that employer (or their beneficiaries), except to the extent provided by the Secretary.
- (9) If the participating employer does not take action by the final deadline (60 days after the final notice is provided) to correct the failure or initiate a spinoff, the plan administrator must:
 - a. Stop accepting contributions from the unresponsive participating employer and its employees;
 - b. Provide notice to participants (and their beneficiaries) that contributions have ceased; and
 - c. Provide participants with an election either to roll over their benefits to an eligible retirement plan, or leave their benefits in the plan, in which case they must remain in the plan until distribution is permitted under the terms of the plan.
- (10) Pursuant to IRC section 413(e)(4)(B), until final Treasury Regulations are published, an employer or pooled plan provider may rely on a good faith, reasonable interpretation of the provisions of IRC section 413(e) to which the final Treasury Regulations relate. Compliance with these proposed regulations is considered reliance on a good faith, reasonable interpretation of the provisions of IRC section 413(e) to which the final Treasury Regulations relate.
- (11) A determination letter for a multiple employer plan issued under Revenue Procedure (Rev. Proc.) 2023-4 (revised annually), section 14, will provide reliance for purposes of the requirements of IRC section 413(c). However, pending issuance of final Treasury Regulations under IRC section 413(e), a favorable determination letter for a multiple employer plan will not provide reliance for purposes of IRC section 413(e). An applicant that has a determination letter application for a multiple employer plan pending with the Service as of January 3, 2022, may withdraw the pending application, receive a refund of the user fee relating to the application, and resubmit the application following the issuance of final Treasury Regulations under IRC section 413(e). If the withdrawn application had been submitted for initial qualification of the plan, the resubmission of that application will not cause the application to fail to be considered as an application for initial qualification.

7.11 Employee Plans Determination Letter Program

7.11.7.4
(10-13-2022)

Submission Period

- (1) A plan sponsor of an individually designed plan is permitted to submit a DL application using Form 5300, Application for Determination for Employee Benefit Plan at any time for:

- a. Initial plan qualification
- b. Qualification upon plan termination
- c. Individually designed plan resulting from merged plans of previously unrelated entities
- d. In other circumstances that the IRS will announce

Note: See Rev. Proc. 2023-4, section 11.01.

- (2) A MEP can file for an initial qualification as either an individually designed plan or use a pre-approved plan. In either instance, Form 5300 must be filed. See Rev. Proc. 2023-4, sections 12.03 and 14.

- (3) In the case of a MEP, the controlling member may adopt a pre-approved plan but must still file the application using Form 5300, following the rules of Rev. Proc. 2023-4, section 12.

- (4) The controlling member may submit an application based on a pre-approved plan for initial qualification, as outlined in Rev. Proc. 2016-37, section 4.03(1), but only if the plan has never been issued a DL with respect to that plan. The application can be submitted at any time during the submission period for the applicable six-year remedial amendment cycle for a plan that:

- a. Makes any modification to a standardized plan (an amendment to add overriding language necessary to satisfy IRC section 415 or IRC section 416 due to required aggregation is not considered a modification)
- b. Makes extensive modifications to a nonstandardized plan
- c. Adopts a pre-approved pension plan that is:
 - (i) Not a governmental plan in which the normal retirement age under the plan is lower than the age 62 safe harbor, requesting a ruling, including, but not limited to, whether the plan satisfies Treas. Reg. section 1.401(a)-1(b)(2).
 - (ii) Is a governmental plan in which the normal retirement age doesn't satisfy any of the safe harbors described in proposed Treas. Reg. section 1.401(a)-1(b)(2)(v), requesting a ruling, including, but not limited to, whether the plan satisfies proposed Treas. Reg. section 1.401(a)-1(b)(2).

- (5) The controlling member may submit an application regardless of whether the plan has received a DL with respect to that plan. The application can be submitted at any time during the submission period for the applicable six-year remedial amendment cycle for a pre-approved plan that:

- a. Is a controlling member with a nonstandardized MEP that makes modifications to a nonstandardized plan that are not extensive,
- b. Is not a governmental plan that files a DL request that is limited to a ruling to determine whether the plan's normal retirement age which is lower than the age 62 safe harbor in Treas. Reg. section 1.401(a)-1(b)(2) is satisfied.
- c. Is a governmental plan with a normal retirement age that does not satisfy any of the safe harbors described in proposed Treas. Reg. section 1.401(a)-1(b)(2)(v); that files a DL request that is limited to a determination as to whether the plan's normal retirement age satisfies the requirements of proposed Treas. Reg. section 1.401(a)-1(b)(2).

7.11.7.5

(10-13-2022)

Submission Procedures

- (1) A controlling member may submit an application for a DL using their name only. See Rev. Proc. 2023-4, section 14.02.

Note: Before January 1, 2017, participating employers could request their own DLs when the controlling member requested one.

- (2) If a participating employer (who's not the controlling member) submits an application, close the case incomplete, issue a refund (if applicable), and issue a 1924 letter with caveat 10 with variable "Rev. Proc. 2023-4".
- (3) An applicant requesting a letter in the name of the controlling member only submits a Form 5300, Application for Determination for Employee Benefit Plan, either including or omitting the design-based safe harbor questions. The user fee should be submitted in accordance with Rev. Proc. 2023-4. For current filing fees for multiple employer plans, see Rev. Proc. 2023-4, Appendix A, section .07 (1)(f) and (g). Any other participating employer and any other employer who adopts the plan may rely on the favorable DL except for IRC section 401(a)(4), IRC section 401(a)(26), IRC section 401(l), IRC section 410(b), and IRC section 414(s), and if the employer maintains or has ever maintained another plan, IRC section 415 and IRC section 416.

7.11.7.6

(10-13-2022)

Scope of Review

- (1) For applications filed with respect to nonstandardized plans, as described in Rev. Proc. 2023-4, section 12.03, review the applicable Cumulative List (CL) that was used to review the underlying pre-approved plan.
- (2) For applications filed for a standardized plan that has been modified, as outlined in Rev. Proc. 2017-41, section 8.06, review the plan based on the Required Amendments List that was issued during the second calendar year preceding the submission of the DL application request. Also see Rev. Proc. 2023-4, sections 12.03(1)(a) and 12.04(4).

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Exhibit 7.11.7-1 (09-18-2015)**Specific Law Provisions and How They Apply to a Multiple Employer Plan**

This chart indicates how specific law provisions are applied to a Multiple Employer Plan

Code Section	Must be Met by Multiple Employer Plan	Must be Met by Each Participating Employer	Authority
IRC section 401(a) - Qualification requirements	Yes		Treas. Reg. section 1.413-2(a)(3)(iv).
IRC section 401(a) - Exclusive benefit rule	Yes		IRC section 413(c)(2) and Professional Employer Organization Rules in Rev. Proc. 2002-21.
IRC section 401(a)(4) - Nondiscrimination		Yes	Treas. Reg. section 1.413-2(a)(3)(iii) and Treas. Reg. section 1.401(a)(4)-1(c)(4).
IRC section 401(a)(26) - Minimum Participation (DB Plans)		Yes	Treas. Reg. section 1.401(a)(26)-2.
IRC section 401(k) /IRC section 401(m) - ADP/ ACP		Yes	Treas. Reg. section 1.401(k)-2(a)3(ii)(A) and Treas. Reg. section 1.401(k)-1(b)(4).
IRC section 404 - Deduction	Adopted before 1989	Adopted after 1988	IRC section 413(c)(6).
IRC section 410(a) - Eligibility	Yes		IRC section 413(c)(1).
IRC section 410(b) - Coverage		Yes	Treas. Reg. section 1.410(b)-7(c)(4)(i)(A) and Treas. Reg. section 1.410(b)-7(c)(4)(ii).
IRC section 411 - Vesting	Yes		IRC section 413(c)(3) and Treas. Reg. section 1.413-2(d).
IRC section 412 / IRC section 430 - Funding	Adopted before 1989	Adopted after 1988	IRC section 413(c)(4).
Treas. Reg. section 1.414(l)-1 - Mergers or Transfer of Assets - see note below	Yes		Treas. Reg. section 1.414(l)-1(b)(1).

Exhibit 7.11.7-1 (Cont. 1) (09-18-2015)**Specific Law Provisions and How They Apply to a Multiple Employer Plan**

Code Section	Must be Met by Multiple Employer Plan	Must be Met by Each Participating Employer	Authority
IRC section 414(q) - Definition of Highly Compensated Employee		Determination is made separately by each adopting employer	Treas. Reg. section 1.414(q)-1(T), Q&A-1.
IRC section 414(v) - Catch-up Contributions	Yes		Treas. Reg. section 1.414(v)-1(f).
IRC section 415 - Limitations on Benefits	All compensation is included		Treas. Reg. section 1.415(a)-1(e).
IRC section 416 - Top-Heavy		Yes	Treas. Reg. section 1.416-1, Q&A G-2 and T-8.

Note: Mergers or Transfer of Assets - All assets available to pay benefits of employees covered under the plan must apply to the multiple employer plan as a whole.