

# PUBLIC SUBMISSION

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Definition of "Employer" under Employee Retirement Income Security Act-Association Retirement Plans and Other Multiple-Employer Plans

**Comment On:** EBSA-2018-0007-0001

Definition of "Employer" under Employee Retirement Income Security Act-Association Retirement Plans and Other Multiple-Employer Plans

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## Submitter Information

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## General Comment

Require Reporting to a Central Child Support Database:

The Proposed Regulations allow sole proprietors/self-employed to act as an employer in order to participate in a bona fide employer group of association and the sole proprietor may also be treated as an employee of their business for the purposes of being able to participate in a multiple employer plan (MEP).

Expanding access to the Employee Retirement Income Security Act of 1974 (ERISA) governed retirement plans will allow local Title IV-D of the Social Security Act (IV-D) agencies to increase collections via Qualified Domestic Relations Orders (QDROs) and provide financial support for more children and families. However, the Department of Labors (DOLs) proposed regulations are problematic for child support enforcement. IV-D agencies obtain the required legal information needed to notice the plan administrator of the agencies adverse interest and to obtain a QDRO for child support enforcement by contacting a non-custodial parents (NCPs) employer. Under the DOLs proposal, self-employed or under employed NCPs would act as an employer. Therefore, the IV-D agency would only be able to obtain the required plan information from the NCP. It will give the NCP sufficient time to move plan assets before the

IV-D agency could serve a notice of adverse interest on the plan administrator. Moreover, the IV-D agency would be dependent on the NCP to provide timely and accurate plan information. If the NCP fails to cooperate, the IV-D agency has little to no recourse to enforce against the retirement plan.

One of the key provisions in the EO is to improve efficiency and reduce cost through the use of electronic notices for required ERISA and plan notices. Both of the above stated problems with the DOL proposed regulations can be eliminated and IV-D services can be improved if, during the implementation of electronic notices, plan administrators are mandated to report new retirement plan participants to a central child support database, such as the National Directory of New Hires (NDNH) or the Multistate Financial Institution Data Match (MSFIDM), and provide local IV-D agencies with the minimum information needed to enforce child support orders via QDROs. The minimum information needed for new participants is as follows:

Participants identifying information;  
Legal name of each retirement plan the NP is a participant;  
Name and contact information of the plans administrator for each plan; and  
The type of plan [401(k), etc.].

The IV-D program can further be enhanced if an automated notice is generated on the IV-D side to give the plan administrator adverse notice of child supports interest in the plan upon receipt of electronic notice of plan participation.

California Department of Child Support Services (DCSS) asks that all plan administrators, including MEPs, be required to report to a central child support database such as MSFIDM or NDNH.