



IRS Expands Determination Letter Program for Individually Designed Plans

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At the end of April, the IRS released Rev. Proc. 2019-20 providing for a limited expansion of the determination letter program with respect to individually designed plans. Under the new procedures, the IRS will accept determination letter applications beginning later this year for statutory hybrid plans and merged plans. Statutory hybrid plans are defined benefit plans that use a **cash balance** or **pension equity formula**.

Background

In 2016, the IRS ended the 5-year remedial amendment cycle process for requesting determination letters for individually designed plans. Since January 1, 2017, plan sponsors of individually designed plans have only been permitted to request a determination letter in the following circumstances:

- The plan has never received a favorable determination letter.
- The plan is terminating.
- The IRS makes a special exception (The IRS will consider additional circumstances based on program capacity and other factors each year).

Based on comments and other factors, the IRS released Rev. Proc. 2019-20 which expands the determination letter program for individually designed statutory hybrid plans and merged plans, as discussed below.

Statutory Hybrid Plans

Under the new Rev. Proc. 2019-20, Plan sponsors may submit determination letter applications for individually designed statutory hybrid plans to the IRS during the 12 month period beginning on September 1, 2019 and ending on August 31, 2020. The IRS's scope of review of the statutory hybrid plans as part of the determination letter process will cover the Required Amendments Lists issued through 2017 and Cumulative Lists issued prior to 2016.

Merged Plans

Further, Rev. Proc. 2019-20 also provides that the IRS will accept determination letter applications for merged plans beginning September 1, 2019, and on an on-going basis with no current end date. In order for a merged plan to be eligible for submission to the IRS, it must meet all of the following requirements:

- The plan merger must combine two or more plans maintained by previously unrelated entities.
- The plan merger date must be no later than last day of the first plan year that begins after the date of the corporate merger, acquisition, or transaction involving the entities.
- The determination letter application is made to the IRS no sooner than the plan merger date and no later than last day of the first plan year that begins after the plan merger date.

The IRS's scope of review of merged plans will cover the Required Amendments List that was issued during the second full calendar year preceding the submission and all prior required amendments lists and cumulative lists.

Should Plan Sponsors Take Advantage of the Newly Expanded Determination Letter Program?

Plans sponsors of statutory hybrid plans and merged plans are not required to submit their plans for IRS determination letters under the new procedures. However, plan sponsors with existing statutory hybrid plans with determination letters may not rely upon them with respect to plan provisions that have subsequently been amended or affected by a change in the law. Additionally, while two existing plans that are merged together may have had determination letters prior to the merger, the plan sponsor of the merged plan may not be able to rely on those letters, particularly with respect to any provisions changed as part of the merger. Further, the IRS has provided for a more favorable penalty structure to the extent that document failures are discovered through a determination letter application submitted under Rev. Proc. 2019-20.

The decision to submit may depend on the number and significance of amendments to the plan since the last IRS determination letter, the degree to which plan provisions were amended to effectuate a plan merger, the form of the plan being merged in, as well as other variables. Sponsors of plans covered by the new procedures should consult with counsel to determine whether to submit their plans for review.

If you have questions or would like additional information, please contact a member of our Employee Benefits and Executive Compensation Practice Group.



Al Ward
al.ward@hw hlaw .com
813.222.8703



Kirsten Vignec
kirsten.vignec@hw hlaw .com
813.222.8731



Melanie Hancock-Brown
melanie.hancock-
brown@hw hlaw .com
813.222.3138



Bret Hamlin
bret.hamlin@hw hlaw .com
813.222.8717



Tim Zehnder
timothy.zehnder@hw hlaw .com
813.222.3113