

IRS Reopens Its Determination Letter Program to Cash Balance Plans and Merged Plans

The Bottom Line

- *Under the IRS' expanded determination letter program, plan sponsors of statutory hybrid plans (e.g., cash balance plans) may now submit an application for a favorable determination letter for a 12-month period beginning September 1, 2019.*
- *Additionally, all retirement plans that have been merged in connection with a corporate transaction may apply for a favorable determination letter, provided that the merger date is close enough to the corporate transaction date and if an application is submitted shortly after the merger.*
- *Sponsors of these plans should strongly consider applying for a new favorable determination letter as soon as possible.*

Effective September 1, 2019, the Internal Revenue Service (IRS) will reopen its determination letter program for two significant categories of individually designed retirement plans – statutory hybrid plans (e.g., cash balance plans) and merged plans. Plan sponsors that maintain these plans should strongly consider applying for a new determination letter as soon as possible, as important deadlines may apply.

Background

Until the IRS substantially closed its determination letter program on January 1, 2017, plan sponsors of individually designed plans applied for a new determination letter once every five years. Although applying for a determination letter was never required by law, plan sponsors saw it as an essential part of maintaining a qualified plan. Obtaining a favorable determination letter meant that the plan, as written and amended, satisfied current law and was, therefore, qualified in the eyes of the IRS.

Effective January 1, 2017, the IRS substantially revised and nearly shuttered its determination program, in large part due to budgetary constraints. As revised, the determination letter program was limited to applications on initial plan adoption and on plan termination. This left plan sponsors of ongoing plans at a significant disadvantage since they no longer had certainty that the terms of their plan, and any amendments made to their plan, complied with current law.

In response to public concern and outcry, the IRS issued [Revenue Procedure 2019-20](#) on May 1, 2019, which provides for a significant expansion of the determination letter program for certain individually designed plans. Under this expansion, the IRS will accept determination letter applications for the following plans:

- Statutory hybrid plans,
- and Merged plans.

Statutory Hybrid Plans

Statutory hybrid plans are defined under IRS regulations as “a defined benefit plan that contains a statutory hybrid benefit formula” (i.e., defined benefit plans that compute accrued benefits by reference to a hypothetical account balance). A common type of statutory hybrid plan is a cash balance plan. This expansion of the determination letter program to include statutory hybrid plans provides an opportunity for plan sponsors to apply for a determination letter regarding the final hybrid plan regulations that became effective January 1, 2017. Additionally, the IRS stated that it will not impose any sanctions for plan document failures relating to the implementation of the final hybrid plan regulations that are discovered by the IRS in its review of a plan submitted for a determination letter pursuant to Revenue Procedure 2019-20. The determination letter program will be available to plan sponsors of existing individually designed statutory hybrid plans for a 12-month period beginning September 1, 2019. New individually designed statutory hybrid plans will continue to be eligible to be submitted for review under the determination letter program after August 30, 2020.

Merged Plans

Beginning September 1, 2019, the IRS will accept, on an ongoing basis, determination letter applications for merged plans. A merged plan means a plan that results from a merger or consolidation of two or more retirement plans into a single individually designed plan in connection with a corporate merger, acquisition, or other similar business transaction among previously unrelated entities (i.e., entities that do not form a controlled group with one another). To be eligible, the plans must have been merged no later than the last day of the first plan year that begins after the corporate transaction and the determination letter application must be submitted by the last day of the first plan year following the plan merger. Determination letters will not be available for plan mergers that do not follow a corporate transaction between previously unrelated entities.

The IRS is continuing to consider comments regarding other situations where reopening the determination letter program may be appropriate.

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