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PENSION ANALYST COMPLIANCE BULLETIN



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IRS expands determination letter program for individually designed plans

On May 1, 2019, the IRS issued [Revenue Procedure 2019-20](#) announcing a limited expansion of the determination letter program for individually designed plans. Under this expansion, the IRS will accept determination letter applications for statutory hybrid plans and certain merged plans.

Background and overview

In 2016, the IRS announced the end of the 5-year remedial amendment cycle program effective January 1, 2017, and introduced a new streamlined approach, under which it would generally only review new or terminating individually designed plans. In 2018, the IRS requested comments on the potential expansion regarding the scope of the determination letter program for individually designed plans.

After consideration of the numerous comments received by the IRS, the determination letter program will be expanded effective September 1, 2019, to include submissions for the following plan types:

- Statutory hybrid plans; and
- Merged Plans.

Statutory hybrid plans

Statutory hybrid plans, including cash balance plans or pension equity plans, may file for a determination letter during the limited 12-month period beginning September 1, 2019 and ending August 31, 2020.

The IRS will review these plans for compliance with the 2017 [Required Amendments Lists](#) and [Cumulative Lists issued before 2016](#). For any plan document failure due to a provision that doesn't comply with the final hybrid plan rules, the IRS won't impose a sanction. Plan document failures that are unrelated to the final hybrid plan rules may be eligible for a reduced sanction equal to the VCP user fee that would have applied if the sponsor had submitted the plan for correction under VCP.

Merged plans

A "merged plan" is a plan that results from the merger or consolidation of plans merged into a single individually designed plan due to a corporate merger, acquisition, or other similar business transaction among unrelated entities that each maintained its own plan(s) before the merger. Determination letter applications for merged plans will be available on an ongoing basis, if the following conditions are satisfied:

- The plan merger occurs no later than the last day of the first plan year beginning after the plan year that includes the date of the corporate merger, acquisition, or other similar business transaction; and
- The determination letter application is submitted within a period beginning on the date of the plan merger and ending on the last day of the plan year beginning after the date of the plan merger.

The IRS will review these plans for compliance with the Required Amendments List issued during the second full calendar year preceding the submission of the determination letter application and previously issued Required Amendments Lists and Cumulative Lists. The IRS will not impose sanctions for failures related to the amendment to effectuate the merger. Reduced sanctions will apply if the following conditions are met:

- The amendment that creates the failure was adopted timely and in good faith with the intent of maintaining the qualified status of the plan; or

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- In the case of an amendment required because of a change in qualification requirements, the plan sponsor reasonably and in good faith determined that no amendment was required because the change does not impact the provisions of the written plan document.

Extension of the remedial amendment period

Any remedial amendment period still open on the date a plan sponsor submits for a determination letter under this guidance is extended to the end of the applicable submission period. The plan sponsor can still rely on the usual 91 day extension after a determination letter is issued.

While the guidance does extend the remedial amendment period for statutory hybrid plans that are submitted for determination letter, it does not provide relief from the anti-cutback rules regarding reducing interest crediting rates in certain circumstances. That anti-cutback relief applies only to sponsors that amended their plans before the first day of the first year beginning on or after January 1, 2017 (with a delayed applicability date for collectively bargained plans).

Next steps

While determination letters are not required, they provide sponsors with assurance that their plan documents comply with applicable federal laws and regulations and are therefore eligible for tax-favored status. Sponsors of individually designed statutory hybrid plans and merged plans should become familiar with these changes and consult legal counsel regarding the submission of a determination letter application under this guidance.

Compliance Bulletin by Prudential Retirement

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