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The IRS Determination Letter Program Reopens (A Little) for More Business

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If you sponsor a recently merged qualified retirement plan or an individually designed statutory hybrid plan, you may not be shut out from the IRS Determination Letter Program any longer. As you already know, a favorable determination letter on the tax-qualified status of your retirement plan protects your plan from IRS challenges to plan provisions. It also provides reassurance in a corporate transaction that an acquired retirement plan has the IRS' blessing. While the IRS is providing these new opportunities to obtain a letter, the opportunities are limited.



Statutory Hybrid Plans: A Time-Limited Opportunity

Statutory hybrid plans are defined benefit plans that may use a hypothetical account balance or an accumulated percentage of a participant's final average compensation to provide for a participant's accrued benefit. They commonly include designs such as cash balance plans, pension equity plans and lump-sum formula plans. A statutory hybrid plan sponsor must submit the plan to the IRS between September 1, 2019 and August 31, 2020 to apply for an IRS determination letter. The IRS will review the plans based on the 2017 Required Amendments List, the 2016 Required Amendments List, and all Cumulative Lists issued prior to 2016. The 2017 List includes the final hybrid plan regulations as well as the final regulations for partial annuity distribution options. Notably, the IRS clarifies that submitted statutory hybrid plans will not get any anti-cutback relief in addition to the relief provided in the final hybrid plan regulations, which expired before the 2017 plan year.

Certain Merged Plans: An Opportunity for a Merged Plan of Previously Unrelated Entities

The IRS will also consider certain merged plans for determination letters beginning September 1, 2019. In order to be eligible for consideration, the following conditions must be met:

- the plan merger must occur by the last day of the first plan year beginning after the plan year in which the corporate acquisition, merger or similar business transaction occurred, which aligns with the transition rule for coverage testing;
- the plan merger must be the combination of two or more plans that were previously maintained by plan sponsors that were not part of the same controlled group; and
- you must submit the determination letter application during the period that begins with the plan merger and ends on the last day of the first plan year after the plan year in which the plan merger occurred.

In the case of a merged plan submission, the IRS will consider the Required Amendments List issued during the second full calendar year prior to the submission. In addition, it will consider all previously issued Required Amendments Lists and Cumulative Lists.

Remedial Amendment Periods

Revenue Procedure 2019-20 also provides that any remedial amendment period that is open as of the beginning of the applicable submission period is extended to the end of that submission period. In addition, submitted plans will get the benefit of the rule that while under review, a submitted plan has 91 days following the date of the determination letter to adopt any necessary amendments.

Certain Document Failures May Result in Sanctions

The IRS clarifies in Revenue Procedure 2019-20 that this determination letter opportunity cannot be used to avoid Voluntary Correction Program (VCP) user fees for

any document failures discovered during the review. A typical document defect is a failure to adopt any required interim amendments. If the failure meets a specific “good faith” standard, it will only be subject to the reduced VCP sanctions. With respect to statutory hybrid plans, failures related to the final hybrid plan regulations are not subject to such sanctions. For merged plans, a failure related to the merger amendment itself is likewise not subject to sanctions.

In Revenue Procedure 2019-20, the IRS renewed its call for comments regarding additional situations in which the submission of a determination letter application may be appropriate. These first new opportunities, although limited, are a good start. If you are a plan sponsor of a hybrid plan or a merged plan, you will want to give thoughtful consideration to taking advantage of them.

Questions? Contact the Findley consultant you normally work with, or contact Sheila Ninneman at sheila.ninneman@findley.com, 216.875.1927.

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