

IRS EXPANDS DETERMINATION LETTER PROGRAM FOR MERGERS OF QUALIFIED PLANS FOLLOWING CORPORATE TRANSACTIONS

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The IRS recently reversed course on the availability of the determination letter program for merged qualified retirement plans – thereby providing new alternatives for integrating qualified retirement plan benefits in the context of corporate transactions.

Merged Plan Relief: [Rev. Proc. 2019-20](#), released on May 1, 2019, expands the IRS' determination letter program for individually designed qualified retirement plans (e.g., defined benefit plans or defined contribution plans) that result from a merger of two or more qualified retirement plans following a corporate merger, acquisition or other similar business transaction (a "Merged Plan"). The newly expanded program will be available beginning September 1, 2019 and continuing on an ongoing basis.

Eligibility: To be eligible for the determination letter program:

- The Merged Plan must be a combination of two or more qualified retirement plans maintained by previously unrelated entities (i.e., entities that are not members of the same controlled group under Section 414 of the Internal Revenue Code);
- The plan merger must occur no later than the last day of the first plan year that begins after the effective date of the corporate merger, acquisition or other similar business transaction (the "Corporate Transaction"); and
- A determination letter application for the Merged Plan must be submitted by the last day of the first plan year that begins after the effective date of the plan merger.

Pre-approved or prototype qualified retirement plans are not explicitly covered by the procedure – additional IRS guidance will be needed to determine the applicability of Rev. Proc. 2019-20 to those types of plans.

Program Affords New Alternatives in Corporate Transactions: With respect to individually designed qualified retirement plan mergers, Rev. Proc. 2019-20 restores an ongoing determination letter

program that was halted in January 2017 when the IRS restricted determination letter applications to initial plan qualifications and qualifications upon plan terminations (see [Rev. Proc. 2016-37](#)). As a result, the alternative of merging a target's qualified retirement plan into a buyer's plan following a Corporate Transaction is much more attractive – and much less risky. In the absence of the ongoing determination letter program, it had become common practice for buyers to terminate targets' qualified retirement plans prior to closing – an action that limited certain (but not all) risks associated with such plans.

Limited Sanction Relief: Rev. Proc. 2019-20 also implements a special sanction structure for plan failures discovered during the determination letter review process for Merged Plans. No sanctions will be imposed for any qualified retirement plan document failures related to plan provisions adopted to effectuate the Corporate Transaction. Reduced sanctions (equal to 100% of the fee under EPCRS) will apply to plan document failures identified during the IRS' determination letter review if (i) the amendment that caused the failure was either adopted timely in good faith with the intent of maintaining the plan's qualified status or (ii) a required amendment was not timely adopted based on the plan sponsor's reasonable and good faith belief that an amendment was not required. All other plan document failures that are identified during the IRS review process will be subject to sanctions equaling 150% to 250% of the fee for self-identified errors under EPCRS (which is generally less severe than the sanctions under the prior determination letter cycle program).

Statutory Hybrid Plan Relief: In addition to expanding the determination letter program for Merged Plans, the IRS also announced in Rev. Proc. 2019-20 that individually designed statutory hybrid plans (e.g., cash balance and pension equity plans) would be eligible to apply for determination letters during the 12-month period beginning on September 1, 2019 and ending on August 31, 2020. Sanctions similar to those described above for Merged Plans will apply to any plan failures discovered during the determination letter review process for statutory hybrid plans.

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