



IRS EXPANDS DETERMINATION LETTERS FOR HYBRID, MERGED PLANS

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May 2, 2019*

Just-released [Rev. Proc. 2019-20](#) provides a limited expansion of IRS's determination letter (DL) program for individually designed retirement plans to allow reviews of hybrid or merged plans. The guidance also extends open remedial amendment periods for sponsors that can submit DLs under this procedure and offers sanction relief for plan document failures discovered during IRS's review of the DL application. The changes come in response to IRS's request last year for input on plan issues that might justify opening the DL program.

LIMITED EXPANSION OF DL PROGRAM

Since Jan. 1, 2017, IRS has limited its review of DL applications for individually designed plans to initial qualification and plan termination. Starting Sept. 1, 2019, IRS will also accept DL applications for individually designed hybrid or merged plans.

Statutory Hybrid Plans

During the 12-month period beginning Sept. 1, 2019, IRS will accept DL applications for individually designed statutory hybrid plans. IRS will review these plans for compliance with the 2017 and 2016 Required Amendments (RA) Lists in [Notice 2017-72](#) and [Notice 2016-80](#) and the [Cumulative Lists](#) issued prior to 2016.

Merged Plans

IRS will accept DL applications on an ongoing basis for merged plans arising from a corporate transaction between two unrelated entities. The sponsor of a merged plan can request a DL if two conditions are met:

- The plan merger occurs no later than the last day of the first plan year that begins after the date of the corporate transaction.
- The DL application is submitted by the last day of the merged plan's first plan year that begins after the date of the plan merger.

IRS will review a merged plan for compliance with the RA List issued during the second full calendar year before the DL application and all earlier RA and Cumulative Lists.

EXTENSION OF REMEDIAL AMENDMENT PERIOD

The new guidance extends any remedial amendment period still open on the date a sponsor becomes eligible to submit a DL (as described above) until the later of:

- The last day the sponsor can submit the DL application under the new guidance
- 91 days after IRS issues a DL (in accordance with Treas. Reg. § [1.401\(b\)-1\(e\)\(3\)](#))

Although the revenue procedure extends remedial amendment periods, it does not provide hybrid plan sponsors additional anti-cutback relief to reduce interest crediting rates that don't comply with the [market-rate rules](#). IRS [granted](#) that relief only to sponsors that amended their plans before the first day of the first plan year beginning on or after Jan. 1, 2017 (with a delayed effective date for collectively bargained plans).

SANCTION RELIEF FOR CERTAIN DEFECTS

If IRS discovers a plan document failure while reviewing a DL application, the sponsor usually faces a sanction. The sanction is equal to 150% or 250% (depending on the failure) of the user fee the sponsor would have paid to correct the defect under the [Voluntary Correction Program](#) (VCP). But IRS will offer sanction relief for plan document defects discovered while reviewing a DL application submitted under this new revenue procedure:

- **Hybrid plan relief.** For statutory hybrid plans, IRS won't impose a sanction for any plan document failure due to a plan provision that doesn't comply with the final hybrid plan regulations in Treas. Reg. §§ [1.411\(a\)\(13\)-1](#) and [1.411\(b\)\(5\)-1](#). Other plan document failures may be eligible for a reduced sanction equal to 100% of the VCP user fee the sponsor would have paid to correct the defect.
- **Merged plan relief.** For merged plans, IRS will impose no sanction for defective plan provisions included to implement the plan merger. For other plan document failures, IRS will impose a reduced sanction equal to the user fee the sponsor would have paid to correct the defect under VCP.

RELATED RESOURCES

Non-Mercer Resources

- [Rev. Proc. 2019-20](#) (IRS, May 1, 2019)
- [Required Amendments List](#) (IRS, May 1, 2019)
- [Cumulative List of Changes in Retirement Plan Qualification Requirements](#) (IRS, April 2, 2019)
- [Determination Letters for Individually Designed Retirement Plans FAQs](#) (IRS, March 18, 2019)

- [Notice 2017-72](#), 2017 Required Amendments List for Qualified Retirement Plans (IRS, Dec. 5, 2017)
- [Notice 2016-80](#), 2016 Required Amendments List for Qualified Retirement Plans (IRS, Dec. 13, 2016)

Mercer Law & Policy Resources

- [IRS Issues 2019 Procedures for Retirement Plan Determination Letters, Rulings, Other Guidance](#) (Jan. 21, 2019)

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