

LEGAL UPDATES

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Service

Retirement, Health & Welfare Plans

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New Opportunity for Certain Retirement Plans to Obtain IRS Determination Letters

Beginning February 1, 2017, the Internal Revenue Service (IRS) stopped accepting applications for determination letters for individually designed plans, other than for new plans and terminating plans. This change in IRS policy was problematic for many sponsors of individually designed plans that did not use a pre-approved plan document. Although never legally required, current determination letters are typically requested by parties to business transactions, lenders, auditors and others.

On May 1, 2019, the IRS issued Revenue Procedure 2019-20 to reopen the determination letter program for certain individually designed plans.

Cash balance and other hybrid defined benefit plans

First, cash balance plans (or other hybrid-type defined benefit pension plans) may be filed during a limited window beginning September 1, 2019, and ending August 31, 2020. The IRS user fee for requesting a determination letter is \$2,500.

If the IRS finds a form defect (other than failure to comply with the final interest rate regulations), the IRS will impose a sanction equal to the user fee that would have applied under the IRS voluntary correction program (currently \$3,500 for a plan with over \$10 million in assets).

No sanctions will be imposed if the IRS determines that the failure to comply with the final interest rate regulations was in good faith.

The \$3,500 sanction will only apply if the IRS determines that the form defect was the result of a good-faith effort to comply (either a good-faith amendment or a good-faith determination that no amendment was needed).

If the IRS determines, apparently at its sole discretion, that the form defect was not the result of good faith, the sanction would be 150% or 250% of the user fee depending on the duration of the failure (currently \$4,250 or \$8,750).

In other words, plan sponsors no longer get an automatic free pass on good-faith form defects.

Merged plans

Second, certain merged plans resulting from a merger or acquisition of an unrelated entity may be filed at any time on an ongoing basis, beginning September 1, 2019. Merged plans include both defined benefit and defined contribution plans. To be eligible the prior plans must have been maintained by entities that were unrelated prior to the merger or other acquisition.

The plan merger must take place by the last day of the plan year following the year of the entity acquisition.

The application must be filed by the last day of the plan year following the plan merger.

Sanction rules similar to the rules discussed above apply. However, there will be no sanctions for good-faith provisions relating to the merger.

Assuming calendar year plans:

Mergers or acquisitions that occurred in 2017, with plans merged in 2017 or 2018, can be filed no later than December 31, 2019.

Mergers or acquisitions that occurred in 2018, with plans merged in 2018 or 2019, can be filed no later than December 31, 2020.

What this means to you

The new IRS guidance provides an opportunity to obtain IRS approval of the form of the plan document for any employer that maintains an individually designed cash balance (or similar hybrid) pension plan or a recently merged retirement plan as a result of an acquisition. More than an opportunity, the fact that a determination letter will be available for a plan that fits the parameters of the new guidance may result in pressure on the plan sponsor to obtain a determination letter.

Plan sponsors also may want to consider whether to convert their individually designed plans to pre-approved documents, which provide an ongoing opportunity to obtain a determination letter. Husch Blackwell currently maintains a pre-approved defined contribution plan, a pre-approved defined benefit pension plan, and a pre-approved cash balance plan, and the IRS is currently reviewing our employee stock ownership plan (ESOP) document for pre-approval.

Contact us

If you have questions about how to respond to this new IRS guidance, contact Alan Kandel, Craig Kovarik, Patricia Martin or your Husch Blackwell attorney.