

Limited Opportunity to Apply for an IRS Determination Letter for Cash Balance Plans



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Michael J. Crumbock | crumbockm@pepperlaw.com

For the one-year period beginning September 1, 2019 and ending August 31, 2020, plan sponsors of statutory hybrid plans will be able to apply for a favorable determination letter from the IRS.

IRS Revenue Procedure 2019-20 (available at: <https://www.irs.gov/pub/irs-drop/rp-19-20.pdf>) opens this limited window to the determination letter program that was effectively closed in 2016 for individually designed retirement plans (other than for terminating plans, initial qualifications and certain other specified circumstances). This window is a very positive development because hybrid plan sponsors can obtain IRS confirmation that their plans are compliant with the final hybrid plan regulations and because the window offers a penalty-free or penalty-reduced opportunity to correct plan document failures.

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Hybrid plans are generally defined benefit plans that use a benefit formula that is based on a lump sum. These plans are often referred to as cash balance plans.

Under the Revenue Procedure, the IRS will not impose any sanctions for document failures it discovers during its application review that are related to implementation of the hybrid plan final regulations. Moreover, if the IRS discovers other document failures during its review unrelated to the hybrid plan regulations, and these failures were the result of timely good faith amendments intended to maintain the plan's qualified status, the IRS will impose a reduced sanction equal to the EPCRS user fee (e.g., \$3,500 for a self-reporting large plan sponsor).

We strongly encourage hybrid plan sponsors to submit a determination letter application during this limited window, even if they are confident that their plan does not have document failures. There may not be another opportunity to obtain a determination letter in the near term, unless the plan is terminated, and the assurance afforded by a determination letter is valuable to sponsors, third parties (e.g., auditors) and counterparties in corporate transactions.

Also included in the Revenue Procedure is an expansion of the determination letter program for "merged plans." On an ongoing basis beginning September 1, 2019, the IRS will accept determination letter applications for individually designed plans that result from consolidating two or more plans maintained by unrelated entities in connection with a corporate merger, acquisition or other similar transaction. This provides merged plan sponsors with an opportunity for sanctions relief similar to that described above with respect to hybrid plans. To be eligible under this portion of the determination letter program, the plan merger must be completed by the end of the plan year following the plan year in which the relevant corporate transaction occurred, and the determination letter application must be submitted by the end of the plan year following the plan year in which the plan merger was completed. Plan sponsors are encouraged to utilize this "merged plan" determination letter opportunity whenever applicable.

If you are the sponsor of a hybrid plan or a merged plan, contact a member of the Employee Benefits and Executive Compensation Practice Group at Pepper Hamilton to learn more about these new determination letter opportunities.