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## IRS Reopens Determination Letter Program for Merged Plans and Cash Balance Plans

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In May 2019, the IRS issued Revenue Procedure 2019-20, which provides for a limited expansion of the determination letter program for certain individually-designed plans. Under this expansion, the IRS will accept determination letter applications for “merged plans” on an ongoing basis and for “statutory hybrid plans” (for example, cash balance plans) during a 12-month period beginning September 1, 2019.

### Background

Effective in 2017, the IRS began accepting determination letter applications for individually-designed plans only for determinations upon initial plan qualification and qualification upon plan termination. Thus, the IRS is no longer accepting determination letter applications for individually-designed plans under the five-year cycle determination letter program.

### Merged Plans

Beginning September 1, 2019 and on an ongoing basis thereafter, the IRS will accept determination letter applications with respect to “merged plans,” provided certain conditions are satisfied. A “merged plan” for this purpose is a plan that results from the merger of two or more plans maintained by unrelated entities into a single individually-designed plan. However, the plan merger must occur in connection with a corporate merger, acquisition, or other similar business transaction, and both the plan merger and the determination letter application filing must satisfy special timing rules.

In particular, the plan merger must occur by the end of the first plan year starting after the plan year that includes the transaction date, and the

### Our Practice

We advise public, private, taxable and tax-exempt clients on a wide variety of issues related to the design, preparation, communication, administration, operation, merger, split-up, amendment and termination of all forms of employee benefit plans and executive compensation programs and related funding vehicles. The firm has defended clients in significant high-profile ERISA litigation matters, including 401(k) plan “stock drop” cases and other breach-of-fiduciary-duty class actions.

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determination letter application must be submitted within the period starting on the date of the plan merger and ending at the end the first plan year of the merged plan starting after the date of the plan merger.

For example, for a merged plan resulting from a transaction that occurred in 2017 to satisfy these timing rules, the plan merger must have occurred by the end of 2018, and the determination letter application must be submitted by the end of 2019 (assuming calendar year plan years). Similarly, for a merged plan resulting from a transaction that occurred in 2019 to satisfy these timing rules, the plan merger must occur by the end of 2020, and the determination letter application must be submitted by the end of 2021 (assuming calendar year plan years).

A merged plan which the IRS finds on its determination letter review to have a plan document failure (within the meaning of the IRS plan correction programs) must be amended to comply with the applicable qualification requirements in order to receive a favorable determination letter. In addition, the plan sponsor must pay the applicable sanction (if any) described below and enter into a closing agreement with the IRS.

However, the IRS will not impose a sanction for any plan document failure with respect to a plan provision included to effectuate the plan merger. For a merged plan that has a plan document failure, other than a failure with respect to a plan provision included to effectuate the plan merger, the amount of the sanction is equal to the applicable IRS “voluntary correction program” (“VCP”) user fee (a maximum of \$3,500 for large plan), as long the amendment that created the failure was adopted timely and in good faith with the intent of maintaining the qualified status of the plan (or the plan sponsor reasonably and in good faith determined that no amendment was required by the qualification change). The sanction that applies where the conditions above are not satisfied is 150% or 250% (depending on the duration of the failure) of the applicable VCP user fee.

## Statutory Hybrid Plans

The IRS will accept a determination letter application for an individually designed “statutory hybrid plan” during the 12-month period beginning on September 1, 2019 and ending on August 31, 2020. A “statutory hybrid plan” is a defined benefit plan under which the accrued benefit (or any portion thereof) is calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant’s final average compensation (or a plan which has a similar effect) (for example, a cash balance plan or a pension equity plan).

A statutory hybrid plan which the IRS finds on its determination letter review to have a plan document failure (within the meaning of the IRS plan correction programs) must be amended to comply with the applicable qualification requirements in order to receive a favorable determination letter. In addition, the plan sponsor must pay the applicable sanction (if any) described below and enter into a closing agreement with the IRS.

However, the IRS will not impose a sanction for any plan document failure relating to the implementation of the final hybrid plan regulations that is discovered by the IRS in its review of a statutory hybrid plan submitted for a determination letter. For a statutory hybrid plan that has a plan document failure, other than a failure relating to the implementation of the final hybrid plan regulations, the amount of the sanction is equal to the applicable

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VCP user fee (a maximum of \$3,500 for large plan), as long the amendment that created the failure was adopted timely and in good faith with the intent of maintaining the qualified status of the plan (or the plan sponsor reasonably and in good faith determined that no amendment was required by the qualification change). The sanction that applies where the conditions above are not satisfied is 150% or 250% (depending on the duration of the failure) of the applicable VCP user fee.

## Insights

This expansion of the IRS determination letter program provides a useful opportunity for merged plans to be reviewed by the IRS for qualification failures on an ongoing basis, provided the timing rules described above are satisfied. In addition, it provides a useful, although limited, one-year opportunity starting September 1, 2019, for a cash balance plan to be reviewed by the IRS for qualification failures and to have such review include a consideration of the final hybrid plan regulations.

King & Spalding LLP would be happy to assist you with any questions you have about the expansion of the IRS determination letter program.

## August and September 2019 Filing and Notice Deadlines for Qualified Retirement and Health and Welfare Plans

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Employers and plan sponsors must comply with numerous filing and notice deadlines for their retirement and health and welfare plans. Failure to comply with these deadlines can result in costly penalties. To avoid such penalties, employers should remain informed with respect to the filing and notice deadlines associated with their plans.

The filing and notice deadline table below provides key filing and notice deadlines common to calendar year plans for August through September. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is usually delayed until the next business day. Please note that the deadlines will generally be different if your plan year is not the calendar year. Please also note that the table is not a complete list of all applicable filing and notice deadlines (including any available exceptions and/or extensions), just the most common ones. King & Spalding is happy to assist you with any questions you may have regarding compliance with the filing and notice requirements for your employee benefit plans.

Deadline	Item	Action	Affected Plans
August 14 (within 45 days after the close of the second quarter of plan	Benefit Statements for Participant- Directed Plans	Deadline for plan administrator to send benefit statement for the second quarter of the plan year to participants in participant-directed defined contribution plans.	Defined Contribution Plans with participant- directed

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Deadline	Item	Action	Affected Plans
year)			investments
	Quarterly Fee Disclosure	Deadline for plan administrator to disclose fees and administrative expenses deducted from participant accounts during the second quarter of the plan year. Note that the quarterly fee disclosure may be included in the quarterly benefit statement or as a stand-alone document.	
August 15 (the 15th day of the 8th month after the end of the plan year)	IRS Forms 990 and 990-EZ	Deadline for tax-exempt trusts associated with qualified retirement plans and voluntary employee beneficiary associations (VEBAs) to file Forms 990 or 990-EZ with the IRS for prior year if the trustee obtained a 3-month extension by filing a Form 8868.	Qualified Retirement Plans  Voluntary Employee Beneficiary Associations
September 15 (8 ½ months after the end of the plan year)	Minimum Contribution Deadline	Deadline for plan administrator to contribute balance of minimum contributions necessary to avoid a funding deficiency.	Defined Benefit Plans
September 30 (within 9 months of the end of the plan year)	Summary Annual Report (SAR)	Deadline for plan administrator to distribute Summary Annual Report for prior year to participants and beneficiaries. This deadline may be extended until 2 months following the close of the extension period for filing a Form 5500, if applicable.	Defined Contribution Plans  Health and Welfare Plans  (unfunded welfare plans are exempt)

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Deadline	Item	Action	Affected Plans
September 30  (last day of the 9th month following the end of the prior plan year)	Certification of Adjusted Funding Target Attainment Percentage (AFTAP)	Deadline for actuary to certify AFTAP to avoid presumption that AFTAP is less than 60%.	Defined Benefit Plans