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IRS lets incomplete determination letter applications for statutory hybrid plans slide until December 31

The IRS is providing relief from the requirements that applications for hybrid DB plan determination letters (such as for cash balance plans) be complete when filed on the Monday, August 31 due date, but only if the (incomplete) application is filed by that date.

Background

Under IRS [Revenue Procedure 2016-37](#), the IRS limited its determination letter program for individually designed retirement plans to applications upon initial plan qualification or plan termination, but indicated it would annually consider whether determination letters would be issued in other specified circumstances.

Last year the IRS issued [Rev. Proc. 2019-20](#) to allow determination letter submissions by individually designed statutory hybrid plans during the 12-month period beginning September 1, 2019 and ending August 31, 2020 as one such special circumstance. This was to allow IRS to review amendments to comply with the final IRS regulations issued concerning those plans.

The deadline for submitting a *complete* determination letter application for amended individually designed statutory hybrid plans under Revenue Procedure 2019-20 was August 31, 2020.

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What is a “statutory hybrid plan”?

Statutory hybrid plans are defined benefit plans that use a hypothetical account balance (e.g., a cash balance plan) or an accumulated percentage of the participant’s final average compensation (e.g., a pension equity plan) to establish a participant’s accrued benefit.

IRS: incomplete applications now accepted

Since some practitioners and plan sponsors are having difficulty obtaining the documentation and information needed to file a complete submission package by August 31, 2020 for these filings, the IRS announced they will let applicants who submit incomplete applications by August 31, 2020 supplement those applications through the end of 2020 if the initial application is submitted by the August 31, 2020 deadline and contains, at minimum, the following three documents:

- Form 5300, Application for Determination of Employee Benefit Plan
- Form 8717, User Fee for Employee Plan Determination Letter Request, with appropriate user fee
- Form 8821, Tax Information Authorization, or Form 2848, Power of Attorney, if applicable

In addition, to take advantage of this relief, the cover letter must say that the application is being made pursuant to Rev. Proc. 2019-20 Amended Hybrid Plan and should provide the applicant's address or fax number. The IRS will then send an Application Identification Sheet to that address or fax number. The Application Identification Sheet must then be included with all supplemental documentation that is submitted after the initial submission so it will be added to the case file.

The EP Determinations Department at IRS will not review the completeness of these Determination Letter Applications for compliance with the list of items required in Sections 10 and 11 of IRS Revenue Procedure 2020-4 until at least January 1, 2021. Under those rules, once a determination letter application is assigned to an IRS Determinations Specialist, they review it and notify the taxpayer (and representative, if applicable) of any missing or incomplete information or documents that must be provided within 21 days. If anything is still missing after 21 days, the Specialist sends a final letter that provides the applicant 30 more days to submit any items. Failure to meet that 30-day deadline ends with IRS closing the case without issuing a determination letter and without refunding the user fee (currently \$2,500). This extension ensures applicants they will have at least until the end of 2020 to perfect their submission without running the risk of having their application rejected and forfeiting their user fee if they can't respond fast enough before then.

In closing

If a plan sponsor is interested in applying for a determination letter for an individually designed statutory hybrid plan and is unable to gather all the necessary documentation by the upcoming August 31, 2020 deadline, they should consider filing an "incomplete" application *as soon as possible*. Doing this will allow them additional time until December 31, 2020 to submit the remaining information.

Don't wait! Determination letter applications for amended hybrid plans submitted after August 31, 2020, whether complete or incomplete, will be returned for missing the 12-month period provided in Rev. Proc. 2019-20.

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