

Publications

IRS Determination Letter Program: Upcoming Deadlines and Recent Developments

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The retirement plan community got a shock five years ago when the Internal Revenue Service (“IRS”) dramatically cut back its 60-year-old program of providing employers with the comfort of a determination letter on the tax qualification of their plans. With the IRS’s limited re-opening of its determination letter program, this summary highlights upcoming deadlines and recent developments. We encourage all eligible retirement plan sponsors to take advantage of the opportunity for a new determination letter in almost all cases when available. And for the many plan sponsors who are still not eligible to request a determination, Groom’s Document Compliance Service provides an alternative form of determination that their plans are up-to-date and tax-qualified (as discussed further at the end of this overview).

Hybrid Pension Plan and Merged Plan Determination Letters

Last year, in Revenue Procedure 2019-20, the IRS re-opened the determination letter program on a limited, but significant, basis for plans that have experienced a recent plan merger and for cash balance and other hybrid pension plans. Please see [our prior alert](#) regarding this program expansion.

Of particular note, plan sponsors of cash balance and other defined benefit plans that use a statutory hybrid formula are reaching the end of the window to submit the plan to the IRS for a determination letter by filing Form 5300. Applications must be filed by August 31, 2020. We note that many have asked the IRS to extend this deadline in light of the coronavirus pandemic, but, as of this date, there has been no extension.

In addition, plan sponsors of merged plans (whether defined contribution or defined benefit) are now permitted to submit the merged plan for a new determination letter within a limited period of time following the corporate transaction and plan merger. In order to be eligible, the plan merger must be completed within the transition period under Internal Revenue Code (“Code”) section 410(b)(6)(C) (i.e., no

later than the end of the plan year after the plan year that includes the date of the corporate transaction), and the determination letter application must be submitted by the last day of the first plan year (of the merged plan) that begins after the effective date of the plan merger. For example, if a corporate acquisition takes place in 2019, and a plan of the newly acquired entity is merged into an existing plan by the end of 2020, the resulting merged plan may be submitted for a new determination letter up until December 31, 2021 (assuming the merged plan uses a calendar year plan year).

Pre-Approved Plan Restatements and Determination Letters

Recently, the IRS issued guidance related to pre-approved plan restatements and determination letters.

With respect to pre-approved defined contribution plans, the IRS issued Announcement 2020-7, which addresses the timeframe in which plan sponsors of pre-approved defined contribution plans must execute newly approved IRS restatements. The IRS expects to issue opinion letters regarding the pre-approved plans on or about June 30, 2020. An opinion letter provides that the form of the plan document (but not plan operations) complies with the Code. Thereafter, during the period starting August 1, 2020 and ending July 31, 2022, plan sponsors will need to adopt these new plan documents. In addition, during this two-year window, a plan sponsor that makes limited modifications to the newly approved IRS restatement may also file for a determination letter on the plan by filing Form 5307.

With respect to pre-approved defined benefit plans, the IRS issued Notice 2020-35, which provides for an extension of the deadline for plan sponsors of pre-approved defined benefit plans to execute the latest approved IRS restatements. Under Announcement 2018-05, plan sponsors originally had until April 30, 2020 to restate their plan document and, if desired, file for a determination letter if limited modifications were made to the pre-approved document. Importantly, Notice 2020-35 extended this restatement and determination letter filing deadline until July 31, 2020. This extended deadline also covers actions that were otherwise required to be performed with respect to disqualifying provisions during the remedial amendment period that would otherwise have ended on April 30, 2020.

Additional details on the determination letter filing process are set forth in Revenue Procedure 2020-4. The filing fee for a Form 5300 is \$2,500 (for single-employer plans), and the filing fee for a Form 5307 is \$800. In either case, an updated favorable determination letter provides significant value to the plan sponsor, especially in the case of any future IRS plan audit.

Next Steps and the Groom “DCS”

If you have questions about whether your plan is eligible for a new determination letter or would like our assistance in filing for a new letter, please contact your regular Groom attorney, or give any of us a call or send us an email.

We understand that plan sponsors are increasingly being asked to provide outside counsel assurances of their plan document’s compliance with IRS requirements to a variety of third parties, including investment managers, recordkeepers, trustees, insurance companies, financial auditors, and lenders. Where a new determination letter is not an option, or where an opinion of counsel is otherwise requested, the Groom Document Compliance Service (“DCS”) can fill that need. Our DCS program is described [here](#). Feel free to contact any of us about this program.

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