

# Multiemployer Review

Update on issues affecting multiemployer plans

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## IRS expands determination letter program for retirement plans

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Earlier this year, the Internal Revenue Service (IRS) released Revenue Procedure (Rev Proc) 2019-20 announcing an expansion of the determination letter program for certain retirement plans. The determination letter program, previously restricted in 2017 (Rev Proc 2016-37), will be expanded on September 1, 2019. This action opens the program up to *statutory hybrid plans* to apply during a 12-month window, and also allows certain *merged plans* indefinitely.

### Background

A favorable determination letter is provided by the IRS upon a complete review of a retirement plan and indicates that the plan meets legal (Internal Revenue Code) requirements and that it qualifies for special tax treatment. Generally, if the plan is administered and operates in accordance with a plan document that has undergone such review, the plan is operating within the bounds of the law and maintains its tax-advantaged “qualified” status.

Prior to 2017, plans generally applied for determination letters every five years, providing an opportunity for the IRS to review restatements and amendments for compliance. At the start of 2017, the determination letter program was restricted to terminating plans and plans establishing their initial qualified status. The official review process was replaced with a process where plans self-monitor compliance. To assist plans, the IRS has published a “Required Amendments List” and an “Operational Compliance List” each year to identify changes that should be incorporated by a plan to retain qualified plan status. Existing plans are expected to retain prior favorable determination letters, disregarding expiration dates if prior to January 4, 2016, and to maintain the plans in accordance with the Required Amendments List.

### Key takeaways for multiemployer plans

- IRS discontinued regular determination letter process in 2017
- IRS is opening a one-year window for certain hybrid plans to apply for a determination letter
- For those plans, sanctions will not be imposed for certain failures
- Hybrid designs recently adopted by some multiemployer plans may qualify and be able to confirm compliance

### What this means for statutory hybrid plans

A statutory hybrid plan means a defined benefit (DB) plan that contains a benefit formula that is either a lump sum-based benefit or has a similar effect. Though generally viewed as “cash balance” type plans, this includes variable annuity benefit formulas with hurdle rate under 5%. Several multiemployer plans have adopted designs with variable annuity benefit formulas in recent years, and some of these plans may be able to apply for determination letters.

Any defined benefit plan that uses a statutory hybrid formula will be eligible to apply for a determination letter during the 12-month period starting September 1, 2019, and ending August 31, 2020. The IRS will review these plans for compliance with the Cumulative Lists and Required Amendments Lists through 2017. With final regulations on hybrid plans coming out in late 2014, many plans have not had a formal review of their current formulas under the most recent hybrid plan rules.

Rev Proc 2019-20 also provides details on reduced sanctions for certain plan document failures. The Treasury and IRS recognize that the determination letter program was frozen shortly after the final hybrid plan regulations so there are no sanctions if the failure was related to the final regulations. If unrelated to the final regulations, there is a special sanction structure for other failures, generally at a reduced rate depending on rules and conditions.

## What this means for merged plans

For this purpose, a *merged plan* means a plan that results from a merger or consolidation of two or more plans into a single individually designed plan in connection with a corporate merger, acquisition, or other similar business transaction among unrelated entities. Under this current definition, it appears that a merger of multiemployer plans would not be allowed to apply for a determination letter. Plans will generally be recently merged, as they must satisfy both of the following two conditions to be eligible:

1. The date of the plan merger is no later than the end of the first plan year after the plan year that includes the date of corporate transaction.
2. A determination letter application is submitted between the date of the plan merger and the last day of the first plan year beginning after the effective date of merger.

As with hybrid plans, the IRS will review these plans for compliance with the Cumulative Lists and Required Amendments Lists. As this is an ongoing program, the review will be based on the Required Amendments List that was issued during the second full calendar year prior to application.

Rev Proc 2019-20 also provides reduced sanctions for certain plan document failures for merged plans. These sanctions are similar to those for statutory hybrid plans.

## Summary for multiemployer plans

As the start of the expanded program approaches, eligible plans should consider applying for new determination letters. This is specifically of interest to multiemployer pension plans that have recently incorporated a variable annuity type of benefit formula with a hurdle rate less than 5%. This is an important opportunity for sponsors of plans with alternative design structures to confirm that their plan documents comply with final IRS rules and regulations. While the definition of a merged plan appears to currently preclude multiemployer plans, eligible sponsors of merged plans can apply on an ongoing basis to ensure compliance with the law as well as take advantage of reduced sanctions, if applicable.

## For more information

For more information on statutory hybrid plans, determination letters, or the impact of the new regulations, please contact your Milliman consultant.



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