

SECTION 1. PURPOSE

This revenue procedure, consistent with the process described in Rev. Proc. 2016-37, 2016-29 I.R.B. 136, provides for a limited expansion of the determination letter program with respect to individually designed plans. Under this limited expansion, the Internal Revenue Service (IRS) will accept determination letter applications for (i) individually designed statutory hybrid plans during a 12-month period beginning September 1, 2019, and (ii) individually designed Merged Plans (as defined in section 5.01(2) of this revenue procedure) on an ongoing basis. As provided by Rev. Proc. 2016-37, a plan sponsor continues to be permitted to submit a determination letter application for initial plan qualification and for qualification upon plan termination. This revenue procedure also provides for a limited extension of the remedial amendment period under § 401(b) of the Internal Revenue Code (Code) and Rev. Proc. 2016-37 under specified circumstances, and for special sanction structures that apply to certain plan document failures discovered by the IRS during the review of a plan submitted for a determination letter pursuant to this revenue procedure.

SECTION 2. BACKGROUND

.01 Effective January 1, 2017, Rev. Proc. 2016-37 provides the circumstances under which plan sponsors may submit determination letter applications to the IRS. In general, a sponsor of an individually designed plan may submit a determination letter application only for initial plan qualification and for qualification upon plan termination. However, as described in section 4.03(3) of Rev. Proc. 2016-37, the Department of the Treasury (Treasury Department) and the IRS will consider each year whether to accept determination letter applications for individually designed plans in specified circumstances other than for initial qualification and qualification upon plan termination.

.02 In Notice 2018-24, 2018-17 I.R.B. 507, the Treasury Department and the IRS requested comments on the potential expansion of the scope of the determination letter program for individually designed plans.

.03 Section 401(b) of the Code and the regulations thereunder provide a remedial amendment period during which a plan may be amended retroactively to comply with the Code's qualification requirements. Section 1.401(b)-1(e)(3) provides, in part, that the submission of a determination letter application extends the remedial amendment period until the expiration of 91 days after the date a determination letter is issued. Section 1.401(b)-1(f) provides that the Commissioner also may extend the remedial amendment period.

.04 Rev. Proc. 2016-37 extended the remedial amendment period that would otherwise apply under § 1.401(b)-1 for certain disqualifying provisions, as described in § 1.401(b)-1(b) and Rev. Proc. 2016-37. Section 5.05(3) of Rev. Proc. 2016-37 provides that the remedial amendment period for a disqualifying provision with respect to a change in qualification requirements (a statutory change or a change in the requirements provided in regulations or other guidance, as noted in section 5.04 of that revenue procedure) is extended to the end of the second calendar year that begins after the issuance of the Required Amendments List in which the change in qualification requirements appears. A later date may apply to a governmental plan (as defined in § 414(d)), as provided in section 5.06 of Rev. Proc. 2016-37. As provided in Rev. Proc. 2016-37, the Treasury Department and the IRS intend to publish a Required Amendments List annually. Section 5.05(2) of Rev. Proc. 2016-37 also provides that the remedial amendment period for a disqualifying provision with respect to an amendment to an existing plan (other than a disqualifying provision with respect to a change in qualification requirements) is extended to the end of the second calendar year following the calendar year in which the amendment is adopted or effective, whichever is later.

.05 Notice 2017-72, 2017-52 I.R.B. 601, sets forth the 2017 Required Amendments List. The 2017 Required Amendments List provides that December 31, 2019, is generally the last day of the remedial amendment period with respect to a disqualifying provision arising as a result of a change in qualification requirements that appears on the 2017 Required Amendments List. December 31, 2019, is also generally the plan amendment deadline for a disqualifying provision arising as a result of a change in qualification requirements that appears on the 2017 Required Amendments List. A later date may apply to a governmental plan (as defined in § 414(d)).¹

.06 Prior to the issuance of Rev. Proc. 2016-37, an annual Cumulative List of Changes in Retirement Plan Qualification Requirements (Cumulative List) was issued to identify changes in the qualification requirements resulting from changes in statutes, or from regulations or other guidance published in the Internal Revenue Bulletin, that were required to be taken into account in a written plan document submitted for a determination letter.

.07 Section 411(a)(13)(C)(i) defines the term “applicable defined benefit plan” as 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. Section 411(a)(13)(C)(ii) provides that the Secretary shall issue regulations which include in the definition of an applicable defined benefit plan any defined benefit plan (or any portion of such a plan) which has an effect similar to an applicable defined benefit plan. Notice 2007-6, 2007-1 C.B. 272, refers to a plan described in either § 411(a)(13)(C)(i) or in regulations or other guidance issued pursuant to

¹ Notice 2018-91, 2018-50 I.R.B. 985, sets forth the 2018 Required Amendments List. There were no changes in qualification requirements listed on the 2018 Required Amendments List.

§ 411(a)(13)(C)(ii) as a statutory hybrid plan. Section 1.411(a)(13)-1(d)(5) defines a “statutory hybrid plan” as a defined benefit plan that contains a statutory hybrid benefit formula.

.08 Section 411(b)(5)(B)(i)(I) provides, in part, that an applicable defined benefit plan shall be treated as failing to meet the requirements of § 411(b)(1)(H) (which provides that the rate of an employee’s benefit accrual must not be reduced because of the attainment of any age) unless the terms of the plan provide that any interest credit (or an equivalent amount) for any plan year shall be at a rate that is not greater than a market rate of return. Final regulations providing rules regarding statutory hybrid retirement plans and transitional amendments to satisfy the market rate of return rules for statutory hybrid retirement plans were issued in 2010 (75 Fed. Reg. 64123), 2014 (79 Fed. Reg. 56442), and 2015 (80 Fed. Reg. 70680), herein referred to individually and collectively as “final hybrid plan regulations.” The 2014 and 2015 final hybrid plan regulations appear on the 2017 Required Amendments List.

.09 Section 411(d)(6) provides, in part, that a plan does not satisfy § 411 if an amendment to the plan decreases a participant’s accrued benefit.

.10 Notwithstanding the requirements of § 411(d)(6), § 1.411(b)(5)-1(e)(3)(vi) permits a plan with an interest crediting rate that does not comply with the 2010 and 2014 final hybrid plan regulations (a noncompliant interest crediting rate) to be amended with respect to benefits that have already accrued so that its interest crediting rate complies with the market rate of return rules of § 411(b)(5)(B)(i) and § 1.411(b)(5)-1(d). Pursuant to § 1.411(b)(5)-1(e)(3)(vi)(B)(3), in order to qualify for this treatment, the amendment had to be adopted prior to, and effective no later than, the applicability date of the regulatory market rate of return rules (generally, the first day of the first plan year that began on or after January 1, 2017, with a delayed applicability date for collectively bargained plans).

SECTION 3. EXPANSION OF DETERMINATION LETTER PROGRAM

The Treasury Department and the IRS received numerous comments in response to the request for comments in Notice 2018-24. After consideration of the comments, the Treasury Department and the IRS have determined that the determination letter program will be expanded to permit plan sponsors to submit (i) determination letter applications for individually designed statutory hybrid plans, as defined in § 1.411(a)(13)-1(d)(5), during the 12-month period beginning September 1, 2019, and ending August 31, 2020, and (ii) determination letter applications for certain individually designed Merged Plans (as defined in section 5.01(2) of this revenue procedure) on an ongoing basis. Sections 6, 7, and 8 of this revenue procedure provide for a limited extension of the remedial amendment period and special sanction structures applicable to plans submitted for a determination letter pursuant to this revenue procedure.

SECTION 4. STATUTORY HYBRID PLANS

.01 Expansion of Determination Letter Program for Statutory Hybrid Plans.

(1) In general. The IRS will accept a determination letter application for an individually designed statutory hybrid plan, as defined in § 1.411(a)(13)-1(d)(5), during the 12-month period beginning September 1, 2019, and ending August 31, 2020 (statutory hybrid plan submission period).

(2) Applicable procedures. The procedures relating to the submission of determination letter applications for individually designed plans set forth in Rev. Proc. 2019-4, 2019-1 I.R.B. 146 (and its annual successors), and Rev. Proc. 2016-37 apply to determination letter applications submitted pursuant to this section 4, except as otherwise provided by this revenue procedure.

(3) Scope of plan review. The IRS's review of individually designed statutory hybrid plans that are submitted for a determination letter pursuant to this revenue procedure will be based on the 2017 Required Amendments List (Notice 2017-72). The review will also take into account all Required Amendments Lists and Cumulative Lists issued prior to 2016.

SECTION 5. MERGED PLANS

.01 Definitions for Guidance Related to Merged Plans.

(1) Plan Merger. The term "Plan Merger" means a merger or consolidation, as described in § 1.414(l)-1(b)(2), that combines two or more plans maintained by previously Unrelated Entities into a single individually designed plan, and that occurs in connection with a corporate merger, acquisition, or other similar business transaction among Unrelated Entities that each maintained its own plan or plans prior to the Plan Merger.

(2) Merged Plan. The term "Merged Plan" means a plan that results from the merger or consolidation of two or more plans into a single individually designed plan pursuant to a Plan Merger.

(3) Unrelated Entities. The term "Unrelated Entities" means entities that are not members of the same controlled group under § 414(b), the same set of trades or businesses under common control under § 414(c), or members of the same affiliated service group under § 414(m).

(4) Date of a Corporate Merger, Acquisition, or Other Similar Business Transaction. The "Date of a Corporate Merger, Acquisition, or Other Similar Business Transaction" is the effective date of the transaction as evidenced by a corporate board resolution or written documentation signed and dated by persons duly authorized to represent the entities involved.

(5) Date of the Plan Merger. The “Date of the Plan Merger” is the effective date of the Plan Merger as evidenced by (a) a corporate board resolution or written documentation signed and dated by persons duly authorized to represent the entities involved, or (b) a plan amendment.

.02 Expansion of Determination Letter Program for Merged Plans.

(1) In general. Beginning September 1, 2019, the IRS will accept a determination letter application that satisfies the conditions set forth in section 5.02(2) with respect to a Merged Plan. Determination letter applications submitted for a Merged Plan will be accepted on an ongoing basis and are not limited to a specific submission period.

(2) Eligible plans. A determination letter application for a Merged Plan satisfies the conditions of this section 5.02(2) if the following requirements are satisfied:

(a) The Date of the Plan Merger occurs no later than the last day of the first plan year that begins after the plan year that includes the Date of a Corporate Merger, Acquisition, or Other Similar Business Transaction between Unrelated Entities, and

(b) A determination letter application for the Merged Plan is submitted within a period beginning on the Date of the Plan Merger and ending on the last day of the first plan year of the Merged Plan that begins after the Date of the Plan Merger (Merged Plan submission period).

.03 Applicable Procedures. The procedures relating to the submission of determination letter applications for individually designed plans set forth in Rev. Proc. 2019-4 (and its annual successors) and Rev. Proc. 2016-37 apply to determination letter applications submitted pursuant to this section 5, except as otherwise provided by this revenue procedure.

.04 Scope of Plan Review. The IRS’s review of individually designed Merged Plans that are submitted for a determination letter pursuant to this revenue procedure will be based on the Required Amendments List that was issued during the second full calendar year preceding the submission of the determination letter application. The review will also take into account all previously issued Required Amendments Lists and Cumulative Lists.

SECTION 6. EXTENSION OF THE REMEDIAL AMENDMENT PERIOD

.01 Extension of Remedial Amendment Period. With respect to a plan submitted for a determination letter pursuant to this revenue procedure, any remedial amendment period that is open as of the beginning of the applicable submission period defined in section 4.01(1) or 5.02(2)(b) of this revenue procedure is extended to the end of such applicable submission period. Section 1.401(b)-1(e)(3) (which provides that the submission of a determination letter application extends the remedial amendment

period until the expiration of 91 days after the date a determination letter is issued) will continue to apply.

.02 No Relief Provided Under § 411(d)(6). Section 1.411(b)(5)-1(e)(3)(vi) provides relief from the anti-cutback requirements of § 411(d)(6) with respect to the modification of a plan's interest crediting rate under certain circumstances. However, pursuant to § 1.411(b)(5)-1(e)(3)(vi)(B)(3), that relief applies only to plan amendments that were adopted prior to, and effective no later than, the applicability date of the regulatory market rate of return rules (generally, the first day of the first plan year that begins on or after January 1, 2017, with a delayed applicability date for collectively bargained plans). Although this revenue procedure extends the remedial amendment period applicable to statutory hybrid plans that are submitted for a determination letter pursuant to this revenue procedure, it does not provide additional relief from the anti-cutback requirements of § 411(d)(6).

SECTION 7. APPLICABLE SANCTIONS – STATUTORY HYBRID PLANS

.01 In General. A plan sponsor that has applied for a determination letter pursuant to this revenue procedure with respect to a statutory hybrid plan that has a plan document failure, as defined in section 5.01(2)(a) of Rev. Proc. 2019-19, 2019-19 I.R.B. 1086, (which includes the failure to adopt an amendment to correct a disqualifying provision within the applicable remedial amendment period), must amend the plan to comply with applicable qualification requirements. In addition, except as provided in section 7.02 of this revenue procedure, the plan sponsor must pay the applicable sanction described in section 7.03 or 7.04 of this revenue procedure, and enter into a closing agreement with the IRS.

.02 No Sanctions for Plan Document Failures Related to Final Hybrid Plan Regulations. The Treasury Department and the IRS are mindful that the IRS's scope of review during a statutory hybrid plan's most recent remedial amendment cycle did not include all the provisions related to the final hybrid plan regulations under § 1.411(a)(13)-1 and § 1.411(b)(5)-1. As a result, plan sponsors of statutory hybrid plans did not have the opportunity to have their plans reviewed for all provisions related to those regulations. Accordingly, the IRS will not impose a sanction for any plan document failure with respect to a plan provision required to meet the requirements of § 1.411(a)(13)-1 and § 1.411(b)(5)-1 that is discovered by the IRS in its review of a plan submitted for a determination letter pursuant to this revenue procedure.

.03 Special Sanction Structure for Plan Document Failures Unrelated to Final Hybrid Plan Regulations. This section 7.03 sets forth a sanction structure that applies to a statutory hybrid plan submitted for a determination letter pursuant to this revenue procedure that has a plan document failure other than a plan document failure with respect to a plan provision that is required to meet the requirements of § 1.411(a)(13)-1 or § 1.411(b)(5)-1, provided the conditions in section 7.03(1)(a) or (b) of this revenue procedure are satisfied. The amount of the sanction is equal to the applicable Employee Plans Voluntary Compliance Resolution System (EPCRS) Voluntary Correction Program user fee that would have applied had the plan sponsor identified the

failure and submitted the plan for consideration under the Voluntary Correction Program.

(1) Conditions for special sanction structure.

(a) The amendment that creates the failure (without regard to whether that amendment was required to be adopted) was adopted timely and in good faith with the intent of maintaining the qualified status of the plan; or

(b) In the case of an amendment required because of a change in qualification requirements, the plan sponsor reasonably and in good faith determined that no amendment was required because the qualification change does not impact provisions of the written plan document.

(2) Other rules for special sanction structure.

(a) The IRS will make the final determination in all cases as to whether an amendment was adopted in good faith with the intent of maintaining the qualified status of the plan, or whether a plan sponsor reasonably and in good faith determined that no amendment was required.

(b) If the conditions of section 7.03(1)(a) or (b) of this revenue procedure are not satisfied, the sanction set forth in section 7.04 will apply.

.04 General Sanction Structure Under EPCRS. This section 7.04 sets forth a general sanction structure that applies to a statutory hybrid plan submitted for a determination letter pursuant to this revenue procedure that (1) has a plan document failure other than a plan document failure with respect to a plan provision that is required to meet § 1.411(a)(13)-1 or § 1.411(b)(5)-1 and (2) does not satisfy the conditions of section 7.03(1)(a) or (b) of this revenue procedure. The amount of the sanction is equal to the applicable sanction amount set forth in section 14.04 of Rev. Proc. 2019-19. Section 14.04 of Rev. Proc. 2019-19 provides for a sanction for certain plan document failures that are discovered by the IRS during the determination letter process that is equal to 150% or 250% (depending on the duration of the failure) of the applicable user fee that would apply to the plan had it been submitted under the EPCRS Voluntary Correction Program. See Appendix A of Rev. Proc. 2019-4 (and its annual successors) for the applicable Voluntary Correction Program user fee.

SECTION 8. APPLICABLE SANCTIONS – MERGED PLANS

.01 In General. A plan sponsor that has applied for a determination letter pursuant to this revenue procedure with respect to a Merged Plan that has a plan document failure, as defined in section 5.01(2)(a) of Rev. Proc. 2019-19 (which includes the failure to adopt an amendment to correct a disqualifying provision within the applicable remedial amendment period), must amend the plan to comply with applicable qualification requirements. In addition, except as provided in section 8.02 of this

revenue procedure, the plan sponsor must pay the applicable sanction as described in section 8.03 or 8.04 of this revenue procedure, and enter into a closing agreement with the IRS.

.02 No Sanctions for Plan Provisions Included to Effectuate the Plan Merger.

For Merged Plans submitted for a determination letter pursuant to this revenue procedure, the IRS will not impose a sanction for any plan document failure with respect to a plan provision included to effectuate the Plan Merger.

.03 Special Sanction Structure for Plan Provisions Other Than Those Included to Effectuate the Plan Merger. This section 8.03 sets forth a sanction structure that applies to a Merged Plan submitted for a determination letter pursuant to this revenue procedure that has a plan document failure other than a plan document failure with respect to a plan provision included to effectuate the Plan Merger, provided the conditions in section 8.03(1)(a) or (b) of this revenue procedure are satisfied. The amount of the sanction is equal to the applicable EPCRS Voluntary Correction Program user fee that would have applied had the plan sponsor identified the failure and submitted the plan for consideration under the Voluntary Correction Program.

(1) Conditions for special sanction structure.

(a) The amendment that creates the failure (without regard to whether that amendment was required to be adopted) was adopted timely and in good faith with the intent of maintaining the qualified status of the plan; or

(b) In the case of an amendment required because of a change in qualification requirements, the plan sponsor reasonably and in good faith determined that no amendment was required because the qualification change does not impact provisions of the written plan document.

(2) Other rules for special sanction structure.

(a) The IRS will make the final determination in all cases as to whether an amendment was adopted in good faith with the intent of maintaining the qualified status of the plan, or whether a plan sponsor reasonably and in good faith determined that no amendment was required.

(b) If the conditions of section 8.03(1)(a) or (b) of this revenue procedure are not satisfied, the sanction set forth in section 8.04 will apply.

.04 General Sanction Structure Under EPCRS. This section 8.04 sets forth a general sanction structure that applies to a Merged Plan submitted for a determination letter pursuant to this revenue procedure that (1) has a plan document failure other than a plan document failure with respect to a plan provision included to effectuate the Plan Merger and (2) does not satisfy the conditions of section 8.03(1)(a) or (b) of this revenue procedure. The amount of the sanction is equal to the applicable sanction

amount set forth in section 14.04 of Rev. Proc. 2019-19. Section 14.04 of Rev. Proc. 2019-19 provides for a sanction for certain plan document failures that are discovered by the IRS during the determination letter process that is equal to 150% or 250% (depending on the duration of the failure) of the applicable user fee that would apply to the plan had it been submitted under the EPCRS Voluntary Correction Program. See Appendix A of Rev. Proc. 2019-4 (and its annual successors) for the applicable Voluntary Correction Program user fee.

SECTION 9. CONTINUED CONSIDERATION OF COMMENTS

The Treasury Department and the IRS will continue to consider comments received in response to Notice 2018-24 and any other comments received regarding additional situations in which the submission of a determination letter application may be appropriate. Also, the Treasury Department and the IRS will continue to request, on a periodic basis, comments on additional situations in which the submission of a determination letter application may be appropriate.

SECTION 10. EFFECT ON OTHER DOCUMENTS

This revenue procedure amplifies and modifies Rev. Proc. 2016-37.

SECTION 11. EFFECTIVE DATE

This revenue procedure is effective September 1, 2019.

SECTION 12. DRAFTING INFORMATION

The principal author of this revenue procedure is Angelique Carrington of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this revenue procedure, contact Ms. Carrington at (202) 317-4148 (not a toll-free number).