

IRS Expands Self-Correction Procedures for Retirement Plans

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IRS EXPANDS SELF-CORRECTION PROCEDURES FOR RETIREMENT PLANS

Written by *Roberta Granadier*

Certain qualified retirement plan errors are now easier to fix under the new expanded IRS self-correction procedures. On April 19, 2019, the IRS released the revised Employee Plans Compliance Resolution System ("EPCRS") under Revenue Procedure 2019-19. EPCRS allows employers of all sizes to identify and correct retirement plan errors under the Self-Correction Program ("SCP"), Voluntary Correction Program ("VCP") and Audit Closing Agreement Program ("Audit CAP"). While Revenue Procedure 2019-19 publishes a whole new EPCRS, the major changes impact the Self-Correction Program only. The expanded Self-Correction Program permits self-correction of the following three common retirement plan violations as long as certain conditions are satisfied:

- Plan Document Failures
- Plan Operation Failures
- Plan Loan Failures

1. **Plan Document Failures**

Employers can now self-correct certain failures to adopt tax-reform or other required amendments by the IRS deadline. Before Revenue Procedure 2019-19, employers were forced to

submit a VCP application, pay an IRS user fee, and obtain IRS approval in order to adopt a required plan amendment after the applicable IRS deadline. A failure to adopt an initial plan document (for a 401(k), 403(b) or other qualified plan) still cannot be corrected under SCP. Late discretionary amendments and eligibility changes are not considered plan document failures and still cannot be corrected retroactively under SCP.

In order to qualify for SCP to correct plan document failures, the following conditions must be satisfied:

- Plan must have an IRS favorable determination letter (or IRS advisory opinion for pre-approved prototype or volume submitter plans); and
- Correction must be made no later than the end of the second plan year after the plan year the amendment should have been adopted.

2. **Plan Operation Failures**

Under the expanded SCP, an employer may now amend plan terms to conform with prior plan operations. Previously, an employer could not retroactively amend plan terms to be consistent with plan operations without filing a VCP application. One example of how the expanded SCP could benefit an employer is where an employer permitted 401(k) plan participants to receive hardship withdrawals, but the plan document did not provide for hardship withdrawals. SCP is only available for plan operation errors if the following conditions are satisfied:

- Plan amendment must result in the increase of a benefit, right or feature;
- Increase must apply to all employee participants; and
- Increase of the benefit, right or feature is permitted under the Internal Revenue Code and EPCRS correction principles.

3. **Plan Loan Failures**

Common loan failures such as loan defaults resulting in taxable deemed distributions or exceeding the plan maximum number of loans can now be corrected under SCP. For example, if loan repayments via payroll deduction started four (4) months following the participant's loan receipt rather than immediately, a plan may now correct the default by reamortizing the outstanding loan balance or permitting a participant lump sum payment to bring the loan balance current to avoid a taxable distribution without filing a VCP application.

Certain loan failure corrections will require a retroactive plan amendment. For example, if a plan has a two-loan maximum but allowed participants to receive three loans, the plan document must be amended retroactively to change the maximum number of loans. The following conditions must be satisfied to correct a loan failure by retroactive plan amendment under SCP:

- Plan amendment must satisfy statutory loan requirements under Code Section 72(p) and the qualification requirements of Code Section 401(a); and

- Participant loans were available to either all participants or solely to one or more non-highly compensated employees.

Effective Date

The new EPCRS, including the expanded self-correction procedures, is effective April 19, 2019.

About the Author:

Roberta Granadier is an attorney in Dickinson Wright's Troy office, where she practices in the area of employee benefits law. She has extensive experience with benefits issues in corporate transactions, executive compensation, ESOPs and public retirement plans. Roberta can be reached at 248-433-7552 or RGranadier@dickinsonwright.com and you can visit her bio here.

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