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IRS Expands Self-Correction Options for Plan Sponsors

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On April 19, the Internal Revenue Service (IRS) released Rev. Proc. 2019-19, which provides an updated statement of the correction programs under the Employee Plans Compliance Resolution System (EPCRS). This update follows closely on the heels of the most recent update, Rev. Proc. 2018-52, issued on September 28, 2018, as reported here. Rev. Proc. 2019-19 delivers on the IRS' statement in Rev. Proc. 2018-52 that it was currently reviewing comments and considering changes to EPCRS that would expand the Self-Correction Program (SCP). While Rev. Proc. 2019-19 expands SCP, it does not modify the EPCRS rules on the correction of overpayments from a plan.

What Is the Employee Plans Compliance Resolution System?

EPCRS allows sponsors of tax-favored retirement plans to correct failures that would otherwise cause a plan to run afoul of the requirements of Sections 401(a), 403(a), 403(b), 408(k) or 408(p) of the Internal Revenue Code of 1986, as amended (the Code). Failure to comply with the Code's requirements can lead to adverse tax consequences for the sponsors and participants in the plans. EPCRS consists of three correction options: SCP; the Voluntary Correction Program with IRS approval (VCP); and Correction on Audit (Audit CAP). SCP is the only correction option under EPCRS that does not require direct coordination with the IRS or the payment of a compliance fee (VCP) or penalty (Audit CAP). SCP is generally viewed as an efficient and cost-effective way to correct plan errors.

How Is SCP Expanded?

Effective immediately, SCP is revised to:

- Permit a sponsor to amend an existing qualified plan or 403(b) annuity if it includes, or fails to include, a provision that on its face violates the Code (Plan Document Failures). For example, if a sponsor fails to timely amend its plan to reflect a required term, SCP may now be available to correct this failure.

- Correct certain plan loan failures, such as correction of a defaulted loan (Plan Loan Failures).

- Expand a sponsor's ability to retroactively amend its plan to conform the plan's terms to its operations (Operational Failures).

Previously, Plan Document Failures and Plan Loan Failures could be corrected only under VCP or Audit CAP, and SCP could be used only to correct Operational Failures by retroactive amendment for four specified types of failures. As noted above, correction under VCP and Audit CAP is generally more costly and burdensome than correcting under SCP.

Note, not all errors can be corrected under the expanded SCP program, nor does it change SCP's eligibility requirements or the time by which corrections must be made. For example, Rev. Proc. 2019-19 requires amendments correcting a Plan Document Failure to be completed, in general, no later than the last day of the second plan year following the plan year in which the term should have been added to or omitted from the plan (a longer correction period may be available for sponsors assuming plans in corporate transactions). Retroactive amendments to self-correct an Operational Failure must broadly increase a benefit, right or feature under the plan, and must be adopted within the time period otherwise applicable to the SCP correction (at any time if the failure is "insignificant," or no later than the last day of the second year following the plan year in which the error occurred, if significant).

With regard to Plan Loan Failures, which are common, the expanded SCP is not available for loans that exceed the statutory maximum as to amount and repayment term or that do not provide for a level amortization schedule. While the expanded SCP is available to correct defaulted loans, Rev. Proc. 2019-19 makes clear that the relief for any related ERISA fiduciary breaches under the Department of Labor's Voluntary Fiduciary Correction Program will not be available unless the defaulted loans are corrected under VCP.

What Should Sponsors Do?

Correcting errors preserves the tax-favored status of retirement plans. Therefore, sponsors should regularly review their plans to determine whether there have been any errors in documentation or administration. If any errors are uncovered, they should be corrected in accordance with EPCRS. If the plan meets the SCP eligibility requirements, sponsors may be able to reduce the costs and burdens of correction by using the SCP's expanded program.

Please contact any member of the Employee Benefits team if you have any questions regarding Rev. Proc. 2019-19 or any other employee benefits matter.

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