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IRS Offers Expanded Opportunity to Self-Correct Plan Errors

The IRS has made it easier to fix certain plan failures by expanding the types of failures that may be self-corrected without the burden and expense of applying for IRS approval.

Background

Revenue Procedure 2019-19, which took effect April 19, 2019, updated the Employee Plans Compliance Resolution System (EPCRS) to allow the self-correction of certain plan document failures, certain plan loan failures, and certain other operational failures. Previously, plan sponsors had to obtain IRS approval of the correction of these failures through the Voluntary Correction Program (VCP) or, in the case of plans under audit, through the Audit Closing Agreement Program (Audit CAP)—programs that take several months or years to complete and require the payment of IRS fees or sanctions. (The IRS fee for VCP varies by plan size and currently tops out at $3,500 for plans with net assets greater than $10 million.) The changes of Rev. Proc. 2019-19 present an opportunity for plan sponsors to evaluate their plan operations and achieve compliance quickly and cost-effectively.

Summary of Changes

Certain correction methods that required IRS approval through VCP or Audit CAP before Rev. Proc. 2019-19 are now available through self-correction. Specifically, plan sponsors are now able to self-correct certain errors by amending their plans to conform with operations. Additionally, certain loan defaults may now be self-corrected by single-sum payment or reamortization without triggering a taxable deemed distribution for the participant. Finally, loan defaults may also be self-corrected through deemed distributions in the year of correction, rather than the year of failure. However, even in some cases where self-correction is available, plan sponsors may consider using VCP because, under its current guidance, the Department of Labor will not issue a no-action letter for loan defaults under the Voluntary Fiduciary Correction Program unless an IRS compliance statement has been obtained under VCP.

Next Steps

A self-correction should be formally documented by the employer, so the information is available during the plan's annual audit to protect the plan in the event of a government audit. We can help you identify whether an "oops" is eligible for self-correction and how to fix it. We can also help prepare a record for your files.

The newly available opportunities for self-correction are summarized below:

Failure	Correction	Conditions for Self-Correction
Plan Document Failures		
Failure to adopt required amendments	Retroactive amendment	• Plan must have timely adopted an initial plan document. • Plan must have a favorable determination, opinion, or advisory letter. • Correction must occur by the end of the second plan year after the plan year in which the failure occurred.

Failure	Correction	Conditions for Self-Correction
Plan Loan Failures		
Defaulted loans (if the statutory maximum loan period has not expired)	Single-sum payment, reamortization, or both	• Plan must obtain participant cooperation. • Employer contribution may be required if the plan's rate of return exceeded the loan interest rate. • Self-correction without an IRS compliance statement may complicate a separate correction under the Department of Labor's program.
Defaulted loans (if the statutory maximum loan period has expired)	Deemed distribution in the year of correction	• Plan must comply with applicable reporting and withholding rules.
Failure to obtain spousal consent for plan loans (when the plan terms require consent)	Notification and spousal consent	• Plan must obtain cooperation of the spouse whose consent was required.
Failure to limit the number of loans as required by plan terms	Retroactive amendment	• Plan must comply with statutory and other EPCRS requirements.
Other Plan Operation Failures		
Other operational failures	Retroactive amendment	• The amendment must result in an increase of a participant's benefit, right or feature. • The increase must be provided to all eligible participants and comply with statutory and other EPCRS requirements.