

## Employee Benefits Plan Alert

# IRS Rev. Proc. 2019-19: Easier Correction Process for Retirement Plans

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In Revenue Procedure 2019-19, the Internal Revenue Service (IRS) issued guidance that increases the availability of retirement plan sponsors to correct certain plan documents and plan loan failures through the IRS Self-Correction Program (SCP). The SCP is one of three correction programs under the IRS Employee Plans Compliance Resolution System (EPCRS). Plan sponsors have taken advantage of the SCP to correct operational failures that could otherwise lead to plan disqualification and the loss of tax-favored status.

Traditionally, plan sponsors with compliance issues were only able to correct them through an application filing process under the IRS Voluntary Compliance Program (VCP) and pay an applicable user fee. The expanded use of the SCP will result in plan sponsors being able to correct a broader range of plan failures without having to actually file with the IRS and hence avoid paying a user fee. This is particularly beneficial for sponsors of small plans, most of whom faced higher user fees under a recent change in the fee structure generally effective for submissions made on or after January 2, 2018. Our prior [EB Newsletter](#) discussed the change to the IRS user fee schedule.

### Plan Operational Errors

Among the changes implemented through Rev. Proc. 2019-19 is the ability to correct an operational failure by retroactively adopting a plan amendment, provided that the following three conditions are satisfied:

1. The amendment results in the increase of a plan benefit, right or feature;
2. Such increase is available to all eligible plan participants; and
3. The increased benefit, right or feature is permitted under the Internal Revenue Code and satisfies the principal requirements for correction under EPCRS.

In addition, it appears that self-correction for this type of failure only applies to errors that are deemed “insignificant” by the IRS and the period to correct generally ends the last day of the second plan year following the plan year for which the failure occurred.

### Plan Document Failures

The changes to EPCRS now permit certain plan document failures to be self-corrected. In order for a plan sponsor to take advantage of self-correction, the plan must have a “favorable letter” from the IRS at the time of correction (for individually-designed plans); in the case of prototype or volume-submitter plans, the IRS must have issued a favorable “opinion” or “advisory” letter.

This new correction process will not be available to correct a failure to timely adopt an initial 401(a) qualified plan or adopt an initial written 403(b) plan document within the time frames and requirements specified in IRS Notice 2009-3 and the related 403(b) regulations.

## Plan Loan Failures

The updated EPCRS also provides for corrections to plan loan failures, which include:

- A retroactive amendment to increase the number of outstanding loans available to a participant where the plan operation allowed the participant to exceed the limit;
- Self-correction of a failure to obtain spousal consent prior to a loan distribution;
- Correction of a defaulted loan either through re-amortization of the loan balance, or by a lump sum payment of the balance by the participant (or a combination of both); and
- Deemed distributions may now be reported on a Form 1099-R in the year of correction instead of the year of failure.

## Conclusion

Plan sponsors should be aware that Rev. Proc. 2019-19 has just limited situations which require a filing under the VCP process by expanding the availability of self-correction for some common plan failures. This guidance is also welcomed by practitioners and plan sponsors of small plans who will be able to reduce the number of VCP applications required to be submitted under their new on-line processing program which began April 1, 2019. The enhancements to EPCRS will now permit sponsors to correct deficiencies in their plans with more administrative ease and in a more efficient and cost-effective manner.

## Contact Us

The Employee Benefit Services Group at PKF O'Connor Davies has broad experience with IRS correction programs and is available to assist employers with bringing their plans into compliance with regulations. We also provide a full spectrum of compliance services for qualified and non-qualified benefit plans.

For more information, please contact your client services partner or either of the following:

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