



IRS Expands Self Correction Program

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The IRS has expanded the Self Correction Program (SCP) under the IRS Employee Plans Compliance Resolution System (EPCRS) in Rev. Proc 2019-19. Under the new rules, certain retirement plan corrections for operational and plan document failures that previously required an application and user fee be submitted to the IRS under the Voluntary Correction Program (VCP) may be fixed under the SCP without contacting the IRS or paying a fee. We have described the new SCP plan corrections under the Rev. Proc. below .

Eligibility for Self Correction Program

In order to be eligible for SCP, a Plan Sponsor must have established compliance practices and procedures (formal or informal) in place and must be routinely following them and the failure being corrected must have occurred through an oversight or mistake in applying them. Generally, a "significant" failure may only be corrected through SCP if that failure is corrected by the last day of the second plan year following the plan year in which the failure occurred (the "two year correction period"). However, a plan sponsor may correct a failure that is not significant through SCP at any time. Whether or not a failure is "significant" is dependent on the facts and circumstances surrounding the failure. These general eligibility rules remain unchanged.

Participant Loan Failures

The expanded program permits for correction of a number of plan loan operational failures through SCP that were previously only permitted through VCP, as follows:

- If the maximum loan repayment period has not expired, a defaulted loan may be self-corrected by (i) having the participant make a single lump sum payment of any missed payments and accrued interest or (ii) by re-amortizing the outstanding balance of the loan over the remaining period of the loan, not to exceed the maximum repayment period under Internal Revenue Code (IRC) Section 72(p), or by a combination of the above methods. If the plan's rate of return exceeds the interest rate on the loan, the employer will need to make a corrective contribution to the participant's account.
- In the alternative, a defaulted loan may be self-corrected by reporting the loan as a deemed distribution on Form 1099-R in the year of correction instead of the year of failure.
- Failure to obtain spousal consent for a participant loan may be self-corrected by obtaining the appropriate spousal consent currently. If the affected spouse does not agree to give consent or the consent cannot be obtained, the failure must be corrected under VCP or Audit CAP.
- Failure to limit number of participant loans to the maximum in the plan's loan policy may be self-corrected by adopting a retroactive amendment to the plan to increase the maximum number of participant loans permitted to conform to the plan's operation. To be eligible for this self-correction, the additional loans must have been available to all participants or only to non-highly compensated employees.

Retroactive Amendments for Operational Failures

Prior to the expansion of the program, correction of operational failures through a retroactive amendment was generally limited to VCP. However, certain operational failures may now be self-corrected through a retroactive plan amendment conforming the plan document to the plan's operation. To be eligible for this self-correction, the following conditions must be met:

- The corrective amendment must result in increased benefits, rights, or features (BRFs);
- The increase in BRFs must be uniform and must be provided to all participants in the plan; and
- The increase in BRFs must be permitted under the Internal Revenue Code and must satisfy the general correction principles under EPCRS.

Retroactive Amendments for Plan Document Failures

Prior to the expansion of the program, correction of plan document failures through a retroactive amendment was generally limited to VCP. However, plan document failures under 401(a) and 403(b) retirement plans may now generally be self-corrected as long as the failure is corrected within the two year correction period. In determining the two year correction period, the failure is considered to have begun in the plan year that includes the end of the applicable remedial amendment period. Additionally, the plan must have a favorable determination, opinion or advisory letter from the IRS. This requirement to have a favorable letter, appears to preclude plan sponsors from self-correcting failures involving late restatements of pre-approved plans, because at the time of the correction the plan's opinion or advisory letter generally would no longer be valid. We expect the IRS to clarify this requirement. Finally, the following plan document failures are not eligible for self-correction:

- Failure to adopt an initial plan document;
- Failure to timely adopt amendments to correct demographic failures; or
- Late adoption of discretionary amendments.

Please Note: The specific methods of correction described above are only required under the SCP. Additional and broader methods of correction may be available under the VCP.

Final Considerations

Given the IRS's recent elimination of all reduced VCP user fees, this expansion of the SCP is a welcome change and may result in significant cost savings to plan sponsors faced with plan corrections.

If you have questions or would like additional information, please contact a member of our Employee Benefits and Executive Compensation Practice Group.



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