

IRS PUBLISHED UPDATED SELF-CORRECTION PROGRAM WITH WELCOMED IMPROVEMENTS

Hodgson Russ Employee Benefits Newsletter
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The Internal Revenue Service (IRS) periodically updates and republishes guidance describing the terms and conditions of the Employee Plans Compliance Resolution System (EPCRS) under which sponsors of qualified retirement plans, including 403 (b) plans, may self-correct certain plan document and operational failures. The latest update to EPCRS, in the form of Revenue Procedure 2019-19, was published in April, and became generally effective as of April 19, 2019.

Revenue Procedure 2019-19 reflects significant expansions to the Self-Correction Program (SCP) feature of EPCRS, which the IRS believes will make it easier to fix certain plan document and operational failures, including plan loan issues, without having to file a submission to the IRS under the Voluntary Correction Program (VCP) feature of EPCRS. There are three significant areas in which SCP has been expanded:

Plan Loan Self-Correction. Under the new EPCRS guidance, a plan sponsor may –

- Report a deemed distribution resulting from a defective or defaulted plan loan in the year of correction rather than in the year of the failure.
- Adopt a retroactive plan amendment conforming the written plan document to the plan's operation when the number of plan loans made to a participant exceeds the number of loans permitted by written plan terms.
- Correct the failure to obtain spousal consent for a plan loan as required by plan terms.
- Correct defaulted loans by having the participant make a single sum repayment or by reamortizing the loan balance or some combination of those two methods, as long as the maximum period for repayment of the loan pursuant has not expired.

Self-Correction of Certain Plan Document Failures. Under the new EPCRS guidance, the plan sponsor may self-correct certain Code Section 401(a) (including 401(k) and 403(b)) retirement plan document failures, but only if –

- The plan document has a favorable determination or opinion letter.
- The correction is made within the prescribed two-year correction period (i.e., no later than the close of the second plan year following the plan year in which the amendment should have been adopted).

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- The failure does not involve a failure to timely adopt an initial Code Section 401(a) plan document, or a failure to adopt an initial written Code Section 403(b) plan document.
- The failure does not involve a failure to timely adopt corrective amendments to resolve demographic failures.

Additional Opportunities for Correcting Certain Operational Failures by Retroactive Plan Amendment. Under the new EPCRS guidance, the plan sponsor may self-correct certain operational failure by retroactive plan amendment if –

- The corrective amendment results in an *increase* of a participant’s benefit, right or feature.
- The increase in benefit, right or feature is provided to all employees eligible to participate in the plan.
- The correction otherwise satisfies certain general correction principles of EPCRS.

Expanded opportunities to self-correct plan document and operational failures without incurring the expense and delay associated with a VCP application are a welcomed development that is expected to encourage greater numbers of plan sponsors to take self-corrective action consistent with EPCRS correction principles.

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