

Qualified Plan Compliance Just Got Easier: New Self-Correction Options For Tax-Qualified Retirement Plan Errors

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On April 19, 2019, the IRS released new procedures for correcting qualified retirement plan errors under its Employee Plans Compliance Resolution System (EPCRS). In particular, Revenue Procedure 2019-19 expanded the types of mistakes that can be corrected by a plan sponsor on its own, thereby avoiding the costly and time-consuming process of requesting IRS approval of the correction.

What is EPCRS?

Under the EPCRS program, plan sponsors can correct documentation and administration errors affecting qualified retirement plans, including certain errors related to non-discrimination testing. EPCRS provides two ways to correct a plan error before it is discovered in the course of an IRS audit: the Self-Correction Program (SCP) and the Voluntary Compliance Program (VCP). (The Audit CAP program is available once a plan is under IRS examination.)

Under SCP, the plan sponsor simply corrects an operational error on its own using the principles and methods described in the EPCRS rules. SCP has always been limited to specific types of operational errors and correction methods that restricted its availability. Specifically, plan sponsors could not use SCP to correct most plan loan errors or to retroactively amend a plan to conform to actual administrative practice or comply with legal requirements. In addition, SCP is not available for "significant" operational errors that are not corrected by the end of the second plan year following the year in which the error occurred.

If SCP is not available, a plan sponsor must submit a VCP filing and pay a user fee to the IRS, which can be a time-consuming and costly process. By expanding the availability of SCP, the IRS hopes to reduce plan administration costs and increase compliance with legal requirements.

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New Self-Correction Opportunities

Revenue Procedure 2019-19 greatly widens the scope of plan errors that can be corrected using SCP. Specifically, the new EPCRS adds the following methods to the self-correction “toolbox” that were previously only available through a VCP filing:

- Retroactive Amendments: Retroactive amendments are generally the most expedient way to correct at least two of the most common types of plan errors: (1) when the plan is not operated in accordance with the plan document, and (2) when the plan sponsor fails to adopt legally-required amendment in a timely manner. EPCRS now allows for a retroactive plan amendment through self-correction as long as (1) the amendment results in an increase in a benefit, right or feature under the plan; (2) the amendment applies to all participant's under the plan; and (3) the amendment otherwise complies with the Internal Revenue Code.
- Plan Loan Failures. Plan sponsors are now able to use self-correction to fix a variety of plan loan errors, including those related to timely repayment of loans, failure to obtain spousal consent and the reporting of deemed distributions when a loan is defaulted.

It is important to note that prior requirements for utilizing SCP remain in place, such as the existence of plan procedures designed to ensure compliance, time limits on self-correcting significant errors and compliance with correction principles. The IRS is expected to provide additional guidance and examples under the SCP to assist plan sponsors with self-correction.

Practical Tips

The new self-correction rules make it easier for plan sponsors to fulfill their duty to correct compliance errors without the expense and hassle of a VCP filing. In order to take advantage of these expanded self-correction opportunities, plan sponsors should:

- Periodically Audit Plan Documents and Administrative Policies. As always, plan sponsors should regularly review their plan documents and practices to ensure that they catch errors early enough to use self-correction and avoid detection in the event of an IRS audit.
- Carefully Develop and Document the Self-Correction Plan. Once an error that is eligible for self-correction is discovered, plan sponsors should develop a detailed self-correction plan. It is extremely helpful to create and retain a written summary that includes a description of the correction principles used and a chronology of implementation.