

Welcome Expansion of IRS Retirement Plans Correction Program

The Internal Revenue Service's Employee Plans Compliance Resolution System (EPCRS) provides a comprehensive system to correct operational and documentary compliance failures of qualified retirement plans. One of the goals of EPCRS is to encourage plan sponsors to monitor compliance and voluntarily correct instances of noncompliance. Under EPCRS, small failures can be self-corrected by the plan sponsor without making a submission to the IRS. More significant failures can only be corrected by making a submission to the IRS, outlining the mistake and the proposed correction. Newly-issued IRS Revenue Procedure 2019-19 governing EPCRS provides a welcome expansion of plan failures that can be self-corrected by plan sponsors without the need to go to the IRS for approval.

Here are some plan failures that can now be self-corrected:

- A Plan Sponsor can self-correct certain plan document failures, other than an initial failure to adopt a qualified plan. The plan must have a favorable IRS determination or opinion letter, and correction must occur no later than the end of the second plan year following the plan year of the failure.
- A plan sponsor can self-correct an operational failure by amending its plan to conform the terms of the plan to the plan's prior operation if the following conditions are satisfied: (a) the plan amendment results in an increase of a benefit, right, or feature, (b) the increase is available to all eligible employees, and (c) the increase in the benefit, right or feature is otherwise permitted under the tax code and satisfies the general correction principles of EPCRS.

Example: Although its plan does not permit after-tax contributions, the plan sponsor allows participants to make after-tax contributions in 2018. The plan sponsor discovers this operational failure in 2019. In 2019, the plan sponsor can self-correct by amending the plan, retroactive to 2018, to permit after-tax contributions.

- EPCRS generally allows a defaulted plan loan to be corrected by either or both of: (a) a single-

sum corrective payment or (b) re-amortizing the outstanding balance of the loan over the remaining payment schedule. Previously such correction required a submission to the IRS.

- A plan sponsor may now report a defaulted loan on Form 1099-R for the year in which the loan is defaulted, instead of the year in which the failure occurred without having to request such relief from the IRS. This change allows a defaulting plan participant to avoid having to go back and amend a previously-filed tax return to include the defaulted loan amount.
- A plan sponsor may correct a failure to obtain necessary spousal consent for a plan loan by notifying the affected participant and spouse, so that the spouse can provide spousal consent. If spousal consent is not obtained, the failure must be corrected through a submission to the IRS.
- A plan sponsor that allows a participant to take a number of plan loans that exceeds the number of loans permitted under the plan may self-correct by retroactively amending the plan to permit the number of plan loans that were previously made available, provided that excess number of loans was available to either all participants or to one or more nonhighly compensated employees.

These changes to EPCRS are effective immediately.

We would be pleased to assist you with any retirement plan issues that you may have. Please feel free to contact us.

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