

IRS Provides Welcome Relief From High VCP Fees

The retirement industry received a gift on April 19, 2019: [Revenue Procedure \(Rev. Proc.\) 2019-19](#). This revenue procedure updates the Employee Plans Compliance Resolution System (EPCRS) by expanding the availability of self-correction options for more kinds of plan failures. The IRS anticipates that this expanded guidance will increase plan compliance and reduce some costs for employers.

A Step in the Right Direction

Expanding the options available through the IRS's Self-Correction Program (SCP) will benefit employers that face increased fees if they correct plan failures under the Voluntary Correction Program (VCP). Under the VCP, an employer submits an application for correction to the IRS, and—if approved—has assurance that the failure will not result in greater sanctions or plan disqualification.

In January 2018, the IRS announced a new VCP fee structure based on plan assets, rather than on the number of plan participants. This fee structure eliminated several exceptions—including amendment or loan failures—that used to carry a fixed or reduced general fee. As a result, many employers face significantly higher fees to correct operational failures under the VCP. But the IRS also allows more employers to fix plan failures through self-correction, perhaps as a result of the vigorous criticism about higher fees.

New Plan Failures Available for Self-Correction

The SCP process requires that employers follow specific IRS correction steps. If properly completed and documented, the SCP gives employers assurance of plan compliance. But with the SCP, the IRS neither reviews the employer's actions nor issues a "compliance statement," which documents the IRS's approval. Rev. Proc. 2019-19 expands self-correction in three primary areas: plan document failures, operational failures, and loan failures.

Plan Document Failures

The revised procedure allows employers to self-correct many plan document failures—other than the initial failure to adopt a qualified plan or 403(b) plan document timely—as long as the plan has a favorable letter at the time of correction. The EPCRS generally considers plan document failures as "significant" failures. So to qualify for self-correction, an employer needs to correct the failure by the end of the second plan year following the year the failure occurred.

Operational Failures

The EPCRS now allows employers to retroactively amend their plans when they have failed to follow the terms of their plan documents. Through this process, an employer can conform the terms of the plan document to the way the employer actually ran the plan. Employers can retroactively amend these operational failures if they meet the following three conditions.

- The plan amendment would result in an increase of a benefit, right, or feature.
- The increase in the benefit, right, or feature applies to all eligible employees.
- The increase in the benefit, right, or feature is permitted under the Internal Revenue Code and satisfies the EPCRS general correction principles.

As with plan document failures, employers must amend their plans for significant operational failures by the end of the second plan year following the year that the failure occurred.

Loan Failures

Employers may now self-correct a defaulted loan by 1) requiring the participant to make a corrective payment, 2) re-

amortizing the outstanding balance of the loan, or 3) dictating some combination of these two options. Previously, employers could use these options only when filing through the VCP. The revised revenue procedure also allows an employer to

- report a deemed loan distribution on Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, in the year of the SCP correction (instead of for the year in which the *failure* occurred);
- obtain after-the-fact spousal consent if the employer failed to obtain spousal consent at the time of the plan loan; and
- retroactively amend the plan for exceeding the number of outstanding loans specified in the document.

Although the EPCRS has greatly expanded the availability of self-correction for loan failures, some restrictions do apply. According to Rev. Proc. 2019-19, the Department of Labor (DOL) will provide a no-action letter *only* to those employers who correct loan default failures through the VCP. Employers concerned about receiving the DOL's no-action letter may wish to spend the additional time and money required to correct the failure under the VCP.

Another restriction applies to failures arising from loans that violate the statutory loan provisions. This includes loans that exceed the maximum loan limit, loans that exceed the maximum repayment period, and loans that were not subject to level amortization. These types of loan failures *do not* qualify for self-correction.

More Guidance to Come?

While Rev. Proc. 2019-19 provides employers with additional self-correction options, more clarification is needed. The IRS has indicated that it may provide additional examples of insignificant operational failures in the [Correcting Plan Errors](#) section of its website. Ascensus will continue to monitor the IRS's website for new guidance. Watch Ascensus.com [News](#) for any significant developments that may emerge.