

Voya Alert!

October 21, 2019

Self-Correction Expanded under Employee Plans Compliance Resolution System (EPCRS)

Alert Highlights

- EPCRS Self Correction Program (SCP) is expanded for 401(a), 401(k) and 403(b) plans under Revenue Procedure 2019-19
- When certain conditions are met the SCP is now available for:
 - Plan document failures that involve the failure to adopt certain required amendments
 - Operational failures that may now be corrected by retroactive amendment to conform to plan operation
 - Loan failures including: a) taxation of a deemed loan in the year it is corrected, b) correction for failure to timely repay a loan, c) failure to obtain spousal consent for a loan and d) when the permitted number of loans is exceeded
- Revenue Procedure 2019-19 was effective April 19, 2019

Background – This most recent version of the Employee Plans Compliance Resolution System (EPCRS) under Revenue Procedure 2019-19 modifies and supersedes the prior EPCRS guidance in Revenue Procedure 2018-52. EPCRS gives plan sponsors of 401(a), 401(k) and 403(b) plans the opportunity to correct operational and plan document failures that are discovered in the course of administering the plan. EPCRS offers three correction programs: 1) Self-Correction Program (SCP) which permits correction of certain failures to be made without contacting the IRS or paying a user fee; 2) Voluntary Correction Program (VCP) to address failures not eligible under SCP by submitting a special IRS filing requesting IRS agreement on the correction method outlined in the filing and payment of an IRS user fee; and 3) Audit CAP to resolve failures discovered under an IRS audit.

In Revenue Procedure 2019-19 the IRS expanded the SCP program to permit self-correction of certain plan document failures, certain plan loan failures and certain operational failures when conditions noted in 2019-19 are met. To be eligible for SCP, the employer or plan administrator must have established practices and procedures reasonably designed to comply in form and operation with applicable Internal Revenue Code (IRC) requirements

The IRS also notes its willingness to accept submissions on a provisional basis outside of EPCRS through standards similar to VCP filings related to 457(b) plan operational defects, generally where the employer is a governmental entity. The Employee Plans Voluntary Compliance Team has complete discretion over whether to accept such a request; if accepted, the IRS will issue a special closing agreement. The IRS cautions that EPCRS is not available for a 457(b) plan sponsor seeking to address an issue related to its written 457(b) plan document or to resolve a defect that can be self-corrected.

Effective date: Revenue Procedures 2019-19 was effective April 19, 2019.

Self-correction of plan document failures – A plan document failure means a plan provision (or absence of a plan provision) that, on its face, violates the requirements of Section 401(a) or 403(b) of the IRC. This includes the failure to timely adopt an amendment that corrects: 1) a non-amender failure (one that corrects a disqualifying provision), 2) a failure to adopt a Good Faith Amendment and 3) the failure to adopt an interim amendment.

An employer may use SCP to correct plan document failures if:

- For 401(a) and 401(k) plans, the employer's plan has a favorable determination letter or a favorable opinion or advisory letter issued to an IRS pre-approved plan;
- For 403(b) plans, the employer is either a 501(c)(3) organization or a public school and had adopted a 403(b) plan by the later of December or the date that the 403(b) plan was first established.
- The correction is made by the last day of the second plan year following the plan year for which the plan document failure occurred.

Plan document failures do not include operational failures, demographic failures, employer eligibility failures or the initial failure to adopt a qualified plan or the failure to adopt a written 403(b) plan timely. The VCP or, if the plan is under audit, the Audit CAP may be available to correct these failures. The failure to timely adopt a discretionary amendment is not considered a plan document failure.

Self-correction of operational failures – An operational failure arises solely from the failure to follow plan provisions. A qualified 401(a), 401(k) or 403(b) plan may retroactively amend the plan to conform the written plan to the plan's operation if:

- The corrective amendment results in an increase of a participant's benefit, right or feature; and
- The increase in benefit, right or feature is:
 - Provided to all employees eligible to participate in the plan; and
 - Is permitted under the IRC; and
- Satisfies the correction principles of Revenue Procedure 2019-19.

Correction is not available under SCP if the operational failure does not provide for a uniform increase in benefits, rights or features to all employees eligible to participate in the plan, but correction may be available under VCP or, if the plan is under audit, Audit CAP.

Conditions for correction by plan amendment – For corrections by plan amendment, for plan document failures and operational failures that are considered significant, the plan must have a Favorable Letter (e.g., IRS Opinion Letter for a prototype or Advisory Letter for a volume submitter) and must be corrected by the end of the second plan year after the error occurred.

Self-correction of certain loan failures – For 401(a), 401(k) and 403(b) plans, the previous EPCRS provided that the loan failures listed below could only be corrected under VCP. Revenue Procedure 2019-19 expands SCP now to permit correction of these failures by the employer under SCP. To be eligible for SCP, the maximum permitted period for repayment of the loan under the IRC must not have expired and the IRS notes that the loan failure cannot be attributable to employer action.

Deemed distributions – loans that are defaulted for failure to meet the qualified loan requirements under the IRC are now taxable in the year the loan is corrected instead of the year the failure occurred.

Correction of a loan defaulted for failure to repay – The plan sponsor may self-correct a loan that has defaulted as a result of the failure to comply with the requirements to repay the plan loan according to plan terms. To correct this failure and avoid a deemed distribution the loan must be within the maximum five-year loan term counted from the original date of the loan and:

- The participant makes a lump sum payment that includes all missed payments plus earnings; or
- The outstanding loan balance plus accrued interest is reamortized under the remaining loan term or over the maximum 5 year term from the original loan date; or
- A combination of lump sum and reamortization.

Failure to obtain spousal consent for loans – If the plan requires spousal consent for loans and spousal consent was not obtained at the time that the loan was made, the plan sponsor must notify the affected participant and spouse (to whom the participant was married at the time) to provide spousal consent. If spousal consent is still not obtained the failure may be corrected under VCP or, if the plan is under audit, Audit CAP. Note that spousal consent for a loan is only required under a 401(a) money purchase plan, a qualified plan that holds assets from a prior money purchase plan, a profit sharing or 401(k) plan that elects a joint and survivor annuity as the primary distribution option under the plan, or a 403(b) plan that is subject to ERISA.

Number of loans exceeds number permitted under the plan – If participants have been permitted to take more loans than is permitted under the plan, this is an operational failure. It may be corrected by adopting a retroactive plan amendment to provide for plan loans that were made available if the following conditions are met:

- The amendment satisfies Section 401(a) or Section 403(b) of the IRC, as applicable,
- The plan as amended would have satisfied the applicable qualification requirements of a qualified plan or a 403(b) plan and the requirements applicable to plan loans under Section 72(p) of the IRC had the amendment been adopted when plan loans were first made available, and
- Plan loans (including plan loans in excess of the number permitted under the terms of the plan) were available to either all participants, or solely to one or more participants who were nonhighly compensated employees.

Note that the failure to comply with the maximum loan amount, the maximum loan term or the level amortization requirement may only be corrected under VCP or, if the plan is under audit, Audit CAP. The expansion of SCP does not cover these failures.

An overview of the expanded SCP program as well as Revenue Procedure 2019-19 is available on the IRS web site at:

Voya Position – The expanded SCP program will make it much easier for plan sponsors to correct many common errors that previously required a VCP filing and payment of an IRS user fee. This is a positive change and Voya is ready to work with plan sponsors to apply these new self-correction options.

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