

MEMO# 31749

May 7, 2019

IRS Updates Employee Plans Correction Program (EPCRS) to Expand Availability of Self-Correction Methods

[31749]

May 7, 2019 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: IRS Updates Employee Plans Correction Program (EPCRS) to Expand Availability of Self-Correction Methods

The Internal Revenue Service (IRS) recently published Revenue Procedure 2019-19,[\[1\]](#) which modifies and supersedes Rev. Proc. 2018-52,[\[2\]](#) the prior consolidated statement of the correction programs under the Employee Plans Compliance Resolution System (EPCRS). EPCRS permits retirement plan sponsors to correct certain failures to meet applicable tax qualification requirements and thereby continue to provide employees with retirement benefits on a tax-favored basis.

The update was issued primarily to expand the Self Correction Program (SCP) under EPCRS, which allows plan sponsors in certain circumstances to correct plan errors without a filing or fee payment.[\[3\]](#) The expanded SCP permits self-correction of certain plan loan failures and plan document failures, and provides additional methods for correcting operational failures through plan amendment. Several groups and organizations, including the ICI, have requested expansion of the SCP in recent years, particularly for plan loan corrections.[\[4\]](#)

Plan Loan Failures

The following loan-related failures may be corrected using SCP, pursuant to section 6.07 of Rev. Proc. 2019-19:

- The loan does not meet the requirements of Code section 72(p)(2) (i.e., relating to amount limitations, repayment period, and level amortization) or is in default.
 - Self-correction may be made by reporting a deemed distribution on Form 1099-R in the year of correction (instead of the year of failure), now without a VCP filing.[\[5\]](#)
 - For loan defaults, in lieu of reporting a deemed distribution, self-correction also is available through single sum repayment, re-amortization of the outstanding balance, or a combination of those two, but only if the original term of the loan has not expired.

- Spousal consent for the loan is required but was not obtained.
 - Correction is made by notifying the participant and spouse, and obtaining the spouse's consent.
 - If spousal consent cannot be obtained, the correction must be accomplished using VCP or Audit CAP.
- The number of plan loans to a participant exceeds the number permitted by the plan document.
 - The plan should adopt a retroactive plan amendment to conform to operation (as long as Code section 72(p) requirements are met).
 - This method is available only if excess loans were available either to all employees or solely to one or more non-highly compensated employees.

The Rev. Proc. indicates that the Department of Labor has advised that it will not issue a no-action letter under the Voluntary Fiduciary Correction Program for a defaulted loan corrected using SCP.

Plan Document Failures

Pursuant to section 4.01(b) of Rev. Proc. 2019-19, the expanded SCP is available to correct certain plan document failures for section 401(a) qualified plans (includes 401(k) plans) and section 403(b) plans, other than a failure to timely adopt an initial plan document. To be eligible, plans must have a favorable letter (as defined in Rev. Proc. 2019-19) and the failure must be corrected within the two-year correction period specified in section 9 of Rev. Proc. 2019-19. Demographic and employer eligibility failures may not be corrected under SCP.

Operational Errors Corrected by Retroactive Plan Amendment

As under the prior revenue procedure, a qualified plan or 403(b) plan sponsor may use SCP to correct operational failures listed in section 2.07 of Appendix B by plan amendment, to conform the terms of the plan to the plan's prior operations. In addition, under section 4.05(2)(a) of the new procedure, an operational failure may be corrected by plan amendment under SCP if: (a) the plan amendment would result in an increase of a benefit, right, or feature, (b) the increase in the benefit, right, or feature is available to all eligible employees, and (c) providing the increase in the benefit, right or feature is permitted under the Internal Revenue Code (e.g., it satisfies the nondiscrimination and coverage rules) and satisfies the correction principles of section 6.02 of Rev. Proc. 2019-19.

Other Issues

Other changes to EPCRS include permitting spousal consent failures to be corrected under either SCP, VCP, or Audit CAP; providing additional examples of operational failures that can be corrected under SCP;[\[6\]](#) and specifying that all VCP submissions now must be made electronically using [Pay.gov](https://www.pay.gov).

As with prior updates, the IRS invites public comments (with no specified deadline) on how to improve EPCRS, but does not request comments regarding any specific area or question. IRS previously received and is still reviewing comments regarding the correction of overpayments.[\[7\]](#) IRS is in the process of developing further changes regarding the correction of overpayments.

Rev. Proc. 2019-19 is effective as of April 19, 2019.

endnotes

[1] Revenue Procedure 2019-19 is available here:

<https://www.irs.gov/pub/irs-drop/rp-19-19.pdf>

[2] For a description of Rev. Proc. 2018-52, see ICI Memorandum No. 31426, dated October 9, 2018. Available at https://www.ici.org/my_ici/memorandum/memo31426.

[3] Other correction programs under EPCRS, specifically the Voluntary Correction Program (VCP) and Audit CAP (correction on audit), require approval from the IRS.

[4] See ICI Memorandum No. 31249, dated June 15, 2018. Available at https://www.ici.org/my_ici/memorandum/memo31249. ICI, along with several other trade groups, met with representatives from the IRS in May 2018 to discuss ideas for expanding the SCP.

[5] For failures to meet the statutory requirements of section 72(p)(2), the only permissible method of self-correction is by reporting a deemed distribution. Other methods of correction must go through VCP or Audit CAP.

[6] The examples will be available at

<https://www.irs.gov/retirement-plans/correcting-plan-errors>.

[7] See ICI Memorandum No. 28911, dated April 20, 2015. Available at

https://www.ici.org/my_ici/memorandum/memo28911.