PCRS Expansion Good News for Plan Sponsors, Practitioners

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E R I S A

In a major victory for the advocacy efforts of the American Retirement Association, new rules under the IRS' Employee Plans Compliance Resolution System (EPCRS) will make it easier – and less costly – to fix certain operational issues without the need for an IRS filing or payment of a user fee.

Effective April 19, 2019, the newly announced expansion in **Rev. Proc. 2019-19** now allows the self-correction program (SCP) to permit correction of certain plan document failures and certain plan loan failures, including the ability to correct defaulted plan loans, the failure to obtain spousal consent on a plan loan, and the failure of permitting plan loans that exceed the number of plan loans permitted under the terms of the plan. The revenue procedure also provides an additional method of correcting operational failures by plan amendment under SCP.

The American Retirement Association (ARA) **submitted a comment letter** to the IRS on April 4, 2018, recommending modifications to EPCRS that would expand the use of the SCP and reduce the burden imposed on small business plans by the new pricing structure that the IRS had put in place for the Voluntary Compliance Program (VCP).

While not all the ARA recommendations in the comment letter were adopted, Rev. Proc. 2019-19 looks to be a great start to help plan sponsors and practitioners more efficiently address potential compliance issues.

Moreover, the expansion of the SCP to accommodate a number of issues common among smaller plans may well mute some of the negative financial impact of changes in the VCP fee structure that **disproportionately affected smaller plans**. The IRS claims that the fee structure shift better reflected the average time spent on those cases.

Self 'Serving'

The new enhancements include the following.

Plan amendments related to changes in the law or regulations can now be self-corrected by retroactively adopting the required amendment no later than the close of the second plan year following the plan year in which the amendment should have been adopted – when many of these oversights are discovered.

Operational errors – that is, not operating the plan strictly in accordance with its written terms – may now be corrected through a retroactive conforming amendment, as long as (a) it results in an increase in a benefit, right or feature, (b) that benefit, right or feature is available to all eligible employees, and (c) it must not violate any other qualification requirement and be in accord with the general correction principles of EPCRS.

Self-correction of **plan loan operational defects** are now possible for the following.

- Failure to repay the loan in accordance with the plan's terms no longer has to be reported as a deemed taxable distribution to the participant. Previously the only way to do this without tax consequences for the participant was to file under the VCP and paying a user fee.
- Failure to obtain spousal consent to a participant pledging his or her account balance as collateral for the loan can now be remedied by notifying the spouse and obtaining consent retroactively.
- Allowing loans to participants beyond the number permitted by the plan can now be fixed via a retroactive conforming amendment may now be adopted – as long as the amendment doesn't violate the qualification requirements of Code Section 401(a), the requirements of Code Section 72(p) and that 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 classified as non-highly compensated employees.

"This is a big win for retirement plan practitioners and plan sponsors alike," noted Craig Hoffman of Trucker Huss, who led ARA's advocacy on the issues addressed in Rev. Proc. 2019-19 when he was ARA's General Counsel. "The ability to use the expanded SCP will be particularly beneficial to the sponsors of smaller plans who will, as a result, now be able to correct a broader array of mistakes without having to actually file with the IRS and pay a user fee. This result is a testament to the hard work of the Government Affairs Committee at ARA over an extended period, and the willingness of the staff at the IRS to take those perspectives into account."