

## **Alert** | **Benefits & Compensation**



**April 2019**

### **IRS Expands Retirement Plan Self-Correction Program**

Our [January 2019 GT Benefits and Compensation Alert](#) addressed the unprecedented level of potential liability for compliance failures in 401(k) and other retirement plans and the importance of performing a plan compliance review and correcting plan document or operational failures before an IRS auditor knocks on the door. Doing nothing and playing the audit lottery is no longer an acceptable risk, with one out of three employers (and half of large employers with at least 25,000 employees) likely to have their retirement plan audited by the IRS or DOL (*See* 2016 WillisTowersWatson Retirement Plan Governance Survey).

Fortunately, the IRS and DOL have programs allowing employer plan sponsors to perform compliance reviews and self-correct plan document and operational failures rather than requiring them to file a correction submission with the IRS or DOL for approval and paying fees or negotiating sanctions on audit.

The IRS has just released new self-correction procedures with the issuance of [Revenue Procedure 2019-19](#), effective as of April 19, 2019, which increases the number and type of errors that can be self-corrected without filing and paying a fee.

Revenue Procedure 2019-19 expands the IRS Self-Correction Program (SCP) under the Employee Plans Compliance Resolution System (EPCRS) so that a sponsor of a 401(k) or other tax-qualified retirement plan may use SCP to correct certain plan document failures that violate Internal Revenue Code Sections

401(a) or 403(b), provided the plan at the time of correction is subject to a favorable determination, advisory, or opinion letter from the IRS, and the correction is made within the SCP correction period for “significant” failures (in general, before the end of the second plan year after the failure occurred).

In addition, Rev. Proc. 2019-19 allows an operational failure to be corrected by plan amendment if the plan amendment results in an increase in a permissible benefit, right, or feature available to all eligible employees, and the amendment complies with the general correction principles of EPCRS.

Rev. Proc. 2019-19 also for the first time extends SCP to certain plan loan failures to be corrected under SCP, and provides that (a) errors relating to defaulted loans may be corrected under SCP by a single sum repayment, re-amortization of the outstanding loan balance, or both and (b) that if correction of a plan loan failure is not made (resulting in a deemed distribution to the borrower/participant that must be reported on Form 1099-R), the plan sponsor may report the deemed distribution in the year of correction rather than the year of the failure without first having to request that reporting relief. Finally, Rev. Proc. 2019-19 provides for a new correction method for a failure to obtain spousal consent for a loan, as well as a plan amendment correction method for granting plan loans in excess of the number of loans permitted under the plan.

The new IRS self-correction provisions are available immediately and create an excellent opportunity to review plan document and operational compliance and take advantage of these new simpler correction procedures for common plan errors.

Please do not hesitate to contact Greenberg Traurig with any questions regarding undertaking self-correction under the EPCRS SCP program, or if you are interested in a plan compliance review.

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