

The background of the top section is a photograph of the United States Capitol building in Washington, D.C., featuring its iconic dome and classical columns. The text is overlaid on this image in a white, serif font.

SLEVIN & HART, P.C.

Benefits Update

IRS Issues New Correction Procedure with Expanded Self-Correction Rules

April 30, 2019

On April 19, 2019, the Internal Revenue Service (“IRS”) issued Revenue Procedure 2019-19 (“Revenue Procedure”) to update its Employee Plans Compliance Resolution System, the program offered by the IRS to allow pension, 401(k) and other qualified plans to correct plan document and operational errors to comply with the law. Additionally, the Revenue Procedure formalizes the IRS’s prior announcement that all Voluntary Correction Program (“VCP”) submissions after March 31, 2019 must be filed electronically.

The Revenue Procedure expands the list of errors eligible for correction by the plan under the Self-Correction Program (“SCP”), instead of filing with the IRS and paying a user fee, as required for a VCP correction. Subject to certain requirements, some of the errors eligible for self-correction under the new Revenue Procedure include the following:

- **Retroactive Plan Amendments to Correct Plan Document Failures.** A plan document failure occurs when a plan does not timely adopt a change required under law. The deadline for a plan to adopt an amendment required under law is the end of the second plan year beginning after the year in which the list of Required Amendments that includes the necessary change is issued. Previously, a plan could correct the failure to timely adopt such required amendments only through a VCP filing. Now, plans that have a favorable determination letter (most plans) may address a failure to adopt changes timely to the plan document required under law by adopting an amendment with the required effective date by the end of the second plan year after the plan year for which the failure occurred.
- **Retroactive Plan Amendments to Correct Operational Errors.** Operational errors occur when the plan is not operated in accordance with the plan document. The Revenue Procedure relaxes the rules for self-correction of operational errors by retroactive plan amendment. A plan sponsor may now adopt an amendment with a retroactive effective date to bring the plan’s written terms into compliance with the plan’s operation, provided the following conditions are satisfied: (1) the amendment would result in an increase of a benefit, right, or feature; (2) the increase in the benefit, right, or feature applies to all employees eligible to participate in the plan; and (3) the increase in the benefit, right, or feature is permissible under the Internal Revenue Code (“Code”) and satisfies the correction principles in the Revenue Procedure.

- Plan Loans. The Revenue Procedure expands the ability of plans to correct the following plan loan failures under SCP:
 - If a participant fails to repay a plan loan, the loan is considered to be in default and is treated as a “deemed distribution” that is taxable to the participant. Previously, a plan could avoid reporting the defaulted loan as a deemed distribution only if it submitted a VCP filing and corrected the defaulted loan using one of the following approaches: (1) re-amortizing the outstanding loan over the remaining period of the loan; (2) allowing the participant to pay a single corrective payment for the outstanding amount owed (including interest); or (3) a combination of (1) and (2). Now, a plan may self-correct a defaulted loan using one of these approaches without having to report the plan loan failure as a deemed distribution. This self-correction is permissible only if the maximum period for repayment of a plan loan described under the Code (generally 5 years) has not expired. Plan sponsors should note that a filing under the Department of Labor’s Voluntary Fiduciary Correction Program is still necessary to avoid an excise tax that applies to the plan sponsor for a prohibited transaction for failing to withhold loan repayments from the participant’s wages if the loan default is cured by self-correction instead of through VCP.
 - Previously, if a participant defaulted on a loan or the amount or term of the loan did not meet one of the requirements under the Code, the loan would be treated as a deemed distribution that is taxable to the participant in the year the failure occurred, unless the plan requested that the failure be reported for the year of the correction as part of a VCP filing. Now, a plan may report the deemed distribution (and issue a Form 1099-R to the participant) for the year of the correction without a VCP filing.
 - A plan that requires spousal consent for plan loans may correct a failure to obtain spousal consent by notifying the participant and the spouse and obtaining spousal consent. If the spouse will not consent, then the failure to obtain spousal consent still must be corrected under VCP.
 - If a plan issues loans to a participant in excess of the number of loans permitted under the plan document, the plan may adopt a retroactive plan amendment as long as (1) the amendment satisfies the general requirements applicable to plan loans under the Code (i.e., the change is legally permissible); (2) the amendment complies with the tax qualification provisions of the Code; and (3) the plan loans in excess of the number permitted under the terms of the plan were available either to all participants or solely to non-highly compensated employees.

The changes under the Revenue Procedure are effective for corrections on or after April 19, 2019. Please contact Slevin & Hart for more information on how the Revenue Procedure may affect your plan. We look forward to discussing this new IRS guidance with you further.

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