

[\(484\) 574-8782](tel:4845748782)

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IRS Modifies EPCRS for Loans and Certain Plan Document Failures



With the issuance of Revenue Procedure 2019-19, the IRS modifies its Employee Compliance Resolution System for the second time in less than a year.

Effective April 19, 2019, the IRS modified the IRS Employee Plans Compliance Resolution System (“EPCRS”).

EPCRS permits any size business or organization that sponsors a retirement plan (including SEP and SIMPLE IRA plans) to identify and correct many failures they find.

Effect on Programs

[Revenue Procedure 2019-19](#) modifies and supersedes [Rev. Proc. 2018-52](#), 2018-42 I.R.B. 611, the most recent prior consolidated statement of the correction programs under EPCRS. This update to [Rev. Proc. 2018-52](#) is a limited update and is published primarily to expand SCP eligibility to **permit correction of certain Plan Document Failures and certain plan loan failures**, and also to provide an additional method of correcting Operational Failures by plan amendment under SCP.

Modifications relating to SCP

In General

Practitioners have requested expansion of the ability to use SCP to correct certain failures,

stating that expansion of SCP would increase compliance and reduce the costs and burdens associated with plan compliance. In light of those comments, the Department of the Treasury (Treasury Department) and the IRS have concluded that an expansion of SCP will facilitate compliance for plans, while reducing costs and burdens of compliance by allowing Plan Sponsors to self-correct in certain additional circumstances. **Beginning April 19, 2019, Plan Sponsors that satisfy the eligibility requirements of SCP may use the procedures under this revenue procedure to correct certain Operational Failures or Plan Document Failures under SCP.**

Correcting certain Plan Document Failures under SCP

Section 4.01 is revised to provide that SCP is available to correct certain Plan Document Failures. Section 4.01(1)(b) provides that, if otherwise eligible to correct under SCP, a sponsor of a Qualified Plan or 403(b) Plan may correct certain Plan Document Failures under SCP, other than the initial failure to adopt a Qualified Plan or the failure to adopt a written 403(b) plan document timely, as required under §1.403(b)-3(b)(3) and Notice 2009-3, 2002 I.R.B. 250. Plan Document Failures under SCP are always treated as significant failures and must be corrected in accordance with section 9. Consistent with treating Plan Document Failures as significant failures, section 4.03(1) provides that **certain Plan Document Failures may be corrected under SCP only if the Plan, as of the date of correction, is subject to a Favorable Letter and the correction is made within the SCP correction period.**

As under [Rev. Proc. 2018-52](#), section 4.01(1)(c) provides that, for SEPs and SIMPLE IRAs, SCP is available to correct only

insignificant Operational Failures. Section 4.01(1)(d) continues to provide that **Demographic and Employer Eligibility Failures are not available for correction under SCP**. Numerous conforming changes to the revenue procedure have been made to implement the expansion of SCP to permit correction of certain Plan Document Failures.

New Rules for Correcting by Plan Amendment under SCP

This revenue procedure adds new rules for correcting Operational Failures by plan amendment under SCP. Under Rev. Proc. 2018-52, a Plan Sponsor could correct an Operational Failure by a plan amendment to conform the terms of the plan to the plan's prior operations for Operational Failures listed in section 2.07 of Appendix B.

Under the new correction rules in this revenue procedure, an Operational Failure may be corrected by plan amendment under SCP if three conditions are satisfied: (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 Code and satisfies the correction principles of section 6.02. In addition to Operational Failures, section 4.05(2)(c) permits certain Plan Document Failures to be corrected by plan amendment if the plan has a Favorable Letter and satisfies section

SCP is Available to Correct Certain Plan Loan Failures

(a) In general. The revenue procedure permits certain plan loan failures to be corrected under SCP. Section 6.07(1) provides that plan loan failures described in section 6.07 generally may be corrected under VCP, Audit CAP, or SCP, unless otherwise specified. The revenue procedure also

provides that errors relating to the failure to repay a plan loan according to plan terms (a defaulted loan) may be corrected under SCP in accordance with section 6.07(3)(d). **The correction methods for a defaulted loan are the same as those provided under Rev. Proc. 2018-52; namely, permitting correction by either a single-sum repayment, re-amortization of the outstanding loan balance, or a combination of the two.**

The Department of Labor's Voluntary Fiduciary Correction Program (VFC Program), at 71 FR 20262, provides for a no-action letter for a defaulted loan failure corrected under VCP, provided the conditions of the VFC Program are met. Such no-action letters are conditioned under section 7.3(b) of that program on the inclusion of a VCP compliance statement, among other things. The Department of Labor has advised the IRS that it will not issue a no-action letter under section 7.3(b) of its VFC Program unless such failures are corrected under VCP.

(b)

Reporting of deemed distributions. Section 6.07(1) of Rev. Proc. 2018-52

provided that if correction of a plan loan failure is not made, a deemed

distribution under § 72(p)(1) must be reported on Form 1099-R, Distributions

From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance

Contracts, etc., with respect to the affected participant. Rev. Proc.

2018-52 permitted, as part of VCP and Audit CAP, a Plan Sponsor to report the

deemed distribution on Form 1099-R in the year of correction (instead of the

year of the failure), but only if the Plan Sponsor specifically requested that

relief. Section 6.07(2) of this revenue procedure eliminates the requirement

that the reporting relief must be requested in order to report the deemed distribution in the year of correction.

(c)

Plan loan statutory failures. Section 6.07(3)(b) and (c) provides that failures related to: (a) plan loans that are made in excess of the loan limits under § 72(p)(2)(A), or (b) plan terms that do not meet the requirements of § 72(p)(2)(B) or (C), may be corrected only under VCP or Audit CAP.

(d)

Failure to obtain spousal consent for a plan loan. **Section 6.07(4) provides a new correction method for failure to obtain spousal consent for a plan loan. Under the new correction method, the Plan Sponsor must notify the affected participant and spouse, so that the spouse can provide spousal consent.** If spousal consent is not obtained, section 6.07(4)(b) provides that the failure must be corrected using either VCP or Audit CAP.

(e) Expanding SCP to correct certain plan loan failures by plan amendment. Section 6.07(5) provides **that a Plan Sponsor may correct a failure resulting from granting a number of plan loans that exceeds the number of loans permitted under a plan by adopting a plan amendment** in accordance with the correction by plan amendment methods set forth in section 2.07(3) of Appendix B. New section 2.07(3) of Appendix B adds a new correction method for plan loans when the number of plan loans exceeds the number permitted under the plan, in addition to the current correction method relating to the failure of granting plan loans to a participant under a plan that does not permit plan loans.

Under section 2.07(3) of Appendix B, the Plan Sponsor may correct by plan amendment if: (i) the amendment satisfies § 401(a), (ii) the plan as amended would have satisfied the qualification requirements of § 401(a) (and the requirements applicable to plan loans under § 72(p)) had the amendment been adopted and effective when plan loans were first made available, and (iii) 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.

Description of other Modifications

The modifications to Rev. Proc. 2018-52 that are reflected in this revenue procedure include the following changes –

- Revising section 1.03 to reflect that SCP is available to correct certain Plan Document Failures, and to make other modifications. For a description of the expansion of SCP to correct certain Plan Document Failures, see section 2.02(2).
- Revising section 4.01 to provide that SCP is also available to correct certain Plan Document Failures and certain plan loan failures. For a description of the expansion of SCP to correct certain Plan Document Failures and certain plan loan failures, see section 2.02(2) and (4).
- Revising section 4.03(1) to provide that certain Plan Document Failures may be corrected under SCP if, as of the date of the correction, the plan is subject to a

Favorable Letter and other applicable requirements are met.

- Revising section 4.04 to reflect that SCP is available to correct certain Plan Document Failures and to make other modifications. For a description of the expansion of SCP to correct certain Plan Document Failures, see section 2.02(2).

- Revising section 4.05(2) to add a new method to correct by plan amendment under SCP. For a description of the correction method, see section 2.02(3).

- Revising sections 4.10(2) and 4.12 to reflect that SCP is available to correct certain Plan Document Failures and to make other modifications. For a description of the expansion of SCP to correct certain Plan Document Failures, see section 2.02(2).

- Revising section 6.02(6) to reflect changes to the methods for correction of plan loan failures. For a description of changes to the methods for correction of plan loans, see section 2.02(4).

- Revising section 6.04 to provide that, in addition to VCP, failures to obtain spousal consent may also be corrected under SCP or Audit CAP.

- Revising section 6.07 to reflect changes to methods for correction of plan loan failures, including expanding SCP to correct certain plan loan failures, permitting the reporting

of deemed distributions in the year of correction without an advance request of relief, and adding new correction methods for certain plan loan failures. For a description of changes to the correction of plan loans failures, see section 2.02(4).

- Revising sections 7 and 9 to reflect changes to SCP. For a description of the expansion of SCP, see section 2.02.

- Revising section 8 to reflect that additional examples illustrating whether an Operational Failure is insignificant will be made available on the IRS website.

- Revising section 2.07 of Appendix B to provide a new correction method when the number of plan loans exceeds the number permitted under the plan. For a description of the correction method, see section 2.02(4)(e) and Appendix B, section 2.07(3).

Submit Comments on Improvements to EPCRS

The IRS and Treasury continue to solicit comments from the public on how EPCRS can be improved. See section 17 of Rev. Proc. 2019-19.

Effective Date

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

EPCRS Revenue Procedures Superseded

Rev. Proc. 2018-52 no longer applies as of April 19, 2019

Future Enhancements

It is expected that the Treasury Department and the IRS will continue to update the EPCRS revenue procedure, in whole or in part, from time to time, including further improvements to EPCRS based on comments received. Accordingly, the Treasury Department and the IRS continue to invite further comments on how to improve EPCRS.

Comments on Recoupment of Overpayments Requested by IRS



The Treasury Department and the IRS requested comments in Rev. Proc. 2015-27, 2015-16 I.R.B. 914, on potential changes relating to the recoupment of Overpayments. In addition, the Treasury Department and the IRS received comments on permitting the correction of Overpayments under SCP, and are currently developing guidance on these issues. As part of the process of developing changes to modify the EPCRS rules on the correction of Overpayments, the Treasury Department and the IRS are continuing to review those comments.



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Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional states that have passed firm mobility.

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