

# Client Action Bulletin

MAY 9, 2019 | CAB 19-1

## IRS Expands Self-Correction Program for Retirement Plans

### SUMMARY

The IRS has expanded the Self-Correction Program (SCP) to enable retirement plan sponsors to more easily fix certain common plan document and operational failures, effective beginning April 19, 2019. [Revenue Procedure 2019-19](#) updates the Employee Plans Compliance Resolution System (EPCRS), which covers the SCP and the Voluntary Correction Program (VCP) and Audit Closing Agreement Program (Audit CAP). The expanded SCP permits: self-correction options for specified participant loan failures and possible deemed distribution relief under Internal Revenue Code (IRC) section 72(p); self-correction of certain plan document failures; and additional self-correction opportunities for certain operational failures by a retroactive plan amendment.

### DISCUSSION

#### Correcting Plan Loan Failures

The following summarizes the steps and conditions for correcting certain plan loan failures:

Failure	Correction under Expanded SCP	Conditions
A loan is treated as a deemed distribution because it does not meet the IRC §72(p)(2) exceptions or is in default and has not been corrected	Report the deemed distribution in the year of correction instead of the year of the failure	<ul style="list-style-type: none"> <li>Deemed distribution amount must be reported on Form 1099-R</li> <li>Plan sponsor must pay applicable federal income tax withholding</li> </ul>
Defaulted loans	Either or in combination: <ul style="list-style-type: none"> <li>Participant makes a single lump-sum payment that includes all missed payments, including accrued interest</li> <li>The outstanding balance of the loan, including accrued interest, is re-amortized over the remaining loan period so that the unpaid principal and accrued interest is repaid by the end of original term of the loan or the maximum period under loan rules, measured from the original date of the loan</li> </ul>	<ul style="list-style-type: none"> <li>The maximum loan repayment period has not expired</li> <li>The participant must be willing to take actions to fix the defaulted loan</li> <li>Avoids deemed distribution</li> <li>No need to issue a Form 1099-R</li> <li>Plan sponsor should make a corrective contribution to the participant's account if the plan's rate of return exceeded the plan loan interest rate</li> </ul>
Failure to obtain any required spousal consent	<ul style="list-style-type: none"> <li>Notify affected participant and the participant's spouse (who was married to the participant at the time of the loan)</li> <li>Obtain spousal consent to the plan loan</li> </ul>	If spousal consent cannot be obtained, the SCP is not available; Correction may be available under the VCP or Audit CAP
Number of plan loans to a participant exceeds the number permitted by the plan's terms	Adopt a retroactive plan amendment to conform the written plan document to the plan's operation	<ul style="list-style-type: none"> <li>The plan, as amended, must satisfy the IRC's requirements for plan loans and tax qualification</li> <li>Plan loans exceeding the number permitted must have been available to all participants or solely to one or more non-highly compensated employees</li> </ul>

Special relief from the deemed distribution rules of IRC section 72(p) is not available under the SCP if the plan loan doesn't comply with the IRC section 72(p) maximum loan amount limit, maximum repayment term, or level amortization requirement, correction of which may only be obtained via the VCP or, if under IRS audit, the Audit CAP.

### Correcting Plan Document Failures

Plan document failures generally occur when a plan sponsor fails to timely adopt required plan amendments. Prior to the issuance of the new Revenue Procedure, plan document failures could only be corrected via the VCP.

The updated guidance newly allows these types of failures to be fixed under the SCP, but only if:

- the plan is either a tax-qualified plan under IRC section 401(a) (including 401(k) plan) or a 403(b) plan;
- the plan has a “favorable letter” (either an IRS determination letter or, in the case of pre-approved plans, an IRS opinion or IRS advisory letter); and
- the correction is made within the two-year period specified in EPCRS: by the last day of the second plan year following the plan year for which the failure occurred. Thus, for example, if a calendar-year plan document failure occurred in 2018, the plan sponsor must correct the error by the end of 2020. (Note that an extension of the correction period is available in the case of corporate mergers, acquisitions, or other similar transactions.)

The SCP is not available to correct a failure to timely adopt an initial written plan document. In addition, corrective amendments that were not timely adopted to resolve demographic failures (under IRC section 401(a)(4) nondiscrimination or under IRC section 410(b) coverage testing failures) also are not eligible for the SCP. Note that the late adoption of discretionary amendments is an operational failure, not a plan document failure (but see “Correcting Operational Failures,” below).

### Correcting Operational Failures via Retroactive Plan Amendments

The new guidance also provides expanded opportunities for plan sponsors to self-correct certain operational failures by making retroactive plan amendments, rather than applying through the VCP under most circumstances. To conform the written terms of the plan with the plan’s operations, the Revenue Procedure requires that:

- the corrective amendment result in an increase of a participant’s benefit, right, or feature;
- the increase in benefit, right, or feature be provided to all employees eligible to participate in the plan; and
- the increase in benefit, right, or feature be permitted under the IRC and satisfy the EPCRS requirements.

## ACTION

Employers that sponsor retirement plans will welcome the changes under the expanded SCP, for they will be able to correct many common errors with less administrative costs and burdens. There remains a few, narrow areas where the SCP might not be helpful, particularly related to plan loans (e.g., loans exceeding the statutory maximum permitted), and plan sponsors should be cautious about possible interactions with the Department of Labor’s regulations (its Voluntary Fiduciary Correction Program) governing plan loans. Regarding plan document failures, note that the IRS’s “Required Amendments” list for 2017 affected very few plans and the list for 2018 had no required amendments.

For additional information about the IRS’s Revenue Procedure 2019-19 and assistance with a review of your retirement plan documents and operations, please contact your Milliman consultant.

## Other Recent Milliman Publications You May Be Interested in:

- [\*\*\*2019 Corporate Pension Funding Study\*\*\*](#)
- [\*\*\*Monthly Benefit News and Developments, April 2019 and May 2019\*\*\*](#)
- [\*\*\*Pension Funding Index, March 2019 and May 2019\*\*\*](#)
- [\*\*\*Health and Group Benefits News and Developments, March 2019\*\*\*](#)
- [\*\*\*Multiemployer Review: PBGC proposed rule: Methods for computing withdrawal liability\*\*\*](#) In February, the Pension Benefit Guaranty Corporation issued a proposed rule to amend and simplify the calculation of withdrawal liability for plans with rehabilitation plans or funding improvement plans that have made certain benefit or contribution changes. This paper provides a detailed review of these proposed rules.
- [\*\*\*What does corporate pension funding look like by sector?\*\*\*](#) An infographic on pension plan funding by business sector, including funded ratio, asset allocation, and expected investment returns.
- [\*\*\*The spot rate method, lump sums, and potential audit requirements\*\*\*](#) Use of the spot-rate method in developing pension cost is a practice that is increasingly being used.
- [\*\*\*Impending merger or acquisition? The health of employee benefit programs can be a make-or-break issue\*\*\*](#) Employee benefits programs can deeply affect a potential merger or acquisition, sometimes to the surprise of the acquiring company.
- [\*\*\*Congress asked nine questions about single payer. Here are 27 answers.\*\*\*](#) In recent weeks, single-payer healthcare proposals have begun to emerge in Congress. While much of the attention during the single-payer discussion has been on specific proposals, Milliman has tried to take a broader view—via questions from a congressman to the Congressional Budget Office about a potential single-payer system in the U.S.
- [\*\*\*The Withdrawal Delay Cohort under VM-21/AG-43: The case for random sampling\*\*\*](#) The VM-21 Standard Projection is essentially a complete overhaul of the existing Actuarial Guideline 43 Standard Scenario framework.



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