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Alert

IRS Updates and Expands its Employee Plans Correction Program

April 22, 2019 – On April 19, 2019, the Internal Revenue Service ("IRS") released Revenue Procedure 2019-19 (the "Ruling" found here), reflecting the latest update to the Employee Plans Compliance Resolution System ("EPCRS"). EPCRS is a set of procedures that allow plan sponsors to correct qualification failures in their tax-qualified retirement plans such as Code Section 401(k) plans and Code Section 403(b) plans.

As updated by the Ruling, EPCRS allows employers greater latitude and flexibility to self-correct certain failures without notifying the IRS. Key changes under the Ruling include:

- **Self-Correction of Plan Document Failures**. EPCRS now permits plan sponsors to self-correct some (but not all) plan document failures (*i.e.*, the failure of the plan terms to comply with legal requirements). Previously, correcting document failures required a formal filing (with attendant filing fees) to obtain IRS consent. To be eligible for the new self-correction relief, a document failure must be corrected by the end of the second plan year following the plan year of the failure. An IRS filing is still required where a plan document failure is not timely self-corrected or where self-correction is simply not permitted (such as not timely adopting an initial plan document or discretionary plan amendment.)

- **Expanded Opportunity to Correct Operational Failures by Retroactive Amendment.** Operational failures (*i.e.*, the failure of the plan to operate in accordance with its terms) can now be more easily self-corrected by retroactively amending the plan document to conform it to the way the plan was actually operated. Before the change, correcting an operational failure by retroactively amending the plan was only available in limited circumstances. Now, it is available for ***any*** operational failure, so long as: (i) the corrective amendment results in an increase of a benefit, right, or feature; (ii) the increase is available to all eligible employees; and (iii) the increase is permitted under the tax code and otherwise satisfies the EPCRS correction principles.

- **Expanded Options to Self-Correct Participant Loan Failures.** EPCRS now has greater options to self-correct participant plan loan failures, thereby avoiding loan defaults and resulting taxable deemed distributions to participants. However, an IRS filing may still be advisable to ensure that the Department of Labor does not impose prohibited transaction penalties in connection with a defaulted loan.

- **All Corrective Filings Must be Electronic.** As previously noted here, EPCRS requires that ***all*** correction filings with, and payments to, the IRS must be made electronically. Paper submissions and checks mailed to the IRS will be rejected.

These changes generally permit plan sponsors greater latitude to self-correct common plan failures without the need to go through a lengthy and costly IRS filing process, and thus will be welcomed by plan sponsors and their counsel.

For questions about EPCRS or advice on identifying and correcting any operational or documentary issues with your employee benefit plan, please contact Alec Nealon or Brian Snarr.

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