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Significant Expansion of IRS Self-Correction Program for Retirement Plan Errors

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On April 19, 2019, the IRS issued Revenue Procedure 2019-19 (the “Revenue Procedure”), the latest update to and restatement of the Employee Plans Compliance Resolution System, its retirement plans correction program. Effective immediately, the Revenue Procedure provides plan sponsors and practitioners long-desired participant loan correction relief, as well as greatly expands the types of failures that can be corrected by retroactive amendment through the Self-Correction Program (“SCP”).

Participant Loans

Defaulted participant loans from qualified retirement plans (resulting from a failure to make loan repayments) have the potential to result in large and unexpected tax consequences to affected participants. To spare participants from such tax consequences, plan sponsors often desired to cure the default either through the reamortization of the loan over the remaining term of the loan, by making a lump sum repayment of the loan or a combination of the two methods. Prior to the Revenue Procedure, plan sponsors were generally unable to self-correct defaulted participant loans and instead were required to go through the IRS's costly and lengthy Voluntary Correction Program (“VCP”). With the issuance of the Revenue Procedure, plan sponsors can at long last self-correct defaulted loans by the methods described above.

In addition, failure to obtain spousal consent for a loan, or failures relating to granting loans in excess of the number of loans permitted under a plan, may also now be self-corrected under certain circumstances. Correction of participant loans that exceed Internal Revenue Code (the “Code”) limits or fail to meet other requirements of the Code still require correction through the VCP. The Revenue Procedure also provides that defaulted loans may now be reported on Form 1099-R for the year the loan was defaulted instead of the year in which the failure occurred. This change is intended to prevent participants from having to amend previously filed tax returns to include defaulted loan amounts.

Self-Correction by Retroactive Amendment

The Revenue Procedure also expanded the SCP to permit the self-correction of certain operational and plan document failures by retroactive plan amendment. Prior to the Revenue Procedure, self-correction by retroactive amendment was permitted only in several narrow

circumstances. Now a plan sponsor may retroactively amend its plan to conform the terms of the plan to the plan's prior operations without having to go through the VCP, provided that: (a) the plan amendment will 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) the benefit, right or feature is permitted under the Code and the correction otherwise meets the general correction principles contained in the Revenue Procedure. In addition, plan document failures (which generally result from a failure to adopt required amendments relating to changes in the Code) may be self-corrected if the required amendment is adopted by the end of the second year following the end of the year in which the failure to adopt the required amendment occurred and the plan has previously received a favorable opinion or determination letter from the IRS.

While the issuance of the Revenue Procedure adds much desired flexibility to correct a broad range of failures that could only previously be corrected under the VCP, navigating the IRS's correction program remains challenging. If you would like assistance with a retirement plan issue you are facing or have any questions about the Revenue Procedure, please contact a member of Holland & Hart's Benefits Law Group.

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