Regulatory Outlook for Retirement Plans

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EPCRS Developments
Employee Plans Compliance Resolution System (EPCRS) allows plan sponsors to correct:

- Operational Failures
- Plan Document Failures
- Demographic Failures
- Employer Eligibility Failures
Available correction programs include:
- Self Correction Program (SCP)
- Voluntary Correction Program (VCP)
- Audit Closing Agreement Program (Audit CAP)
### Online VCP Applications

As of April 1, 2019, all VCP applications must be submitted to the IRS electronically using Pay.gov

- Any paper submissions will be returned unprocessed
- Filing fee must also be paid online
Online VCP Applications (continued)

- Filings must be submitted in PDF format, not to exceed 15 MB
- Additional materials must be faxed to the IRS
- Website still has model schedules for use with common errors (e.g., nonamenders, loan errors, RMD errors)
Correcting Loan Errors

Loan defaults can now be self corrected by:

- Having the participant repay missed payments
- Reamortizing missed payments over the remaining period of the loan OR
- A combination of the two

If the default is not fully cured, the plan must report the excess amount as taxable in the year of correction.
If a plan gives a loan without spousal consent (contrary to the plan document), plan can self correct by:

- Notifying the participant and spouse (as of the loan date) AND
- Obtaining spousal consent to the loan
Correcting Loan Errors (continued)

- If a plan gave more participant loans than permitted under the loan policy, the plan document/loan policy can be amended retroactively to increase the number of permissible loans.

- Other options—have the participant repay one of the loans OR reamortize multiple loans into a single loan.
Correcting Loan Errors (continued)

Loan errors not eligible for self correction:

• Loans in excess of Internal Revenue Code limits (e.g., more than $50,000)

• Loans with repayment schedules over 5 years (unless for purchase of primary residence)
Retroactive Amendments

A plan can self-correct an error via retroactive amendment IF:

- The amendment conforms the document to the actual plan administration
- The amendment increases participants’ benefits, rights or features
- The increase applies to all participants AND
- The increase is permitted under the Code and the EPCRS general correction principles
Non-Amender Errors

• Plan sponsors can self correct a failure to adopt interim amendments (i.e., legally required amendments).
• Adoption must occur within the two plan years following the plan year in which the error occurred
• Plans must have a determination letter or reliance on a pre-approved document
Non-Amender Errors (continued)

Plans cannot self-correct:

• Failures to adopt a discretionary amendment
• Failures to timely adopt the initial plan document
Determination Letter Program

IRS allows for determination letters only for:

- Plans that have never applied for a determination letter before
- Plans that are terminating
Hybrid Plans

- Hybrid plans are now eligible for determination letter applications
- Includes cash balance plans, pension equity plans and variable annuity plans
- Filing window runs from Sept. 1, 2019 to August 31, 2020
Merged Plan

- Effective 9-1-19, merged plans can file for a determination letter—no sunset date
- Individually designed plans only
- Merger must happen by the end of the plan year following the year in which the transaction occurs
- Filing must happen by the end of the plan year following the year in which the merger occurs
Pre-Approved DB Plans

- Pre-approved DB plans received IRS approval letters in early 2018
- The window for restating DB plans using a pre-approved document opened on May 1, 2018 and closes on April 2020
Pre-Approved DC Plans

- Pre-approved DC plans were (hopefully) submitted to the IRS by 12-31-18
- IRS intends to issue opinion letters by Summer of 2020
- If the IRS meets that deadline, the restatement window for DC plans using a pre-approved document will run from mid-2020 to mid-2022
Hardship Distributions
Casualty Hardships

- Hardship distributions for casualty previously included damage from any cause
- Effective 2018, Code section 165 changed—casualty only results if damage was caused by a federally declared disaster
- Nov. 2018—IRS proposed regs reverting to the old rule for hardship casualties
- Hardship for casualties resulting from any source now permitted
BBA Hardship Changes

Under the Bipartisan Budget Act:

• Participants no longer required to take a plan loan prior to a hardship distribution

• Participants no longer subject to deferral suspensions after hardship distribution

• QNECs, QMACs, safe harbor sources and earnings on deferrals eligible for hardship
<table>
<thead>
<tr>
<th>IRS Proposed Regulations</th>
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<tr>
<td>• November 2018—IRS issued proposed changes to the hardship regulations</td>
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<td>• Proposal adjusts the events test (i.e., has the participant incurred an event triggering a hardship)</td>
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<tr>
<td>• Proposal completely rewrites the needs test (i.e., does the participant need a distribution to meet the hardship)</td>
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Needs Test

- During 2019, plans may still impose the deferral suspension following a hardship distribution
- Beginning in 2020, plans **may not** impose any deferral suspensions following a hardship distribution
Needs Test (continued)

- Plans may continue to impose a requirement that participants take a loan prior to requesting a hardship
- Expansion of hardship availability to QNECs, QMACs, safe harbor contributions and earnings on deferrals is optional
Needs Test (continued)

New Needs Test:
• The distribution must not exceed the amount of the need
• The participant must have obtained other available distributions (other than a plan loan) AND
• The participant must represent they have insufficient cash or other liquid assets to satisfy the financial need
# Events Test

- Proposed Regs add a new hardship distribution trigger for expenses incurred as a result of federally declared disasters
- Can cover any expense resulting from the disaster, including lost earnings
- No future piecemeal guidance from the IRS on disaster relief
Events Test (continued)

- Notice 2007-7 *permits* hardship distributions based on medical, education or funeral expenses of primary beneficiary
- Proposed regulations now incorporate this rule
- Open question—Is this now required (not optional) for plans using the safe harbor events test?
Multiple Employer Plans (MEPs)
MEPs

- 8-31-18—executive order requesting revisions to the MEP rules and requirements
- 7-29-19—DOL finalized regulations indicating that a bona fide group or association can sponsor a MEP
- Employers in the plan must have a commonality of interest (being in the same trade or industry, or within the same geographic area)
MEPs

- 7-3-19—IRS proposes regulations to undo the “one bad apple” rule
- Any disqualifying error by any employer in the MEP will **not** disqualify the entire plan if:
  - The plan administrator provides multiple notifications to the employer about the error
  - Plan administrator will spinoff the employer’s assets into a separate plan and terminate that plan, **AND**
  - The plan administrator reports the spinoff/termination to the IRS
Questions