# CORRECTING POTENTIAL ERRORS RELATING TO CARES ACT LOANS

During the first year of the COVID-19 pandemic, Congress provided plan sponsors with a broad toolkit to help employees access retirement assets and manage loan repayments. However, many of the provisions associated with retirement plan loans in the Coronavirus Aid, Relief and Economic Security (CARES) Act have now expired. Plan sponsors should work with their service providers to ensure that loans are being administered accordingly—or take advantage of federal self-correcting programs to get retirement plan loans back on track.

**Review of CARES Act Loan Provisions**

The CARES Act allowed employers to increase the amount participants could borrow from their 401(k), 403(b) or 457 plans. Previously, the limit was the lesser of $50,000 or 50% of the vested balance, but during the period March 27, 2020 to September 22, 2020, participants with a valid COVID-19-related reason could borrow the lesser of $100,000 or 100% of the vested balance.

A second provision allowed participants to suspend repayments on any outstanding plan loan between March 27 and December 31, 2020 if they were affected by the pandemic. The CARES Act also extended the repayment term for loans (usually five years) by an additional year. Repayment schedules needed to be re-amortized (including interest incurred during the suspension of repayments) and resumed in January 2021.

**Possible Errors—And How to Correct Them**

The CARES Act included many moving parts and different deadlines related to loans. As a result, many plan sponsors—or their third-party service providers—may have made errors related to participant loans, including missing important cutoff or restart dates. For example, many 401(k) loans are initiated by the participant electronically and often solely through the service provider's platform—not through the employer. It is possible that some of these service providers may have continued making loans up to the higher CARES Act limits after the September 22, 2020 deadline. Similarly, service providers may not have properly re-amortized loans that were suspended during the nine-month period allowed by the CARES Act (using the outstanding principal and accrued interest), and some participants may not have resumed making repayments at the beginning of 2021.

Plan sponsors should review IRS Notice 2020-50, which explains the qualifications and deadlines for CARES Act loans. If an error is discovered, the IRS and the Department of Labor (DOL) have correction programs that can help plan sponsors correct errors and avoid disqualification and/or severe penalties.

The IRS's Employee Plans Compliance Resolution System (EPCRS) offers three ways to resolve problems; the level of plan failure determines the route employers need to take to resolve the issue. In addition, employers may need to address errors using the DOL's Voluntary Fiduciary Correction Program (VFCP). This self-correction program addresses 19 different prohibited transactions, including participant loans that fail to comply with plan provisions for amount, duration or level of amortization.

**Insight:**

**Fiduciary Duty Ultimately Falls on Plan Sponsor**

Part of a plan sponsor's fiduciary duty is to select service providers wisely and monitor whether they are complying with the plan document and existing laws. Most service providers disavow fiduciary status, so, in many cases, the employer is ultimately responsible for ensuring that the plan operates in compliance with its terms and applicable law. Failure to fulfill this responsibility could lead to severe consequences.

Plan sponsors should review participant loans and work with service providers to ensure that the loan process has been managed in accordance with the changing federal guidelines. If plan sponsors discover an error, they should document the issue as thoroughly as possible (including how the pandemic may have contributed to the oversight) and turn to the IRS and DOL self-correction programs.