

Significant Updates to the Employee Plans Compliance Resolution System under Revenue Procedure 2021-30

Executive Summary

On July 16, 2021, the Internal Revenue Service (the “IRS”) released [Rev. Proc. 2021-30](#), reflecting important changes to the Employee Plans Compliance Resolution System (the “EPCRS”) that the IRS previously established for correcting errors in tax-qualified retirement plans. There are notable changes to EPCRS, which permits plan sponsors to correct plan qualification failures and retain tax-favored status, including:

- expanding guidance on the recoupment of overpayments and creating two new exceptions for defined benefit plans;
- extending the end of the correction period under the Self-Correction Program;
- expanding the ability to correct an operational failure by a retroactive plan amendment;
- extending the safe harbor correction method for certain deferral failures under a plan with an automatic contribution feature; and
- eliminating the anonymous submission procedure under the Voluntary Correction Program (the “VCP”) while adding an anonymous, no fee, VCP pre-submission conference procedure.

This newsletter will highlight what these changes mean for retirement plan sponsors and participants.

Important Dates

August 14:

- Confirm recordkeeper has provided quarterly statements to participants
- File Form 990 returns for tax-exempt trusts or VEBAs, unless extended to November 15

September 15:

- File Form 8928 to report excise taxes for noncompliance with certain group health plan requirements
- Forms 5500 for calendar-year plans are eligible for an automatic extension (without filing a Form 5558)
- Minimum funding deadline for pension plans

September 30:

- Distribute Summary Annual Report for calendar-year plans, if 5500 was filed on July 31



Correcting Benefit Overpayments

Generally, plan sponsors are required to correct overpayments from defined benefit plans and defined contribution plans by making a corrective contribution to the plan that is equal to the amount of overpayments participants did not return.

EPCRS now includes two correction methods for defined benefit pension plans that do not require participants to repay the overpayment amount, thus avoiding the corrective contribution requirement.

- The “funding exception” correction method allows defined benefit plans to avoid corrective contributions as long as the plan’s adjusted funding target attainment percentage on the date of correction is at least 100% (different standards apply for multiemployer plans). Under this exception, all future payments to the overpaid recipient must be reduced to the correct payment amount, but no further corrective payments or benefit reductions are required or permitted.
- The “contribution credit” correction method permits the amount of repayments to be reduced (but not below zero) by the cumulative increase in the plan’s minimum funding requirements attributable to overpayments and certain additional contributions in excess of minimum funding requirements paid after the overpayment was made. In addition, future benefit payments to the overpaid recipient must be reduced to the correct amount. No further corrective payments or reductions to future benefit payments are required if the amount of overpayments is reduced to zero after the contribution credit is applied.

For defined contribution plans, EPCRS now provides that overpayments may be repaid by a participant under an installment agreement (in addition to lump sums and reductions of future payments).

In addition, in general, if the total amount of an overpayment is \$250 or less, the plan sponsor is not required to seek repayment from the participant or to notify the participant that the overpayment is not an eligible rollover distribution. This is an increase from the prior \$100 threshold.

Expansion of Self-Correction Program

The Self-Correction Program under EPCRS (“SCP”) allows plan sponsors to correct certain failures without contacting the IRS or paying a user fee.

Effective July 16, 2021, the correction period for significant operational failures under SCP increased from two years to three years, so that the new deadline for correcting a significant operational failure is the last day of the third plan year following the plan year during which the failure occurred.

Self-correction also now expands the permitted use of retroactive amendments to correct operational failures by eliminating the requirement that all participants in the plan benefit from a retroactive amendment that increases a plan’s benefit, right or feature (a change that seems to

recognize that operational failures involving a benefit, right or feature often impact only certain groups of employees).

In other welcome news, the sunset provision of the safe harbor correction method for elective deferral failures related to automatic contribution features was extended from December 31, 2020 to December 31, 2023.

Anonymous VCP Submissions to be Replaced by Pre-Submission Conference

The Voluntary Correction Program under EPCRS allows plan sponsors to correct failures that cannot be addressed under the SCP, with approval from the IRS. Currently, plan sponsors can submit a VCP application anonymously and reach agreement with the IRS about a proposed correction method before revealing the identity of the plan sponsor.

Effective January 1, 2022, anonymous submissions will no longer be permitted under the VCP. However, effective January 1, 2022, the IRS will accommodate anonymous VCP pre-submission conferences. The pre-submission conferences will be free of charge and will provide the plan sponsor with an opportunity to discuss a potential VCP submission. Input provided by the IRS at a pre-submission conference will be non-binding. If a plan sponsor decides to submit a VCP request following the pre-submission conference, the submission will no longer be anonymous.



To discuss the impact of Rev. Proc. 2021-30 on the Employee Plans Compliance Resolution System, or any other employee benefits matters, please contact any member of our Employee Benefits and Executive Compensation Group below.

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