

IRS Updates Employee Plans Compliance Resolution System

The Bottom Line

- IRS revisions to the EPCRS may be beneficial to qualified plans and participants, and may affect how plans resolve issues and/or avoid significant tax penalties.
- Plan sponsors and administrators should consult with ERISA counsel regarding any errors, as corrective options under the EPCRS may have changed or expanded. Certain corrective actions may only be available within the same plan year as the underlying failure (or, in some instances, as soon as the issue becomes known).
- Plan sponsors wishing to utilize the anonymous VCP submission program should prepare to submit materials on or before December 31, 2021.

The Internal Revenue Service (IRS) issued in its *Revenue Procedure 2021-30* an update to its Employee Plans Compliance Resolution System (EPCRS) on July 16, 2021, revising its correction programs for qualified retirement plans. The new guidance generally replaces and supersedes prior EPCRS guidance.

Updated EPCRS Highlights

Key updates and new features for plan sponsors and administrators include the following points, which are generally effective July 16, 2021 (except as otherwise noted):

Benefit Overpayment Corrections

Plans can now recoup overpayments through an installment agreement or a reduction of future benefits, in addition to a lump sum repayment. Additionally, corrective options are expanded through which defined benefit plan sponsors may resolve operational failures when plan participants or beneficiaries receive overpayments.

In particular, the new overpayment correction principles:

1. Limit the correction, under specified circumstances, to a certain amount to be recouped from participants or beneficiaries who received overpayments, and
2. In some cases, do not require the overpayment repayment at all if the plan satisfies a specified funding level, determined at the date of correction.

Increased Threshold for De Minimis Correction Amounts

The threshold amount is increased to \$250 (from \$100) for certain de minimis amounts for which a plan sponsor is not required to implement correction (including for overpayment corrections). The maximum amount for de minimis corrective distributions due to a participant or beneficiary remains unchanged at \$75 (and there remains no de minimis threshold for corrective contributions required to be made for a participant).

Correction Period for Significant Operational and Plan Document Failures

The self-correction period under the EPCRS' Self-Correction Program (SCP) applicable to significant operational and eligible plan document failures is extended to the last day of the third plan year (instead of the second plan year) following the plan year for which the failure occurred. After this SCP window passes, the plan sponsor would then have to correct the failure under the EPCRS' Voluntary Correction Program (VCP) (as was previously the case). Most insignificant operational failures can still be self-corrected at any time.

Expansion of Self Correction via Retroactive Plan Amendments

The use of retroactive plan amendments to self-correct operational failures is made easier and more practical by removing the requirement that if such amendment increases a benefit, right, or feature in the plan, it must then apply to all employees eligible to participate in the plan (as was previously required under the SCP).

Anonymous VCP Submissions versus Pre-Submission Conferences

Anonymous submissions under the VCP, as currently permitted, will be eliminated effective January 1, 2022. As a result, any plan sponsors wishing to utilize the existing anonymous submission format should prepare to submit their VCP materials on or before December 31, 2021, as the IRS will not process anonymous submissions made after such date.

In exchange, and also effective January 1, 2022, the IRS will permit plan sponsors or their representatives under specified circumstances to make an anonymous request for a pre-submission conference to discuss a potential VCP submission at no cost to the plan sponsor. Similar to a VCP submission, pre-submission conference applications must describe the failure (including how and why it occurred), the proposed correction, related facts (including, if applicable, the type of affected participants), and relevant plan provisions or amendments. The sponsor or representative will then receive oral feedback from the IRS about the failure and proposed correction method, as well as a written confirmation that the conference occurred.

However, following this pre-submission conference, if the plan sponsor then submits a VCP request, it would no longer be anonymous. Additionally, any such pre-submission conferences are granted at the IRS' discretion and any substantive discussions and/or guidance is advisory only (and non-binding).

Safe Harbor Sunset for Automatic Contribution Failures

The safe harbor correction method's sunset to correct missed elective deferrals for eligible employees subject to an automatic contribution feature in Section 401(k) or 403(b) plans is extended by three years, to December 31, 2023 (versus the original expiry on December 31, 2020). This safe harbor allows such failures to be corrected without requiring the employer to make qualified nonelective contributions for missed elective deferrals on behalf of affected participant if the error is corrected within the first 9½ months of the plan year following the plan year of the failure.

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