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IRS Updates Correction Procedures for Plan Sponsors

On July 15, the IRS released Rev. Proc. 2021-30, which provides an updated statement of the correction programs under the Employee Plans Compliance Resolution System (EPCRS). The IRS last updated EPCRS in April 2019, as described in our prior alert. Rev. Proc. 2021-30 changes EPCRS' rules regarding self-correction by retroactive amendment, the correction of overpayments from a plan, anonymous submissions and the threshold for *de minimis* errors for which correction is not required. Additionally, Rev. Proc. 2021-30 extends the safe harbor correction method for certain employee elective deferrals for eligible employees subject to an automatic contribution feature in a 401(k) plan or a 403(b) plan.

What Is EPCRS?

EPCRS allows sponsors of tax-favored retirement plans to correct failures that would otherwise cause a plan to run afoul of the requirements of Sections 401(a), 403(a), 403(b), 408(k) or 408(p) of the Internal Revenue Code of 1986, as amended (Code). Failure to comply with the Code's requirements can lead to adverse tax consequences for the sponsors and participants in the plans. EPCRS consists of three correction options: the Self-Correction Program (SCP), the Voluntary Correction Program with IRS Approval (VCP) and Correction on Audit (Audit CAP). SCP is the only correction option under EPCRS that does not require direct coordination with the IRS or the payment of a compliance fee (as required under VCP) or penalty (as a result of Audit CAP). SCP is generally viewed as an efficient and cost-effective way to correct plan errors.

How Is EPCRS Updated?

Except as otherwise noted, effective July 16, Rev. Proc. 2021-30:

- Expands the ability for a plan sponsor to self-correct by retroactively amending its plan to conform the plan's terms to its operations, provided the amendment results in an increase in a benefit, right or feature and the increase in the benefit, right or feature is permitted under the Code and is otherwise consistent with EPCRS general correction procedures, e.g., keeps assets in the plan. EPCRS previously required that such amendments apply to all eligible employees in the plan.
- Extends to December 31, 2023, the safe harbor correction method for certain missed employee elective deferrals for 401(k) or 403(b) plans subject to an automatic contribution feature. Broadly speaking, no corrective contribution is required if the failure to implement the automatic contribution feature does not extend beyond the end of the 9 ½ month period after the end of the plan year in which the deferrals should have begun, subject to, among other things, certain notice requirements and earnings adjustments on the missed employee elective deferrals. Under EPCRS' prior version, this safe harbor correction method expired on December 31, 2020. Rev. Proc. 2021-30 makes clear that this relief is effective retroactive to January 1, 2021.
- Expands the options for correcting overpayments erroneously made to participants or beneficiaries. Specifically, Rev. Proc. 2021-30 modifies the current method allowing participants or beneficiaries to repay an overpayment from a defined benefit or defined contribution plan by permitting plan sponsors to give certain participants or beneficiaries the option to repay the plan in installments. For overpayments from defined benefit plans, EPCRS now allows plan sponsors to reduce the repayment if certain funding or contribution requirements are met. Additionally, no correction is necessary if the overpayment is $250 or less (this threshold was previously set at $100 or less).
- Increases the threshold for taking corrective action if a participant receives an excess allocation under the plan. If the excess amount is $250 or less, no corrective action is required (this threshold was previously set at $100 or less).

- Extends the end of the SCP correction period for "significant" failures to the end of the third year following the year in which the failure occurred. The question of whether a failure is significant is inherently factual and, broadly speaking, considers the type of failure, the period of time in which the failure occurred, and the percentage of plan assets and plan participants affected. Previously, the SCP correction period for significant failures was the end of the second plan year following the year in which the failure occurred.
- Effective January 1, 2022, eliminates the ability to submit an anonymous VCP application. Instead, EPCRS will permit plan sponsors to request a no-fee, anonymous VCP presubmission conference with the IRS to discuss proposed corrections. While substantive issues discussed during the conference are not binding on the IRS, a presubmission conference may provide plan sponsors some indication that their proposed corrections would be accepted as part of a formal VCP submission.

What Should Sponsors Do?

Correcting errors preserves the tax-favored status of retirement plans, and the IRS regularly seeks to make the process for correcting such errors easier and more efficient. By making SCP and VCP easier and more cost effective, the IRS may be inclined to take a harder line for errors it finds on audit. Therefore, sponsors should regularly review their plans to determine whether there have been any errors in documentation or administration. If any errors are uncovered, correction should be made in accordance with SCP or VCP. If the plan meets the SCP eligibility requirements, sponsors may be able to reduce the costs and burdens of correction by utilizing SCP's expanded program.

Please contact any member of the Employee Benefits team if you have any questions regarding Rev. Proc. 2021-30 or any other employee benefits matter.

Authors



David P. Doyle
Partner

Parsippany, NJ | (973) 966-8136

ddoyle@daypitney.com



Thomas F. J. O'Mullane
Partner

Parsippany, NJ | (973) 966-8413

tomullane@daypitney.com