

LEGAL UPDATE

In this issue, Angel Garrett focuses on one EPCRS revision. This article takes a broader look at the EPCRS revisions.

IRS Updates Guidance Regarding Correction of Tax-Qualified Plan Errors under the Employee Plans Compliance Resolution System (EPCRS)

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Mistakes happen, even with respect to tax-qualified plans and 403(b) plans that have implemented internal controls designed to reduce, if not eliminate, the likelihood of plan failures. Under the Internal Revenue Code and IRS regulations, those mistakes could result in the loss of a plan's tax-qualified status, even if those errors were relatively minor in nature. To alleviate these disproportionate adverse tax consequences and encourage the correction of document and operational plan failures, the IRS maintains the Employee Plans Compliance Resolution System (EPCRS), which includes three correction programs: the Self Correction Program (SCP), which allows certain failures to be corrected without contacting the IRS or paying a user fee; the Voluntary Correction Program (VCP), which permits correction of failures not eligible for correction under the SCP program for a relatively small user fee; and the Closing Agreement Program (CAP), which resolves plan failures discovered during an IRS audit that cannot be corrected using the SCP by payment of a sanction.

The IRS periodically updates EPCRS, and its most recent version, Revenue Procedure 2021-30, issued on July 16, 2021, makes several significant changes:

- The correction period for significant operational failures under SCP is extended from two years to three years.
 - Under SCP, failures are either “significant” or “insignificant” depending upon certain factors that include, among other things, the number or percentage of participants affected, the percentage of assets involved, and the period of time over which the failure occurred. Insignificant failures can be corrected at any time, but significant failures must be corrected within a correction period. Previously, a significant failure had to be corrected by the last day of the second plan year following the plan year in which the failure occurred, which means a failure that occurred in 2018 in a calendar year plan had to be corrected by December 31, 2020. The new SCP adds a year to the correction period for significant failures: a failure that occurred in 2018 in a calendar
- year plan now can now be corrected by December 31, 2021.
 - This change also has the effect of extending the availability of the “safe harbor” correction method for employee elective deferral failures that last more than three months but not beyond the end of the SCP period for significant failures, reducing corrective employer contributions from 50 percent to 25 percent of missed elective deferrals.
- The “safe harbor” correction method to correct missed elective deferrals for eligible employees subject to an automatic contribution feature in Code Section 401(k) and 403(b) plans had a sunset provision that ended December 31, 2020. The availability of this correction method has been reinstated and extended for three more years, through December 31, 2023.
- The correction methods for overpayments from defined contribution and 403(b) plans have been modified to offer overpayment recipients the option to make repayments in a single lump sum payment, through installment payments, or by reducing future payments (if any).
- The correction methods for overpayments from defined benefit plans have been modified and expanded.
 - Plan sponsors may give overpayment recipients the option to make repayments in a single lump sum payment, through installment payments, or by reducing future payments.
 - Under two new correction methods, a plan sponsor is not required to correct overpayments not associated with a failure to satisfy a statutory limit: (i) the funding exception correction method, which provides that corrective payments are not required if a plan subject to Code section 436 funding requirements has an adjusted funding target attainment percentage (AFTAP) of at least 100 percent, and (ii) the contribution credit correction method, which reduces the overpayment amount by additional amounts contributed to the plan after the overpayment, but if a net overpayment amount remains after the contribution credits, further action is needed to reimburse the plan for the overpayment.

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- Retroactive plan amendments can more easily be used to correct operational failures because the requirement that all participants in the plan benefit by the retroactive amendment with respect to benefits, rights, and features has been removed.
- The threshold for certain “de minimis” amounts for which a plan sponsor is not required to implement correction in the case of overpayments and excess amounts is increased from \$100 to \$250.
- Anonymous submissions under VCP will not be accepted as of January 1, 2022. Instead, effective on that date, IRS will permit plan sponsors or their representatives to make an anonymous written request for a pre-submission conference to discuss a potential VCP submission at no cost to the plan sponsor. Following the pre-submission

conference, if the plan sponsor submits a VCP request, it can no longer be anonymous.

- Sanctions payable under the Closing Agreement Program must be paid electronically rather than by a cashier’s or certified check, effective January 1, 2022.

The effect of the changes to EPCRS made by Revenue Procedure 2021-30 will be to reduce the circumstances under which taxpayers will need to make corrections or file with the IRS under VCP.

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