EMPLOYEE BENEFITS

IRS Updates EPCRS Plan Correction Program

By Melanie N. Aska and Erek M. Sharp | July 30, 2021

On July 16, 2021, the IRS issued an updated version of the Employee Plans Compliance Resolution System (EPCRS), set forth in Revenue Procedure 2021-30. The new EPCRS modifies and supersedes the previous EPCRS, set forth in Revenue Procedure 2019-19 (April 19, 2019), and generally expands the correction methods that may be used to fix certain plan failures and thereby preserve a plan's tax-qualified status.

Background. EPCRS permits any plan sponsor of a retirement plan (including a 401(a), 403(a), 403(b), SEP or SIMPLE IRA plan) to correct certain plan failures. EPCRS offers three correction programs:

- **Self-Correction Program (SCP)**, which plan sponsors can use to correct certain plan failures without contacting the IRS or paying an IRS user fee;

- **Voluntary Correction Program (VCP)**, which plan sponsors can use to correct failures that are not eligible for SCP, and to get the approval of the IRS (after submitting a filing to the IRS and paying the applicable IRS user fee) that the failures were properly corrected; and

- **Audit Closing Agreement Program (Audit CAP)**, which is used to resolve failures that the IRS discovers during an audit and that cannot be corrected using SCP or VCP.

Summary of Significant Changes Reflected in the New EPCRS. The new EPCRS reflects the following significant changes:

- **Expansion of SCP**. The new EPCRS expands SCP in two ways:

  - **Extension of Self Correction Period for Significant Operational Failures**. Effective July 16, 2021, the new EPCRS extends the correction period for significant operational failures from two to three years (this extension also gives plan sponsors more time to correct failures in cases where the required correction period is linked to the SCP correction period for significant operational failures, including the safe harbor correction method for fixing 401(k) or 403(b) plan employee elective deferral failures that extend beyond three months but not beyond the now three-year SCP correction period for significant operational failures); and

  - **Expansion of Self Correction for Retroactive Plan Amendments**. Effective July 16, 2021, the new EPCRS also makes it easier to use retroactive plan amendments to correct operational failures by removing the previous requirement that all participants in the plan must benefit by the retroactive amendment.

- **Changes to the Anonymous VCP Review Process**. The new EPCRS changes the anonymous review process in two ways:

  - **Elimination of Anonymous VCP Submissions**. Effective January 1, 2022, the new EPCRS eliminates anonymous VCP submissions; and

  - **Anonymous Pre-Submission Conferences**. Effective January 1, 2022, the 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.

- **Expansion of Overpayment Correction Options**. Effective July 16, 2021, the new EPCRS expands the methods for correcting plan overpayments (i.e., payments to participants or beneficiaries that exceed the amount payable under the terms of the plan or a limitation in the Internal Revenue Code or IRS regulations) in the following ways:

  - **Correction by Plan Amendment**. Effective July 16, 2021, the new EPCRS allows plan sponsors of defined contribution, 403(b) and defined benefit plans to correct an overpayment by amending the plan document to conform to the plan's operations.

  - **Expansion of Return of Overpayment Correction Method**. The previous EPCRS allowed plan sponsors to correct overpayments by taking reasonable steps to have the participant or beneficiary repay the overpayment to the plan, as adjusted for earnings. Effective July 16, 2021, the new EPCRS allows plan sponsors of defined contribution, 403(b) and defined benefit plans to permit overpayment recipients to repay overpayments to the plan through a single sum, installment payments under an installment agreement, or an adjustment to future payments, and further allows plan sponsors to permit overpayment recipients to choose the method of repayment that will be used to correct the overpayment.

  - **Additional Overpayment Correction Methods for Certain Defined Benefit Plans**. Effective July 16, 2021, the new EPCRS allows plan sponsors of defined benefit plans that meet certain requirements to correct overpayments as follows:

    - **Funding Exception Correction Method**. Under this new overpayment correction method, in the case of a single-employer defined benefit plan that is subject to the PPA 2006 funding-based limits under Code Section 436, overpayments need not be repaid to the plan if the plan's AFTAP (adjusted funding target attainment percentage) at the date of correction is at least 100%, but future benefit payments to an overpayment recipient must be reduced to the correct benefit payment amount. Under this correction method, no further correction is required or permitted.

    - **Contribution Credit Correction Method**. Under this other new overpayment correction method, the amount of overpayments that must be repaid to the plan is reduced (but not below zero) by the sum of (1) the cumulative increase in the plan's minimum funding requirements attributable to the overpayments, and (2) certain additional contributions, in excess of minimum funding requirements, paid to the plan after the first overpayment was made. Like the new funding exception correction method described above, the new contribution credit correction method also requires the plan to reduce future benefit payments to an overpayment recipient to the correct benefit payment amount. And, once the contribution credit correction method reduces the overpayment amount to zero, no further correction is required or permitted.

- **Extension of Sunset Date for Correcting Automatic Enrollment Failures**. Effective retroactively to January 1, 2021, the new EPCRS extends by three years, from December 31, 2020 to December 31, 2023, the sunset date of the safe harbor correction method for fixing certain short-lived missed elective deferrals for eligible employees who are subject to an automatic contribution feature under a 401(k) or 403(b) plan. As a result, this safe harbor correction method can be used to correct eligible failures that begin on or before December 31, 2023.

- **Increased Threshold for *De Minimis* Correction Amounts**. Effective July 16, 2021, the new EPCRS increases, from $100 to $250, the threshold for certain *de minimis* amounts for which a plan sponsor is not required to implement any correction. Under this change, a plan sponsor is no longer required (1) to correct benefit overpayments of $250 or less (or notify recipients of such overpayments that the overpayments are not eligible for favorable tax treatment, including tax-free rollover), or (2) to distribute or forfeit excess amounts (i.e., contributions, allocations, or similar credits made on behalf of a participant or beneficiary that exceed the maximum permitted under the terms of the plan or a limitation provided in the Code or IRS regulations) of $250 or less (however, the new EPCRS did not change the existing requirement that if a *de minimis* excess amount exceeds a statutory limit, the participant or beneficiary must be notified that the excess amount is not eligible for favorable tax treatment, including tax-free rollover). Notably, the new EPCRS did not increase the existing $75 threshold for *de minimis* underpayments.

Other Changes Reflected in the New EPCRS. The new EPCRS reflects other, minor changes, including the new requirement that, effective January 1, 2022, plan sponsors generally must pay Audit CAP sanctions using the payment methods available on the Pay.gov website (the same methods that are used to pay VCP user fees) rather than by certified or cashier's check.

Public Comments. The Treasury Department and the IRS invite written public comments on the new EPCRS. The comment period ends October 14, 2021, and commenters are strongly encouraged to submit comments electronically, rather than by mail.

If you have questions about the new EPCRS or how it might affect your business, or if your business sponsors a retirement plan that has experienced any plan document, operational or other failure that may adversely affect the plan's tax-qualified status, please contact:
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