

IRS Publishes Updated Version of EPCRS

On July 15, 2021, the Internal Revenue Service (IRS) published an updated version of the Employee Plans Compliance Resolution System (EPCRS) in Revenue Procedure 2021-30. This updated version supersedes the previous version outlined in Revenue Procedure 2019-19 and includes changes applicable to both defined benefit and defined contribution plans. Notably, the updated version of EPCRS provides the following:

- Expanded guidance regarding the correction of overpayment errors, including two new correction methods.
- Effective January 1, 2022, the anonymous submission procedure under the voluntary correction program (VCP) is eliminated and replaced with an option for a plan representative to request an anonymous, no-fee, pre-submission VCP conference with an IRS representative.
- The sunset for the safe harbor correction method available for certain missed elective deferrals for eligible employees who are subject to an automatic contribution feature in a 401(k) or 403(b) plan is extended to December 31, 2023.
- Plan sponsors now have three years from the year in which a failure occurs, rather than two, to use the self-correction program (SCP) to correct significant failures.
- Plan sponsors have an expanded ability to correct an operational failure under SCP by plan amendment.

The updated version of EPCRS is generally effective as of July 16, 2021. The deadline to submit comments to the IRS regarding the updated version of EPCRS is October 14, 2021.

Correction of Overpayments

The revised EPCRS provides two new correction methods defined benefit plans may use to address overpayments. The Funding Exception Method is available to both single employer and multiemployer plans, while the Contribution Credit Correction Method is only available to single employer plans. It does not appear from the current guidance that either of these methods are available for governmental plans, which are not subject to Code section 436.

The Funding Exception Method is available to a single employer plan if the plan's certified or presumed adjusted funding target attainment percentage (AFTAP)

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under Section 436 as of the date of correction is at least 100 percent. This Method is available to a multiemployer plan if the plan's most recent annual funding certification indicates the plan is in what is commonly referred to as "the green zone" (*i.e.*, it is not in critical, critical and declining, or endangered status). If a plan meets these criteria and elects to use this method, then no further corrective payments from any party are required. Any prospective benefit payments to the individual must be adjusted to the correct amount, and the individual must be notified that the overpayment is not eligible for favorable tax treatment.

The Contribution Credit Correction Method is more complicated and will likely require assistance from the plan's actuary. Under the Contribution Credit Correction Method, the amount of overpayment would be reduced by an amount equal to (a) the cumulative increase in the plan's minimum funding requirements attributable to the overpayments beginning with the plan year for which the overpayments are taken into account for funding purposes, and through the end of the plan year preceding the plan year for which the corrected benefit amount is taken into account for funding purposes; and (b) certain additional contributions in excess of minimum funding requirements paid to the plan after the first overpayment was made. Under this Method as well, prospective benefit payments must be paid at the correct amount and the individual must be notified that the overpayment is not eligible for favorable tax treatment.

Additionally, the new version of EPCRS increases the de minimis threshold for what are considered insignificant overpayments. Under the new guidance, a plan sponsor is not required to seek the return of an overpayment if the overpayment totaled \$250 or less. This threshold was previously set at \$100.

Finally, the guidance now permits plan sponsors to seek recoupment of an overpayment by entering into an installment agreement with the recipient of the overpayment. Accordingly, plan sponsors may now allow recipients to repay overpayments to the plan through a lump sum, offset of future benefits or an installment agreement.

Plan sponsors should review and update their overpayment policies and procedures as necessary to reflect this new guidance.

Replacement of Anonymous Submission VCP Procedure with Pre-Submission Conference Procedure

Effective January 1, 2022, the anonymous submission procedure under VCP is eliminated. On that date a new anonymous no-fee VCP pre-submission

conference procedure will take effect.

Plan sponsors will be able to request a pre-submission conference by submitting a Form 8950, which will be updated to note the information that needs to be submitted with a conference request. The required information will include a description of the relevant errors and the proposed corrections.

At the conference, an IRS representative will provide oral feedback on the proposed correction methods. However, any discussion of substantive issues will be advisory only and will not be binding on the IRS. Similarly, such feedback cannot be relied upon as a basis for obtaining relief under EPCRS. The IRS will document that the conference took place and will close the matter. If the plan sponsor wishes to proceed with a correction under VCP they will need to submit a new Form 8950, along with the user fee.

Changes to the SCP

The new version of EPCRS also includes several significant changes to the SCP provisions. First, the SCP correction period for significant failures is extended by one year. As a result, the last day of the correction period is now the last day of the third plan year following the plan year during which the failure occurred. Notably, this change means the deadline for plan sponsors to use the safe harbor correction method for employee elective deferral failures in 401(k) and 403(b) plans which lasted more than three months is extended to three years after the failure first occurred.

Additionally, the new version of EPCRS expands the ability of plan sponsors to correct operational failures under SCP by plan amendment. Previously, EPCRS required a corrective amendment to result in an increase of a benefit, right or feature applicable to all employees eligible to participate in the plan. The updated version provides that a corrective amendment must still result in an increase of a benefit, right or feature, but no longer requires that the increase is applicable to all eligible employees.

Finally, the updated version of EPCRS extends the sunset date of the safe harbor correction method for certain employee elective deferral failures relating to employees who are subject to an automatic contribution feature in a 401(k) plan or a 403(b) plan. The previous version of EPCRS provided that the safe harbor for the correction method would sunset on December 31, 2020. Effective January 1, 2021, the new sunset date is December 31, 2023.



Plan sponsors with corrections in progress should review the proposed correction methods and contact their Reinhart attorney to confirm whether the new guidance may affect those correction methods.

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