August 16, 2021

IRS Makes Important Changes to Plan Correction Program

The IRS has released Revenue Procedure (Rev. Proc.) 2021-30, which contains significant updates to the Employee Plans Compliance Resolution System (EPCRS). Employers use EPCRS to correct certain retirement plan qualification failures so that they can continue to maintain a tax-favored retirement plan. EPCRS consists of the Self-Correction Program (SCP), the Voluntary Correction Program (VCP), and the Audit Closing Agreement Program (Audit CAP). Rev. Proc. 2021-30 supersedes the previous EPCRS guidance (in Rev. Proc. 2019-19) and affects each of these three programs.

Summary of EPCRS Changes

The new Rev. Proc. contains some anticipated changes as well as some unexpected revisions. Here is a summary of these modifications.

- **Sunset provision for correcting elective deferral failures is extended for three years.** Rev. Proc. 2021-30 contains a special safe harbor correction method that can be used when an employer fails to properly implement elective deferrals for eligible employees. This method—which applies to plans with an automatic contribution feature—sunsetted as of December 31, 2020, under Rev. Proc. 2019-19. This left employers without clear guidance about whether they could continue to correct deferral failures with this method. But Section .05(8)(d) of Appendix A now extends this sunset provision, applying it to such failures that begin on or before December 31, 2023.

  This important extension, although expected, is welcome relief for the industry. This correction method allows employers to avoid making a QNEC for a missed elective deferral if certain conditions are satisfied. Because many providers have come to rely on this approach, the three-year extension gives continuity to plan corrections.

- **Deadline is extended for self-correction of certain significant operational failures.** The last day for self-correcting certain significant operational failures and plan document failures has been extended by one year. The new deadline is the last day of the third plan year following the plan year for which the failure occurred. (The previous deadline was the last day of the *second* year.) This simple EPCRS change will allow more plans to remain qualified under the SCP process, which permits self-correction without a fee and without IRS involvement.

- **Anonymous submissions are eliminated.** Effective January 1, 2022, the existing anonymous VCP submission procedure is eliminated. The existing process allows a proposed correction to be submitted to the

IRS without revealing the employer or the plan. Employers currently use the anonymous submission to determine the likelihood of the IRS accepting the proposed correction method. Once the IRS and the employer's authorized representative reach an agreement on the submission, the employer comes forward and carries out the terms of the correction agreement.

Although the IRS will not process an anonymous submission made on or after January 1, 2022, Rev. Proc. 2021-30 has a new procedure to replace it: the no-fee anonymous VCP pre-submission conference. Starting on January 1, 2022, an employer's representative may request an anonymous meeting with the IRS to discuss proposed corrective actions—before submitting a VCP application. A VCP pre-submission conference may be requested only

  - for matters on which a compliance statement may be issued under Rev. Proc. 2021-30,
  - with respect to proposed corrections that are *not* listed as safe harbor corrections in Rev. Proc. 2021-30, and
  - if the employer is eligible and intends to submit a VCP application.

The Rev. Proc. states that "VCP conferences are held only at the discretion of the IRS, and as time permits." The process requires submitting a pre-submission conference request (using Form 8950) and providing sufficient details about the failure so that the IRS can evaluate the request. At the conference, the IRS will provide oral feedback, which is advisory only and cannot be relied upon as a basis for obtaining relief under EPCRS.

- **New correction methods are added for defined benefit overpayments.** Existing defined benefit overpayment correction methods, including single sum repayments and adjustments to future periodic payments, have been expanded to provide overpayment recipients with the option of repaying the plan through an installment agreement. Additionally, the Rev. Proc. adds two new correction methods.
  - Funding exception correction method – Employers with single-employer defined benefit plans that are subject to the requirements of Internal Revenue Code Section (IRC Sec.) 436 can avoid corrective payments if the plan's adjusted funding target attainment percentage (AFTAP) is equal to at least 100 percent. Future benefit payments to an overpayment recipient must be reduced to the correct benefit payment amount. No corrective payments or further benefit reductions are required.
  - Contribution credit correction method – This method allows overpayments to be "credited" or reduced by the cumulative increase in the plan's required minimum funding that is caused by the overpayment amounts and any additional contributions in excess of the required minimum funding after the first overpayment. If overpayments remain after application of the contribution credit, the employer, or another party, must reimburse the plan for the remainder of the overpayment.
- **De minimis threshold is increased.** Rev. Proc. 2021-30 increases the threshold for corrective distributions and for recovery of overpayments. The previous de minimis amount was $100; it has been raised to $250. So now employers will not have to seek the return of overpayments of $250 or less. They also will not have to notify affected participants that the overpayment is ineligible for rollover or other favorable tax treatment. Similarly, employers are not required to distribute or forfeit excess contribution amounts of $250 or less. But if an excess contribution or allocation exceeds a statutory limit, the participant or beneficiary must be notified that the amount is ineligible for rollover. This change in the de minimis threshold amount shows that the IRS understands that employers could spend considerable time and effort trying to restore or distribute relatively small amounts, which may not necessarily be in the best interest of participants and beneficiaries.
- **Correcting an operational failure by a plan amendment is easier under SCP.** Qualified plan and 403(b) plan operational failures may be corrected by a plan amendment that conforms the plan terms with the plan's actual operations. This can be done only if 1) the amendment results in an increase of a benefit, right, or feature and 2) such an increase is permitted under the IRC.

  Rev. Proc. 2021-30 has removed the condition (in Rev. Proc. 2019-19) that "the increase in the benefit, right, or feature applies to all employees eligible to participate in the plan." So now these corrective plan amendments need not apply to *all* employees—provided that the amendment satisfies the Rev. Proc.'s correction principles (and any other applicable rules). For example, one of the main EPCRS tenets is that any method used for correcting nondiscrimination failures should provide benefits for nonhighly compensated employees.

Effective Date

Rev. Proc. 2021-30 is generally effective July 16, 2021. But the extension of the sunset provision for correcting certain elective deferral failures is retroactive to January 1, 2021. A few provisions, such as the anonymous pre-submission conference, become effective January 1, 2022.

Conclusion

The most recent update to EPCRS contains several significant revisions. For those who are involved with retirement plan correction work, it pays to become familiar with Rev. Proc. 2021-30. But even if you don't deal with plan corrections routinely, knowing about the key changes listed above may prove helpful. As complicated as the retirement plan rules are, it is inevitable that employers will make mistakes. Knowing how to address those mistakes will help employers get back on track.

As always, Ascensus will follow any retirement plan guidance as it is released. Visit ascensus.com for the latest developments.