EPCRS Update Offers New Tools to Correct Retirement Plan Errors

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The IRS recently updated its "Employee Plans Compliance Resolution System" (EPCRS). By way of background, EPCRS is a correction program administered by the IRS for plan sponsors to correct certain retirement plan errors. EPCRS is comprised of three different components: the Self-Correction Program, the Voluntary Correction Program, and the Audit Closing Agreement Program.

The updated version of EPCRS, which was published in Revenue Procedure 2021-30, supersedes the prior version of EPCRS. Plan sponsors and administrators should familiarize themselves with the EPCRS changes, which are generally effective July 16, 2021. The following provides an overview of some of the significant changes made to EPCRS.

New Flexibility to Correct Retirement Plan Overpayments

Correcting retirement plan overpayments—which occur when a retirement plan has paid more to a participant or beneficiary than permitted under the terms of the plan—can be a hassle. Under EPCRS, plan sponsors are charged with recouping overpayments from participants and beneficiaries, or, if that fails, making a corrective contribution to the plan in the amount of the overpayment. Any overpayment reimbursements must be adjusted for earnings.

To simplify the process of correcting overpayments from well-funded defined benefit plans, the EPCRS update provides two new alternative correction methods for defined benefit plan overpayments: (1) the funding exception correction method, and (2) the contribution credit correction method. To rely on either method, the overpayment cannot be associated with a qualified plan limit failure, nor can the overpayment recipient be a disqualified person. Each method is explained in more detail below.

- *Funding exception correction method*: This method provides that no corrective payment with respect to an overpayment is required, provided that the plan meets certain funding levels. To rely on this method, the plan must meet the following funding levels as of the date of correction: (1) For a single employer plan, the plan's certified or presumed adjusted funding target attainment percentage (AFTAP) is at least 100%, and (2) For a multiemployer plan, the plan's most recent annual funding certification indicates the plan is in the "green zone." Future benefit payments must be reduced to the correct payment amount. In addition, if a plan sponsor relies on this method, the plan sponsor cannot seek additional corrective payments related to the overpayment from any party (including the overpayment recipient, and, any spouse or beneficiary of an overpayment recipient).

- *Contribution credit correction method*: This method reduces the corrective payment that would otherwise be required to be made with respect to the overpayment by a "contribution credit." At a high level, the contribution credit comprises two parts: (1) the amount by which the overpayment amount has already been reflected in an increase in the required minimum funding contribution to the plan, and (2) certain additional contributions in excess of minimum funding requirements paid to the plan after the date of the overpayment. If the contribution credit exceeds the amount of overpayment, no corrective payment to the plan is due and the plan sponsor cannot seek additional corrective payments from any party (including the overpayment recipient, and, any spouse or beneficiary of an overpayment recipient). If a net overpayment remains after application of the contribution credit, the plan sponsor or another party must take further corrective action to reimburse the plan for the remaining overpayment. Like the funding exception method, future benefit payments must be reduced to the correct amount.

Both of the new overpayment correction methods described above are optional. Consistent with the prior version of EPCRS, plan sponsors may continue to correct overpayments by recovering the amount of the overpayment from the overpayment recipient and contributing that amount to the plan (adjusted for earnings). However, to the extent that recoupment of overpayments has proved impractical or time-consuming, the updated version of EPCRS provides useful tools to correct well-funded defined benefit plan overpayments.

In addition to the changes related to the correction of defined benefit plan overpayments summarized above, the EPCRS update makes two overpayment correction changes that apply to retirement plans generally, which are summarized below:

- *Increase to small overpayment limit*: The threshold for small retirement plan overpayments for which no correction is required is increased from $100 to $250. This increase potentially reduces the correction burden for plans with large numbers of small overpayments.

- *Repayment through installment agreement*: Plan sponsors seeking to recoup overpayments from recipients may now permit the recipient to make repayment through an installment agreement, in addition to a single lump sum. This change should provide additional flexibility for recipients to reimburse plan overpayments.

Expansion of Self-Correction Program

The Self-Correction Program (SCP) under EPCRS permits plan sponsors to correct certain failures without IRS involvement or approval (and without compliance fees). The updated version of EPCRS provides additional flexibility for plan sponsors to use SCP by extending the period during which plan sponsors can correct significant failures under SCP by an additional year, as well as by expanding the eligibility requirements to correct certain operational errors by retroactive plan amendment. These changes are discussed in more detail below.

- *Self-correction period for significant failures extended by one year*: Under the prior version of EPCRS, "significant" failures were eligible for correction under SCP during the period ending on the last day of the second plan year following the plan year in which the failure occurred. The EPCRS update extends the SCP period by an additional year to the last day of the third plan year following the plan year in which the failure occurred. This provides additional time for plan sponsors to correct significant failures under SCP. Relatedly, because the EPCRS safe harbor correction methods for certain employee elective deferral failures are keyed to the SCP correction period, this one-year extension also extends the availability of the safe harbor correction method for those failures.
- *Expanded self-correction by retroactive plan amendment*: EPCRS allows plan sponsors to correct certain operational failures by adopting a retroactive plan amendment to make the terms of the plan conform to its operation—provided that the amendment results in an increase to a benefit, right, and feature (BRF) that applies to all eligible employees. The EPCRS update eliminates the requirement that the increased BRF apply to all eligible employees, making it possible to correct additional types of errors by retroactive plan amendment under SCP.
- *Extension of automatic enrollment safe harbor correction sunset date to December 31, 2023*: Certain 401(k) plans provide for "automatic enrollment," whereby employees are deemed to automatically enroll in the plan at a specified deferral rate. Under the prior version of EPCRS, errors relating to implementation of a plan's automatic enrollment feature could be corrected without making the qualified nonelective contribution that would otherwise be required for the missed deferral

opportunity (assuming certain notice and timing requirement were met), provided the error first occurred on or before December 31, 2020. Effective January 1, 2021, the EPCRS update extends the sunset date for this correction method to errors first occurring on or before December 31, 2023.

Elimination of Anonymous VCP Submissions, Addition of Pre-Submission Conference

Plan sponsors may utilize the Voluntary Correction Program (VCP) for errors not eligible for correction under the Self-Correction Program. Filing a VCP application permits a plan sponsor to apply to the IRS for approval of the proposed correction method. For several years, VCP has included an optional "anonymous" submission process whereby plan sponsors could submit VCP applications without identifying information, meaning that the IRS could approve the proposed correction before learning the sponsor's identity. Effective January 1, 2022, the anonymous VCP submission process is eliminated.

Instead, effective January 1, 2022, plan sponsors may submit a request for an anonymous pre-submission conference with the IRS regarding any proposed correction method that is not a "safe harbor" correction method under EPCRS. Any request must be written and include all relevant facts. If the conference request is granted, the IRS will provide verbal feedback about the proposed correction method; however, any feedback is advisory only and not binding on the IRS in any future VCP application regarding the issues discussed at the conference.

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The EPCRS update includes significant new tools for plan sponsors to correct common retirement plan errors. Plan sponsors and administrators should familiarize themselves with the new rules, and evaluate whether any ongoing correction projects started under the prior version of EPCRS should be adjusted to reflect the EPCRS update.

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