IRS UPDATES EPCRS CORRECTION PROGRAM

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Many sponsors of tax qualified retirement plans have become familiar with the IRS's Employee Plans Compliance Resolution System (EPCRS) which provides guidelines sponsors may use to correct plan failures that are needed to preserve a retirement plan's tax advantaged status. Three correction programs are available under EPCRS:

- Self-Correction Program (SCP) that may be used to correct certain plan failures without obtaining IRS prior approval or paying any user fee.
- Voluntary Correction Program (VCP) that may be used to correct other failures for which SCP is not otherwise available. VCP requires an application to the IRS and payment of a user fee. If the application is approved, VCP results in a signed IRS compliance statement approving corrective action proposed or described in the VCP application.
- Audit CAP which can be used when retirement plan has significant problems that are discovered by the IRS on audit or during a determination letter application process. Sanctions under Audit CAP normally would be greater than the user fee paid under VCP.

The parameters of the EPCRS program are laid out in an IRS Revenue Procedure that is updated from time to time. The most recent EPCRS Revenue Procedure (Revenue Procedure 2021-30) was updated and published in July. The highlights of the EPCRS changes made by Revenue Procedure 2021-30 include:

- SCP Expansions
  - Beginning July 16, 2021, plans may use SCP to correct significant operational failures provided the correction is completed by the last day of the *third* plan year following the year in which the failure occurred. Previously, correction had to be made by the last day of the *second* plan year following the year in which the failure occurred.
  - Beginning July 16, 2021, plans will be permitted to correct certain operational failures by adopting a retroactive plan amendment, and do so *without* requiring that all participants in the plan benefit from the retroactive amendment.
- Expanded Overpayment Correction Principles and Options
  - The new principles reduce the need to seek repayment from participants or beneficiaries who received overpayments and, *in some cases*, do not require the plan sponsor to reimburse the plan for overpayments to participants. But,

recovery from the employer or another party or reduction in subsequent payments owed overpayment recipients are still permitted.

    - For defined benefit pension plans, there may be no need to recover overpayments from the plan sponsor or the individual who received the overpayment if the plan satisfies certain funding requirements. Alternatively, in some cases, certain contribution credits may be applied to reduce the amount of the overpayment (determined without interest) that needs to be repaid to the plan. These credits arise from the increased minimum funding contributions due to the reduction in plan assets or increases in liability due to the error or certain additional contributions. For purposes of EPCRS, if the amount of the overpayments is reduced to zero after the contribution credits are applied, then no additional corrective action needs to be taken to recover the overpayment. If a net amount is owed to the plan, then the plan sponsor or another party must reimburse the plan for the net amount owed.
  - Where necessary, multiple methods for recovering overpayments might be available, including installment payments, adjusting future benefit payments, or a single sum payment.
  - The limits on de minimis or small overpayments that will not require correction is increased from $100 to $250.
- Anonymous VCP Submission Changes
  - Effective January 1, 2022, the IRS is *eliminating* the procedures that permit anonymous VCP submissions.
  - Instead, 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. But any subsequent VCP application may not be anonymous.
- Safe Harbor Correction of Automatic Enrollment Failures Extended
  - Certain safe harbor correction methods have been available for missed elective deferrals for eligible employees who are subject to an automatic contribution arrangement in a Section 401(k) or 403(b) plan. Those safe harbors were scheduled to expire for failures that began after December 31, 2020. Revenue Procedure 2021-30 extends those safe harbors correction methods by three years for failures that begin on or before December 31, 2023.

EPCRS has been a valuable tool for plan sponsors and plan providers for addressing plan failures that inevitably arise in the maintenance and operation of qualified retirement plans. The changes made by the latest EPCRS guidelines provide helpful changes that continue to expand a plan's correction options.