

Revenue Procedure 2021-30: A New and (Further) Improved EPCRS

by Suzanne E. Meeker on August 30, 2021

The Internal Revenue Service has updated the Employee Plans Compliance Resolution System (EPCRS) in several respects that will be helpful to retirement plan sponsors. Revenue Procedure 2021-30, published July 16, 2021, replaces the previous version (Rev. Proc. 2019-19) in its entirety. Most provisions of the new EPCRS were immediately effective, but several changes are delayed to January 1, 2022.

The new guidance provides more flexibility in making corrections:

- *The period for self-correcting significant operational and plan document failures is longer.* The Self Correction Program (SCP) component of EPCRS allows sponsors to correct many operational failures and certain plan document failures without IRS involvement. Under previous guidance, SCP was available for correcting significant failures only within the first two plan years following the plan year for which the error occurred. The deadline is now extended by 12 months, to the last day of the third plan year following the plan year for which the error occurred. (SCP continues to be available for correction of insignificant operational failures at any time. Because all plan document failures that may be corrected through SCP are deemed significant, they must be corrected by the last day of the third plan year following the plan year for which the error occurred.) One consequence of this change is to extend the safe harbor correction period for remitting corrective contributions to the accounts of participants affected by Employee Elective Deferral Failures.
- *Some additional operational failures may be corrected through a retroactive plan amendment under SCP.* Under SCP, some operational errors may be corrected by retroactively amending the plan if, among other things, the amendment will result in the increase of a plan benefit, right or feature (BRF). Previously, the BRF was required to be available to all eligible employees. The new guidance omits this requirement; however, the benefiting group must satisfy nondiscrimination rules and other applicable Internal Revenue Code rules.
- *There are new options for correcting overpayments to plan participants and beneficiaries.* An overpayment results when a participant or beneficiary receives plan benefits that exceed the amount the recipient is due under the plan's terms or Internal Revenue Code limits. To correct an overpayment, a sponsor generally is required to seek recovery from the overpayment recipient and, to the extent the overpayment (including earnings) is not recouped from the recipient, the sponsor

or a third party must contribute the difference to the plan. EPCRS includes an exception from the requirement to seek recovery from the overpayment recipient, for “small overpayments.” The exception amount has been increased from \$100 to \$250.

The new guidance also authorizes entering into payment agreements with participants and beneficiaries who have been overpaid. Specifically, plans may recover overpayments not only as a lump sum, but also pursuant to an installment agreement or an actuarial adjustment of future benefit payments (if applicable) and generally may permit the participant or beneficiary to choose among these methods. The installment agreement method is not available, however, if the overpayment recipient is a disqualified person (party in interest) or an owner-employee.

Finally, EPCRS has been expanded to include two new overpayment correction methods for defined benefit plans, which are based on a plan’s funding rather than characteristics of the overpayment or its recipient: the Funding Exception and Contribution Credit Correction Methods. These methods may not be used to correct overpayments associated with a failure to satisfy Internal Revenue Code limits, or if the overpayment recipient is a disqualified person (party in interest) or an owner-employee.

(1) No corrective payments are required to be made to the plan if the *Funding Exception Correction Method* applies. This exception is available to a single employer plan if its adjusted funding target attainment percentage (AFTAP) is at least 100% at the date of correction (as certified or presumed under the rules of Internal Revenue Code Section 436); and is available to a multiemployer plan if the plan’s most recent annual funding certification finds the plan not in critical, critical and declining, or endangered status at time of correction (as determined under Internal Revenue Code Section 432). In either case, the plan must reduce the overpayment recipient’s future benefit payments to the correct amount.

(2) Corrective payments to the plan may be fully or partially offset if *Contribution Credits* are available. In general terms, a plan’s contribution credits are calculated by reference to the cumulative increase in the plan’s minimum funding requirements attributable to the overpayment and additional employer contributions, in excess of minimum funding requirements, made to the plan after the initial overpayment. If the available contribution credit is sufficient to fully offset the overpayment, no further corrective action is required except adjusting future payments to the correct amount under the plan terms. If, however, the overpayment is only partially offset, the correction must be completed by other means available under EPCRS. This includes seeking recovery from the overpayment recipient, in which case the guidance prescribes a notice that must

be provided to the individual. The *Contribution Credit Correction Method* may not be used if the plan has a funding deficiency or unpaid minimum contribution for the end of last plan year before the year in which the plan sponsor takes into account corrected benefit payments.

- *The safe harbor correction method for certain missed elective deferrals under an automatic contribution arrangement is available to correct failures that begin on or before December 31, 2023.* Under the previous version of EPCRS, this correction method was only available to correct failures that began on or before December 31, 2020. We previously reported on this extension [here](#).
- *Beginning next year, plan sponsor representatives may request a free, anonymous conference before making a Voluntary Correction Program (VCP) submission.* A pre-submission conference may be requested effective January 1, 2022, to discuss corrective actions for a plan error that may be corrected through VCP. The proposed correction method may not be one described in EPCRS, and the IRS has discretion whether to grant the conference request. Unfortunately, the anonymous VCP pre-submission conference replaces the current procedures for anonymous VCP submissions, which will be discontinued effective January 1, 2022. And the views expressed by the IRS at the VCP pre-submission conference are not binding on the IRS.

The IRS's continued enhancements to EPCRS are generally positive news for retirement plan sponsors. If you have questions about your plan or its administration, or how to correct a document or operational failure, contact a member of Verrill's [Employee Benefits & Executive Compensation Group](#).



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