

## Employee Benefit Plans Alert

# IRS Updates Correction Program for Retirement Plans

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The IRS has issued Revenue Procedure 2021-30 which updates its Employee Plans Compliance Resolution System (EPCRS). The EPCRS permits retirement plan sponsors to correct certain plan failures so they can continue to provide their employees with retirement benefits on a tax-favored basis. The Revenue Procedure is generally effective July 16, 2021.

### Background

The Employee Plans Compliance Resolution System is a comprehensive system of correction programs administered by the IRS's Employee Plans Division for sponsors of retirement plans that have failed to satisfy certain requirements of the Internal Revenue Code (IRC). EPCRS consists of the following areas: the Self-Correction Program (SCP), the Voluntary Correction Program (VCP), and the Audit Closing Agreement Program (Audit CAP).

### Overpayments

The update to the EPCRS includes two new defined benefit plan overpayment correction methods. Under the update, employers are encouraged to avoid recouping benefit overpayments from participants.

Two overpayment correction methods are provided:

1. No correction required if the plan satisfies a specified funding level

**Funding exception correction method** – Allows single employer defined benefit plans that are subject to the funding limits in Internal Revenue Code Section 436 to avoid corrective payments so long as 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.

**OR**

2. Limiting the amount to be recouped under certain circumstances

**Contribution credit correction method** – This method allows the overpayments to be reduced by the cumulative increase in the plan's minimum funding requirements attributable to the overpayment. If overpayments remain after application of the credit, the plan sponsor or another party must reimburse the plan for the remainder of the overpayment.

### Anonymous Submission

Effective January 1, 2022, the IRS Voluntary Correction Program (VCP) anonymous submission procedure is eliminated.

To replace the VCP anonymous submission procedure, the IRS has added, also effective January 1, 2022, an anonymous no-fee VCP pre-submission conference procedure to allow plan sponsors to discuss correction methods not described as safe harbor methods in the Revenue Procedure. However, following the pre-submission conference, if the plan sponsor submits a VCP request, it can no longer be anonymous.

## Retroactive Amendments

The Revenue Procedure also makes it easier to use retroactive plan amendments to correct operational failures by removing the requirement that all participants in the plan benefit by the retroactive amendment.

## Elective Deferral Failure – Sunset of Safe Harbor Extended

The sunset provisions of safe harbor correction methods for elective deferral failures related to automatic contribution features have been extended from December 31, 2020 to December 31, 2023.

## Self-Correction for Significant Operational Failures Expanded

Insignificant failures can be corrected at any time. The Revenue Procedure lists the factors (e.g., the number or percentage of participants affected, the percentage of assets involved, the period of time over which the failure occurred, etc.), but significant failures must be corrected within a correction period. Pursuant to the new Revenue Procedure, the correction period of significant operational failures has been increased from two (2) to three (3) years, effective July 16, 2021.

## De Minimis Correction Threshold

The threshold for certain “de minimis” amounts for which a plan sponsor is not required to implement correction in the case of overpayments and excess amounts is increased from \$100 to \$250.

## Sanction Payment Requirement

Audit CAP sanctions must be paid using Pay.gov. These payments are made to the IRS when a plan is examined and defects are discovered that are not eligible for self-correction.

## Contact Us

If you have any questions on the process, please contact your PKF O’Connor Davies engagement partner or any of the following:

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