

MEMO# 22826

August 27, 2008

IRS Updates Correction Program (EPCRS); Invites Further Comments

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TO: PENSION COMMITTEE No. 24-08

PENSION OPERATIONS ADVISORY COMMITTEE No. 24-08 RE: IRS UPDATES CORRECTION PROGRAM (EPCRS); INVITES FURTHER COMMENTS

The Internal Revenue Service published Revenue Procedure 2008-50 [\[1\]](#), which modifies and supersedes Rev. Proc. 2006-27 [\[2\]](#), the prior consolidated statement of the correction programs under the Employee Plans Compliance Resolution System ("EPCRS"). The changes are effective January 1, 2009. However, plan sponsors are permitted to apply the new provisions on or after September 2, 2008.

Some of the significant modifications include the following [\[3\]](#):

- Expanding the definition of plan loan failure to include violations of Code section 72(p)(2), regardless of whether the plan contains language relating to section 72(p). The modified EPCRS also reduces the compliance fee under certain circumstances where the sole failure is the failure of participant loans to comply with section 72(p)(2).
- Expanding the scope of the Self-Correction Program by (i) liberalizing the requirement for determining whether there was a substantial completion of correction when the plan comes under examination; and (ii) expanding the failures for which sample correction methods are provided.
- Expanding correction methods with respect to elective deferrals to include catch-up contributions and designated Roth contributions.
- Expanding correction methods for a failure to include an eligible employee in a 401(k) plan to include a situation in which elective deferral and after-tax employee contribution elections are not implemented or are implemented in a manner inconsistent with the plan's terms.

- Clarifying that the earnings rate derived from the online calculator for the Department of Labor's Voluntary Fiduciary Correction Program may be used to determine the earnings adjustment applied to corrective contributions, distributions, allocations, and reallocations if it is not feasible to make a reasonable estimate of what the actual results would have been.
- Increasing the de minimis amount of corrective distributions not required to be distributed from \$50 to \$75.
- Modifying the correction for failures to restrict annual additions pursuant to section 415.
- Extending the streamlined Voluntary Correction Program application procedures (which previously were available only for interim nonamenders) to a number of other failures, including SEP, SARSEP and SIMPLE IRA plan failures, loan failures, employer eligibility failures, failures to distribute section 402(g) excess deferrals, and failures to make timely required minimum distributions.

The Service has invited comments on how to improve EPCRS and specifically requested comments on how to correct failures related to automatic enrollment and designated Roth contributions. Because EPCRS is an ongoing program that is updated from time to time, the Service does not provide a deadline for comments. The Institute will prepare a comment letter if there is sufficient member interest. Please provide any comments or suggestions to Anna Driggs at adriggs@ici.org or by phone at (202) 218-3573.

Anna Driggs
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endnotes

[1] Available at <http://www.irs.gov/pub/irs-drop/rp-08-50.pdf>.

[2] See Memorandum to Pension Members No. 35-06 [20044], dated May 12, 2006.

[3] For a more comprehensive list of the changes made to EPCRS, see section 2.01 of Rev. Proc. 2008-50. In addition, the IRS has posted Summary of Significant Changes comparing Rev. Proc. 2008-50 to its predecessor Rev. Proc. 2006-07 at http://www.irs.gov/pub/irs-tege/rp08_50_summary.pdf.

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