MEMO# 33711

August 2, 2021

IRS Updates Employee Plans Correction Program, Including Elimination of Anonymous VCP Submissions

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TO: ICI Members
Pension Committee
Pension Operations Advisory Committee SUBJECTS: Pension RE: IRS Updates Employee Plans Correction Program, Including Elimination of Anonymous VCP Submissions

The Internal Revenue Service (IRS) recently published Revenue Procedure 2021-30,[1] which modifies and supersedes Rev. Proc. 2019-19,[2] the prior consolidated statement of the correction programs under the Employee Plans Compliance Resolution System (EPCRS). EPCRS permits retirement plan sponsors to correct certain failures to meet applicable tax qualification requirements and thereby continue to provide employees with retirement benefits on a tax-favored basis.

EPCRS is made up of three components: the Self-Correction Program (SCP), the Voluntary Correction Program (VCP), and the Audit Closing Agreement Program (Audit CAP).[3] As described in more detail below, Rev. Proc. 2021-30 makes several changes to both the VCP and the SCP.

Changes to Anonymous Submissions under the VCP

Rev. Proc. 2021-30 significantly changes the way a plan may approach the IRS anonymously to make a correction. EPCRS currently allows a plan to submit a VCP application, through a representative, without identifying the plan or the plan sponsor. If the IRS and the representative are able to reach an agreement on the proposed correction, then the plan can identify itself. If an agreement is not reached, the plan can withdraw the submission and remain anonymous, although the IRS does not refund the VCP user fee. Rev. Proc. 2021-30 eliminates this procedure, effective January 1, 2022.

To replace the anonymous submission procedure, Rev. Proc. 2021-30 adds an anonymous, no-fee, VCP pre-submission conference procedure, effective January 1, 2022. A VCP pre-submission conference may be requested only (1) for matters on which a compliance statement may be issued under the revenue procedure, (2) with respect to requested correction methods that are not described as safe harbor correction methods in Appendix A or B of the revenue procedure, and (3) if the plan sponsor is eligible and intends to submit an application under VCP.

At the conference, the IRS will provide the plan's representative with oral feedback regarding the failure and proposed correction method. Unlike under the current anonymous submission procedure, the feedback IRS provides at the conference is advisory only and is not binding on the IRS. The plan can then decide, based on the feedback, whether it will file a VCP submission, which will require the plan to identify itself and pay a user fee.

Enhancements to Self-Correction Program

Rev. Proc. 2021-30 makes two changes that expand a plan's ability to use the SCP.

Expanded correction period

To be eligible to use the SCP to correct significant operational failures and plan document failures, a plan must correct the failure within the correction period. Rev. Proc. 2021-30 extends the correction period by one year (the correction period will now end on the last day of the third plan year following the plan year for which the failure occurred).

Expanded ability to correct by plan amendment

A plan sponsor can use the SCP to correct a failure by amending the plan document to conform the terms of the plan to the plan's prior operations, provided that certain conditions are met. Previously, one condition for this type of correction was that the amendment would result in an increase of benefit, right or feature that would apply to all employees eligible to participate in the plan. Rev. Proc. 2021-30 removes this condition that the increase must apply to all eligible employees.

Extension of Safe Harbor Correction Method for Automatic Contribution Failures

In 2015, the IRS added a new safe harbor correction method for 401(k) and 403(b) plans using automatic contribution features (including automatic enrollment and automatic escalation of elective deferrals) to correct certain failures that are of limited duration and involve elective deferrals.[4] This safe harbor method was initially scheduled to be available only until December 31, 2020. Effective January 1, 2021, Rev. Proc. 2021-30 extends it to cover failures that begin on or before December 31, 2023.

Correction of Overpayments

Rev. Proc. 2021-30 expands EPCRS's guidance on the recoupment of overpayments,[5] including two new overpayment correction methods for defined benefit plans.[6]

Rev. Proc. 2021-30 also modifies its provisions regarding correction of overpayments from defined contribution (DC) plans, to modify the structure of the section and to clarify the correction principles relating to overpayments from DC plans. This section describes how corrections can be made by amending the plan to conform to plan operation, by reducing future payments (in the case of periodic payments), or by allowing the participants who received the overpayments to repay the amounts with a lump sum or installment payments.

Increase of Threshold for Exception for De Minimis Amounts

EPCRS provides an exception for certain failures involving de minimis amounts, for which a plan is not required to implement corrections. Rev. Proc. 2021-30 increases the threshold for this exception from $100 to $250. Now, a plan is not required to take any action when it makes an overpayment to a participant in an amount up to $250. Similarly, a plan is not required to make a distribution when an excess amount of up to $250 is contributed to a participant's account.[7] In the case of a de minimis excess amount, if a statutory limit is exceeded, the plan still will need to notify the participant that the excess amount is not eligible for favorable tax treatment accorded to distributions from the plan (and, specifically, is not eligible for tax-free rollover).

Effective Date

Rev. Proc. 2021-30 is effective as of July 16, 2021.

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endnotes

[1] Revenue Procedure 2021-30 is *available at* https://www.irs.gov/pub/irs-drop/rp-21-30.pdf.

[2] For a description of Rev. Proc. 2019-19, *see* ICI Memorandum No. 31749, dated May 7, 2019, *available at* https://www.ici.org/memo31749.

[3] Under the SCP, a plan sponsor may correct certain plan failures without contacting the IRS or paying any fee. Under the VCP, a plan sponsor may, at any time before audit, pay a fee and receive IRS approval for correction of plan failures. Audit CAP allows a plan to correct a failure and pay a sanction after the failure has been identified during an audit.

[4] For a description of the safe harbor, *see* ICI Memorandum No. 28911, dated April 20, 2015, *available at* https://www.ici.org/memo28911.

[5] An "overpayment" happens when a payment is made to a participant or beneficiary that exceeds the amount payable to the participant or beneficiary under the terms of the plan or that exceeds a limitation provided in the Code or regulations.

[6] The new correction methods include the funding exception correction method (see Section 6.06(3)(d)(i)) and the contribution credit correction method (see Section 6.06(3)(d)(ii)).

[7] An "excess amount" occurs when a contribution or credit is made to a participant's account in excess of the maximum amount permitted to be contributed or credited on under the terms of the plan or that exceeds a limitation on contributions provided in the Code or regulations.