

Employee Benefit Plans Alert

IRS Employee Plans Compliance Resolution System (EPCRS) Correction Program

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The Internal Revenue Service (IRS) issued Revenue Procedure 2021-30 (Rev. Proc.) on July 16, 2021. We previously summarized the major highlights of the Rev. Proc. in our [August 2021 Alert](#). The IRS Employee Plans Compliance Resolution System (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. Discussed in this Alert are further details regarding the changes made in the recently-issued Rev. Proc.

De Minimis Correction Threshold

One of the updates is the increase in the de minimis correction threshold from \$100 to \$250. [Rev. Proc. 2021-30](#) describes an increase from \$100 to \$250 for certain de minimis transactions where correction may not be required. Transactions qualifying for this de minimis threshold are detailed as *Overpayments* and *Excess Amounts*.

Overpayments – The Rev. Proc. describes Overpayments as a qualification failure due to a payment to a participant that exceeds the eligible amount payable to that recipient under the plan document, regulations or the Internal Revenue Code (the Code). Overpayments can come from a defined contribution (DC) or defined benefit (DB) plan. The Rev. Proc. excludes payments made to a beneficiary or participant in order to correct a different qualification failure under this guidance as being considered an Overpayment.

Excess Amounts – This item is described as a qualification failure due to a contribution or allocation made to a participant's plan account in excess of the maximum allowable amount under the plan, regulations, or the Code. These contributions can include elective deferrals or employee after-tax contributions that exceed the plan limits or limits under various Code sections [415, 402(g), etc.], or other employer contributions. Similar to *Overpayments*, *Excess Amounts* do not include payments made to a beneficiary or participant in order to correct a different qualification failure under this guidance.

The Rev. Proc. indicates that if an Overpayment of \$250 or less is made to a recipient, the Plan Sponsor does not need to seek to recoup the funds, and also does not need to inform the recipient that the payment is ineligible for favorable tax treatment. This rule similarly applies to Excess Amounts, unless it exceeds a statutory limit.

Expansion of the Self-Correction Period

The EPCRS has always allowed plan sponsors to self-correct significant operational failures within two (2) years. There has never been a time limit to correct insignificant failures. The new Rev. Proc. extends the time period to correct a significant operational failure until the last day of the third plan year following the year of failure.

- Plan document failures – which are classified as a significant failure – are also impacted. An additional year is provided to self-correct.
- ADP/ACP test impact – Per the 401(k) regulations, the employer can correct ADP/ACP failures by the end of the subsequent plan year. This deadline to self-correct significant ADP/ACP failures is, therefore, extended to a total of four (4) years after the year of failure because of the new EPCRS Rev. Proc.

- Auto enrollment and escalation corrections applicable to 401(k) and 403(b) plans – Retirement plans that have these features were available to utilize a safe-harbor method for employees' elective deferral failures. Previously, this correction method was set to expire on December 31, 2020. However, the IRS has extended this deadline to December 31, 2023.

Normally, the correction for improper exclusion from making deferrals and failure to correctly implement elective deferrals required the employer to make a qualified non-elective contribution (QNEC) of 50% of the missed deferral amount. EPCRS provides a safe-harbor correction method, which permits correction for current participants to be 25% or even 0% if certain criteria are satisfied. The deadline for correcting the failure without an employer QNEC is satisfied if employee deferrals start no later than 9-½ months after the plan year when the failure occurred and the employer provides a timely 45-day notice to the participant. Providing any matching or safe-harbor contribution with an earnings adjustment is still required.

Plans that do not have an auto enrollment feature are still available to have a 0% QNEC correction if the correct deferrals begin no later than the earlier of: compensation made on or after the last day of the three-month period that begins when the failure first occurred, **or** after a specific time the employer was notified by the affected participant.

The safe-harbor correction method for employee elective deferral failures that extend beyond three months, but do not extend the self-correction period of three years, can be corrected with a 25% QNEC. The employer matching contribution and earnings also apply, as well as providing the participant a 45-day notice.

Quick Hits

403(b) Cycle 2 Pre-Approved Program Updates – On September 1, 2021, the IRS issued [Rev. Proc. 2021-37](#) providing procedures around the issuance of 403(b) pre-approved plan opinion letters for the second remedial amendment cycle (aka *Cycle 2*). Rev.Proc. 2021-37 outlines the period of time for mass submitters to submit their applications. The Rev. Proc. also outlines other amendment procedures and improvements.

5500 Guidance for Retroactively Adopted Plans – On September 22, 2021, the IRS issued a reminder on the relief provided based on Section 201 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act). This section of the SECURE Act allows an employer to adopt a retirement plan after the end of their taxable year, by the due date of their tax return, and elect to have the plan effective as of the last day of the employer's taxable year. The IRS announced in their August 6, 2021 [Employee Plan Newsletter](#) that if an employer, prior to filing their 2020 tax return in 2021, elected to have the plan effective as of the last day of their 2020 year, then a Form 5500 is not required. A Form will be required starting with the 2021 Form 5500. A box indicating the retroactive adoption on the last day of the 2020 year will have to be checked on the 2021 Form 5500. There are additional requirements for defined benefit (DB) plans as well.

Contact Us

The Employee Benefit Services Group at PKF O'Connor Davies is available to assist plan sponsors in meeting the various compliance requirements applicable to their plans. We also provide a full spectrum of compliance services for qualified retirement plans, nonqualified deferred compensation plans, and welfare plans. For more information, please contact your client services partner or any of the following:

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