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# Employee Benefits Corner

## EPCRS Update Brings Good News for Plan Sponsors

By Elizabeth Thomas Dold and David N. Levine

**R**ev. Proc. 2021-30 is the latest iteration of the IRS correction program—Employee Plans Compliance Resolution System (“EPCRS”)—that enables plan sponsors and the retirement industry to sleep at night knowing that plan errors can be corrected and may retain their all-important tax-favored status. This version of EPCRS replaces Rev. Proc. 2019-19, generally effective as of July 16, 2021, with one notable exception: the ability to file anonymously under the Voluntary Correction Program (“VCP”) is eliminated as of January 1, 2022.

Charts 1 through 3 set forth a summary of the key changes that were made to the program; a majority of the provisions were unchanged.

### Next Steps

Qualified plan rules, and the plan administration needed to comply with the rules and the plan terms, are very complex and very difficult to get right 100% of the time. So EPCRS is a helpful program to fix errors and the additional expansions of the program that the IRS gives on a regular basis are a blessing. With this latest iteration, plan sponsors have more time to correct significant failures, more correction methods to consider when it comes to plan overpayments, a restoration of the favorable auto-enrollment deferral failure correction, and higher *de minimis* thresholds. So all plan sponsors should be sure to look to Rev. Proc. 2021-30 when addressing a plan qualification failure. And beginning next year, we will all embrace the no-names pre-submission VCP conference process if there are concerns regarding the proposed correction.

CHART 1. SELF-CORRECTION PROGRAM (SCP) CHANGES			
	Old Relief	New Relief	Comment
<b>Correction Deadline</b>	<p><i>Insignificant errors.</i> There is no deadline for insignificant errors (consistent with the fact that there is no statute of limitations for plan errors).</p> <p><i>Significant errors.</i> For significant errors (which is a facts and circumstances determination), the deadline is the end of the second plan year following the plan year for which the failure occurred.</p>	<p><i>Insignificant errors.</i> No change.</p> <p><i>Significant errors.</i> For significant errors, we have another year. Therefore, the deadline is the end of the third plan year following the plan year for which the failure occurred.</p>	<p>Another year to make corrections is always welcomed.</p> <p>For example, if the error was significant and it started in 2018, then there may still be time to correct the failure without a VCP filing—but correction must be completed by the end of the 2021 plan year.</p> <p>Conversely, if the error started in 2019, you now have another year – until the end of 2022 to complete the correction.</p>
<b>Self-Correction Through Plan Amendment for Operational Failures</b>	<p>There is limited ability to self-correct operational failures by amending the plan to reflect plan operations. This correction is available if the amendment (1) would result in an increase of a benefit, right, or feature, (2) the increase in the benefit, right, or feature applies to all participants eligible to participate under the plan, and (3) the provision of the increase is permitted under the Code (including 401(a)(4), 410(b), 411(d)(6)) and satisfies the correction principles of EPCRS.</p>	<p>The second requirement has been eliminated.</p>	<p>This is very helpful, more cost-effective, relief that converts this rather limited correction relief into one that should be routinely considered.</p>
<b>Safe-Harbor Correction for Auto-Enrollment Failure</b>	<p>No QNEC is required if missed deferrals in auto-enrollment plans were corrected within 9½ months following the end of the plan year of the failure. This safe-harbor correction expired on December 31, 2020.</p>	<p>The sunset date was extended until December 31, 2023.</p>	<p>This brings a very valuable correction approach for employers with an automatic enrollment feature back into play.</p>
<b>De minimis Exceptions</b>	<p>There is a \$100 <i>de minimis</i> exception for plan overpayments and excess amounts.</p>	<p>The \$100 amount is now \$250. (Note that no change was made to the \$75 threshold for corrective distributions.)</p>	<p>Although the delivery of small benefits remains at \$75, the provision does clarify that corrective contributions are required to be made with respect to a current or former participant, without regard to the amount of the corrective contributions.</p> <p>These increased limits apply equally to VCP filings.</p>

**CHART 1. SELF-CORRECTION PROGRAM (SCP) CHANGES (Continued)**

	Old Relief	New Relief	Comment
<b>Overpayments in Defined Contribution Plan</b>	In general, self-correction results in asking the participant to return the funds and failure to do so the employer (or another party) contributes the amount of the overpayment (adjusted for earnings) to the plan. (No make-whole payment is needed if it is merely a timing issue.)	<p>Plan sponsors may permit participants to select the method of repayment: lump sum, installment agreement, or adjustment of future benefit payments.</p> <p>Note that if not corrected by a plan amendment (1) future payments (if any) must be reduced as soon as practicable to reflect the correct amount (or meet a statutory limit), (2) recipient must be notified in writing that the overpayment is not eligible for favorable tax treatment and specifically not eligible for tax-free rollover, and (3) to the extent that the overpayment adjusted for earnings at the plan's earnings rate from the date of distribution to the date of the correction is not repaid to the plan, the difference must be contributed.</p> <p>(No make-whole payment is needed for merely timing issue.)</p> <p>[see above]</p>	<p>These are helpful clarification for DC overpayments.</p> <p>Unfortunately, the participant must still be notified that the amounts are not eligible for tax-free rollover, and a make-up payment still must generally be made.</p>
<b>Overpayments in Defined Benefit Plan</b>	Similar to above, except that future pension payments can be reduced to recover the overpayment.	<p>Similar to above, but also adds two new corrective methods (if not a statutory violation): (1) funding exception<sup>1</sup> correction method, and (2) contribution credit correction method<sup>2</sup> to reduce the need to reimburse the plan for overpayments, depending on the funding status of the plan.</p> <p>Note that if not corrected by a plan amendment (1) future payments (if any) must be reduced as soon as practicable to reflect the correct amount (or meet a statutory limit), (2) recipient must be notified in writing that the overpayment is not eligible for favorable tax treatment and specifically not eligible for tax-free rollover, and (3) subject to the two new exceptions, to the extent that the overpayment adjusted for earnings at the plan's earnings rate is not repaid to the plan, the difference must be contributed.</p> <p>Note that to the extent the amount returned by recipient through an adjustment to future payments is less than the overpayment (e.g., due to death of the recipient) the plan sponsor is not required to contribute any additional amount to the plan.</p> <p>The plan sponsor may allow the participant to select the repayment method.</p>	<p>These are helpful correction methods that focus on corrections going forward.</p> <p>The IRS continues to provide that other appropriate correction methods may be used (e.g., have the plan sponsor contribute the overpayment (with appropriate interest) to the plan instead of seeking reimbursement from the overpayment recipient).</p> <p>Notably, EPCRS addresses Code issues, but does not address Title I of ERISA.</p>

<sup>1</sup> Under the funding exception, no corrective payments are necessary provided that the certified or presumed AFTAP determined under Code Sec. 436 that is applicable to the plan at the date of correction is equal to at least 100 percent (or for a multiemployer plan, provided the plan is not in critical, critical and declining, or endangered status).

<sup>2</sup> Under the contribution credit correction method, the amount of overpayment required to be repaid is the amount of the overpayment reduced by: (1) the cumulative increase in the plan's minimum funding requirements attributable to the overpayment beginning with (i) the plan year for which the overpayments were taken into account for funding purposes through (ii) the end of the plan year preceding the plan year for which the corrected benefit payment amount is taken into account for funding purposes, and (2) certain additional contributions in excess of minimum funding requirements paid to the plan after the first of the overpayments was made. To the extent a net overpayment remains, the plan sponsor or another party must take further action to reimburse the plan for the remainder of the overpayment. This can include repayment from the overpayment recipient, along with parameters regarding notice and amount of repayment. Note that this correction is not available if the plan has a funding deficiency or an unpaid minimum required contribution as of the end of the last plan year before the plan year for which the plan sponsor takes into account the corrected benefit payment amount for funding purposes. Appendix B of the Revenue Procedure includes more details and helpful examples.

CHART 2. VOLUNTARY COMPLIANCE PROGRAM (VCP) CHANGES			
	Old Relief	New Relief	Comment
<b>Anonymous VCP Submissions</b>	VCP filings (including group submissions) are permitted to be made on a no-names basis. Only once agreement regarding the correction has been reached between the applicant and the IRS the applicant must disclose its name. There is a risk that an intervening IRS audit would take away the VCP option, but it provides filers with piece of mind that the IRS could not refer the case to audit in the event of disagreement regarding the correction.	Effective January 1, 2022, VCP filings cannot be made on a no-names basis.  Instead, the IRS has developed a free, no-names pre-submission conference to get the IRS take on the failure and the proposed correction. Unfortunately, the result of this conference is not binding on the IRS.	Last call for no-names submissions through December 31, 2021.
<b>Correction Changes</b>	See above regarding auto-enrollment and overpayment, although VCP is typically used to retroactively amend the plan to conform to the plan's operations (e.g., providing for the overpayment as a plan benefit).	See above, which are also available via VCP filing.	VCP is still a good choice for complex plan overpayment corrections, or a retroactive plan amendment correction.

CHART 3. AUDIT CLOSING AGREEMENT PROGRAM (CAP) AND VOLUNTARY AUDIT CAP (VCAP) CHANGES			
	Old Relief	New Relief	Comment
<b>VCAP Program</b>	This voluntary closing agreement approach provides relief that is not available under a VCP filing. Similar to a VCP filing, an applicant can file a no-names submission for review. There is no filing fee for the submission, and the Applicant's name is only disclosed when agreement is reached on the correction and the non-deductible sanction amount.	The VCAP program is still available, but no-names submissions must be filed by December 31, 2021. Thereafter, this process is replaced with a no-names pre-submission conference, which is at the discretion of the IRS, and again the results of this process are not binding on the IRS.  Employee Plans Voluntary Closing Agreements   Internal Revenue Service ( <a href="https://www.irs.gov">irs.gov</a> ).	Last call for no-names submissions through December 31, 2021.
<b>Audit CAP</b>	Sanctions can be paid via certified or cashier's check.	Beginning January 1, 2022, audit CAP sanctions must be paid through the <a href="https://www.pay.gov">Pay.gov</a> website.	No more paper checks for the IRS!

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