

Benefits Overpayment Guidance May Require More Labor

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Tax professionals in the benefits industry have identified some questions that recent IRS guidance on benefit overpayment corrections didn't answer.

Although the guidance (Notice 2024-77, 2024-45 IRB 1) doesn't address the ERISA restrictions on recouping benefit overpayments, it does help plan sponsors "take appropriate corrective action to maintain the tax-qualified status of their plan, which is invaluable," Elizabeth Thomas Dold of Groom Law Group told *Tax Notes*.

The October 15 notice helps clarify the impact on the Employee Plans Compliance Resolution System (EPCRS) of inadvertent benefit overpayment provisions included in SECURE 2.0, enacted as part of the Consolidated Appropriations Act, 2023.

According to Dold, the notice provides welcome initial guidance on the scope of relief by defining an inadvertent benefit overpayment and integrating existing EPCRS correction procedures in Rev. Proc. 2021-30, 2021-31 IRB 172.

Sarah J. Touzalin of Seyfarth Shaw LLP said there's a need for guidance addressing the new ERISA rules for correcting payments that were added by SECURE 2.0 — specifically, ERISA section 206(h).

"We have a lot of questions about that provision. For example, we need clarification on the rules that will apply to the recoupment of lump sum overpayments and how much can be recouped each year," Touzalin said.

Touzalin and Michael L. Hadley of Davis & Harman LLP said the remaining questions about the ERISA provision should be answered by the Labor Department rather than the IRS.

Ronald G. Cluett of Caplin & Drysdale said that sponsors of ERISA plans will "need to take into consideration the additional rules under section 206(h)," but that guidance from the Labor

Department remains forthcoming and will help sponsors “more fully understand their options and obligations with respect to inadvertent benefit overpayments.”

Questions Answered

Touzalin said the notice was “helpful in that it answers some of the questions” after SECURE 2.0 added sections 414(aa) and 402(c)(12) regarding the recoupment of inadvertent benefit overpayments.

The IRS “did a good job explaining how the SECURE 2.0 overpayment provision modifies the EPCRS, especially the circumstances under which a plan sponsor no longer needs to make a repayment back to the plan,” Hadley said.

SECURE 2.0 provided retirement plan fiduciaries with the ability to choose not to recoup benefit overpayments that were mistakenly made to plan participants. If fiduciaries choose to recoup the overpayments, SECURE 2.0 includes limits on the recovery to protect plan participants.

One “interesting tidbit” from the notice, according to Hadley, was that the overpayment provision doesn’t apply to disqualified persons or owner-employees. “Presumably, the IRS is worried about business owners abusing the provision by overpaying themselves and then not seeking recoupment,” he said.

DOCUMENT ATTRIBUTES

CODE SECTIONS	SEC. 414 DEFINITIONS AND SPECIAL RULES SEC. 402 TAXABILITY OF BENEFICIARY OF EMPLOYEES' TRUST SEC. 401 QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS SEC. 403 TAXATION OF EMPLOYEE ANNUITIES SEC. 436 FUNDING-BASED LIMITS ON BENEFITS AND BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER PLANS SEC. 415 LIMITATIONS ON BENEFITS AND CONTRIBUTIONS UNDER QUALIFIED PLANS
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