

IRS Modifies EPCRS Guidelines, Requests Comments on Overpayment Correction

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On March 27, 2015, the **Internal Revenue Service (IRS)** released Revenue Procedure 2015-27, which modifies, effective July 1, 2015, prior guidelines under the **Employee Plans Compliance Resolution System (EPCRS)**. The IRS established EPCRS so that plan sponsors could correct documentary and operational errors without jeopardizing a plan's tax qualified status. EPCRS consists of three programs under which plan sponsors can correct plan errors – the Self-Correction Program, the Voluntary Correction Program and the Audit Closing Agreement Program. The new guidance modifies, but does not supersede, the most recent restatement of EPCRS set forth in Revenue Procedure 2013-12.

The primary focus of Rev. Proc. 2015-27 is on correction methods related to overpayments. Prior to the new guidance, EPCRS guidelines provided that any correction of plan overpayments must include reasonable efforts to have the overpayment returned to the plan. If full repayment cannot be obtained from the recipients, a plan must be made whole by the plan sponsor or another person. In response to complaints from participants and beneficiaries that plan sponsors have requested the return of large sums of money resulting from administrative errors, the IRS modified EPCRS to provide plan sponsors the "flexibility" to forgo seeking repayment from participants and beneficiaries. For example, the IRS explained that instead of demanding the return of overpayments, plan sponsors could simply make the plan whole by making a contribution to the plan. In practice, it is often difficult to obtain repayment directly from plan participants and beneficiaries, and unless future benefits can be offset, a plan sponsor is generally forced to make the plan whole in any event.

The IRS also described an alternative correction method under which a plan sponsor could simply adopt a retroactive amendment allowing for the overpayment. However, this option may be of limited utility because the Self-Correction Program only allows retroactive amendments in very limited situations.

When determining whether to adopt a retroactive amendment, plan sponsors should compare the cost of correcting under the Voluntary Correction Program to the cost of other available correction methods. Also, plan sponsors correcting an overpayment from a plan subject to funding-based benefit restrictions should ensure that a retroactive amendment will not result in an impermissible increase in benefits.

In addition to modifying the guidance with respect to overpayments, Rev. Proc. 2015-27 included material modifications with respect to model forms under the Voluntary Correction Program, user fees for certain corrections, self-correction of excess annual additions, and on-cycle corrections. Each of these changes is described below.

- *Model Forms.* The new guidelines eliminate the model forms found in Appendices C and D of Rev. Proc. 2013-12. In place of the old forms, an employer seeking to correct using model forms must use the applicable form in the Form 14568 series. The IRS will issue revised Forms 14568-A through 14568-I (each dealing with various types of document or operational failures) to reflect this change. Additionally, plan sponsors seeking an acknowledgement from the IRS that a Voluntary Correction Program submission has been received must make this request using IRS Letter 5265.
- *User Fees.* The IRS has amended the reduced fee structure for corrections related to required minimum distribution (RMD) errors and plan loan errors. Previously, the reduced user fee for a Voluntary Correction Program submission related solely to RMD errors affecting 50 or fewer participants was \$500. The new guidance provides for a reduced user fee of \$500 if the RMD error affects 150 or fewer participants and \$1,500 if the RMD error affects between 151 and 300 participants. For plan loan errors, the new guidance replaces the 50% user fee reduction with a tiered user fee ranging from \$300 to \$3,000 based on the number of affected participants.
- *Excess Annual Additions.* In order to be eligible for correction under Self-Correction Program, a plan sponsor must have procedures in place to promote and facilitate compliance with the tax qualification requirements. The new guidelines provide that frequent errors involving excess annual additions under Internal Revenue Code Section 415(c) will not result in a lack of compliance procedures, provided that the excess annual additions are corrected no later than 9½ months after the end of the plan's limitation year.
- *On-Cycle Corrections.* In general, if a correction under the Voluntary Correction Program is needed during a plan's "on-cycle" year for determination letter purposes, the correction submission must be combined with the determination letter application. The new guidance, however, clarifies that this requirement does not apply to plans that have adopted a volume submitter or prototype document.

The IRS will provide additional guidance regarding EPCRS, as it has requested comments on whether a plan sponsor should be prohibited from seeking the return of overpayments from participants and beneficiaries in certain situations, whether the overpayment correction methods under PBGC regulations should be adopted and whether guidance is needed on the calculation of interest. Therefore, plan sponsors correcting overpayments should check to make sure that it is following the latest guidance.

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