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IRS Expands Self-Correction under EPCRS and Adds New Overpayment Correction Methods

By: Jenni Krengel and Tonie Bitseff

On Friday, the IRS issued Revenue Procedure 2021-30 expanding the Employee Plans Compliance Resolution System ("EPCRS")—a voluntary program for correcting errors in tax-qualified and section 403(b) plans—by adding two new methods for recouping benefit overpayments, among other changes. The revenue procedure, which is generally effective July 16, 2021, is welcome news for retirement plans, particularly defined benefit plan sponsors and administrators who have long advocated for more expansive overpayment correction options.

Under EPCRS, retirement plan sponsors can correct certain operational and plan document failures that might otherwise adversely affect the tax favored status of the plan, including benefit overpayments. Overpayments are typically corrected by recouping the overpayment with earnings so that the plan is made whole. In 2015, the IRS clarified that overpayments could be recouped from the plan sponsor or another party, as opposed to requiring that they be recouped directly from the participant or beneficiary. This new EPCRS revenue procedure adds two more options for correcting overpayments.

First, the new "contribution credit correction method" takes into account changes in the plan's funding requirements related to the overpayment. Under this new correction method, the amount of an overpayment that must be repaid to the plan is reduced by the cumulative increase in the plan's minimum funding requirements attributable to the overpayment during a specified period. This includes the increase attributable to the overstatement of liabilities. Certain other additional contributions in excess of minimum funding requirements also reduce the amount that must be repaid to the plan under this correction method.

Second, the new "funding exception correction method" provides that corrective payments are not required if the plan satisfies a certain funding level. This funding exception correction method applies to defined benefit plans that are subject to Internal Revenue Code section 436, and hence is not applicable to governmental plans and non-electing church plans.

The revenue procedure also includes a number of other important EPCRS changes, as follows:

- Allows overpayment recipients to be given a choice as to whether to repay an overpayment in a lump sum, thought an installment agreement or through future reductions in benefits.
- Increases the threshold from $100 to $250 for certain de minimis amounts that are not required to be corrected.

- Replaces the VCP anonymous submission procedure with an anonymous, no-fee, VCP pre-submission conference procedure.
- Expands the Self Correction Program ("SCP") by permitting correction through plan amendment under new conditions, extending the SCP correction period for significant failures by one year, and extending the sunset of the safe harbor correction method for certain missed elective deferrals.

The new guidance will streamline the correction process for plan sponsors and administrators, and ease the burden on plan participants and beneficiaries. If you have questions about the new guidance, please contact Jenni Krengel, Tonie Bitseff, or any of Buchalter's Employee Benefits and Executive Compensation team.

Jenni Krengel
Shareholder
(415) 227-0900
jkrengel@buchalter.com

Tonie L. Bitseff
Special Counsel
(206) 319-7042
tbitseff@buchalter.com

Kalley R. Aman
Shareholder
(213) 891-5028
kaman@buchalter.com

Laurent Badoux
Shareholder
(480) 383-1867
lbadoux@buchalter.com

James Andrew Caprile
Shareholder
916-945-5244
jcaprile@buchalter.com

Lee C. Cheng
Shareholder
(949) 224-6471
lcheng@buchalter.com

Arthur Chinski
Shareholder
(213) 891-5060
achinski@buchalter.com

Joseph K. Fletcher, III
Shareholder
(213) 891-5079
jfletcher@buchalter.com

Martin P. Florman
Shareholder
(949) 224-6281
mflorman@buchalter.com

Michael W. Shackelford
Shareholder
(503) 226-8488
mshackelford@buchalter.com

Philip J. Wolman
Shareholder
(213) 891-5390
pwolman@buchalter.com

Nikole K. Zoumberakis
Senior Counsel
(213) 891-5123
nzoumberakis@buchalter.com