

July 2021

EPCRS Correction Program Update Released by IRS

On July 15, 2021, the Internal Revenue Service (“IRS”) released Revenue Procedure 2021-30, updating certain elements of its Employee Plans Compliance Resolution System (“EPCRS”). The IRS describes the release as a “limited update,” modifying and replacing the previous EPCRS guidance of Revenue Procedure 2019-19. These updates are generally effective July 16, 2021, with certain exceptions noted below.

Key updated provisions of Revenue Procedure 2021-30 include the following:

- The safe harbor correction method for certain Employee Elective Deferral Failures for eligible employees subject to an automatic contribution feature in a 401(k) or 403(b) plan is extended by three years, for defects that began on or before December 31, 2020 (when correction was scheduled to sunset), to defects beginning on or before December 31, 2023. The extension is effective retroactively to January 1, 2021.
- The correction principles relating to recovery of Overpayments from defined contribution 401 and 403(b) plans are clarified. Plan sponsors can seek overpayment (including attributable earnings) from plan recipients by either in a single sum payment or through an installment agreement, or (if the recipient has elected a distribution form of periodic payments) by an adjustment in future payments.
- The ability of a Plan Sponsor to correct an Operational Failure under SCP by plan amendment is expanded. The retroactive amendment no longer must provide that an increase in the benefit, right, or feature must apply to all plan participants.
- The EPCRS Self Correction Program (“SCP”) correction period for significant failures is extended by one year. Under the prior EPCRS, in order to fix a significant mistake under SCP, generally the mistake had to be corrected within two plan years after the end of the plan year in which the failure occurred. Under Revenue Procedure 2021-30, this correction period is extended to three plan years after the end of the plan year in which the failure occurred. This new extension also applies to the safe harbor correction method for Employee Elective Deferral Failures (not subject to an automatic contribution feature) lasting more than three months but not beyond the three-plan year extension of SCP for significant failures. For significant failures that fall outside of this correction period, a Plan Sponsor would need to correct the defect via the EPCRS Voluntary Correction Program (“VCP”).
- The ability to file an anonymous submission under VCP is eliminated. However, the IRS will permit Plan Sponsors or their representatives to make an anonymous, optional, no-fee written request for a VCP pre-submission conference, effective January 1, 2022. Following such a pre-submission conference, if the plan sponsor files under VCP, that VCP submission will no longer be considered anonymous.
- The limit for certain de minimis amounts for which a Plan Sponsor is not required to implement correction for an Overpayment is increased from \$100 to \$250.
- Effective January 1, 2022, a Plan Sponsor seeking to correct defects under the EPCRS Audit Closing Agreement Program (“Audit CAP”), must submit sanctions payments via pay.gov unless the Plan Sponsor lacks the capability to do so.

Voya continues to monitor regulatory developments impacting retirement plans.

IRS Circular 230 Disclosure

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