IRS Releases Revised Employee Plans Compliance Resolution System

Alert
07.20.2021

By Sam Butler

On Friday, July 16, 2021, the Internal Revenue Service (IRS) published the most recent revision to the Employee Plans Compliance Resolution System (EPCRS) in Revenue Procedure 2021-30. Revenue Procedure 2021-30 supersedes and replaces the previous version of EPCRS set forth in Revenue Procedure 2019-19, which itself replaced Revenue Procedure 2018-52. Under the EPCRS, sponsors of qualified retirement plans and Internal Revenue Code section 403(b) plans have the ability to unilaterally fix specified operational or documentary failures using correction methods described by the IRS in the applicable revenue procedure through the EPCRS's self-correction program (SCP) or seek IRS approval of a correction method through the voluntary correction program (VCP).

In Revenue Procedure 2021-30, the IRS makes a number of changes to the EPCRS that benefit plan sponsors, including:

- **Providing additional methods correcting overpayments.** Revenue Procedure 2021-30 gives plan sponsors the option of allowing participants to repay overpayments in installments or by reducing future distributions from the plan. Revenue Procedure 2021-30 also sets forth two new correction methods for correcting overpayments made from a defined benefit plan. The first new correction method, the funding exception correction method, provides that corrective payments are not required for a defined benefit plan subject to code section 436, provided that the plan's certified or presumed adjusted funding target attainment percentage (AFTAP) determined under code section 436 applicable to the plan at the date of correction is equal to at least 100 percent.
  The second new correction method, the contribution credit correction method, provides that the amount of overpayments required to be repaid to a defined benefit plan is the amount of the overpayments reduced (but not below zero) by: (i) the cumulative increase in the plan's minimum

funding requirements attributable to the overpayments (including the increase attributable to the overstatement of liabilities, whether funded through cash contributions or through the use of a funding standard carryover balance, prefunding balance, or funding standard account credit balance), beginning with (1) the plan year for which the overpayments are taken into account for funding purposes, through (2) 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 (ii) certain additional contributions in excess of minimum funding requirements paid to the plan after the first of the overpayments was made.

- **Making it easier to correct failures by retroactive amendment.** Previously, plan sponsors were only permitted to correct an operational failure by retroactive amendment if the following three conditions were satisfied: (i) the plan amendment would result in an increase of a benefit, right or feature; (ii) the increase in the benefit, right, or feature applied to all employees eligible to participate in the plan; and (iii) providing the increase in the benefit, right or feature to participants was permitted under the code and consistent with the general correction principles and other rules set forth in the EPCRS. In Revenue Procedure 2021-30, the IRS has dropped the requirement that the increase in the benefit, right, or feature apply to all employees eligible to participate in the plan.
- **Increasing the dollar amount threshold under which certain failures are considered de minimis.** In Revenue Procedure 2019-19 the IRS states that in cases where plan participants received an overpayment $100 or less, the plan sponsor was not required to seek repayment of the overpayment from the participant or notify the distributee that the overpayment is not eligible for favorable tax treatment. Similarly, excess amounts of $100 or less were considered de minimis and plan sponsors were not required to distribute such amounts pursuant to Revenue Procedure 2019-19. Under Revenue Procedure 2021-30, overpayments and excess amounts of $250 or less are considered de minimis. In contrast, the IRS did not increase the threshold for small corrective distributions. Under Revenue Procedure 2019-19, if the corrective distribution due a participant or beneficiary is $75 or less, a plan sponsor is not required to make the corrective distribution if the reasonable direct cost of processing and delivering the distribution would exceed the amount of the distribution. Revenue Procedure 2021-30 preserves the $75 threshold from Revenue Procedure 2019-19.
- **Extending the time period in which significant failures can be corrected using SCP.** Previously, operational failures that qualified as "significant failures" under the definition set forth in the EPCRS, could only be self-corrected if the plan sponsor substantially completed the correction by the end of the second plan year following the plan year in which the operational failure occurred. Under Revenue Procedure 2021-30, a plan sponsor has an additional year to complete the correction of a significant operational failure, until the third plan year following the plan year in which the operational failure occurred.
- **Allowing pre-submission anonymous conferences with the IRS prior to submitting a VCP application.** Effective January 1, 2022, a representative of a plan sponsor may request a conference with IRS representatives before submitting a VCP application. Such a conference may only be requested with

respect to correction methods that are described in the EPCRS (i.e., those safe harbor correction methods described in Appendix A and B of Revenue Procedure 2021-30). The IRS is not, however, required to grant a request for a pre-submission conference. Furthermore, any guidance offered by the IRS in an anonymous conference is advisory only and not binding on the IRS and cannot be relied upon as a basis for obtaining relief under the EPCRS.

While many of the changes in Revenue Procedure 2021-30 will be welcomed by plan sponsors, not all of the revisions to the EPCRS are plan sponsor friendly. For instance, after December 31, 2021, the IRS will no longer accept anonymous VCP submissions.

Plan sponsors who have additional questions regarding the changes to the EPCRS made by Revenue Procedure 2021-30 or any other plan correction issues should contact a member of Stinson's employee benefits group.

CONTACT

Samuel Butler, IV

RELATED CAPABILITIES

Employee Benefits

Labor, Employment & Benefits