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# Insights

## Revenue Procedure 2021-30 Brings Welcome Changes to IRS Correction Program

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Retirement plan administrators are required by law to abide by specific requirements in the Internal Revenue Code (the "Code"). If a plan administrator fails to administer the plan in accordance with Code requirements, the plan is at risk of being disqualified. The Internal Revenue Service (the "IRS"), however, has allowed plan administrators to voluntarily correct mistakes through the Employee Plans Compliance Resolution System (the "EPCRS"), and thereby continue to provide their employees with retirement benefits on a tax-favored basis. The changes affect two of the correction programs under EPCRS: the Self-Correction Program ("SCP") and the Voluntary Correction Program ("VCP").

On July 15, 2021, the IRS published Revenue Procedure 2021-30 (the "Rev. Proc.") that updates EPCRS. The Rev. Proc. is published in its entirety **here**.

The Rev. Proc. brings several welcome changes to EPCRS, including:

- Elimination of the anonymous submission procedure and addition of an anonymous pre-submission conference option under VCP;
- Extension of the SCP correction period for significant failures;
- Expansion of corrections by plan amendment for operational failures under SCP;
- Extension of the sunset on safe harbor correction methods available for certain employee elective deferral failures; and
- Expansion of flexibility in the recoupment of overpayments.

Following is a high-level overview of the significant changes included in Rev. Proc. 2021-30:

Elimination of the Anonymous Submission Procedure and Addition of an Anonymous, No-Fee, Pre-Submission Conference Procedure under VCP

The Rev. Proc. eliminates VCP anonymous submission procedures effective as of January 1, 2022. On or after this date, identifying information for the plan sponsor, the plan, and other applicable information must be disclosed on the application form submitted and any other forms, documents, or exhibits included with the submission.
However, effective January 1, 2022 and under specified circumstances, plan administrators may request a no-fee anonymous VCP pre-submission conference concerning any failure that is eligible to be submitted under VCP.

Extension of the SCP Correction Period for Significant Failures

Previously, significant failures could be corrected under SCP if correction was substantially completed by the end of the second plan year following the plan year in which the failure occurred.
The SCP correction period for significant failures is now extended by one year - to the end of the third plan year following the plan year in which the failure occurred. The extension of the SCP correction period also extends the safe harbor correction method for certain elective deferral failures lasting more than three months but not beyond the end of the third plan year following the plan year in which the failure occurred.

Expansion of Correction of Operational Failures by Plan Amendment Under SCP

Previously, correction that increased a benefit, right or feature by retroactive amendment under SCP was required to apply to all plan participants. However, under the Rev. Proc., such a correction may be applied only to certain plan participants, as long as the amendment meets other Code requirements.

Extension of Sunset of the Safe Harbor Correction Methods Available for Certain Elective Deferral Failures

The sunset of the safe harbor correction method for employee elective deferral failures associated with an automatic contribution feature in a Code §401(k) or §403(b) plan is extended by three years. Previously, the safe harbor correction method was only for failures that began on or before December 31, 2020. The Rev. Proc. extends the safe harbor to failures that began or begin on or before December 31, 2023. This safe harbor method generally allows correction of failures without making up the missed deferrals.

Increased Thresholds for Overpayments and Excess Amounts in Defined Contribution Plans

Previously, excess amounts either paid to a participant or allocated to a participant's account under a defined contribution plan did not require recoupment if the amount was $100 or less.

Under the Rev. Proc., this threshold is increased to $250; provided the participant must be notified if an excess amount in his account is not eligible for rollover.

Expansion of Flexibility in Correction of Overpayments from Defined Benefit Plans

The Rev. Proc. also provides plan administrators of defined benefit plans flexibility by expanding existing correction methods for overpayments. Plan administrators may now offer participants or beneficiaries who have received overpayments the option of repaying such overpayments in a single sum payment, through installments, or by adjustment of future payments.

Conclusion

Overall, Rev. Proc. 2021-30 benefits plan administrators by extending and expanding certain programs, which gives more flexibility in correcting plan failures under both SCP and VCP. However, plan sponsors should seek advice from their attorneys and advisors before implementing any options mentioned above.

If you have any questions regarding the changes included in Rev. Proc. 2021-30, please contact **Lisa. A. Durham**, **Alex C. Eads** or **any member of our practice group**.

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