# Pension Plan Fix-It Handbook

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# IRS Makes Several Changes to EPCRS That Employers Ought to Like

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IRS' recent announcement of two new rounds of revisions to its Employee Plans Compliance Resolutions System brought several housekeeping changes that ought to make completing EPCRS procedures easier.

In this column, I will review the new revenue procedures for EPCRS — which IRS labels "improvements" — with an eye toward their impact on plan sponsors and administrators.

### EPCRS Evolves

Rev. Proc. 2015-27 on March 27 delivered several minor administrative changes to EPCRS that were needed and should be welcomed. For example, it removes references to the Social Security letter forwarding system as well as removing Appendices C (replaced by numerous Forms 14568, 14568A-I) and D (replaced by Form Letter 5265, which must be partially completed by the submitter).

There also were fee reductions for certain errors, including plan loans and minimum distributions, as well as submission changes.

This document modifies, but doesn't supersede, Rev. Proc. 2013-12, and is effective July 1, 2015. Plan sponsors may apply the provisions on or after March 27, 2015. IRS invites written comments on Rev. Proc. 2015-17, which must be submitted by July 20.

Here are some highlights of the new EPCRS guidance:

*Flexibility in correction of overpayments*. Plan mistakes happen for various reasons. Sometimes a plan will overpay a participant. The existing correction method has led many employers to believe that they must contact the affected participant and demand the return of the overpayment.

But Rev. Proc. 2015-27 provides that, depending on facts and circumstances, the plan sponsor may not need to request that the overpayment be returned to the plan by the participant and/or beneficiary. Instead, the employer or another person could contribute the overpayment. In addition, the plan sponsor could adopt a retroactive amendment conforming the plan document to the plan's operations for these activities, the revenue procedure says.

IRS intends to make further revisions related to the correction of overpayments and is asking for comments on:

- circumstances under which the employer should be required to make the plan whole, rather than asking the participant or beneficiary to repay the overpayment;
- whether guidance be provided for overpayments related to benefit calculation errors;
- whether the correction method should follow the U.S. Pension Benefit Guaranty Corp.'s method (basically, reduce future payments until the overpayment is recouped);
- whether additional guidance is needed regarding the calculation of interest on overpayments; and
- whether any further changes or guidance on overpayments are needed, including the circumstances under which full return of overpayments should not be required.

*Repeated corrections of excess annual additions.* The new procedure extends the time given to correct excess annual additions, or contributions in excess of federal tax Code Section 415 limits, through the return of elective deferrals to 9½ months after the end of the plan's limitation year. Currently, the requirement is 2½ months.

*Minimum distribution failure fee change.* The current Voluntary Correction Program fee for a minimum distribution failure is $500 if the failure results in imposition

**See *Andersen*, p. 2**

## Andersen (continued from p. 1)

of the excise tax under Section 4974, it is the only failure submitted and the failure affects fewer than 50 participants. The revenue procedure expands the reduced fee to $500 to cover failures involving 150 or fewer participants and sets it at $1,500 for 151 to 300 participants. If there are more than 300 participants, the general fee applies ($5,000 for up to 500 participants and increasing thereafter).

*Loan failure fee change.* The current VCP fee is reduced by 50 percent if the loan failure does not affect more than 25 percent of plan participants in any year in which the failure occurred, and the loan failure is the only failure in the submission. The revenue procedure further reduces the fee, depending on the number of participants affected. The fees range from $300 for 13 or fewer participants to $3,000 for more than 150 participants.

### Next Changes Ease Rules on Auto-features

On April 2, IRS made further enhancements to Rev. Proc. 2013-12, primarily affecting defined contribution plans' automatic features. The second revisions came from Rev. Proc. 2015-28.

EPCRS provides that qualified nonelective contributions must be provided on behalf of 401(k) participants who were not enrolled in the plan on a timely basis.

Currently, the correction is a QNEC equal to 50 percent of the participant's "lost opportunity" as well as 100 percent of any matching contributions, plus investment earnings that would have been made had the deferral elections begun on time. IRS received comments that the current correction method could create a windfall for affected participants because they received their salary, the corrective contribution and the corrective matching correction. Commenters contended that this costly correction procedure discouraged plan sponsors from implementing an automatic enrollment feature, where short-duration enrollment errors are not rare.

In response, IRS is providing additional safe harbors for:

- plans with automatic enrollment and automatic escalation features; and
- plans that have elective deferral failures of less than three months or more than three months but not beyond the Self-correction of Operational Defects correction period for significant failures.

In each safe harbor, affected participants must be notified within 45 days after the correct deferrals begin. The revenue procedure lists the information that must be included in the notice.

*Special safe harbor for elective deferral failures with automatic contribution feature.* No QNEC for elective deferrals will be required if the failure does not go beyond the extended due date for the Form 5500, generally 9½ months after the end of the plan year. The correct deferrals must begin with the first payroll after the 9½-month period or earlier, as noted above. Corrective matching contributions and related earnings are required.

*Safe harbor for elective deferral failures that do not exceed three months.* No QNEC for the missed elective deferral but corrective matching contributions and related earnings are required.

*Safe harbor for elective deferrals failures that extend beyond three months but not beyond the SCP correction period for significant failures.* A 25-percent QNEC (rather than the current the 50-percent QNEC) as well as a corrective contributions to make up for any missed matching contributions and related earnings are required. The correct deferrals must begin by the last day of the second plan year following the plan year in which the failure occurred or earlier, as noted above.

### Take-aways for Plan Sponsors

Employee benefit compliance is complex and the rules change constantly. It is important that you try to stay up-to-date on changes, but at a minimum you should request periodic updates from your consultants and attorneys on any recent changes that might affect your plans. ❖