

## Updates to the Employee Plans Compliance Resolution System

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The Internal Revenue Service (“IRS”) issued [Revenue Procedure 2016-51](#) on September 29, 2016 which updates the current version of the Employee Plans Compliance Resolution System (“EPCRS”), effective January 1, 2017. The current EPCRS, issued in 2013 in Revenue Procedure 2013-12, had become outdated due to changes made to the program in subsequent IRS guidance and the recent curtailment of the IRS’ determination letter program for individually designed plans.

EPCRS provides sponsors and administrators of qualified and tax-favored retirement plans (including pension, 401(k) and 403(b) plans) with a process to correct plan errors and to prevent plan disqualification. EPCRS has evolved over the years and has become a very useful tool for sponsors and administrators, not only providing guidance on self-correction of certain common operational and document errors (e.g., excess allocations and missed deferrals) but also providing a vehicle to submit more significant issues to the IRS for its input and approval.

Revenue Procedure 2016-51 includes the following changes to EPCRS:

- allows increased flexibility in correcting overpayments by permitting plans to not demand repayment from participants and beneficiaries under certain facts and circumstances, as provided in Revenue Procedure 2015-27;
- reflects the alternative safe harbor correction methods for elective deferral failures (for example, failure to correctly implement a plan’s automatic contribution or automatic escalation feature, or an improper exclusion of an eligible employee from the plan), as provided in Revenue Procedure 2015-28 which encourages early correction of deferral failures by making available reduced corrective contributions by employers;
- eliminates references to the use of the Social Security letter forwarding program for locating missing participants and beneficiaries, which had been eliminated by the Social Security Administration;
- removes references to determination letter requirements in light of the curtailment of the determination letter program for individually designed plans, which generally means that determination letter applications are no longer required for the IRS’s approval of certain corrective retroactive amendments;

- provides that the correction of interim amendment and non-amender failures must be made by the date of the Voluntary Correction Program (“VCP”) submission, and any corrective plan amendments must be adopted no later than 150 days after the date of the compliance statement;
- removes the user fee schedule from EPCRS and explains that the IRS will provide the EPCRS user fees, including VCP user fees, as part of an annually published list;
- clarifies that Audit Closing Agreement Program (“Audit CAP”) sanctions will no longer be based on the maximum payment amount on disqualification, but instead will be based on facts and circumstances (but generally will not be less than the VCP user fee);
- clarifies that the IRS reserves the right to impose sanctions for VCP submissions in excess of the VCP user fee for “egregious” failures;
- eliminates the 50% refund of the user fee that was previously provided in the case of an anonymous VCP submission that fails to reach resolution, meaning that if an anonymous submission is pulled the sponsor will lose 100% of the user fee;
- clarifies that compliance statements and closing agreements (issued after a VCP or Audit CAP, respectively) do not constitute determinations that a plan is qualified in form or operation, but only that the plan has been timely adopted or that the specific operational failure has been corrected; and
- provides that the VCP application forms will be provided on the IRS website, rather than as an appendix to the revenue procedure, allowing the forms to be updated without a full update to EPCRS.

While Revenue Procedure 2016-51 is a useful update to EPCRS in light of the changes made over the past few years, it generally leaves the correction principles untouched. Given the curtailment of the IRS’ determination letter program, we might see additional changes to EPCRS (e.g., expand the availability of self-correction under certain circumstances). We will keep you apprised of any future guidance or changes to EPCRS.

Plan sponsors and administrators should continue to review their plans in order to address issues that require correction. The Required Amendments List and Operational Compliance List that will now be issued by the IRS on an annual basis should assist with this self-review process. See our [July 2016 Benefits Report article](#) on changes to the determination letter application program. Any corrections made after January 1, 2017 will need to follow the guidelines set forth in Revenue Procedure 2016-51.

If you have any questions or need assistance, please reach out to the author of this article or the attorney with whom you normally work.

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