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Updated IRS Program Offers More Flexibility in Retirement Plan Corrections

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Retirement plan sponsors now have more flexibility to correct operational errors and avoid plan disqualification. In mid-July the IRS released an updated version of the Employee Plans Compliance Resolution System (“EPCRS”). EPCRS is a program that allows plan sponsors to self-correct or negotiate corrections with the IRS to bring plans into compliance with Internal Revenue Code (“Code”) requirements. Under EPCRS, plan sponsors may correct mistakes through three different programs: Self-Correction Program (“SCP”), Voluntary Correction Program (“VCP”), or the Audit Closing Agreement Program (“Audit CAP”).

Key updates include (1) a longer self-correction period, increased ability to self-correct through plan amendments, and expanded options for overpayment corrections; and (2) changes to the anonymous VCP option.

1. Self-Correction Program

The IRS enhanced the self-correction program in the following ways:

- Plan sponsors have an additional year to self-correct significant failures. This allows significant operational failures to be corrected up until the last day of the third plan year following the year in which the failure occurred.
- The following safe harbor corrections are extended:
 - An error in following a participant’s deferral election can be corrected with the reduced 25% qualified non-elective contribution (“QNEC”) up until the end of the third year following the year in which the failure occurred, provided timely notice is given and any missed matching contribution is made; and
 - Automatic enrollment plans need not make QNECs when correcting failures within the nine and one-half month period after the end of the plan year in which the failure occurred, provided that a timely notice is given and any missed matching contribution is made. This safe harbor correction will expire December 31, 2023.
- Self-correction of operational failures by retroactive plan amendment are no longer conditioned on an enhanced benefit, right or feature being provided to all eligible employees.

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- Plan sponsors gain flexibility in correcting overpayments to participants. For example:
 - Participants may be given repayment options (e.g., installment payments);
 - Plan sponsors may recoup amounts by reducing future payments; and
 - Defined benefit plans with certain funding levels may not need to recoup overpayments.
- No correction is required for overpayments or excess contributions under \$250. This amount was increased from \$100.

2. Voluntary Correction Program

Beginning January 1, 2022, plan sponsors will no longer be able to submit anonymous VCP filings. Plan sponsors can instead seek a free and anonymous non-binding VCP pre-submission conference for matters that meet certain criteria. Unfortunately, the IRS will grant requests for conferences at their discretion and only as time permits.

If you have questions about your plan's operation or the need to make corrections, please contact a member of the Kutak Rock [Employee Benefits Practice Group](#).

