

Voluntary Correction Gets A Spring Cleaning

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Insight — 5/11/2006 12:00:00 AM

The Internal Revenue Service has released the long-awaited updated and expanded voluntary correction program ("VCP") for employee retirement plans, the Employee Plans Compliance Resolution System ("EPCRS"), in new Revenue Procedure 2006-27.

Under EPCRS, plan sponsors can correct certain operational and document errors in employee retirement plans, in some cases without notice to the IRS. Correcting plans in this way allows employers to bring their plans into compliance without losing favorable tax treatment for retirement benefits.

The IRS has noted that plan sponsors who do not take advantage of EPCRS, and whose plans are found during examination to have qualification errors, will not receive the favorable tax (or penalty) treatment available in EPCRS programs.

The key changes to EPCRS include the following:

- ***providing that if a plan sponsor corrects the failures in accordance with the requirements of the updated EPCRS, the plan will be treated as satisfying qualification requirements for purposes of the FICA and FUTA taxes;***
- providing rules relating to the availability of programs under EPCRS in cases where the plan or plan sponsor is a party to an abusive tax avoidance transaction;
- updating the definition of "favorable letter;"
- updating the definition of "under examination;"
- ***adding a correction method for certain plan loan failures;***
- ***revising the correction method for a failure to include an eligible employee in a 401(k) plan to lower the required percentage of compensation to be replaced by employer contributions;***
- adding an alternative correction method for a failure to obtain spousal consent;
- providing that as part of both VCP and Audit CAP, if the failure involves the failure to satisfy the age 70½ minimum

required distribution requirements of Code Section 401(a)(9), the IRS will waive the Code Section 4974 excise tax requirements in appropriate cases;

- clarifying submission procedures, providing a streamlined submission procedure for certain nonamender failures, and providing a submission assembly procedure;
- revising the requirements for submitting a determination letter application when correcting certain qualification failures by plan amendment;
- revising the acknowledgement procedures of receipt of a submission (and providing a new acknowledgement letter);
- reducing the compliance fee for a plan where the sole failure is the failure to timely adopt certain plan amendments;
- adding a fee schedule for plans in the determination letter process found to be nonamenders of tax law changes;
- providing that if a nonamender failure is discovered during an employee plans examination, then it is expected that the applicable sanction will be greater than the applicable fee;
- reducing the compliance fee for a plan where the sole failure is the failure to satisfy the minimum distribution rules for 50 or fewer employees;
- expanding the excise taxes that IRS may not pursue; and
- clarifying the scope of a compliance statement issued with respect to certain nonamender failures.

The update and expansion of EPCRS arrives at a time we are seeing increased enforcement efforts by the IRS, including the hiring and training of significant numbers of audit personnel. Thus, the IRS is taking a two-pronged approach to employee plan compliance: increased enforcement and the promotion of voluntary correction. The IRS has provided further information on voluntary compliance on their web page, "Correcting Plan Errors" which provides an EPCRS outline and tools for increased understanding of the voluntary correction programs.

For more information about how you might ensure your retirement plan's compliance with qualification requirements, please contact Holland & Hart's Benefits Law Group.

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