Employee Benefits and Executive Compensation Advisory

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IRS Continues to Expand, Encourage and Simplify Correction Program in 2015 Updates to EPCRS

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In spite of a plan sponsor's best efforts, errors and failures in administering a retirement plan occasionally come to light. We hear about these errors and failures usually following a change in administration, service provider or other staff. It is usually best if corrections are made in order to protect the plan's tax-favored status. One of the correction programs available is the Employee Plan Compliance Resolution System (EPCRS) sponsored by the Internal Revenue Service (IRS).

The IRS recently updated EPCRS in Revenue Procedures 2015-27 and 2015-28. These updates continue to operate along the themes that have generally occurred each time the EPCRS program is updated: expanding corrections, encouraging prompt and voluntary correction, simplifying the procedures and generally clarifying the program.

Under the 2015 updates, the IRS is continuing to provide incentive for plan sponsors to correct errors promptly, rather than wait for a governmental auditor to discover the error and require correction along with a hefty sanction.

The following is a brief description of the key changes.

Expand Availability of the Correction Program

- Provides new correction methods for failures in automatic enrollment and deferrals escalation in 401(k) plans.
- Provides safe-harbor earnings calculations for some failures to implement auto-contribution features.
- Allows new options for corrections that previously required recoupment of participant overpayments.
- Extends the self-correction program eligibility to allow for repeated corrections of excess annual additions as long as corrections for excess annual additions are returned to the affected employees within nine-and-a-half months after the end of the relevant year.

Encourage Prompt and Voluntary Correction

- Provides lower compliance fees for participant plan loan errors in large plans that have a relatively small number of affected loans.
- Adds a safe-harbor correction method for immediate and forward correction of automatic contribution feature errors.
- Adds a special safe-harbor correction method for plans with failures that are for a short period of time and involve elective deferrals, at less cost than under present rules in some cases.
- Expands availability of a reduced compliance fee for correction of failure to satisfy the minimum distribution requirements.

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Simplify and Clarify Correction

- Provides procedural changes that simplify and clarify EPCRS.
- Extends the correction period for adopting certain corrective plan amendments in situations in which a determination letter application is required to be submitted concurrently with the voluntary correction program (VCP) submission.
- Applicants electing a VCP submission must submit documents by completing the newly available IRS Form 14568.

Overview of Specific Changes in EPCRS

Although several changes were made to EPCRS, the majority of those changes were additions and revisions to clarify situations and the meanings of terms under EPCRS. Specifically, updates worth noting include the following.

- Clarifies that corrective plan amendments used for correcting qualification failures under the program for prototype, volume submitter plans and some terminated plans do not need to provide a determination letter application as part of the submission.
- Provides for an extended period of time to correct excess annual additions through the return of elective deferrals to affected employees by changing the reference from two-and-a-half months to nine-and-a-half months.
- Clarifies that the requirement to submit a determination letter application to the IRS does not apply to: (1) certain prototype and volume submitter plans; and (2) terminated plans where the assets were fully distributed at least one year prior to the date of the correction filing.
- Clarifies that there is flexibility in correcting an overpayment (applicable to either a defined benefit plan or a defined contribution plan) as long as the correction method is consistent with the correction principles and other rules for EPCRS.

Our Experience With EPCRS

EPCRS is probably the most commonly used correction program. Often errors are discovered during a routine audit conducted for the Form 5500 filing. More and more auditors are requiring assurance from the employer or providers that this program is being used in order for the auditor to issue its report. We can help determine if the self-correction program can be used to correct the error or help coordinate and prepare a VCP submission, if needed. We encourage you to identify problems with regular compliance reviews and correct the errors by using the EPCRS program in order to reduce future sanctions and avoid potentially large liabilities. Katten attorneys are able to assist with this review.