

UPDATES TO EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM (EPCRS)

"RESTORATIVE PAYMENTS" TO QUALIFIED DEFINED CONTRIBUTION PLANS

The Internal Revenue Service has released the following published guidance:

<p>Revenue Procedure 2002-47 (Modifies and supersedes Revenue Procedure 2001-17)</p>	<p>Modifications to EPCRS. See below Highlights of Revenue Procedure 2002-47.</p> <p>For a Summary of Changes made to EPCRS by Revenue Procedure 2002-47, please visit the Retirements Plans web page and go to the Employee Plans Compliance Resolution System (EPCRS) section.</p>
<p>Revenue Ruling 2002-45</p>	<p>Revenue Ruling 2002-45 provides guidance where, based on all of the relevant facts and circumstances, the employer makes payments to the trust of a qualified defined contribution plan to restore the plan's losses due to an action that gives rise to a reasonable risk of liability for a breach of fiduciary responsibility under Title I of ERISA. The revenue ruling holds that in the circumstances contained therein, the additional amounts are not subject to the nondiscrimination rules of Code section 401(a)(4) or to the special nondiscrimination tests of sections 401(k) or 401(m). The revenue ruling also holds that the "restorative payments" are not subject to the deduction limits of section 404, are not subject to the limitations on contributions and benefits under section 415(c) and are not subject to the excise tax on nondeductible contributions under section 4972.</p>

Highlights of Revenue Procedure 2002-47

Revenue Procedure 2002-47 (effective 7/22/2002) updates EPCRS, a comprehensive system of correction programs for sponsors of retirement plans that are intended to satisfy the requirements of sections 401(a), 403(a), 403(b), or 408(k) of the Internal Revenue Code (the

"Code"), but that have not met these requirements for a period of time. EPCRS permits plan sponsors to correct these failures and thereby continue to provide their employees with retirement benefits on a tax-favored basis. The components of EPCRS are the Self-Correction Program ("SCP"), the Voluntary Correction Program ("VCP"), and the Audit Closing Agreement Program ("Audit CAP").

Modifications made by Revenue Procedure 2002-47 include:

- Extending the duration of the self-correction period under SCP for significant operational compliance failures where the Plan Sponsor assumes a plan in connection with a corporate merger, acquisition, or other transaction. (Section 9.02(2))
- Extending the Anonymous Submission Procedure indefinitely. (Section 10.13(3))
- Expanding the Anonymous Submission Procedure to permit the submission of failures listed in Appendix A and Appendix B. (Section 10.13(1))
- Expanding the Anonymous Submission Procedure to VCGroup and VCSEP submissions. (Section 10.13(1))
- Expanding the definition of Employer Eligibility Failure to include the adoption of a 401(k) plan by any ineligible employer. (Section 5.01(2)(d))
- Broadening the VCGroup procedures to permit Eligible Organizations to submit Operational and Plan Document Failures in a single submission. (Section 10.15(1))
- Increasing the de minimis amount relating to corrective distributions. (Section 6.02(5)(b))
- Providing a de minimis rule for correcting certain Overpayments. (Section 6.02(5)(c))
- Clarifying the date by which correction of a failure related to Transferred Assets must be completed. (Section 12.08)
- Clarifying that the correction of failures in a terminated plan may be made under VCP. (Section 10.03)
- Clarifying what items may be excluded from the initial submission under the Anonymous Submission Procedure. (Section 10.13(1))
- Updating the definition of Favorable Letter. (Section 5.01(4))
- Modifying the correction procedure relating to Excess Amounts under VCT and overcontributions under VCSEP. (Sections 12.05(3) and 12.07(2))
- Clarifying the factors considered under Audit CAP for determining a sanction amount. (Section 14.02)
- Revising the checklist in Appendix C to include questions relating to Transferred Assets and the waiver of the excise tax under Code section 4974. (Appendix C items 10 and 18)

All capitalized terms above are defined in Revenue Procedure 2002-47.

Update on Form 5310

The new Form 5310, which is expected to be available by the end of July 2002, will make the Schedule Q optional. However, until the new Form 5310 is available, filers may use the July 1998 version of Schedule Q. If the [July 1998 version](#) is not available, filers can use the [new version](#) of Schedule Q with a statement to satisfy Internal Revenue Code sections 401(a)(4) and 410(b).

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