

October 14, 2021

*Submitted Electronically via the Federal eRulemaking Portal at  
Regulations.gov*

Internal Revenue Service  
Attn: CC:PA:LPD:PR (Revenue Procedure 2021-30)  
Room 5203, P.O. Box 7604,  
Ben Franklin Station,  
Washington, D.C. 20044

**RE: Revenue Procedure 2021-30**

Ladies and Gentleman:

The Pension Rights Center<sup>1</sup> and Covington & Burling LLP<sup>2</sup> are pleased to respond to the request by the Internal Revenue Service (“IRS”) to comment on Rev. Proc. 2021-30, which updated selected correction procedures for benefit overpayments under the Employee Plans Compliance Resolution System (“EPCRS”). For decades, EPCRS’ overpayment recovery procedures have upended the retirement security of countless innocent retirees. While the new correction procedures adopt important improvements over prior iterations, they don’t go far enough to protect innocent retirees from destructive—and unnecessary—overpayment recovery actions that will still occur under the new rules.

We appreciate IRS’s recognition for the first time in this latest iteration of EPCRS that the minimum funding rules ensure that a defined benefit plan automatically is made whole for overpayments without the need for separate recovery efforts—thereby making recovery of overpayments unnecessary to protect either other plan participants or the financial condition of the plan. Indeed, in many circumstances, as a result of employer contributions under the minimum funding rules alone, a plan will end up

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<sup>1</sup> The Pension Rights Center is a Washington, D.C. non-profit consumer organization that for the last 45 years has been dedicated to protecting and promoting the requirement security of American workers, retirees, and their families.

<sup>2</sup> Covington & Burling LLP is an international law firm headquartered in Washington, D.C., which advises many of the nation’s largest employers on employee benefits matters, including matters related to EPCRS.

better funded as a result of an overpayment than if the overpayment had not occurred.<sup>3</sup>

Notwithstanding this recognition, EPCRS provides plans with only limited opportunities to avoid being compelled to make duplicative recoveries. To avoid such compulsion, most defined benefit plans will need to rely on the contribution credit correction method introduced in this latest iteration of EPCRS. However, we understand from experienced actuaries that the cost of performing the complex calculations needed to satisfy this correction method in many cases will exceed the amount of the overpayment at issue—in effect, making the contribution credit correction method unavailable in practice to plans and imprudent for them to pursue.

As a result, most defined benefit plans will still be compelled to recover overpayments in far too many overpayment scenarios—even though doing so is not necessary to protect other plan participants and, in fact, will result in a double recovery by the plan. Yet where plans do seek recovery, EPCRS fails to provide innocent participants adequate protection from common, and onerous, recovery demands, including:

- No limit on the length of time since the overpayments occurred,
- No laches on the plan's failure to timely identify the overpayment,
- No consideration of the hardship recovery would impose on the participant,
- No restrictions on seeking recovery via threats of litigation or through collection agencies,
- No requirement to take into account the participant's lack of culpability for the overpayment,

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<sup>3</sup> By contrast, EPCRS does not recognize that existing law also ensures that a defined contribution plan is made whole for any loss suffered by other participants as a result of an overpayment. As an initial matter, not every overpayment from a defined contribution plan causes a corresponding loss to another participant's account. However, where an overpayment from one participant's account does result in a loss to another participant's account, the anti-forfeiture rules mandate that the lost funds be promptly restored to the other participant's account, regardless of whether the plan is able to recover the overpayment from its recipient or any other party.

- No complete prohibition on recovering interest or lost plan earnings on overpayments, where the plan, and not the participant, bears responsibility for the overpayment,
- No requirement that recovery cease once the full amount of the overpayment has been recovered,
- No ability for the responsible plan fiduciary to exercise its fiduciary discretion as to whether and how much to recover,
- No ability to return rolled-over overpayments without adverse tax consequences, and
- No requirement to permit participants to contest recovery efforts pursuant to the plan's claims and appeals procedures.

Innocent participants who have relied on a plan's benefit calculations in planning their retirement on the assumption that those calculations were correct have done nothing wrong—and, as a matter of fundamental fairness, should be afforded these protections as soon as humanly possible.

Legislation that would accomplish this critical goal is currently pending in Congress<sup>4</sup> and has received strong support in both the House and Senate, from both political parties, and from representatives of retirees, plan fiduciaries, and employers. We respectfully urge the IRS and Treasury to join us in supporting this legislation as the fastest and most certain way to provide the protections long overdue to innocent recipients of benefit overpayments, while at the same time protecting the retirement security of all plan participants.

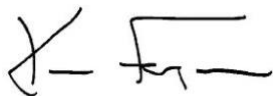
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<sup>4</sup> See H.R. 2954, [Securing a Strong Retirement Act of 2020](#), § 301, and S.1770, [Retirement Security & Savings Act](#), § 322.

We stand willing to discuss this comment. If you have any questions, or if we can be of further assistance, please do not hesitate to contact us.

Respectfully submitted,



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