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Compliance

EPCRS Changes Make Key Clarifications For Employers, Participants, Practitioners Say

Two recent Internal Revenue Service updates to its correction program, the Employee Plans Compliance Resolution System, ease some burdens on employers discovering costly errors in their plans, practitioners told Bloomberg BNA.

Revenue Procedure 2015-27 provided good clarification for employers who are reluctant to self-correct because of the impact trying to recoup overpayments would have on retirees, they said.

In the guidance, released March 27, the IRS made clear that plans discovering overpayments don't need to ask for the money back from retirees before taking other avenues to make the plan whole (42 BPR 610, 3/31/15). The guidance also lessened the costs associated with correcting plan loan errors.

''This is a really good clarification,'' J. Rose Zaklad, an associate with Groom Law Group Chartered in Washington told Bloomberg BNA.

''Employers were very reluctant to go after these retirees to seek repayments, but they thought they had to do so,'' she said.

Less than a week after issuing Rev. Proc. 2015-27, the IRS modified EPCRS again in Rev. Proc. 2015-28 (42 BPR 650, 4/7/15).

The guidance offered new safe harbor correction methods related to automatic contribution features through the EPCRS, aiming to bolster participation in tax code Section 401(k) and other similar plans.

David Mustone, a partner at Hunton & Williams LLP in McLean, Va., told Bloomberg BNA that the new guidance was ''significant'' and another incremental step in improving the EPCRS.

Loans. Ilene H. Ferenczy, managing partner of Ferenczy Benefits Law Center LLP in Atlanta, praised the changes in Rev. Proc. 2015-27, particularly the changes regarding plan loan corrections.

When it comes to mistakes on plan loans, Ferenczy told Bloomberg BNA, if a participant messes the loan up, there isn't much sympathy for them. However, if there truly is a plan mistake, it can be a costly error for the participant because the money associated with the loan would become taxable income, she said.

Additionally, the IRS requires a filing to correct a plan loan error, which can come with some exorbitant high fees, depending on the size of the plan, Ferenczy said.

''The IRS filing fees are usually based on the number of participants in the plan. The change made the fee relate to the number of participants with loan problems, so it represents a substantial decrease in the costs, particularly for larger plans,'' she said.

Zaklad had a similar view of the plan loan changes, saying in most plan loan failures she sees, the participants aren't at fault. She said the changes to EPCRS provide ''really great relief. I think a lot of people are excited about it and I do think that people will be using this reduced fee and you might be seeing more loan'' corrections through the IRS's Voluntary Correction Program.

While Ferenczy was pleased with the EPCRS advances, she said the IRS didn't go as far as many in the retirement practitioner community would have liked. Many would like to be able to self-correct the failure, she said.

''The IRS went part way on this. They basically made it cheaper in terms of user fees and stuff to correct this, but they still require a filing,'' she said. ''It's good, it's just not as good as we would have liked.''

Mustone echoed that sentiment, saying that while the fee reductions were ''a great step forward,'' many practitioners would like the IRS to allow for self-corrections in this area.

Overpayments. Karen Ferguson, director of the Pension Rights Center, told Bloomberg BNA that the changes in Rev. Proc. 2015-27 were a ''very significant development,'' particularly for retirees who have accidentally been overpaid, in some cases for years.

''There's circumstances where recoupment makes sense: fraud, or if the retiree could have known, or in the case of executives or company owners. They can be presumed to know. But in the typical situation where it's just a mistake, it's nobody's fault, it's just a mistake. The idea of having the retirees pay for these mistakes when they had no way of knowing about it was just unconscionable,'' Ferguson said.

Zaklad said the new changes will result in a willingness on the part of plan sponsors to correct overpayments, because they won't be worried about going after participants.

Mustone said while many may have read EPCRS to require them to go after participants for overpayments, he didn't see it that way.

''I have not read it, and a lot of practitioners have not read it, as requiring that you have to first go to try and collect it from the affected participants. But what's good is that the IRS has made that clear,'' he said.

Automatic Enrollment. Mustone said the most extensive and significant change in Rev. Proc. 2015-28 is the correction for a failure to automatically enroll a participant.

''What the IRS has said is, 'You will not have to do any sort of makeup for missed deferrals in the auto contribution context' '' if they meet some requirements set out in the guidance, he said.

Zaklad said as with plan loan errors, automatic enrollment errors can occur because of processing issues, but those processing issues can turn out to be very expensive for employers. Prior to Rev. Proc. 2015-28, if an employer failed to automatically enroll a participant, they would have to make a 50 percent corrective contribution to the plan on behalf of the employee.

This can result in a ''windfall'' for participants who were possibly unaware that they were supposed to be automatically enrolled, she said.

''I do think it does deter employers from implementing the automatic contribution arrangements, so I think that this is going to be really helpful. I think we'll see a lot of corrections under this new rule,'' Zaklad said.

While the Treasury Department and the IRS are hoping this guidance will push more plans in the direction of automatic enrollment, Mustone isn't so sure that that is the case.

''I'm not convinced that this by itself will tip the scales for somebody who is already otherwise reluctant to get into to set up an auto enrollment because of cost, but it certainly won't hurt,'' he said.

The changes certainly reduce correction costs and remove the ''windfall'' that many plan sponsors may take issue with, he said.

''But is it enough to tip the scales for people who are really concerned about the costs of errors? I'm not sure,'' Mustone said.

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