EPCRS Updated and New ICRS Program Established for Correcting IRA Errors

The Department of Treasury and the IRS issued two revenue procedures that update the Employee Plans Compliance Resolution System (EPCRS) and establish a new IRA Compliance Resolution System (ICRS) pursuant to the SECURE 2.0 Act of 2022 (SECURE 2.0). In particular, (1) Revenue Procedure 2026-34 updates EPCRS, the correction system for sponsors of employer retirement plans, and modifies and supersedes Revenue

Procedure 2021-30, and (2) Revenue Procedure 2026-33 establishes ICRS, a new correction program for IRAs, which is modeled after EPCRS.

UPDATED EPCRS GUIDANCE FOR RETIREMENT PLANS

EPCRS includes the Self-Correction Program, the Voluntary Correction Program, and the Audit Closing Agreement Program. Together, these programs allow sponsors of qualified plans, section 403(b) plans, SEP arrangements, and SIMPLE IRA plans to make corrections and continue providing retirement benefits on a tax-favored basis.

Among other changes, Revenue Procedure 2026-34 includes the following:

- **Updates for changes under SECURE 2.0**. The update incorporates changes made by sections 301(b), 305, and 350 of SECURE 2.0 and interim guidance in Notice 2023-43, Notice 2024-2, and Notice 2024-77. For example, the update includes expansion of the Self-Correction Program, the permanent extension and expansion of a reduced corrective contribution for automatic enrollment and escalation failures, and revisions to reflect when an inadvertent benefit overpayment must be restored, when recoupment may be sought, and how certain overpayments are treated for rollover purposes.
- **Expansions and improvements**. The update expands and improves EPCRS, including by adding a provision regarding the adoption of certain retroactive amendments to clarify the requirements for a limited correction method used in VCP and Audit CAP, liberalizing the ability to make a group submission under VCP, and adding a safe harbor correction method for plan sponsors that fail to provide a suspension of benefits notice to certain participants in a defined benefit plan.
- **Restructuring and simplification**. The update

significantly restructures and streamlines EPCRS, including by merging Appendix A and Appendix B from Revenue Procedure 2021-30 into a single Appendix, removing duplicative provisions, updating correction method examples, adding definitions for SEP arrangements and SIMPLE IRA plans, and reorganizing certain provisions.

NEW ICRS PROGRAM FOR IRAs

In general. The new ICRS program, set forth in Revenue Procedure 2026-33, permits IRA custodians and IRA owners to request correction of certain eligible inadvertent failures caused by service-provider errors. ICRS also provides a process for retirement plan participants and IRA owners (and their beneficiaries) to request to waive the requirement that a rollover to another plan or IRA be made within 60 days of the distribution from the first plan or IRA. Self-correction is not available under ICRS at this time. At launch, IRA Voluntary Correction Program (IVCP) corrections will be limited to four types of failures:

- **Required minimum distribution failures.** A service-provider error causes an IRA owner to receive less than the required minimum distribution for the year.
- **IRA establishment failures**. A service provider establishes the wrong type of IRA or a non-IRA account after the IRA owner requested a specific type of IRA.
- **Nonspouse beneficiary failures.** An inadvertent error by a service provider results in a taxable distribution to a nonspouse beneficiary or results in the taxable transfer of inherited IRA assets into an account that is not an inherited IRA.
- **60-day rollover failures.** A distribution from a retirement plan or IRA is not rolled over within 60 days and denying a waiver would be against equity or good

conscience, including because of a casualty, disaster, or other event beyond the individual's reasonable control.

Applicants must submit Form 15443, Application for Individual Retirement Account/Annuity (IRA) Voluntary Correction Program (IVCP), through Pay.gov and pay the applicable user fee. For non-group submissions filed before Jan. 1, 2028, the fee is $3,500. Higher fees apply for group submissions. The applicant must complete the approved correction within a designated time period after receiving a compliance statement covering the failures addressed.

Transition to ICRS of 60-day rollover waiver requests. During 2027, taxpayers may request a waiver of the 60-day rollover requirement under either ICRS or the private letter ruling procedures in Revenue Procedure 2027-4 (which is expected to be published in early January). Beginning in 2028, the Treasury Department and the IRS anticipate that these waiver requests will be made only through ICRS. Existing automatic waiver and self-certification procedures remain available at no cost for taxpayers who meet the requirements under Revenue Procedures 2020-46, 2016-47, and 2003-16.

EFFECTIVE DATES AND REQUEST FOR COMMENTS

The new EPCRS revenue procedure is effective immediately, and the ICRS revenue procedure is effective May 1, 2027. The Treasury Department and the IRS invite comments on both EPCRS and ICRS. The EPCRS revenue procedure specifically requests comments on proposals described in the revenue procedure for calculating earnings by reference to a DOL online calculator for certain defined contribution plan corrections. The ICRS revenue procedure specifically requests comments on additional failures that could be corrected in future versions of ICRS. All comments should be submitted by January 20, 2027.

More specifically, Section 2 of Revenue Procedure 2026-34

gives its specific effects and is reproduced below.

SECTION 2. EFFECT OF THIS REVENUE PROCEDURE ON PROGRAMS

.01 Effect on programs. This revenue procedure modifies and supersedes Rev. Proc. 2021-30, 2021-31 IRB 172, the most recent prior consolidated statement of the correction programs under EPCRS.

.02 Description of modifications. This update to Rev. Proc. 2021-30 incorporates changes made to EPCRS by recent legislation and interim guidance issued in Notice 2023-43, 2023-24 IRB 919, Notice 2024-2, 2024-2 IRB 316, and Notice 2024-77, 2024-45 IRB 1093. Changes made in response to comments are noted in the changes described in this section 2.02. This update to Rev. Proc. 2021-30 makes the following changes:

(1) SECURE 2.0 Act. Division T of the Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4459 (2022), known as the SECURE 2.0 Act of 2022 ("SECURE 2.0 Act"), was enacted on December 29, 2022. Section 301 (recovery of retirement plan overpayments), section 305 (expansion of the Employee Plans Compliance Resolution System), and section 350 (safe harbor for corrections of employee elective deferral failures) of the SECURE 2.0 Act made changes that affected several provisions of Rev. Proc. 2021-30. The Department of the Treasury ("Treasury Department") and the IRS issued three notices providing interim guidance on these provisions. Notice 2023-43 provides interim guidance on section 305; Notice 2024-2 provides interim guidance on section 350; and Notice 2024-77 provides interim guidance on section 301(b). This revenue procedure incorporates the provisions of sections 301(b), 305, and 350 and the guidance provided in these notices as described in the following paragraphs.

(a) Section 305 of the SECURE 2.0 Act (expansion of Employee

Plans Compliance Resolution System). Section 305 of the SECURE 2.0 Act generally expands SCP to permit self-correction of Eligible Inadvertent Failures, including loan failures. This updated revenue procedure incorporates the provisions of section 305 and Notice 2023-43 by:

(i) defining Eligible Inadvertent Failure, see section 4.09;

(ii) eliminating the requirement that a Qualified Plan or a Section 403(b) Plan be the subject of a favorable letter to use SCP;

(iii) listing failures that are not eligible for SCP, see section 7.03;

(iv) permitting self-correction of certain Demographic Failures, Employer Eligibility Failures, and Plan Document Failures, see section 6.05, 6.06, and 6.07;

(v) permitting self-correction of loan failures identified in this revenue procedure, see section 6.13;

(vi) expanding self-correction for failures occurring in SEP Arrangements and SIMPLE IRA Plans, if certain plan document requirements are met, see section 7;

(vii) requiring that a Plan Sponsor ensure that a spouse receives the benefit the spouse is entitled to under sections 401(a)(11) and 417 if there was a failure to obtain spousal consent for a loan and the loan has not been repaid at the time a distribution is made, see section 6.13(4);

(viii) requiring that self-correction of an Eligible Inadvertent Failure be completed within a reasonable period after identification of the failure, and that a self-correction that is completed by the later of the last day of the third plan year following the plan year in which the failure occurred or 18 months after identification of the

failure is deemed to have been completed within a reasonable period,[1] see section 7.05;

(ix) treating self-correction of an Employer Eligibility Failure as having been completed within a reasonable period if the Plan Sponsor ceases all contributions to the plan as soon as reasonably practicable after the failure is identified and no later than the last day of the sixth month following the date the failure is identified, see sections 6.05 and 7.05;

(x) requiring a Plan Sponsor to provide documentation substantiating self-correction of an Eligible Inadvertent Failure when a plan or Plan Sponsor is Under Examination, see section 7.05(2)(b);

(xi) providing that, once a plan or Plan Sponsor comes Under Examination, SCP may only be used if: (a) the Plan Sponsor has demonstrated a specific commitment to implement a self-correction with respect to the Eligible Inadvertent Failures, including corrections for Plan Document Failures, Employer Eligibility Failures, and Demographic Failures; or (b) the failure is an insignificant Operational Failure, see sections 7.05, 8.01, and 8.02;

(xii) establishing that a determination of whether actions taken by a Plan Sponsor demonstrate a specific commitment to implement self-correction is based on all the facts and circumstances and must include a demonstration that the Plan Sponsor is actively pursuing correction, see section 8.01;

(xiii) restricting the availability of SCP to correct failures discovered during the determination letter process so that SCP is only available with respect to those failures if they are insignificant Operational Failures, see section 9.06(2); and

(xiv) specifying that an elective deferral failure may be corrected with a reduced qualified nonelective contribution ("QNEC") only if the correction is completed no later than the

last day of the third plan year following the plan year in which the failure occurred (rather than by the end of the SCP correction period for significant failures because that deadline no longer applies due to the passage of section 305 of the SECURE 2.0 Act), see Appendix section .05(9)(b).[2]

(b) Section 350 of the SECURE 2.0 Act (safe harbor for corrections of employee elective deferral failures). Section 350 of the SECURE 2.0 Act adds section 414(cc) to the Code. Section 414(cc) generally reinstates the safe harbor method in section .05(8), Appendix A of Rev. Proc. 2021-30, that permits correction, with no QNEC, of an employee deferral failure in a plan with an automatic enrollment or automatic escalation feature.[3]

This updated revenue procedure incorporates the provisions of section 350 of the SECURE 2.0 Act and Notice 2024-2, relating to section 401(k) plans, Section 403(b) Plans, SEP Arrangements, or SIMPLE IRA Plans, in Appendix section .05(8) by:

(i) eliminating the December 31, 2023, sunset of the safe harbor correction method;

(ii) extending the correction method to SEP Arrangements and SIMPLE IRA Plans;

(iii) extending the correction method to terminated employees; and

(iv) requiring that a corrective allocation of matching contributions be made within a reasonable period, as determined by all relevant facts and circumstances, after the date on which the correct elective deferrals begin (or would have begun but for the employees' termination of employment).[4]

(c) Section 301 of the SECURE 2.0 Act (recovery of retirement plan Overpayments). Section 301(b) of the SECURE 2.0 Act adds

sections 414(aa) and 402(c)(12) to the Code. Section 414(aa) generally provides that no corrective payment is required for an Inadvertent Benefit Overpayment. Section 402(c)(12) provides rollover treatment for an Inadvertent Benefit Overpayment.

This updated revenue procedure incorporates the provisions of section 301(b) of the SECURE 2.0 Act and Notice 2024-77 by:

(i) defining Inadvertent Benefit Overpayment, see section 4.01(3)(d) and 4.02(4);

(ii) excluding failures related to sections 401(a)(17), 415, and 436 of the Code from the elimination of the requirement to restore an Inadvertent Benefit Overpayment to the plan, see section 6.12(1)(a);

(iii) permitting a Plan Sponsor to seek recoupment of an Inadvertent Benefit Overpayment, see section 6.12(1)(a);[5]

(iv) requiring a corrective payment to the Plan for an Inadvertent Benefit Overpayment related to a section 401(a)(17), 415, or 436 failure that is not recouped from the recipient with an exception for small payments under $250,[6] see section 6.03(4) and 6.12(1)(b);

(v) providing that certain failures may require a corrective payment if the Inadvertent Benefit Overpayment results in another failure, such as (a) a corrective payment due to an incorrect allocation of a profit-sharing contribution that results in benefit underpayments to others, or (b) restoration of an impermissible forfeiture in accordance with section 411, see section 6.12(1)(a);

(vi) treating as an eligible rollover distribution any Inadvertent Benefit Overpayment not sought by the Plan Sponsor, see section 6.12(1)(c)(i);

(vii) requiring that a Plan Sponsor seeking recoupment of

an Inadvertent Benefit Overpayment notify the recipient that any unreturned portion is not an eligible rollover distribution, see section 6.12(1)(c)(i);

(viii) treating recoupment as having been sought with respect to any Inadvertent Benefit Overpayment that is due to a section 415 or 401(a)(17) failure (so that the Plan Sponsor must notify the recipient that any unreturned portion of the Inadvertent Benefit Overpayment is not an eligible rollover distribution), see section 6.12(1)(c)(ii);

(ix) treating the transfer of an Inadvertent Benefit Overpayment that had been rolled over from the originating plan to a second plan as an eligible rollover distribution and also treating as an eligible rollover distribution the transfer of the amount from the second plan back to the originating plan, regardless of plan terms, see section 6.12(1)(c)(iii);

(x) permitting a Plan Sponsor that wishes to continue Inadvertent Benefit Overpayments that are not in accordance with plan terms to adopt an amendment that increases past and future benefit payments if the amendment does not violate any applicable Code provision, including section 401(a)(17) or 415, see section 6.12(1)(a) and (3); and

(xi) eliminating the description of the funding exception method and contribution credit method and referencing Rev. Proc. 2021-30 for the description of these methods, see section 6.12(3)(d).

(2) Other modifications. In addition to incorporating sections 301(b), 305, and 350 of the SECURE 2.0 Act, this updated revenue procedure makes other changes by:

(a) referencing the availability of VCAP for resolving certain income and excise tax issues that are ineligible for resolution under EPCRS and giving the IRS the discretion to determine that a submission is ineligible for VCP and may be

resolved under VCAP, see sections 1.04 and 9.07(2);

(b) referencing the availability of an IRA compliance resolution system for resolving certain failures related to IRAs that are ineligible for resolution under EPCRS, see section 1.05;

(c) updating definitions related to Plan Document Failures by incorporating the definitions used in Rev. Proc. 2022-40, 2022-47 IRB 487 (determination letter program for individually designed plans), and Rev. Proc. 2023-37, 2023-51 IRB 1491 (opinion letter program for Pre-approved Plans), see section 4.01(2)(a) and 4.02(2)(a);

(d) clarifying that, for purposes of SCP eligibility, a failure to initially adopt a written plan does not include a failure in which (1) employees of an employer are participating in a plan adopted by a Plan Sponsor; and (2) the employer has not adopted the plan as a participating employer,[7] see sections 6.07(3)(c) and 7.03(1);

(e) revising certain definitions and correction methods applicable to SEP Arrangements and SIMPLE IRA Plans, see sections 4.06, 4.07, and 6.17;

(f) clarifying that certain income or excise tax issues are ineligible for VCP and Audit CAP, see section 5.01(1)(b) and (c);

(g) clarifying that failures in a fully insured defined benefit plan that is described in section 412(e)(3) of the Code are generally not eligible for SCP, VCP, or Audit CAP, see sections 5.01(1)(b), 5.01(1)(c), and 7.03(10);

(h) eliminating the requirement for a Plan Sponsor to notify an individual that an Excess Amount of $250 or less is not an eligible rollover distribution, see section 6.03(5);

(i) revising procedures for locating lost

participants, see section 6.03(6);

(j) adding a provision regarding the adoption of certain retroactive amendments to clarify the requirements for a limited correction method used in VCP and Audit CAP, see section 6.07;

(k) revising the correction principle for failure to obtain spousal consent in certain Qualified Plans to require that the Plan Sponsor ensure that the spouse receives the benefit the spouse is entitled to receive, see section 6.08 and Appendix section .07;

(l) clarifying the determination of actuarial equivalence for corrective distributions from defined benefit plans (underpayments), see section 6.10;

(m) revising procedures for a group submission under VCP, see sections 9.11 and 10.04(13);

(n) revising the Audit CAP sanction for Nonamender Failures discovered during the determination letter application process, see section 13.04;

(o) eliminating a special rule relating to brief exclusions from elective deferrals and after-tax employee contributions previously in Appendix B section .02(1)(F) to Rev. Proc. 2021-30;

(p) clarifying that the correction methods for employee exclusion failures with respect to after-tax employee contributions may be used for failures involving partial years,[8] see Appendix section .05(2)(d)(i);

(q) extending a safe harbor correction method that permits a reduced QNEC to correct deferral failures so that it applies to terminated employees and is available to correct after-tax employee contribution failures,[9] see Appendix section .05(9)(b) and (d);

(r) adding a method for determining the missed deferral if all non-highly compensated employees are improperly excluded from making deferrals,[10] see Appendix section .05(2)(b);

(s) adding a safe harbor correction method for Plan Sponsors that fail to provide a suspension of benefits notice to certain participants in a defined benefit plan, see Appendix section .10;

(t) revising certain VCP and Audit CAP procedures to include updated references that reflect the expansion of SCP, the issuance of Rev. Proc. 2022-40 and Rev. Proc. 2023-37, and revised internal Employee Plans procedures; and

(u) making miscellaneous style changes, including (i) merging Appendix A and Appendix B to Rev. Proc. 2021-30 into a single Appendix; (ii) removing duplicative provisions; (iii) updating correction method examples by revising annual limits, contributions, and plan years; and (iv) reorganizing certain provisions.[11]

.03 Future enhancements and request for comments. (1) Future enhancements. It is expected that the Treasury Department and the IRS will continue to update EPCRS. The Treasury Department and the IRS continue to invite further comments on how to improve EPCRS. For information on how to submit comments, see section 16.

(2) Request for comments on proposal for calculating Earnings. This revenue procedure currently provides that an allocation or contribution made to correct a failure in a defined contribution plan should be adjusted for the earnings that would have been allocated or contributed to the participant's account had the failure not occurred (from the date of the failure through the date of correction), and, for these corrections, this revenue procedure also provides that a Plan Sponsor may, but is not required to, adjust for losses. The

Appendix provides for safe harbor methods for calculation of earnings for a correction of an Operational Failure in a defined contribution plan (in general, a corrective contribution or allocation that increases one or more employees' account balances). The safe harbor methods do not apply to corrective distributions or reductions. The safe harbor methods are based on actual earnings of the applicable account, fund, or plan. However, section 6.03(2) provides an exception stating that, under certain circumstances, if it is not feasible to make a reasonable estimate of what the actual investment results would have been, a reasonable interest rate may be used, and, for this purpose, the interest rate used by the Department of Labor's Voluntary Fiduciary Correction Program ("VFCP") Online Calculator ("DOL Online Calculator")[12] is deemed to be a reasonable interest rate. The DOL Online Calculator uses the section 6621(a)(2) and (c)(1) underpayment rates in effect during the time period of the failure and the corresponding factors from Rev. Proc. 95-17, 1995-1 CB 556, which reflect daily compounding. The DOL Online Calculator uses the rate in section 6621(a)(2) if lost earnings do not exceed $100,000 and the rate in section 6621(c)(1) if lost earnings exceed $100,000. The rate under section 6621(a)(2) is based on the Federal short-term rate plus three percentage points, and the rate under section 6621(c)(1) is the rate under section 6621(a)(2) plus two percentage points.

In response to stakeholder suggestions, the Treasury Department and the IRS are considering ways to expand the use of the DOL Online Calculator to calculate earnings. Expanded use of the DOL Online Calculator has the potential to reduce earnings calculation costs, complexity, and uncertainty. However, the DOL Online Calculator rate of section 6621(a)(2) may be too low as compared to average rates of return for private defined contribution plans over recent periods. Additionally, it would be inappropriate to permit Plan Sponsors to choose to calculate earnings based on the DOL

Online Calculator during periods of high returns and to use actual earnings during periods of low, or even negative, returns.

The Treasury Department and the IRS have developed a proposal that would require use of the DOL Online Calculator earnings assumption based on the underpayment rate under section 6621(c)(1), which is higher than the rate under section 6621(a)(2). Using the DOL Online Calculator in a way that generates use of the higher underpayment rate requires some manipulation, but should not significantly increase costs, complexity, or uncertainty. The proposal also would impose an earnings floor, as described in (b) below, with respect to correction methods that permit use of the safe harbor earnings calculation methods described in the Appendix.

Comments are requested on the following specific proposals:

(a) Addition of another safe harbor method under Appendix section .14 for calculating earnings for a correction of an Operational Failure in a defined contribution plan (in general, a corrective contribution or allocation that increases one or more employees' account balances) which would permit the use of the underpayment rate described in section 6621(c)(1) (used in the DOL Online Calculator if lost earnings exceed $100,000);[13] and

(b) If this revenue procedure does not require a specific earnings method, addition of a requirement that the DOL Online Calculator underpayment rates (described in section 6621(a)(2) and (c)(1), as applicable) must be used as a floor (a minimum amount of earnings) for determining the amount of earnings under all corrections of Operational Failures in defined contribution plans (in general, corrective contributions or allocations that increase one or more employees' account balances), including when any other safe harbor method is used to determine the earnings.

Comments are also requested on whether the benefit restoration calculation method available under certain circumstances in section 6.03(2) should be revised to be consistent with the prior paragraph.

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[1] Notice 2023-43 provides that a correction completed within 18 months after identification of a failure is deemed to be a correction made within a reasonable period. In response to comments, this deemed reasonable period has been modified to provide that if a correction of a failure is completed by the later of the last day of the third plan year following the plan year in which the failure occurred or 18 months after identification of the failure, the correction is deemed to have been completed within a reasonable period.

[2] This correction deadline was revised after consideration of comments.

[3] Pursuant to authority provided in section 414(cc)(4)(E), for the Treasury Department and the IRS to prescribe guidance to carry out the purposes of section 414(cc), an error under section 414(cc)(2) may only be corrected upon satisfaction of the requirements of this revenue procedure (or a successor revenue procedure).

[4] Q&A I-4 of Notice 2024-2 provides that a corrective allocation of matching contributions made by the last day of the sixth month following the month in which correct elective deferrals begin is deemed to have been made within a reasonable period. In response to a comment, the six-month period in Q&A I-4 has been extended to twelve months.

[5] Section 206(h) of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829, as amended (ERISA) may limit a Plan Sponsor’s ability to seek recoupment.

[6] Notice 2024-77 did not include this small payment

exception. The exception has been added to this revenue procedure in response to a comment.

[7] This clarification was made in response to comments.

[8] This revenue procedure's clarification that certain correction methods can be used for partial plan year failures was made after consideration of comments.

[9] This revenue procedure's extension of the safe harbor correction method so that it applies to failures with respect to after-tax employee contributions and terminated employees was made after consideration of comments.

[10] This revenue procedure's additional method for determining the missed ADP if all non-highly compensated employees have been excluded with respect to deferrals was made after consideration of comments.

[11] Several commenters requested stylistic changes, for example, the removal of duplicative provisions.

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[12] The DOL Online Calculator is found at: https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/correction-programs/vfcp.

[13] Because the underpayment rate under section 6621(c)(1) must be used, correction amounts cannot merely be entered into the DOL Online Calculator to obtain the correct lost earnings. For the DOL Online Calculator to generate earnings using the interest rate under section 6621(c)(1), an artificial entry may need to be created. For example, the following data to create the artificial entry could be used: $100,000,000 in the "Principal" box, any date in the "Loss Date" box, and a date that is at least one year later in both the "Recovery Date" and "Final Payment Date" boxes. The "Amount Due" generated using the artificial data would be ignored when aggregating

the earnings for the correction.

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Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional states that have passed firm mobility.

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