

in the news

Employee Benefits & Executive Compensation



May 2015

More and Less Expensive Options for Retirement Plan Corrections: New IRS Guidance on EPCRS

In this Issue:

| | |
|--|---|
| Rev. Proc. 2015-27 | 1 |
| Rev. Proc. 2015-28 | 2 |
| For More Information | 3 |
| About Polsinelli's Employee Benefits and Executive Compensation Practice | 4 |

The IRS recently provided updated guidance on the Employee Plans Compliance Resolution System (“EPCRS”). Many employers and plan sponsors use EPCRS to fix administrative mistakes or document errors for their 401(k), 403(b), defined benefit, or other qualified retirement plan. EPCRS allows plan sponsors to correct errors through either a voluntary IRS filing (VCP) or self-correction.

In two recent Revenue Procedures, the IRS expanded the methods of correction for several categories of failure, including for Internal Revenue Code (“Code”) Section 415 failures, required minimum distribution (“RMD”) failures, overpayments to participants, and automatic enrollment or automatic escalation features. In welcome news, the IRS has lowered compliance fees for plan loan failures and RMD failures. It will also cost plan sponsors less to fix auto enroll or auto escalation errors.

The guidance is found in the newly issued Revenue Procedures 2015-27 and 2015-28, making several important changes to the EPCRS.

Rev. Proc. 2015-27 may be used beginning March 27, 2015 and is effective July 1, 2015.

1. **Significant fee reduction for plan loan failures.**

The new fees (tied to the total number of problem loans, not the total number of plan participants) are:



| New Plan Loan Compliance Fees | |
|---------------------------------|----------------|
| Participants with loan failures | Compliance fee |
| 13 or fewer | \$300 |
| 14 to 50 | \$600 |
| 51 to 100 | \$1,000 |
| 101 to 150 | \$2,000 |
| Over 150 | \$3,000 |

| Regular Compliance Fees | |
|----------------------------|----------------|
| Based on Participant Count | Compliance Fee |
| 20 or fewer | \$750 |
| 21 to 50 | \$1,000 |
| 51 to 100 | \$2,500 |
| 101 to 500 | \$5,000 |
| 501 to 1,000 | \$8,000 |

2. **Fee Reduction for Required Minimum Distribution Errors.**

The IRS adjusted the filing fee related to the failure to make RMDs. Previously, the plan could pay \$500 and remove the potential 50% excise tax for up to 50 participants. Now the same \$500 will cover up to 150 participants and \$1,500 will cover failures involving 151 – 300 participants.

3. **Longer Deadline to Correct Code Section 415 failures.**

The 2013 version of EPCRS allowed the plan to self-correct an excess annual contribution over the Code Section 415(c) limit by returning elective deferrals to the participant within 2.5 months of the end of the plan year, and this correction could be done each year the problem occurs. The IRS changed the deadline to 9.5 months after the year end, and the correction is still available each year the overage occurs.

4. **Expanded Methods of Correction for Overpayments.**

Until now, the method of correcting overpayments from a plan has required the plan sponsor to take reasonable

steps to collect the overpayment from the participant, and if the participant failed to repay the overpayment, the plan sponsor was required to contribute the overpaid amount back into the plan. The 2015 Rev. Proc. provides additional options. In appropriate situations, the plan sponsor may pay the overpayment back into the plan's trust without first trying to recover the overpaid amount from the participant, or the employer may amend the plan retroactively to conform the document to actual practices. As with most IRS correction principals, the corrections options are based on individual facts and circumstances.

Rev. Proc. 2015-28 is effective as of April 2, 2015.

This Procedure provides lower employer contribution corrections for Automatic Enrollment, Automatic Escalation, and certain missed deferral errors. Automatic Enrollment and Automatic Escalation features can cause costly errors when the automatic changes are not implemented timely. Prior to this update, the IRS required the plan sponsor to contribute an amount equal to 50% of what a plan participant would have deferred had the automatic enrollment or automatic escalation feature been properly implemented. The plan sponsor also had to contribute an amount equal to the total matching contribution that would have been made in the full amount of intended deferrals, plus an amount equal to the lost earnings on both the deferrals and the matching contributions.

With Rev. Proc. 2015-28, the IRS has eased the correction requirements if errors are discovered reasonably quickly.





1. No Employer Contribution Required if Error Corrected Timely

Under the new guidance, plan sponsors *do not have to make a corrective employer contribution*:

- If the failure to automatically enroll the participant or automatically increase the participant's deferrals is found and corrected within 9.5 months of the failure or the last day of the month following the month in which the participant advised the plan sponsor of the problem.
- If a missed deferral (whether related to automatic enrollment or escalation or not) that happened within the prior three months is restarted by the first payroll after the earlier of 1) three months after the missed deferrals occurred; or 2) the last day of the month following the month in which the participant advised the sponsor of the problem.

2. Reduced Employer Contribution

The employer contribution amount is reduced from the previous 50% level down to 25% for missed deferral amounts that are over three months old but are corrected by the last day of the 2nd plan year following the error.

3. Additional Requirements

For the revised corrections of automatic enrollment and automatic escalation errors, the plan sponsor must also do the following:

- Give a notice to the affected participants within 45 days of the date on which the corrected deferrals are occurring;
- Make the matching contribution that the participant would have received had deferrals been handled properly; and
- Make up any lost earnings on the contributions.



For More Information

If you are concerned about errors in the administration of your employer sponsored retirement plan, the attorneys in Polsinelli's Employee Benefits Executive Compensation Group can help you. With years of experience in filing VCPs and helping guide employers through self-correction and Audit Cap, Polsinelli can help you identify the most efficient methods of correction for any small or large plan errors.

- Hannah R. DeLuca | *Author* | 816.572.4568 | hdeluca@polsinelli.com
- Kathryn Wheeler | *Benefits Analyst* | *Author* | 816.572.4614 | kwwheeler@polsinelli.com
- W. Andrew Douglass | *Practice Chair* | 312.873.2933 | adouglass@polsinelli.com
- William P. Sweeney | *Practice Vice Chair* | 312.873.3664 | wsweeney@polsinelli.com

To contact a member of our Employee Benefits and Executive Compensation team, click [here](#) or visit our website at www.polsinelli.com > Services > Employee Benefits and Executive Compensation > Related Professionals.

To learn more about our Employee Benefits and Executive Compensation practice, click [here](#) or visit our website at www.polsinelli.com > Services > Employee Benefits and Executive Compensation.





About Polsinelli's Employee Benefits and Executive Compensation Practice

Polsinelli has a diverse group of Employee Benefits attorneys who cover all aspects of plan creation and design, plan compliance and executive compensation agreements. Our attorneys have more than 100 years of combined employee benefits experience which we focus on providing practical, proactive advice, while also striving to develop innovative solutions to our clients' employee benefit needs.

Our firm has experience working with public and private businesses, as well as governmental and nonprofit entities to design, implement and effectively administer plans that meet their business needs.

In this increasingly complex area of compliance responsibility, our team works with clients to not only minimize the risk of problems, but to develop proactive strategies in ways that benefit a business' culture, as well as its bottom line. A key to such success lies in the development of initial advisory alerts, training programs, educational campaigns, and regular internal memoranda that properly outline compliance obligations, as well as the elements of the organization's successful usage of such arrangements.

About Polsinelli

real challenges. real answers.SM

Polsinelli is an Am Law 100 firm with more than 740 attorneys in 19 offices, serving corporations, institutions, entrepreneurs and individuals nationally. Ranked in the top five percent of law firms for client service and top five percent of firms for innovating new and valuable services*, the firm has risen more than 100 spots in Am Law's annual firm ranking over the past six years. Polsinelli attorneys provide practical legal counsel infused with business insight, and focus on health care, financial services, real estate, life sciences and technology, and business litigation. Polsinelli attorneys have depth of experience in 100 service areas and 70 industries. The firm can be found online at www.polsinelli.com. Polsinelli PC. In California, Polsinelli LLP.

**BTI Client Service A-Team 2015 and BTI Brand Elite 2015*

About this Publication

Polsinelli provides this material for informational purposes only. The material provided herein is general and is not intended to be legal advice. The choice of a lawyer is an important decision and should not be based solely upon advertisements.

Polsinelli PC. In California, Polsinelli LLP.

