

October 14, 2021

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
Submitted Electronically

Re: Revenue Procedure 2021-30 – Comments on Pension Overpayment Provisions

The ERISA Industry Committee (ERIC) is pleased to respond to the request of the Internal Revenue Service (IRS) for comments on Revenue Procedure 2021-30 (the Revenue Procedure). The Revenue Procedure sets forth the IRS's latest guidance regarding its Employee Plans Compliance Resolution System (EPCRS). Our comments focus on the Revenue Procedure's provisions regarding correction of pension plan overpayments.

ERIC is a national advocacy organization that exclusively represents large employers that provide health, retirement, paid leave, and other benefits to their nationwide workforces. Our member companies are leaders in every sector of the economy, with stores, warehouses, factories, and operations in every state. ERIC is the voice of large employer plan sponsors on public policies impacting their ability to sponsor benefit plans for active and retired workers, as well as families. Our member companies tailor retirement, health, and compensation benefits to meet the unique needs of their workforces. We have a strong interest in policies that impact the ability of large employers to provide effective and cost-efficient retirement programs to millions of workers, retirees, and their families. As such, ERIC has a vested interest in the EPCRS program and is well-positioned to provide helpful information from the perspective of large plan sponsors most affected by the Revenue Procedure.

ERIC supports the IRS's latest updates to the EPCRS pension plan overpayment provisions. The Revenue Procedure includes a number of helpful updates to the correction guidance for pension plan overpayments. These include increasing from \$100 to \$250 the *de minimis* threshold for which correction of an overpayment is not required, permitting recoupment of overpayments from participants or beneficiaries through an installment agreement, and adding two new correction methods for defined benefit plan overpayments—the funding exception correction method (the Funding Exception Method) and the contribution credit correction method (the Contribution Credit Method). We appreciate the IRS's continued efforts since 2015 to provide plan sponsors and overpayment recipients with additional flexibility to address pension plan overpayments.

We urge the IRS to consider providing additional flexibility similar to legislative proposals currently pending in Congress. Two retirement bills introduced in the current Congress contain identical provisions that would substantially simplify the correction of “inadvertent benefit overpayments.” Section 301 of H.R. 2954 (the *Securing a Strong Retirement Act of 2021*) and Section 322 of S. 1770 (the *Retirement Security and Savings Act of 2021*) would confirm that the qualified status of a plan under Section 401(a), 403(a) or 403(b) of the Internal Revenue Code (the Code) or of certain governmental plans would not be adversely affected merely because:

- The plan fails to obtain payment from any participant, beneficiary, employer, plan sponsor, fiduciary or other party on account of any inadvertent benefit overpayment made by the plan, or the plan sponsor amends the plan to increase past or future benefit payments to affected participants and beneficiaries in order to adjust for prior inadvertent benefit overpayments; or
- After discovering an inadvertent benefit overpayment, the plan reduces future benefit payments to the correct amount provided for under the plan, or seeks recovery from the person or persons responsible for the overpayment.

The legislation would make clear the plan sponsor is not relieved of any obligations to make contributions to meet the minimum funding requirements of Section 412 and 430 of the Code, or to prevent or restore any impermissible forfeiture in accordance with Section 411 of the Code. Similarly, the plan would still be required to observe any limitations imposed by Section 401(a)(17) or 415 of the Code, and to enforce those limitations using any method approved by the Secretary of the Treasury (including methods for recouping benefits previously paid or allocations previously made in excess of such limitations).

The above provisions are consistent with the pension overpayment correction guidance in the Revenue Procedure, with the key difference that, for qualified plan purposes, the legislation would permit **an inadvertent benefit payment not to be recouped from the recipient or from the plan sponsor or another party** as long the plan continues to meet the Code’s minimum funding requirements (which would require benefit overpayments to be taken into account in determining the plan sponsor’s minimum required contributions, if applicable), the vesting and accrued benefit requirements of Section 411 of the Code, and the compensation and benefit limitations imposed by Code Sections 401(a)(17) and 415.

In contrast, the Revenue Procedure would require recoupment in all cases except for *de minimis* amounts (\$250 or less) or overpayments from defined benefit plans that qualify for the new Funding Exception Method or Contribution Credit Method. These exceptions would not be needed if the legislative approach were adopted.

We believe the legislative approach described above is within the IRS’s authority to provide under the EPCRS and would provide much needed flexibility to plan sponsors and to overpayment recipients. We understand that other aspects of the legislation (specifically, provisions allowing inadvertent overpayments that have been rolled over to an eligible retirement

plan to remain in such plan on a tax-qualified basis, or to be repaid to the payor plan as a rollover contribution) may require legislative action to effectuate.

With respect to the Revenue Procedure’s specific guidelines for correcting pension plan overpayments, we have the following comments:

Increase de minimis threshold. We would further increase the *de minimis* non-correction threshold from \$250 to \$1,000, so that correction is required under EPCRS only if the aggregate overpayments made to a participant or beneficiary exceed \$1,000. When operational errors result in overpayments, the current \$250 threshold can be quickly exceeded even by defined benefit plans making annuity payments. An increased threshold would provide much needed relief to plan sponsors and to participants and beneficiaries who have received overpayments.

Allow installment method of recoupment to apply to disqualified persons and owner-employees. Section 2.05(2)(a)(ii) of Appendix B of the Revenue Procedure, regarding the Return of Overpayment Correction Method, prohibits the installment method of recoupment from being offered to a “disqualified person” as defined in Section 4975(e)(2) of the Code, or to an “owner-employee” as defined in Section 401(c) of the Code. There is no similar prohibition on the use of an installment agreement when there is a “net Overpayment” that needs to be recouped under the Contribution Credit Method.

We do not see a compelling policy reason for prohibiting the use of installment agreements for disqualified persons and owner-employees under the Return of Overpayment Correction Method. Disqualified persons and owner-employees would not typically be responsible for the overpayment occurring, and would not necessarily be immune from financial difficulties generated by having to repay a (potentially) large overpayment amount. We believe a plan sponsor should be permitted to offer an installment agreement whenever the circumstances warrant that approach.

We further note that the scope of the definition of “disqualified person” in Section 4975(e)(2) is not clear and involves determinations that plan sponsors do not need to make as part of their annual compliance program. In particular, subparagraph (H) of that definition includes “an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), 10 percent or more shareholder, or a highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described in subparagraph (C), (D), (E), or (G). . . .” There are no regulations or published IRS rulings interpreting this portion of the “disqualified person” definition. Large employers with many affiliated companies will find interpreting and applying this definition a challenge.

Allow more flexibility for installment agreements under the Contribution Credit Method. Section 2.05(4)(b)(ii) of Appendix B of the Revenue Procedure, regarding the Contribution Credit Method, requires that any installment agreement used to recoup a “net Overpayment” be for a period of at least five 5 years. We believe this requirement is overly prescriptive. Plan sponsors and overpayment recipients should be permitted to enter into

installment agreements for any period that is reasonable under the circumstances, even if that period is less than 5 years.

ERIC appreciates the opportunity to provide comments on the Revenue Procedure. If you have any questions concerning our comments or if we can be of further assistance, please contact us.

Sincerely,

A handwritten signature in black ink that reads "Andrew Banducci". The signature is written in a cursive, flowing style.

Andrew Banducci
Senior Vice President
Retirement and Compensation Policy