

Proc. 2019-19, 2019-19 I.R.B. 1086, the most recent prior consolidated statement of the correction programs under EPCRS. This update to Rev. Proc. 2019-19 is a limited update and is published primarily to:

- (1) expand guidance on the recoupment of Overpayments;
- (2) eliminate the anonymous submission procedure under VCP, effective January 1, 2022;
- (3) add an anonymous, no-fee, VCP pre-submission conference procedure, effective January 1, 2022;
- (4) extend the end of the SCP correction period for significant failures by one year (which has the result of also extending the safe harbor correction method for Employee Elective Deferral Failures lasting more than three months but not beyond the extended SCP correction period for significant failures);
- (5) expand the ability of a Plan Sponsor to correct an Operational Failure under SCP by plan amendment; and
- (6) extend by three years the sunset of the safe harbor correction method available for certain Employee Elective Deferral Failures associated with missed elective deferrals for eligible employees who are subject to an automatic contribution feature in a § 401(k) plan or § 403(b) Plan (from December 31, 2020, to December 31, 2023).

.02 Correction of Overpayment (defined benefit plans). (1) In general. Rev. Proc. 2015-27, 2015-16 I.R.B. 914, clarified the permissible methods for correcting Overpayments under EPCRS by noting that, depending on the facts and circumstances, correcting an Overpayment under EPCRS may not need to include requesting that Overpayments be returned to the plan by plan participants and beneficiaries. The Department of the Treasury ("Treasury Department") and the IRS also requested comments in Rev. Proc. 2015-27 on potential changes relating to the recoupment of Overpayments. In light of comments received, the Treasury Department and the IRS are modifying Rev. Proc. 2019-19 to further clarify and expand options available for the recoupment of Overpayments.

(2) Modifications to current correction methods. Sections 6.06(3), 6.06(4), and Appendix B, section 2.05, are revised to provide that Plan Sponsors may provide Overpayment recipients the option of repaying an Overpayment in a single sum

payment, through an installment agreement, or through an adjustment in future payments.

(3) New correction methods. Section 6.06(3) is revised to provide two new Overpayment correction methods, the funding exception correction method and the contribution credit correction method. These methods reduce the need for defined benefit plans to seek recoupment from Overpayment recipients and ease the process for Overpayment recipients repaying Overpayments, while balancing the interest of other participants in the plan.

(i) Funding exception correction method. Section 6.06(3)(d)(i) sets forth the new funding exception correction method, which provides that corrective payments are not required for a plan subject to § 436, provided that the plan's certified or presumed adjusted funding target attainment percentage ("AFTAP") determined under § 436 that is applicable to the plan at the date of correction is equal to at least 100 percent (or, in the case of a multiemployer plan, the plan's most recent annual funding certification indicates that the plan is not in critical, critical and declining, or endangered status (as defined in § 432), determined at the date of correction). Future benefit payments to an Overpayment recipient must be reduced to the correct benefit payment amount. For purposes of EPCRS, no further corrective payments from any party are required, no further reductions to future benefit payments to an Overpayment recipient, or any spouse or beneficiary of an Overpayment recipient, are permitted, and no further corrective payments from an Overpayment recipient, or any spouse or beneficiary of an Overpayment recipient, are permitted. See section 6.06(3)(d)(i) and Appendix B, section 2.05(3).

(ii) Contribution credit correction method. Section 6.06(3)(d)(ii) sets forth the new contribution credit correction method, which provides that the amount of Overpayments required to be repaid to the plan is the amount of the Overpayments reduced (but not below zero) by: (A) the cumulative increase in the plan's minimum funding requirements attributable to the Overpayments (including the increase attributable to the overstatement of liabilities, whether funded through cash contributions or through the use of a funding standard carryover balance, prefunding balance, or funding standard account credit balance), beginning with (1) the plan year for which the Overpayments are taken into account for funding purposes, through (2) the end of the plan year preceding the plan year for which the corrected benefit payment amount is taken into account for funding purposes; and (B) certain additional contributions in excess of minimum funding requirements paid to the plan after the first of the Overpayments was made. This reduction is referred to as a "contribution credit." Future benefit payments to an Overpayment recipient must be reduced to the correct benefit payment amount. For purposes of EPCRS, if the amount of the Overpayments

is reduced to zero after the contribution credit is applied, no further corrective payments from any party are required, no further reductions to future benefit payments to an Overpayment recipient, or any spouse or beneficiary of an Overpayment recipient, are permitted, and no further corrective payments from an Overpayment recipient, or any spouse or beneficiary of an Overpayment recipient, are permitted. However, if a net Overpayment remains after the application of the contribution credit, the Plan Sponsor or another party must take further action to reimburse the plan for the remainder of the Overpayment. See section 6.06(3)(d)(ii) and Appendix B, section 2.05(4).

.03 Description of other modifications. The other modifications to Rev. Proc. 2019-19 that are made by this revenue procedure include the following --

1. Eliminating the condition previously set forth in section 4.05(2)(a)(ii) (relating to correction by plan amendment of Operational Failures under SCP for Qualified Plans and § 403(b) Plans) that requires a plan amendment that increases a benefit, right, or feature to apply to all participants eligible to participate under the plan.
2. Increasing from \$100 to \$250 the threshold for certain de minimis amounts for which a Plan Sponsor is not required to implement correction. See sections 6.02(5)(c), 6.02(5)(e), and 6.11(5)(c).
3. Modifying the structure of section 6.06(4) and Appendix B, section 2.04, to be more consistent with changes made to section 6.06(3) and Appendix B, section 2.05, and to clarify the correction principles relating to Overpayments from defined contribution plans and § 403(b) Plans.
4. Extending the end of the SCP correction period for significant failures (set forth in section 9.02) from the last day of the second plan year following the plan year for which the failure occurred to the last day of the third plan year following the plan year for which the failure occurred (which has the result of also extending the safe harbor correction method set forth in Appendix A, section .05(9)(b) for Employee Elective Deferral Failures lasting more than three months but not beyond the extended SCP correction period for significant failures) and modifying the examples in section 9.04 to reflect this extension.
5. Revising section 10.01 to add an option, effective January 1, 2022, for Plan Sponsors to request a no-fee anonymous VCP pre-submission conference under specified circumstances.

the corrective amendment is not provided for among plan provision options that were pre-approved when the opinion or advisory letter was issued with respect to the plan. As a result, adopting such a corrective amendment would cause the Plan Sponsor to lose reliance on the plan's opinion or advisory letter, except in the limited circumstances provided in section 6.05(2)(b).

(b) Exception for certain amendments. In the case of a Pre-approved Plan or a § 403(b) Pre-approved Plan, the adoption of a plan provision required to correct a failure under VCP or Audit CAP that is not provided for in the adoption agreement will not cause the Plan Sponsor to lose its reliance on the plan's opinion or advisory letter, provided that: (i) the corrective amendment would otherwise be permitted under the rules for Pre-approved Plans or § 403(b) Pre-approved Plans, as applicable, and (ii) no other modification has been made to the plan that would cause the plan to lose its reliance on the opinion or advisory letter. If these conditions are satisfied, the Plan Sponsor will be allowed to continue to rely on the plan's opinion or advisory letter. In addition, the adoption of the corrective amendment will not cause the Pre-approved Plan to lose its eligibility to remain within the six-year remedial amendment cycle provided for in Rev. Proc. 2016-37, as modified, on a continuing basis until the expiration of the next six-year remedial amendment cycle described in section 16.01 of Rev. Proc. 2016-37, as modified.

.06 Special rules relating to Excess Amounts. (1) Treatment of Excess Amounts. A distribution of an Excess Amount is not eligible for the favorable tax treatment accorded to distributions from Qualified Plans or § 403(b) Plans (such as eligibility for tax-free rollover). Thus, for example, if such a distribution was contributed to an IRA, the contribution is not a valid rollover contribution for purposes of determining the amount of excess contributions (within the meaning of § 4973) to the individual's IRA. A distribution of an Excess Amount is generally treated in the manner described in section 3 of Rev. Proc. 92-93, 1992-2 C.B. 505 (relating to the corrective disbursement of elective deferrals). The distribution must be reported on Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., for the year of distribution with respect to each participant or beneficiary receiving such a distribution. Except as otherwise provided in section 6.02(5)(c) with respect to recovery of small Overpayments, where an Excess Amount has been or is being distributed, the Plan Sponsor must notify the recipient that (a) an Excess Amount has been or will be distributed and (b) an Excess Amount is not eligible for favorable tax treatment accorded to distributions from an eligible retirement plan, as defined in § 402(c)(8)(B) (and, specifically, is not eligible for rollover).

(2) Correction of Excess Allocations. In general, an Excess Allocation is corrected in accordance with the Reduction of Account Balance Correction Method set forth in this paragraph. Under this method, the account balance of an employee who received an Excess Allocation is reduced by the Excess Allocation (adjusted for Earnings). If the Excess Allocation would have been allocated to other employees in the year of the failure had the failure not occurred, then that amount (adjusted for Earnings) is reallocated to those employees in accordance with the plan's allocation formula. If the improperly allocated amount would not have been allocated to other employees absent the failure, that amount (adjusted for Earnings) is placed in a separate account that is not allocated on behalf of any participant or beneficiary (an unallocated account) established for the purpose of holding Excess Allocations, adjusted for Earnings, to be used to reduce employer contributions (other than elective deferrals) in the current year or succeeding year. While such amounts remain in the unallocated account, the employer is not permitted to make contributions to the plan other than elective deferrals. Excess Allocations that are attributable to elective deferrals or after-tax employee contributions (adjusted for Earnings) must be distributed to the participant. For qualification purposes, an Excess Allocation that is corrected pursuant to this paragraph is disregarded for purposes of §§ 402(g) and 415, the ADP test of § 401(k)(3), and the ACP test of § 401(m)(2). If an Excess Allocation resulting from a violation of § 415 consists of annual additions attributable to both employer contributions and elective deferrals or after-tax employee contributions, then the correction of the Excess Allocation is completed by first distributing the unmatched employee's after-tax contributions (adjusted for Earnings) and then the unmatched employee's elective deferrals (adjusted for Earnings). If any excess remains, and is attributable to either elective deferrals or after-tax employee contributions that are matched, the excess is apportioned first to after-tax employee contributions with the associated matching employer contributions and then to elective deferrals with the associated matching employer contributions. Any matching contribution or nonelective employer contribution (adjusted for Earnings) which constitutes an Excess Allocation is then forfeited and placed in an unallocated account established for the purpose of holding Excess Allocations to be used to reduce employer contributions in the current year and succeeding year. Such unallocated account is adjusted for Earnings. While such amounts remain in the unallocated account, the employer is not permitted to make contributions (other than elective deferrals) to the plan.

(3) Correction of Overpayments (defined benefit plans). An Overpayment from a defined benefit plan is corrected in accordance with the rules set forth in this section 6.06(3) and Appendix B, section 2.05.

(a) In general, subject to the conditions set forth in section 4.05 (which permits correction by plan amendment under VCP, Audit CAP, and, under limited

circumstances, SCP), a Plan Sponsor may correct an Overpayment by adopting a retroactive amendment to conform to the plan's operation.

(b) If the Overpayment is not corrected by plan amendment, the Plan Sponsor may correct the Overpayment in accordance with the correction methods set forth in section 6.06(3)(c) and (d) and Appendix B, section 2.05. In those cases, the following rules apply:

(i) With regard to Overpayments involving periodic payments, future payments must be reduced as soon as practicable either to reflect the correct amount payable to the Overpayment recipient under the terms of the plan, or to satisfy a limitation provided in the Code or regulations;

(ii) Except as provided in section 6.02(5)(c) with respect to the recovery of small Overpayments, the Plan Sponsor must notify the Overpayment recipient in writing that the Overpayment is not eligible for favorable tax treatment accorded to distributions from an eligible retirement plan, as defined in § 402(c)(8)(B) (and, specifically, is not eligible for tax-free rollover); and

(iii) Except as provided in section 6.02(5)(c) with respect to the recovery of small Overpayments, and except as otherwise provided in this section 6.06(3) and Appendix B, section 2.05, to the extent the amount of an Overpayment adjusted for Earnings at the plan's earnings rate is not repaid to the plan, the Plan Sponsor or another person must contribute the difference to the plan.

(c) An Overpayment may be corrected in accordance with the return of Overpayment correction method (including repayment through an installment agreement) or the adjustment of future payments correction method, as described in Appendix B, section 2.05(2). Plan Sponsors may permit an Overpayment recipient to choose the method of repayment that will apply to the correction of the Overpayment.

(d) If the applicable requirements are satisfied, an Overpayment may be corrected in accordance with the funding exception correction method described in Appendix B, section 2.05(3), or the contribution credit correction method described in Appendix B, section 2.05(4).

(i) In general, under the funding exception correction method, in the case of a plan subject to § 436, no corrective payments are necessary with regard to an Overpayment, provided that the certified or presumed AFTAP determined under § 436 that is applicable to the plan at the date of correction is equal to at least 100 percent (or, in the case of a multiemployer plan, the plan's most recent annual funding

certification indicates that the plan is not in critical, critical and declining, or endangered status, as defined in § 432, determined at the date of correction). As provided in section 6.06(3)(b)(i), future benefit payments to an Overpayment recipient must be reduced to the correct benefit payment amount. For purposes of EPCRS, no further corrective payments from any party are required, no further reductions to future benefit payments to an Overpayment recipient, or any spouse or beneficiary of an Overpayment recipient, are permitted, and no further corrective payments from an Overpayment recipient, or any spouse or beneficiary of an Overpayment recipient, are permitted. See Appendix B, section 2.05(3), for additional details and eligibility requirements regarding the funding exception correction method.

(ii) Under the contribution credit correction method, in general, the amount of Overpayments required to be repaid to the plan is the amount of the Overpayments reduced (but not below zero) by: (A) the cumulative increase in the plan's minimum funding requirements attributable to the Overpayments (including the increase attributable to the overstatement of liabilities, whether funded through cash contributions or through the use of a funding standard carryover balance, prefunding balance, or funding standard account credit balance) beginning with (1) the plan year for which the Overpayments are taken into account for funding purposes, through (2) the end of the plan year preceding the plan year for which the corrected benefit payment amount is taken into account for funding purposes; and (B) certain additional contributions in excess of minimum funding requirements paid to the plan after the first of the Overpayments was made. This reduction is referred to as a "contribution credit." As provided in section 6.06(3)(b)(i), future benefit payments to an Overpayment recipient must be reduced to the correct benefit payment amount. For purposes of EPCRS, if the amount of the Overpayments is reduced to zero after the contribution credit is applied, no further corrective payments from any party are required, no further reductions to future benefit payments to an Overpayment recipient, or any spouse or beneficiary of an Overpayment recipient, are permitted, and no further corrective payments from an Overpayment recipient, or any spouse or beneficiary of an Overpayment recipient, are permitted. However, if a net Overpayment remains after the application of the contribution credit, the Plan Sponsor or another party must take further action to reimburse the plan for the remainder of the Overpayment. See Appendix B, section 2.05(4), for additional details and eligibility requirements regarding the contribution credit correction method.

(e) Depending on the nature of the Overpayment, other appropriate correction methods may be used. An appropriate correction method may include using rules similar to the correction methods described in Appendix B, section 2.05, but having the Plan Sponsor or another person contribute the amount of the Overpayment (with appropriate interest) to the plan instead of seeking recoupment from an Overpayment

recipient. Any other correction method used must satisfy the correction principles of section 6.02 and any other applicable rules in this revenue procedure.

(4) Correction of Overpayments (defined contribution plans and § 403(b) Plans). An Overpayment from a defined contribution plan or § 403(b) Plan is corrected in accordance with the rules set forth in this section 6.06(4) and Appendix B, section 2.04.

(a) Correction by plan amendment. In general, subject to the conditions set forth in section 4.05 (which permits correction by plan amendment under VCP, Audit CAP, and, under limited circumstances, SCP), a Plan Sponsor may correct an Overpayment by amending the plan to conform to the plan's operation.

(b) Rules relating to Overpayment correction methods. If the Overpayment is not corrected by plan amendment, the Plan Sponsor may correct the Overpayment in accordance with the correction methods set forth in sections 6.06(4)(c), (d), and (e), and Appendix B, section 2.04. In those cases, the following rules apply:

(i) With regard to Overpayments involving periodic payments, future payments must be reduced as soon as practicable either to reflect the correct amount payable to the Overpayment recipient under the terms of the plan, or to satisfy a limitation provided in the Code or regulations;

(ii) Except as provided in section 6.02(5)(c) with respect to the recovery of small Overpayments, the Plan Sponsor must notify the Overpayment recipient in writing that the Overpayment was not eligible for favorable tax treatment accorded to distributions from an eligible retirement plan, as defined in § 402(c)(8)(B), (and, specifically, was not eligible for tax-free rollover); and

(iii) Except as provided in section 6.02(5)(c) with respect to the recovery of small Overpayments, to the extent the amount of an Overpayment adjusted for Earnings at the plan's earnings rate from the date of distribution to the date of the correction is not repaid to the plan, the Plan Sponsor or another person must contribute the difference to the plan. The preceding sentence does not apply when the failure arose solely because a payment was made from the plan to an Overpayment recipient in the absence of a distributable event (but was otherwise determined in accordance with the terms of the plan (for example, an impermissible in-service distribution)).

(c) Return of Overpayment correction method. An Overpayment may be corrected in accordance with the return of Overpayment correction method (including repayment through an installment agreement). Under this method, the employer takes reasonable steps to have the Overpayment repaid to the plan by the Overpayment

recipient, adjusted for Earnings at the plan's earnings rate from the date of the distribution to the date of the correction of the Overpayment. Plan Sponsors may permit an Overpayment recipient to choose the method of repayment that will apply to the correction of the Overpayment.

(d) Unallocated account. Except as provided in section 6.06(4)(e), a corrected Overpayment, adjusted for Earnings at the plan's earnings rate to the date of the repayment, is to be placed in an unallocated account, as described in section 6.06(2), to be used to reduce employer contributions (other than elective deferrals) in the current year and succeeding year(s) (or, if the amount would have been allocated to other eligible employees who were in the plan for the year of the failure if the failure had not occurred, then that amount is reallocated to the other eligible employees in accordance with the plan's allocation formula).

(e) Repayment by the Overpayment recipient. To the extent an Overpayment results solely from a distribution of an Overpayment recipient's benefit under the plan in the absence of a distributable event but the Overpayment was otherwise determined in accordance with the terms of the plan, any amount returned to the plan by the Overpayment recipient is to be allocated to his or her account.

(f) Other appropriate correction methods. Depending on the nature of the Overpayment, other appropriate correction methods may be used. An appropriate correction method may include using rules similar to the correction method in section 6.06(4)(b) but having the employer or another person contribute the amount of the Overpayment (with appropriate interest) to the plan instead of seeking recoupment from an Overpayment recipient. Any other correction method used must satisfy the correction principles of section 6.02 and any other applicable rules of this revenue procedure.

.07 Correction of plan loan failures. (1) In general. Plan loan failures may be corrected under VCP, SCP, or Audit CAP, unless otherwise specified in this section 6.07.

(2) Plan loan failures treated as deemed distributions under § 72(p). Unless correction is made in accordance with section 6.07(3) (to the extent applicable), a deemed distribution under § 72(p)(1) in connection with a failure relating to a plan loan to a participant must be reported on Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., with respect to the affected participant, and any applicable income tax withholding amount that was required to be paid in connection with the failure (see §1.72(p)-1, Q&A-15) must be paid by the employer. In this case, the deemed distribution may be reported

Example 19:

Employer H maintains a § 401(k) plan. The plan provides for nonelective employer contributions, matching contributions, and elective deferrals. The plan provides for matching contributions that are equal to 100% of an employee's elective deferrals that do not exceed 8% of the employee's plan compensation for the plan year. For the 1998 limitation year, Employee V had § 415 compensation of \$50,000, and, accordingly, a § 415(c)(1)(B) limit of \$12,500. During that limitation year, the annual additions for Employee V totaled \$15,000, consisting of \$5,000 in elective deferrals, a \$4,000 matching contribution (8% of \$50,000), and a \$6,000 nonelective employer contribution. Thus, the annual additions for Employee V exceeded the § 415(c) limit by \$2,500.

Correction:

Employer H uses the Appendix A correction method to correct the § 415(c) excess with respect to Employee V (that is, \$2,500). Accordingly, \$1,000 of the unmatched elective deferrals (adjusted for Earnings) are distributed to Employee V. The remaining \$1,500 excess is apportioned equally between the elective deferrals and the associated matching employer contributions, so Employee V's account balance is further reduced by distributing to Employee V \$750 (adjusted for Earnings) of the elective deferrals and forfeiting \$750 (adjusted for Earnings) of the associated employer matching contributions. The forfeited matching contributions are placed in an unallocated account, as described in section 6.06(2) of this revenue procedure, to be used to reduce employer contributions in succeeding year(s). After correction, it is determined that the ADP and ACP tests for 1998 were satisfied.

.05 Section 415(b) Failures and Correction of Overpayments (Defined Benefit Plans). (1) In General. An Overpayment in a defined benefit plan may be corrected using the return of Overpayment or adjustment of future payment correction methods set forth in section 2.05(2), or, provided certain requirements are satisfied, the funding exception correction method set forth in section 2.05(3), or the contribution credit correction method set forth in section 2.05(4). However, the funding exception correction method set forth in section 2.05(3) and the contribution credit correction method set forth in section 2.05(4) may not be applied with respect to Overpayments associated with a failure to satisfy a statutory limit (including §§ 401(a)(17), 415(b), and 436) or with Overpayments made to a disqualified person (as defined in § 4975(e)(2)) or an owner-employee (as defined in § 401(c)). In addition, to be eligible to use the contribution credit correction method, the plan may not have a funding deficiency or an unpaid minimum required contribution as of the end of the last plan year before the plan year for which the Plan Sponsor takes into account the corrected benefit payment amount for funding purposes (taking into account contributions made after the end of the plan year that are credited to that plan year). As provided in section 6.06(3)(e) of this revenue procedure, any other appropriate correction method may be used to correct an Overpayment.

(2) Return of Overpayment and Adjustment of Future Payments Correction Methods. (a) Return of Overpayment Correction Method. (i) In General. Under the return of Overpayment correction method, the Plan Sponsor must take reasonable

steps to have the Overpayment (adjusted for appropriate interest) returned to the plan by the Overpayment recipient and must reduce future benefit payments (if any) to the Overpayment recipient to equal the correct amount payable under the terms of the plan (or an amount that satisfies a limitation provided in the Code or regulations). The Plan Sponsor may permit the Overpayment recipient to repay the Overpayment through the payment of a single sum or through an installment agreement, as described in section 2.05(2)(a)(ii). If the amount returned to the plan by the Overpayment recipient is less than the Overpayment adjusted for Earnings at the plan's earnings rate, the Plan Sponsor or another person (other than any spouse or beneficiary of the Overpayment recipient) must contribute the difference to the plan. In addition, if the Overpayment was previously treated as eligible for favorable tax treatment, in accordance with section 6.06(3) of this revenue procedure, the Plan Sponsor must notify the Overpayment recipient in writing that the Overpayment was not eligible for favorable tax treatment accorded to distributions from qualified plans (and, specifically, was not eligible for tax-free rollover). (See Examples 23, 24, and 25.)

(ii) Rules Relating to Recoupment Through an Installment Agreement. Under the return of Overpayment correction method, the Plan Sponsor may permit an Overpayment recipient to repay the Overpayment through an installment agreement. However, this option is not available in cases in which the Overpayment recipient is a disqualified person (as defined in § 4975(e)(2)) or an owner-employee (as defined in § 401(c)).

(b) Adjustment of Future Payments Correction Method. (i) In General. In the case of plan benefits that are being distributed in the form of periodic payments, Overpayments may be corrected using the adjustment of future payments correction method set forth in this section 2.05(2)(b). Under the adjustment of future payments correction method, payments made to the Overpayment recipient on or after the date of correction are reduced so that they do not exceed the correct benefit payment under the terms of the plan (or satisfy a limitation provided in the Code or regulations). An additional reduction is made to recoup the Overpayment (over a period not longer than the remaining payment period) so that the actuarial present value of the additional reduction, determined as of the date of correction, is equal to the Overpayment plus interest at the interest rate used by the plan as of the date of correction to determine actuarial equivalence. (See Examples 20 and 22.)

(ii) Joint and Survivor Annuity Payments. If a participant is receiving payments in the form of a joint and survivor annuity, with the employee's spouse receiving a life annuity upon the employee's death equal to a percentage (for example, 75 percent) of the amount being paid to the employee, the reduction of future annuity payments to reflect the correct amount payable to the participant under the terms of the plan (or to satisfy a limitation provided in the Code or regulations) reduces the amount of benefits

payable during the lives of both the employee and spouse. However, any reduction to recoup Overpayments made to the employee's future annuity payments does not reduce the amount of the spouse's survivor benefit (regardless of whether the Overpayments have been recouped fully due to the reductions during the employee's lifetime). Thus, the spouse's survivor benefit will be based on the specified percentage (for example, 75 percent) of the maximum permitted amount payable under the terms of the plan (or to satisfy a limitation provided in the Code or Regulations), instead of the reduced periodic amount payable to the employee. (See Example 21.)

(iii) Overpayment Not Treated as an Excess Amount. An Overpayment corrected under the adjustment of future payments correction method is not treated as an Excess Amount as defined in section 5.01(3) of this revenue procedure.

(iv) Plan Sponsor Not Required to Contribute to the Plan. To the extent the amount returned by an Overpayment recipient through the adjustment of future payments correction method is less than the Overpayment (for example, due to the death of the Overpayment recipient), the Plan Sponsor is not required to contribute any additional amount to the plan.

(c) Overpayment Recipients May Be Given Choice of Recoupment Correction Methods. If seeking recoupment of an Overpayment under the return of Overpayment or adjustment of future payments correction methods under section 2.05(2), a Plan Sponsor may provide Overpayment recipients a choice of repaying an Overpayment by: (A) a single sum repayment, (B) entering an installment agreement, or (C) an adjustment made to future benefit payments.

(3) Funding Exception Correction Method. Corrective payments are not required in the case of a plan subject to § 436, provided that the plan's certified or presumed AFTAP that is applicable to the plan at the date of correction is equal to at least 100 percent (or, in the case of a multiemployer plan, the plan's most recent annual funding certification indicates that the plan is not in critical, critical and declining, or endangered status, as defined in § 432, determined at the date of correction). For this purpose, the rules for determining the AFTAP and presumed AFTAP under § 436 and for determining the status of a multiemployer plan under § 432 must be followed. Future benefit payments to an Overpayment recipient must be reduced to the correct benefit payment amount. For purposes of EPCRS, no further payments from any party are required, no further reductions to future benefit payments to an Overpayment recipient, or any spouse or beneficiary of an Overpayment recipient, are permitted, and no further corrective payments from an Overpayment recipient, or any spouse or beneficiary of an Overpayment recipient, are permitted. (See Examples 25 and 28.)

(4) Contribution Credit Correction Method. (a) In General. (i) Subject to the additional rules set forth in section 2.05(4)(a)(ii) and (b), under the contribution credit correction method, the amount of Overpayments required to be repaid to the plan is the amount of the Overpayments reduced (but not below zero) by: (A) the cumulative increase in the plan's minimum funding requirements attributable to the Overpayments (including the increase attributable to the overstatement of liabilities, whether funded through cash contributions or through the use of a funding standard carryover balance, prefunding balance, or funding standard account credit balance), beginning with (1) the plan year for which the Overpayments are taken into account for funding purposes, and through (2) the end of the plan year preceding the plan year for which the corrected benefit payment amount is taken into account for funding purposes; and (B) certain additional contributions in excess of minimum funding requirements paid to the plan after the first of the Overpayments was made (see section 2.05(4)(a)(ii)). The amount of the Overpayments and the cumulative additional contributions (taking into account the increase in minimum funding and excess contributions) are determined without adjustment for interest. (See Examples 26 and 27.) This reduction is referred to as the "contribution credit."

(ii) Contributions may not be counted toward the contribution credit if they are designated for other plan purposes. Accordingly, the following contributions to the plan in excess of minimum funding requirements may not be counted toward the contribution credit: (A) contributions added to the plan's prefunding balance (except that, if an election was made by the date of correction to reduce the prefunding balance by all or a portion of those contributions, then the amount by which the prefunding balance was reduced may be counted toward the contribution credit); (B) contributions made to avoid or remove restrictions under § 436; (C) contributions made to CSEC plans and withdrawal liability payments and other contributions made to multiemployer plans (all of which are automatically added to the credit balance); and (D) contributions made to correct other Qualification Failures.

(iii) For purposes of EPCRS, if the amount of the Overpayments is reduced to zero after the contribution credit is applied, no further corrective payments from any party are required, no further reductions to future benefit payments to an Overpayment recipient, or any spouse or beneficiary of an Overpayment recipient, are permitted, and no further corrective payments from an Overpayment recipient, or any spouse or beneficiary of an Overpayment recipient, are permitted. However, if a net amount of Overpayments remains ("net Overpayment") after application of the contribution credit, subject to section 2.05(4)(a)(iv) and the additional rules set forth in section 2.05(4)(b), the Plan Sponsor or another party must take one of the following actions to secure repayment to the plan of the net Overpayment: (A) the Plan Sponsor or another party makes a single sum contribution to the plan in the amount of the net Overpayment; or (B) the Plan Sponsor takes reasonable steps to recoup the net Overpayment from the

Overpayment recipient by (1) securing a single sum payment from the Overpayment recipient, (2) entering into an installment agreement with the Overpayment recipient, or (3) adjusting future benefit payments due to the Overpayment recipient in accordance with section 2.05(2)(b). If the Plan Sponsor pursues recoupment under this section 2.05(4)(a), Overpayment recipients must be permitted to choose which of these correction options will apply after receiving the written notification described in section 2.05(4)(b)(iv).

(iv) To the extent the amount returned by an Overpayment recipient through either a single sum payment or an installment agreement is less than the net Overpayment, the Plan Sponsor or another person must contribute any additional amount owed to the plan. However, to the extent the amount returned by the Overpayment recipient through the adjustment of future payments is less than the net Overpayment (for example, due to the death of the Overpayment recipient), the Plan Sponsor is not required to contribute an additional amount to the plan.

(b) Additional Rules. The following additional rules apply if a net Overpayment remains after the application of the contribution credit as described in section 2.05(4)(a).

(i) Limitations Relating to Recoupment Through Adjustment of Future Payments. The following limitations apply if a Plan Sponsor pursues recoupment of a net Overpayment from an Overpayment recipient and the Overpayment recipient chooses to have future periodic benefit payments adjusted for the net Overpayment: (A) the maximum adjustment to a future periodic benefit payment must be limited to 10 percent of the Overpayment recipient's corrected periodic payment amount; (B) interest may not accrue prior to the date that corrected periodic payments begin; and (C) appropriate interest must accrue on the amount of the net Overpayment beginning on the date the corrected periodic payments begin.

(ii) Rules Relating to Recoupment From an Overpayment Recipient Through an Installment Agreement. The following rules apply if a Plan Sponsor pursues recoupment of a net Overpayment from an Overpayment recipient and the Overpayment recipient chooses to repay the net Overpayment through an installment agreement: (A) interest may not accrue prior to the date that installment payments begin; (B) appropriate interest must accrue on the amount of the net Overpayment beginning on the date the installment payments begin; and (C) the installment period over which the net Overpayment will be repaid to the plan must be at least five years.

(iii) Joint and Survivor Annuity Payments. The requirements set forth in section 2.05(2)(B)(ii), relating to joint and survivor annuity payments, apply to the contribution credit correction method.

(iv) Written Notification Required. Under the contribution credit correction method, a Plan Sponsor that requests recoupment of a net Overpayment from an Overpayment recipient must provide a written notification to the Overpayment recipient with information about the net Overpayment and the repayment options available to the Overpayment recipient. This information must include the following:

- (A) a description of the error;
- (B) the amount of the Overpayment;
- (C) the amount of the Overpayment recipient's benefit after reduction to reflect the correct amount payable under the terms of the plan, or to satisfy a limitation provided in the Code or regulations;
- (D) the estimated amount of reduced future benefit payments that the Overpayment recipient will receive if the Overpayment recipient chooses to have future benefit payments adjusted; and
- (E) the estimated repayment amounts if the Overpayment recipient chooses to repay the Overpayment through a single sum repayment or an installment agreement.

Information about the repayment options must indicate that if the Overpayment recipient does not choose a repayment option within a reasonable time (which may not be less than 30 days), the default repayment option will be the adjustment of future payments correction method if the Overpayment recipient is entitled to future payments under the terms of the plan, or a single sum repayment, if the Overpayment recipient is not entitled to future payments under the terms of the plan (for example, if the Overpayment recipient's entire benefit was distributed as a single sum payment). The information required by this section 2.05(4)(b)(iv) must be provided in addition to the written notification required under section 6.06(3)(b)(ii) of this revenue procedure (but may be set forth in the same notification to the Overpayment recipient).

(c) Examples.

Example 20:

Employer F maintains a defined benefit plan funded solely through employer contributions. The plan provides that the benefits of employees are limited to the maximum amount permitted under § 415(b), disregarding cost-of-living adjustments under § 415(d) after benefit payments have commenced. At the beginning of the 2006 plan year, Employee S retired and started receiving an annual straight life annuity of \$185,000 from the plan. Due to an administrative error, the annual amount received by Employee S for 2006 included an Overpayment of \$10,000 (because the § 415(b)(1)(A) limit for 2006 was \$175,000). This error was discovered at the beginning of 2007.

Correction:

Employer F uses the adjustment of future payments correction method to correct the failure to satisfy the limit in § 415(b). Future annuity benefit payments to Employee S are reduced so that they do

not exceed the § 415(b) maximum limit, and, in addition, Employee S's future benefit payments from the plan are actuarially reduced to recoup the Overpayment. Accordingly, Employee S's future benefit payments from the plan are reduced to \$175,000 and further reduced by \$1,000 annually for life, beginning in 2007. The annual benefit amount is reduced by \$1,000 annually for life because, for Employee S, the actuarial present value of a benefit of \$1,000 annually for life commencing in 2007 is equal to the sum of \$10,000 and interest at the rate used by the plan to determine actuarial equivalence beginning with the date of the first Overpayment and ending with the date the reduced annuity payment begins. Thus, Employee S's remaining benefit payments are reduced so that Employee S receives \$174,000 for 2007, and for each year thereafter.

Example 21:

The facts are the same as in Example 20, except that Employee S is receiving the benefit in the form of a fully-subsidized 100% joint and survivor benefit, so that Employee S's spouse will receive 100% of Employee S's benefit after Employee S's death. As provided under Example 20, under the terms of the plan, the annual benefit payable to Employee S should have been \$175,000 for Employee S's lifetime, and \$175,000 to Employee S's spouse after Employee S's death.

Correction:

The adjustment to recoup the Overpayment is applied only for Employee S's lifetime, as described in section 2.05(2)(b)(ii), so the actuarial adjustment is \$1,000 annually as determined in Example 20. Therefore, the future annual payments to Employee S will be \$174,000 for Employee S's lifetime, and the annual payments to Employee S's spouse will be \$175,000 for the remainder of the spouse's lifetime after Employee S's death.

Example 22:

The facts are the same as in Example 20.

Correction:

Employer F uses the adjustment of future payments correction method to correct the § 415(b) failure, by recouping the entire excess payment made in 2006 from Employee S's remaining benefit payments for 2007. Thus, Employee S's annual annuity benefit for 2007 is reduced to \$164,400 to reflect the excess benefit amounts (increased by interest) that were paid from the plan to Employee S during the 2006 plan year. Beginning in 2008, Employee S begins to receive annual benefit payments of \$175,000.

Example 23:

The facts are the same as in Example 20, except that the benefit was paid to Employee S in the form of a single-sum distribution in 2006, which exceeded the maximum § 415(b) limit by \$110,000.

Correction:

Employer F uses the return of Overpayment correction method to correct the § 415(b) failure. Thus, Employer F notifies Employee S of the \$110,000 Overpayment and that the Overpayment was not eligible for favorable tax treatment accorded to distributions from qualified plans (and, specifically, was not eligible for tax-free rollover). The notice also informs Employee S that the Overpayment (with interest at the rate used by the plan to calculate the single-sum payment) is owed to the plan. Employer F takes reasonable steps to have the Overpayment (with interest at the rate used by the plan to calculate the

single-sum payment) paid to the plan. Employee S pays the \$110,000 (plus the requested interest) to the plan. It is determined that the plan's rate of return for the relevant period was 2 percentage points more than the rate used by the plan to calculate the single-sum payment. Accordingly, Employer F contributes the difference to the plan.

Example 24:

The facts are the same as in Example 23.

Correction:

Employer F uses the return of Overpayment correction method to correct the § 415(b) failure. Thus, Employer F notifies Employee S of the \$110,000 Overpayment and that the Overpayment was not eligible for favorable tax treatment accorded to distributions from qualified plans (and, specifically, was not eligible for tax-free rollover). The notice also informs Employee S that the Overpayment (with interest at the rate used by the plan to calculate the single-sum payment) is owed to the plan. Employer F takes reasonable steps to have the Overpayment (with interest at the rate used by the plan to calculate the single-sum payment) paid to the plan. As a result of Employer F's recovery efforts, some, but not all, of the Overpayment (with interest) is recovered from Employee S. It is determined that the amount returned by Employee S to the plan is less than the Overpayment adjusted for Earnings at the plan's rate of return. Accordingly, Employer F contributes the difference to the plan.

Example 25:

Plan H is a single-employer plan with a calendar-year plan year. In August, 2021, the Plan Sponsor discovers that the lump sum paid to Participant U in December, 2019 was overstated by \$10,000, although the benefit was less than the maximum benefit permitted under § 415(b). Plan H's last certified AFTAP for the 2020 plan year is equal to 100%; however, the Plan Sponsor has not yet certified the AFTAP for 2021.

Correction:

The Plan Sponsor notifies Participant U that \$10,000 of the lump sum payment is not eligible for favorable tax treatment because the benefit exceeded the amount that should have been provided under plan terms. The Plan Sponsor uses the funding exception correction method to correct the Overpayments. Because the presumed AFTAP as required under § 436 as of August, 2021 is equal to 100%, no corrective payment is required to be made to Plan H as a result of the Overpayment.

Example 26:

The facts are the same as in Example 25, except that the certified AFTAP for 2020 was 90%. The Plan Sponsor determines that the \$10,000 Overpayment increased the minimum funding requirement by \$1,700 per year, starting with the 2020 plan year when the Overpayment was first reflected in the funding calculations. The error was discovered after the 2021 valuation was completed, so the Overpayment was also reflected in the 2021 minimum required contribution. The Plan Sponsor contributed an additional \$1,000 over the minimum required contribution for the 2020 plan year which was not added to the prefunding balance.

Correction:

The Plan Sponsor corrects the Overpayment under the contribution credit correction method. Under this correction method, the cumulative contribution credit is \$4,400 (that is, \$1,700 for plan year 2020, \$1,700 for plan year 2021, and the additional \$1,000 contribution for the 2020 plan year). The difference of \$5,600 (\$10,000 - \$4,400) must be repaid by the Plan Sponsor, Participant U, or another party. Under this correction method, no adjustment for interest is made when calculating the amount of the Overpayment or the cumulative contribution credit for periods before the date of correction.

Example 27:

The facts are the same as in Example 26 except that Participant U retired December 1, 2019, with a life annuity and the Plan Sponsor discovered in August, 2021 that the monthly benefits paid to Participant U were overstated by \$200 per month. The Plan Sponsor reduces the life annuity to the correct amount beginning with the benefit paid for September, 2021. The Plan Sponsor reflected the incorrect payment in the calculation of the minimum required contribution for the 2020 and 2021 plan years and determined that the Overpayment resulted in an increase in the minimum required contribution of \$4,900 per year. Participant U received the \$200 monthly Overpayment for 21 months, for a cumulative Overpayment of \$4,200 (with no adjustment for interest prior to the date of correction).

Correction:

The Plan Sponsor corrects the Overpayment using the contribution credit correction method. The accumulated contribution credit is \$10,800 (resulting from an increase in the minimum required contribution of \$4,900 per year for two years, plus the additional \$1,000 contribution for the 2020 plan year, again with no adjustment for interest). Under the contribution credit correction method, since the accumulated contribution credit is larger than the cumulative Overpayment, no corrective payments are required to be made to Plan H as a result of the Overpayment.

Example 28:

Plan G is a multiemployer plan with a calendar-year plan year. In March, 2021, the enrolled actuary certifies that Plan G is not in critical, critical and declining, or endangered status in accordance with the rules of § 432. In June, 2021, the Plan Administrator discovers that for 12 months, Participant T had been receiving a benefit of \$1,000 per month (which is under the limit in § 415(b)) instead of the \$900 per month benefit provided under the terms of the plan.

Correction:

The Plan Sponsor reduces Participant T's benefit to the corrected amount of \$900 per month effective July 1, 2021. The Plan Sponsor uses the funding exception correction method to correct the Overpayments. Under this correction method, because the most recent certification by Plan G's actuary states that Plan G is not in critical, critical and declining, or endangered status, no corrective payment is required for Plan G as a result of the Overpayment.

.06 § 401(a)(17) Failures. (1) Reduction of Account Balance Correction Method. The allocation of contributions or forfeitures under a defined contribution plan for a plan year on the basis of compensation in excess of the limit under § 401(a)(17) for the plan year may be corrected using the reduction of account balance correction method set forth in section 6.06(2) of this revenue procedure.