

Section 301.

(last updated 1/19/2023)

Title: Recovery of retirement plan overpayments

Effective Date: Effective upon enactment with certain retroactive relief for prior good faith interpretations of existing guidance.

Mandatory or Optional: N/A

Plans Affected: 401(a); 403(a); 403(b)

Previous Law: Fiduciaries for plans that have mistakenly overpaid a participant must take reasonable steps to recoup such overpayment, such as collecting the overpayment from the participant or employer in order to maintain the tax-qualified status of the plan and comply with ERISA. EPCRS includes various procedures for correcting overpayments made from defined benefit and defined contribution plans. The Pension Benefit Guaranty Corporation (“PBGC”) also has overpayment recoupment policies for terminating defined benefit plans.

SECURE 2.0 Law: A 401(a), 403(a), 403(b), and governmental plan (but not including a 457(b) plan) will not fail to be a tax favored plan merely because the plan fails to recover an “inadvertent benefit overpayment” or otherwise amends the plan to permit this increased benefit. In certain cases, the overpayment is also treated as an eligible rollover distribution. There is also fiduciary relief for failure to make the plan whole. However, the plan sponsor must still satisfy minimum funding requirements and prevent/restore an impermissible forfeiture.

Guidance and/or Correction Bills:

- None