

# **Guidance Under Sections 414(aa) and 402(c)(12) of the Internal Revenue Code with Respect to Inadvertent Benefit Overpayments**

Notice 2024-77

## **I. PURPOSE**

This notice provides guidance in the form of questions and answers on sections 414(aa) and 402(c)(12) of the Internal Revenue Code (Code) as added by section 301(b) of 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).<sup>1</sup> Section 414(aa) of the Code addresses the requirements of sections 401(a) and 403 with respect to inadvertent benefit overpayments. Section 402(c)(12) addresses the treatment of certain inadvertent benefit overpayments as eligible rollover distributions.

This notice provides guidance on the impact of sections 414(aa) and 402(c)(12) on the Employee Plans Compliance Resolution System (EPCRS), set forth in Revenue Procedure 2021-30, 2021-31 IRB 172, including the impact on correction of inadvertent benefit overpayments. This notice is intended to assist taxpayers by providing interim guidance and is not intended to provide comprehensive guidance with respect to sections 414(aa) and 402(c)(12).

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<sup>1</sup> Section 301(a) of the SECURE 2.0 Act amends title I of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829, as amended (ERISA), by adding section 206(h) to ERISA. This notice does not address section 206(h) of ERISA.

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) invite comments on the guidance in this notice and any other aspect of sections 414(aa) and 402(c)(12), including how those sections are affected by the provisions of section 301(c) and (d) of the SECURE 2.0 Act.

## **II. BACKGROUND**

### **A. Rev. Proc. 2021-30.**

Rev. Proc. 2021-30 sets forth EPCRS, a system of correction programs for certain employer-sponsored retirement plans. Rev. Proc. 2021-30 describes correction methods for overpayments, including a method by which overpayments may be corrected through corrective payments to the plan (whether recouped from participants or beneficiaries or paid by plan sponsors or other third parties).<sup>2</sup> A participant or beneficiary may make corrective payments in a lump sum, in installments, or, with regard to overpayments involving periodic payments, through reductions in future payments.<sup>3</sup> If a plan sponsor chooses not to seek recoupment from a participant or beneficiary (or is unsuccessful in obtaining full recoupment), the plan sponsor or another person generally must make the corrective payments to the extent the full overpayment amount is not repaid to the plan.<sup>4</sup> In addition, under Rev. Proc. 2021-30, if an overpayment is not corrected by plan amendment, the plan sponsor generally must notify the participant or beneficiary in writing that the overpayment is not eligible for the favorable tax treatment accorded to

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<sup>2</sup> Other correction methods may be available. For example, a plan sponsor may also be able to amend the plan to conform to the plan's operations. See section 6.06(3)(a) and (4)(a) of Rev. Proc. 2021-30.

<sup>3</sup> See section 6.06(3)(c) and (4)(c) of Rev. Proc. 2021-30 and sections 2.04(2) and 2.05(2) of Appendix B to Rev. Proc. 2021-30.

<sup>4</sup> See section 6.06(3)(b)(iii) and (4)(b)(iii) of Rev. Proc. 2021-30.

distributions from an eligible retirement plan and is not eligible for tax-free rollover.<sup>5</sup> For defined benefit plans, Rev. Proc. 2021-30 provides two additional correction methods, the funding exception correction method and contribution credit correction method, that reduce the need for corrective payments.<sup>6</sup> Under the funding exception correction method, if a plan subject to section 436 is sufficiently funded and satisfies other eligibility requirements, no corrective payments from any party are required. Under the contribution credit correction method, required corrective payments are reduced, based on a specified formula, by certain additional contributions in excess of minimum funding requirements and by increases in the plan's minimum funding requirements attributable to the overpayment.

**B. Section 414(aa) of the Code.**

Section 301(b)(1) of the SECURE 2.0 Act added section 414(aa) to the Code. Section 414(aa)(1) provides that, as a general rule, a plan will not fail to be treated as described in clause (i), (ii), (iii) or (iv) of section 219(g)(5)(A)<sup>7</sup> and will not fail to be treated as satisfying the requirements of section 401(a) or 403 merely because the plan fails to obtain payment from a participant, beneficiary, employer, plan sponsor, fiduciary, or other party on account of any inadvertent benefit overpayment, or the plan sponsor amends the

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<sup>5</sup> See section 6.06(3)(b)(ii) and (4)(b)(ii) of Rev. Proc. 2021-30.

<sup>6</sup> See section 6.06(3)(d) of Rev. Proc. 2021-30 and section 2.05(3) and (4) of Appendix B to Rev. Proc. 2021-30.

<sup>7</sup> A plan described in section 219(g)(5)(A)(i), (ii), (iii), or (iv) is (i) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a), (ii) an annuity plan described in section 403(a), (iii) a plan established for its employees by the United States, by a State or political subdivision thereof or any agency or instrumentality of any of the foregoing, or (iv) an annuity contract described in section 403(b).

plan to increase past, or decrease future, benefit payments to affected participants and beneficiaries in order to adjust for prior inadvertent benefit overpayments.

Section 414(aa)(2) provides that section 414(aa)(1) will not fail to apply to a plan merely because, after discovering a benefit overpayment, the plan reduces future benefit payments to the correct amount provided for under the terms of the plan or seeks recovery from the person responsible for the overpayment.

Section 414(aa)(3) provides that nothing in section 414(aa) relieves an employer of any obligation imposed on it to make contributions to a plan to meet the minimum funding standards under sections 412 and 430 or to prevent or restore an impermissible forfeiture in accordance with section 411.

Section 414(aa)(4) provides that, notwithstanding section 414(aa)(1), a plan to which section 414(aa)(1) applies must observe any limitations imposed on it by section 401(a)(17) or 415. The plan may enforce these limitations using any method approved by the Secretary for recouping benefits previously paid or allocations previously made in excess of the limitations.

Section 414(aa)(5) provides that the Secretary may issue regulations or other guidance of general applicability specifying how benefit overpayments and their recoupment or non-recoupment from a participant are taken into account for purposes of satisfying any requirement applicable to a plan to which section 414(aa)(1) applies.

**C. Section 402(c)(12) of the Code.**

Section 301(b)(2) of the SECURE 2.0 Act added section 402(c)(12) to the Code. Section 402(c)(12) applies in the case of an inadvertent benefit overpayment from a plan

to which section 414(aa)(1) applies that is transferred to an eligible retirement plan by or on behalf of a participant or beneficiary. Section 402(c)(12)(A) provides that the portion of the overpayment with respect to which recoupment is not sought on behalf of the plan will be treated as having been paid in an eligible rollover distribution if the payment would have been an eligible rollover distribution but for being an overpayment. Section 402(c)(12)(B) provides that the portion of the overpayment with respect to which recoupment is sought on behalf of the plan will be permitted to be returned to the plan and, in the case of an overpayment returned to the plan, will be treated as an eligible rollover distribution transferred to the plan by the participant or beneficiary who received the overpayment (and the plans making and receiving the transfer are treated as permitting the transfer).

**D. Sections 301(c) and (d) of the SECURE 2.0 Act.**

Section 301(c) of the SECURE 2.0 Act provides that the amendments made by section 301 are effective as of the date of enactment of the SECURE 2.0 Act (December 29, 2022).

Section 301(d) provides that plans, fiduciaries, employers, and plan sponsors are entitled to rely on:

(1) a reasonable good faith interpretation of then existing administrative guidance for inadvertent benefit overpayment recoupments and recoveries that commenced before December 29, 2022, and

(2) determinations made before December 29, 2022, by the responsible plan fiduciary, in the exercise of its fiduciary discretion, not to seek recoupment or recovery of all or part of an inadvertent benefit overpayment.

In the case of a benefit overpayment that occurred before December 29, 2022, any installment payments made by the participant or beneficiary to the plan or any reduction in periodic benefit payments to the participant or beneficiary that were made in recoupment of such overpayment, and that commenced before December 29, 2022, may continue after that date.

Nothing in section 301(d) relieves a fiduciary from responsibility for an overpayment that resulted from a breach of its fiduciary duties.

### **III. GUIDANCE REGARDING SECTIONS 414(aa) AND 402(c)(12) OF THE CODE**

**Q-1.** How is an “inadvertent benefit overpayment” defined for purposes of sections 414(aa) and 402(c)(12) and this notice?

**A-1.** An “inadvertent benefit overpayment,” for purposes of sections 414(aa) and 402(c)(12) and this notice, is an eligible inadvertent failure, as defined in section 305(e) of the SECURE 2.0 Act,<sup>8</sup> that occurs due to a payment made from a plan described in section 219(g)(5)(A)(i)-(iv) of the Code<sup>9</sup> that exceeded the amount payable under the terms of the plan or a limitation provided in the Code or regulations. An inadvertent benefit

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<sup>8</sup> An “eligible inadvertent failure” is defined in section 305(e) of the SECURE 2.0 Act as a failure that (1) occurs despite the existence of established practices and procedures that, as relevant to employer-sponsored plans, satisfy the standards set forth in section 4.04 of Rev. Proc. 2021-30, (2) is not egregious, (3) does not relate to the diversion or misuse of plan assets, and (4) is not directly or indirectly related to an abusive tax avoidance transaction. See Notice 2023-43, 2023-24 IRB 919, for additional information and conditions with respect to expansion of EPCRS under section 305 of the SECURE 2.0 Act.

<sup>9</sup> See footnote 7 for the definition of a plan described in section 219(g)(5)(A)(i), (ii), (iii), or (iv).

overpayment also includes a payment made before a distribution is permitted under the Code or under the terms of the plan. However, an inadvertent benefit overpayment does not include (i) a payment made to a disqualified person as defined in section 4975(e)(2) or owner-employee as defined in section 401(c), or (ii) a payment that is made pursuant to a correction method provided under Rev. Proc. 2021–30 for a different qualification failure.

**Q-2.** Does section 414(aa)(1)(A) affect the requirement in section 6.06 of Rev. Proc. 2021-30<sup>10</sup> that an overpayment be corrected through corrective payments?

**A-2.** Yes. Except as provided in section 414(aa)(4) and (5), under section 414(aa)(1)(A), a failure to obtain payment on account of any inadvertent benefit overpayment does not affect a plan’s satisfaction of the applicable provisions of sections 401(a) and 403. Thus, except as described in Q&A-5 of this notice with respect to failures to observe any of the funding-based benefit restrictions of section 436(b), (c), (d), or (e) applicable to certain single-employer defined benefit plans (section 436 failure) and as described in Q&A-6 of this notice with respect to failures to observe any limitation imposed by section 401(a)(17) or 415 (section 401(a)(17) and 415 failures), any requirement described in section 6.06 of Rev. Proc. 2021-30 that a corrective payment be made to a plan with respect to an inadvertent benefit overpayment no longer applies.

Although a corrective payment generally is not required for an inadvertent benefit overpayment, other failures may occur as the result of an inadvertent benefit overpayment

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<sup>10</sup> Some of the correction methods described in section 6.06 of Rev. Proc. 2021-30 are also described in sections 2.04 and 2.05 of Appendix B to Rev. Proc. 2021–30. In this notice, a reference to section 6.06 also includes parallel language in section 2.04 or 2.05 of Appendix B.

that could require a corrective payment. For example, if a plan participant received an inadvertent benefit overpayment due to an incorrect allocation of a profit-sharing contribution under a plan, another plan participant may have received a benefit underpayment. In this case, the benefit underpayment would be considered an additional failure in need of correction, which may require a corrective payment. In addition, section 414(aa)(3) may require an employer to make a corrective payment to prevent or restore an impermissible forfeiture in accordance with section 411.

**Q-3.** Does section 414(aa)(1) prohibit a plan sponsor from seeking recoupment of inadvertent benefit overpayments from overpayment recipients?

**A-3.** No. Section 414(aa)(1) does not change the rule in section 6.06 of Rev. Proc. 2021-30 that recoupment from overpayment recipients is permitted but not required. For example, a plan sponsor may continue to use the overpayment correction methods in section 6.06(3)(c) and (4)(c) and in section 2.05(2)(c) of Appendix B to Rev. Proc. 2021-30. As noted in footnote 1, this notice does not address ERISA section 206(h), which, in part, imposes conditions on recoupment of an inadvertent benefit overpayment from a participant or beneficiary.

**Q-4.** Under what circumstances may an individual who rolls over an inadvertent benefit overpayment to an eligible retirement plan retain the overpayment in tax-favored status?

**A-4.** Under section 402(c)(12)(A), the portion of a rolled-over inadvertent benefit overpayment for which recoupment is not sought is treated as an eligible rollover distribution if the payment would have been an eligible rollover distribution but for being an overpayment. Accordingly, subject to the exception described in Q&A-6 of this notice



for a section 401(a)(17) or 415 failure, an individual who receives an inadvertent benefit overpayment and rolls over that overpayment pursuant to a direct or 60-day rollover retains the tax-favored status of the overpayment for the portion of the overpayment for which recoupment is not sought.

Under section 402(c)(12)(B), if an inadvertent benefit payment is rolled over from an originating plan to a second plan and recoupment of all or a portion of the inadvertent benefit payment is sought, then the amount that is sought and transferred back to the originating plan is treated both as an eligible rollover distribution from the originating plan and as an eligible rollover distribution transferred back to the originating plan. Additionally, under section 402(c)(12)(B), both the originating plan and the second plan are treated as permitting the transfer back to the originating plan. Thus, without regard to plan terms, the originating plan is treated as permitting the transfer back of the inadvertent benefit overpayment as an eligible rollover distribution, and the transfer from the second plan is treated as an eligible rollover distribution.

The portion of an inadvertent benefit overpayment for which recoupment is sought that is not returned to the originating plan is not treated as an eligible rollover distribution. In accordance with the requirements of section 6.06(3)(b)(ii) or (4)(ii) of Rev. Proc. 2021-30, the plan sponsor must notify the individual that any unreturned portion of the inadvertent benefit overpayment is not eligible for favorable tax treatment accorded to distributions from an eligible retirement plan, as defined in section 402(c)(8)(B) (and, specifically, is not eligible for tax-free rollover). The notice provided to the participant regarding tax

treatment of the unreturned portion of the overpayment may be combined with a plan sponsor's recoupment request.

**Q-5.** What is the treatment under sections 414(aa) and 402(c)(12) for inadvertent benefit overpayments resulting from a section 436 failure?

**A-5.** With respect to a section 436 failure under a plan that occurs as a result of an inadvertent benefit overpayment to an individual, to the extent the inadvertent benefit overpayment is not recouped on behalf of the plan from the individual, the plan sponsor or another person must make a corrective payment under the same circumstances as apply generally under Rev. Proc. 2021-30 for an overpayment that is not an inadvertent benefit overpayment. This requirement is provided pursuant to the Secretary's authority under section 414(aa)(5) to issue guidance specifying how benefit overpayments and their recoupment or non-recoupment are taken into account for purposes of satisfying any requirement applicable to a plan to which section 414(aa)(1) applies and is an exception to the rule described in Q&A-2 that section 6.06 of Rev. Proc. 2021-30 no longer requires a corrective payment to a plan with respect to an inadvertent benefit overpayment.

In addition, to the extent an individual rolled over an inadvertent benefit overpayment resulting from a section 436 failure, the rules relating to rollover treatment if an inadvertent benefit overpayment either is or is not sought that are described in Q&A-4 apply.

**Q-6.** What is the treatment under sections 414(aa) and 402(c)(12) for inadvertent benefit overpayments resulting from section 401(a)(17) or 415 failures?

**A-6.** Under section 414(aa)(4), a plan must observe the limitations imposed by sections 401(a)(17) and 415 and may enforce those limitations using any method

approved by the Secretary for recouping benefits previously paid or allocations previously made in excess of those limitations. This requirement to comply with sections 401(a)(17) and 415 is an exception to the rule described in Q&A-2 of this notice that any requirement described in section 6.06 of Rev. Proc. 2021-30 that a corrective payment be made to a plan with respect to an inadvertent benefit overpayment no longer applies. Accordingly, with respect to a section 401(a)(17) or 415 failure under a plan that occurs as a result of an inadvertent benefit overpayment to an individual, to the extent the inadvertent benefit overpayment is not recouped on behalf of the plan from the individual, the plan sponsor or another person must make a corrective payment under the same circumstances as apply under section 6.06 of Rev. Proc. 2021-30 for an overpayment that is not an inadvertent benefit overpayment.

As described in Q&A-4 of this notice, the portion of an inadvertent benefit overpayment for which recoupment is sought that is not returned to the originating plan is not treated as an eligible rollover distribution under section 402(c)(12). For purposes of this rule, an inadvertent benefit overpayment occurring as a result of a section 401(a)(17) or 415 failure that requires corrective payments under section 6.06 of Rev. Proc. 2021-30 is treated as an inadvertent benefit overpayment for which recoupment is sought. Accordingly, if, on behalf of a plan, the plan sponsor does not recoup from an individual a rolled-over inadvertent benefit overpayment that occurs as a result of a section 401(a)(17) or 415 failure, the inadvertent benefit overpayment is not treated as an eligible rollover distribution. In accordance with the requirements of section 6.06(3)(b)(ii) and (4)(ii), the plan sponsor must notify the individual that any portion of the inadvertent benefit

overpayment not returned to the plan is not eligible for favorable tax treatment accorded to distributions from an eligible retirement plan, as defined in section 402(c)(8)(B) (and, specifically, is not eligible for tax-free rollover). The notice provided to the participant regarding tax treatment of the unreturned portion of the overpayment may be combined with a recoupment request.

**Q-7.** May a plan sponsor amend a plan to increase past benefit payments to affected participants and beneficiaries, in order to adjust for prior inadvertent benefit overpayments pursuant to section 414(aa)(1)(B), in a manner that results in a violation of section 401(a)(17), 415, or 436 for a past year?

**A-7.** Under section 414(aa)(4), notwithstanding section 414(aa)(1), a plan to which section 414(aa)(1) applies must observe any limitations imposed on it by sections 401(a)(17) and 415. Additionally, under Q&A-1 of Notice 2023-43, a plan sponsor may self-correct an eligible inadvertent failure (which includes an inadvertent benefit overpayment) only if certain requirements are met, including that the plan sponsor does not use a correction method that is prohibited under Rev. Proc. 2021-30. Under section 6.02(2)(d) of Rev. Proc. 2021-30, a correction method under Rev. Proc. 2021-30 should not violate another applicable specific requirement of section 401(a) or 403(b), or a parallel requirement in part 2 of subtitle B of title I of ERISA (for plans that are subject to part 2 of subtitle B of title I of ERISA). Therefore, an amendment to increase past benefit payments pursuant to section 414(aa)(1)(B) of the Code in a manner that results in a violation of section 401(a)(17) or 415 for a past year is not permitted.

An amendment to increase past benefits pursuant to section 414(aa)(1)(B) that results in a section 436 failure for a past year is permitted only if contributions are made in accordance with section 436(c)(2) and section 6.02(4) of Rev. Proc. 2021-30.

**Q-8.** Are there any provisions of Rev. Proc. 2021-30 that are modified or are no longer applicable with respect to an inadvertent benefit overpayment to which section 414(aa) or 402(c)(12) applies?

**A-8.** The following provisions of Rev. Proc. 2021-30 are modified or are no longer applicable with respect to an inadvertent benefit overpayment to which section 414(aa) or 402(c)(12) applies:

- The definition of an overpayment in sections 5.01(3)(c) and 5.02(4) of Rev. Proc. 2021-30 is modified by Q&A-1 of this notice for an overpayment that is an inadvertent benefit overpayment.
- Any requirement in section 6.06(3)(b)(ii) and (4)(b)(ii) of Rev. Proc. 2021-30 that a plan sponsor must notify an individual that an overpayment is not an eligible rollover distribution no longer applies to the portion of an inadvertent benefit overpayment not sought for recoupment (other than as specified in Q&A-4, Q&A-5, and Q&A-6 of this notice with respect to the portion of an inadvertent benefit overpayment for which recoupment is sought but is not returned to the originating plan).
- Any requirement of a corrective payment in section 6.06 of Rev. Proc. 2021-30 no longer applies to an inadvertent benefit overpayment (other than as specified in Q&A-5 of this notice with respect to a section 436 failure and in Q&A-6 of this notice with respect to a section 401(a)(17) or 415 failure).

- Section 6.09(5) of Rev. Proc. 2021-30, which provides relief from the excise tax under section 4973, is no longer necessary for any inadvertent benefit overpayment that is treated as an eligible rollover distribution under section 402(c)(12). Accordingly, under those circumstances, section 6.09(5) of Rev. Proc. 2021-30 no longer applies.

- Section 6.09(6) of Rev. Proc. 2021-30, which provides relief from the 10 percent additional income tax under section 72(t), is no longer necessary for any inadvertent benefit overpayment that is treated as an eligible rollover distribution under section 402(c)(12). Accordingly, under those circumstances, section 6.09(6) of Rev. Proc. 2021-30 no longer applies.

#### **IV. APPLICABILITY DATE**

This notice applies with respect to section 414(aa) on the date it is issued. For periods before the date of issuance of this notice, a taxpayer may rely on a good faith, reasonable interpretation of section 414(aa).

This notice applies with respect to section 402(c)(12) on the date it is issued. Section 402(c)(12) applies as of December 29, 2022, regardless of when an inadvertent benefit overpayment was made. For periods before the date of issuance of this notice, a taxpayer may rely on a good faith, reasonable interpretation of section 402(c)(12).

A plan sponsor that interpreted section 414(aa) or 402(c)(12) during periods before the date of issuance of this notice in a manner that accords with this notice will be treated as having applied a good faith, reasonable interpretation of section 414(aa) or 402(c)(12).

## **V. REQUEST FOR COMMENTS**

The Treasury Department and the IRS invite comments on the guidance in this notice and any other aspect of sections 414(aa) and 402(c)(12), including as those sections are affected by the provisions of section 301(c) and (d) of the SECURE 2.0 Act.

Comments should be submitted in writing on or before December 16, 2024, and should include a reference to Notice 2024-77. Comments may be submitted electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (type “IRS Notice 2024-77” in the search field on the Regulations.gov home page to find this notice and submit comments). Alternatively, comments may be submitted by mail to: Internal Revenue Service, Attn: CC:PA:LPD:PR (Notice 2024-77), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.

The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket.

## **VI. PAPERWORK REDUCTION ACT**

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. The collection of information mentioned in this IRS Notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1673.

The mentioned collection of information is a third-party disclosure requirement listed in Q&A-4, Q&A-5, and Q&A-6. This information is required to notify plan participants of the tax implications of a distribution from a plan that is not an eligible rollover distribution.

Notice 2024-77 does not alter any previously accounted for information collection requirements and does not create new collection requirements not already approved by the Office of Management and Budget.

## **VII. DRAFTING INFORMATION**

The principal authors of this notice are Christina Cerasale and Amy Moskowitz of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of this guidance. For further information regarding this notice, contact Ms. Cerasale or Ms. Moskowitz at (202) 317-4102 (not a toll-free number).