



Pensions on PEACHTREE 2023





EPCRS



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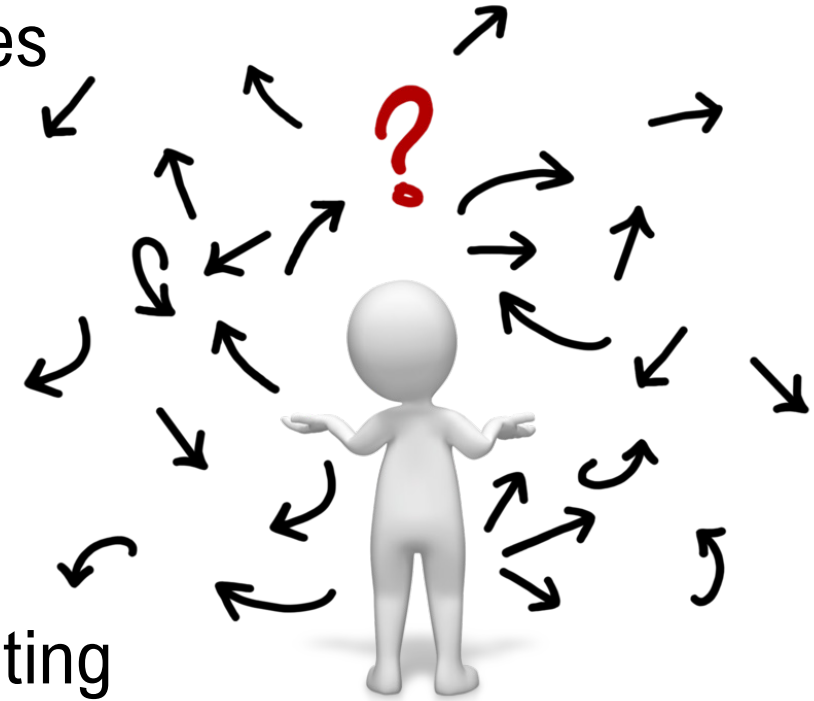
AGENDA

- 2022 Coverage issues (Mustard Plan, Peach Plan, Peacock Plan)
- Plan document failures
 - Missing participant agreement (Miss Scarlet Hot Sauce)
 - Late adoption of Cycle 3 restatement (Mustard Plan)
 - Possible missing initial plan document
- Participation of excluded employees (Plum in Peach Plan)
- Compensation failure (Peach Plan)
- Overpayments (Plum Plan)
- Loan failures (Plum Plan and Mustard Plan)



WHAT ABOUT SECURE 2.0?

- Possibly allows us to self-correct almost all failures without considering the self-correction window
- Need additional guidance from IRS and updated EPCRS
- Standard corrections – more likely to rely on self-correction expansion
- Overpayment rules are effective now (without waiting for guidance)



ISSUE 1: COVERAGE – MUSTARD PLAN

- Col. Mustard Condiments and Miriam's Aglets form a controlled group
- Need to redo coverage testing treating Aglets employees as eligible but excluded from the Col. Mustard Plan
- Miriam's Aglets does not have a plan – only one test
 - But, need to perform testing for all affected years



ISSUE 1: COVERAGE - MUSTARD PLAN

Mustard Plan	Total EEs	Total NHCEs	Bene NHCEs	Total HCEs	Bene HCEs
Mustard	57	53	39	4	4
Scarlet	38	36	20	1	1
Aglets	15	14	0	1	0
	110	103	59	6	5
Mustard Coverage					
				HCE %	83.33%
		NHCE %	57.28%		
Mustard Plan Ratio Percentage:			68.74%	Fail	

Mustard Fails Coverage!



ISSUE 1: COVERAGE – PEACH PLAN

- Miss Peach Cobbler, Georgia Green PC and Peacock's Pumps form a controlled group
- Need to redo coverage testing treating Georgia Green and Peacock employees as eligible but not benefitting in the Peach Plan
- Peacock Plan is Safe Harbor, but Peach Plan is not Safe Harbor
 - Can't aggregate for testing!
- When coverage testing Peach Plan, include Peacock and Green as non-benefitting
 - Will Peach pass coverage with these additional non-benefitting groups?



ISSUE 1: COVERAGE – PEACH PLAN

Peach Plan	Total EEs	Total NHCEs	Bene NHCEs	Total HCEs	Bene HCEs
Peach	140	135	100	5	5
Peacock Pumps	40	35	0	5	0
Georgia Green PC	1	0	0	1	0
	181	170	100	11	5
Peach Coverage					
				HCE %	45.45%
		NHCE %	58.82%		
Peach Plan Ratio Percentage:			129.41%	PASS	

Peach Passes Coverage!



ISSUE 1: COVERAGE – PEACOCK PLAN

- What about the Peacock Plan:
- Miss Peach Cobbler, Georgia Green PC and Peacock's Pumps form a controlled group
- Need to redo coverage testing treating Georgia Green and Peach employees as eligible but not benefitting in the Peacock Plan
- When coverage testing Peacock Plan, include Peach and Green as non-benefitting
 - Will Peacock pass coverage with these additional non-benefitting groups?



ISSUE 1: COVERAGE – PEACOCK PLAN

Peacock Plan	Total EEs	Total NHCEs	Bene NHCEs	Total HCEs	Bene HCEs
Peach	140	135	0	5	0
Peacock Pumps	40	35	35	5	5
Georgia Green PC	1	0	0	1	0
	181	170	35	11	5
Peacock Coverage					
				HCE %	45.45%
		NHCE %	20.59%		
Peach Plan Ratio Percentage:			45.29%	FAIL	

Peacock Fails Coverage!



ISSUE 1: COVERAGE – FIXING MUSTARD & PEACOCK PLANS

- Correction is to provide additional benefits until ratio percentage is satisfied or pass average benefit test
- Prepare and have client sign an 11(g) amendment by 15th day of 10th month following plan year end (10/15 for calendar year plan)
- File VCP?
 - Code gives deadline for adoption of 11(g) amendment. If miss deadline, historically must file through VCP
 - SECURE 2.0 expands self-correction for any inadvertent failure to comply with Code §401(a). Seemingly could includes demographic failures. Absent updated EPCRS that permits SCP, these failures should still be corrected through VCP

ISSUE 1: COVERAGE – FIXING MUSTARD & PEACOCK PLANS

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- Can also use Average Benefit Percentage Testing to satisfy coverage
 - Can be difficult to collect data if not all employers are cooperative
- If document uses 410(b) fail-safe election, document will require ratio percentage test to correct
 - Check all documents! Not just the Miss Peach Plan
- Often forces most expensive correction option and dictates how to correct (i.e., who is let in)



ISSUE 2: PLAN DOCUMENTS

- EPCRS was expanded prior to SECURE 2.0 to allow self-correction of some document failures
- Does not permit SCP for failure to adopt initial plan document
- Some question as to whether that applies to a participating employer, as well
- Post-SECURE 2.0, we need guidance
- How do you prove original adoption?

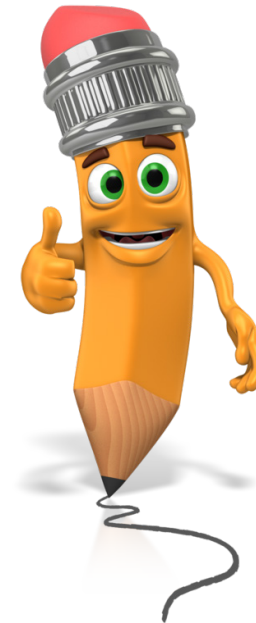


ISSUE 2: PLAN DOCUMENTS – PARTICIPATING EMPLOYER

- **Miss Scarlet** never adopted the **Col. Mustard** Plan as a participating employer, but **Miss Scarlet** employees participated in the Plan
- All contributions for **Miss Scarlet** employees are improper unless we fix the Plan documents
- Prepare missing participating employer agreements and adopt now
- Prepare retroactive amendment to document reflecting controlled group and adopt now

ISSUE 2: PLAN DOCUMENTS – PARTICIPATING EMPLOYER

- Key for corrective documents:
 - Match effective dates and terms to actual operations
 - Signed and dated contemporaneously – documents will have retroactive effect, but should always be dated as of the date they are actually signed
 - Include language in the amendment that it is prepared pursuant to EPCRS and make a note in your system
- Should you file VCP? YES



ISSUE 2: PLAN DOCUMENTS – LATE CYCLE 3

- Not necessarily a qualification failure
- May 23, 2022, Employee Plans newsletter – applies to DB and 403(b) plans, but logic applies to all qualified plans
- If a restatement is not timely adopted by the deadline, the plan is no longer a pre-approved plan - becomes Individually Designed Plan (IDP)
- Must review documents to ensure:
 - (1) Any prior interim and discretionary amendments made while the plan was a pre-approved plan meet the requirements of Code §401(a); and
 - (2) The plan must satisfy the rules applicable to the remedial amendment period for any required changes for IDPs (as opposed to the rules and timing for pre-approved plans)

ISSUE 2: PLAN DOCUMENTS – LATE CYCLE 3

- If prior interim and discretionary amendments do not meet requirements of Code §401(a), can still be corrected using EPCRS (some self-correction permitted by EPCRS, and potentially expanded by SECURE 2.0)
 - Must have internal procedures to qualify for self-correction
- Adopt Cycle 3 document – Plan is once again on a preapproved document and is only an IDP for the period it was not on preapproved document
 - E.g., Col. Mustard Plan adopts a preapproved document on 4/18/2023. It was an IDP from 8/1/2022 through 4/17/2023

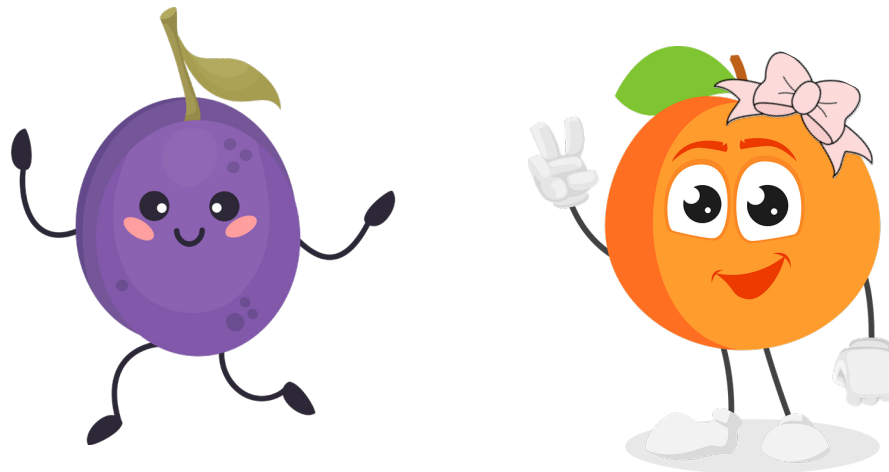
ISSUE 2: PLAN DOCUMENTS – LATE CYCLE 3

- Review required amendments lists to determine any necessary interim amendment language
- Example:
 - Missing hardship language that should have been adopted by 12/31/2021
 - Strict interpretation – EPCRS permits self-correction within 3-year window (i.e., 12/31/2024)
 - Can adopt hardship amendment now to self-correct and maintain qualification
 - Potential under SECURE 2.0 that it could be self-corrected even beyond the 3 years



ISSUE 3: PLUM EMPLOYEES PARTICIPATING IN PEACH PLAN

- Peach Plan was not amended to credit service with Plum Lucky
- Plum Lucky employees began participating in the Peach Plan on 1/1 when moved to the Peach payroll
- This is an early inclusion of an otherwise eligible employee
 - Plum Lucky employees are not eligible for the Peach Plan unless it is amended to credit prior service



ISSUE 3: PLUM EMPLOYEES PARTICIPATING IN PEACH PLAN

- Then what is the correction?
- Permitting Plum Lucky employees to participate is an operational failure to follow the terms of the Peach Plan document
- Adopt an amendment to conform the terms of the Peach Plan to the prior operations
 - Amend the Peach Plan to credit service with Plum Lucky to participate as of 1/1
 - Some documents automatically credit service with controlled group member (Miss Peach Plan document does not)

ISSUE 3: PLUM EMPLOYEES PARTICIPATING IN PEACH PLAN

Pensions on
PEACH TREE
2023

Can this be self corrected?

- Participation by Plum Lucky employees was an increase in a benefit, right, or feature that can be corrected through SCP. Requirements:
 - Amendment must result in increase in BRF
 - Increase provided by amendment must not violate Code (i.e., be discriminatory, eliminate a protected benefit) or EPCRS principles



ISSUE 3: PLUM EMPLOYEES PARTICIPATING IN PEACH PLAN

What goes into the amendment?

- Need to match amendment provisions to operations
- Who did they let in on 1/1?
 - Those over 21 years old *and* 1 year of service at Plum Lucky
 - Anyone participating in Plum Lucky Plan prior to acquisition
 - Everyone at Plum Lucky at time of acquisition



ISSUE 4: COMPENSATION FAILURE – PEACH PLAN

- Miss Peach Cobbler, LLC is taxed as an S-Corp
- Eligible compensation must be W-2
 - K-1 income from an S-Corp is not earned income
 - Must be earned income to be eligible plan compensation
- Miss Peach (owner) is paid solely via K-1 but has been participating in the Miss Peach Plan
- Miss Peach does not have eligible compensation



ISSUE 4: COMPENSATION FAILURE – PEACH PLAN



EPCRS does not specifically address compensation failures (beyond 401(a)(17) corrections)



Theory 1: Failure to follow the terms of the plan document. Correction is to return the plan to the position it would have been had the failure never occurred



Theory 2: Because there was no eligible compensation, all money deferred or contributed for **Miss Peach's** account was an excess allocation (violates Code §415)



Under either theory, we end up with the same correction – deferrals must come out of the **Miss Peach** Plan and employer money must be forfeited



ISSUE 4: COMPENSATION FAILURE – PEACH PLAN

- Excess allocation is from elective deferrals – return money to the participant
 - Adjust for earnings through the date of correction (can't use gap period because it's late)
- Fix the tax reporting: report distribution on Form 1099-R in both the year of deferral and the year of correction
- Forfeit any match or nonelective contributions that were allocated (adjusted for earnings)



ISSUE 5: OVERPAYMENTS – PLUM LUCKY PLAN

- Plum Lucky execs incorrectly treated the Plum Plan as terminated and started distributing assets
- Overpayments are not just excess amounts
 - Excess amount = money in a participant's account that shouldn't be there
 - Overpayment = distribution to a recipient (whether participant, beneficiary, or alternate payee) that shouldn't have been made



ISSUE 5: OVERPAYMENTS – PLUM LUCKY PLAN

- Norman Body is 52 years old. He had accumulated a balance in the Plum Plan \$250,000. He rolled over his entire balance to an IRA in November 2022.
- No distributable event:
 - No hardship
 - COVID distributions are long gone
 - Too young for in-service distribution
- Distributing assets in absence of a distributable event = overpayment failure under EPCRS



ISSUE 5: OVERPAYMENTS – PLUM LUCKY PLAN

- SECURE 2.0 Change – if overpayment was “inadvertent” and fiduciary has established procedures to prevent/minimize overpayments, the overpayment does not need to be recovered
- What if we don’t meet the SECURE 2.0 requirements?
 - Adopt amendment retroactively effective to conform Plum Plan to operations
 - Only works if not prohibited by law (e.g., distribution restrictions on 401k money)
 - There is no valid distributable event that could be adopted to fix the transaction
De minimis exception – If overpayment does not exceed \$250
 - \$250,000 was distributed to Norman
 - Return of overpayment – recipient must return the distributed money to the Plan, or, in some cases, the plan sponsor will need to make the plan whole

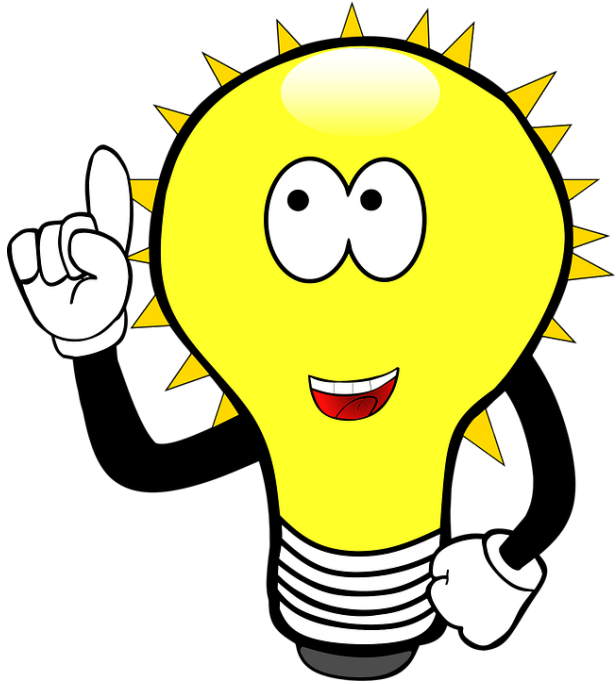
ISSUE 5: OVERPAYMENTS – PLUM LUCKY PLAN

What if the distribution was not an inadvertent overpayment and Norman refuses to return the money?

- If recipient was paid too much (i.e., the amount distributed exceeded their account), and exceeded the de minimis exception, someone (the plan sponsor, RK, etc.) must make the plan whole
- If recipient was paid too soon (i.e., the amount was proper but there was no distributable event), the Plan Sponsor is required to make reasonable efforts to get money returned



AN INTERLUDE FOR EARNINGS



- For corrective contributions, look to Rev. Proc. 2021-30 Appendix B, Section 3.01(3)(b)
- Preferred method is to use the actual rate of return based on the investments selected by the affected participants
- If actual earnings are not available or practical, methods vary depending on HCE vs. NHCE, and type of failure involved



EARNINGS FOR CORRECTIVE CONTRIBUTIONS

If group is predominantly NHCE –

- Fund option under the plan with the highest rate of return during the period of failure
- If the affected participants had not made any investment elections, may use rate of return under the plan as a whole during the period of failure (i.e., the average rate of return)
 - The use of the average rate of return is also applicable if you have an employer-directed trust

EARNINGS FOR CORRECTIVE CONTRIBUTIONS

- Even if the affected group is predominantly HCEs, using actual earnings is always the preferred method
- If actual earnings are too complicated to calculate (too many people involved), may use weighted average with HCEs
- NOTE: use of highest ROR isn't available for HCEs
- DOL Online Calculator is an option when no data on investments and earnings is available

ISSUE 6: LOAN FAILURES

Two Failures:

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graph TD; A[Two Failures:] --> B[Mustard Plan – Failure to withhold loan repayments]; A --> C[Plum Plan – Improper offsetting of loans upon distribution];
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Mustard Plan –
Failure to withhold
loan repayments

Plum Plan – Improper
offsetting of loans
upon distribution

ISSUE 6: LOAN FAILURES – MUSTARD PLAN

Failure to Withhold Repayments

- Repayments ceased with the 3/3/2023 payroll
- We are still in the cure period!
 - Always check the plan document first
 - Confirm with recordkeeper that nothing has been deemed distributed and that they stop the process



ISSUE 6: LOAN FAILURES – MUSTARD PLAN

Failure to Withhold Repayments

- Correction options:
 - Participant makes lump sum payment to bring loan current; then continue payments under original schedule
 - Reamortize repayment schedule over remaining term or maximum deadline; then resume payments
 - Combination of the above (at participant's election)



ISSUE 6: LOAN FAILURES – MUSTARD PLAN

Failure to Withhold Repayments

- Two possible options for reamortization:
 - Loan was issued 2/1/2020 with a 60-month (5-year) term. Loan may be reamortized over the same term, with final payment occurring by 1/31/2025 (Assume no COVID changes.)
 - Loan was issued 2/1/2021 with a 36-month (3-year term). The participant would like to reamortize using the maximum 5 years. This is permitted. The final payment will occur by 1/31/2026. The term is calculated based on the date of the initial loan, not the date of reamortization



ISSUE 6: LOAN FAILURES – PLUM (& PEACH) PLANS

Deemed Distribution and Offsetting

- Barb Akew took a distribution of her account in November 2022. She had an outstanding participant loan balance of \$20,000 that she did not repay prior to the distribution
- In January 2023, the recordkeeper issued a 1099-R reflecting the \$20,000 as taxable income to Barb
- The outstanding amount was offset upon distribution. Of Barb's \$80,000 balance, only \$60,000 was rolled over to her IRA
- Now, she is returning the money to the Plum Plan. Can we correct the loan offset?



ISSUE 6: LOAN FAILURES – PLUM (& PEACH) PLANS

Deemed Distribution and Offsetting

- Point 1 to address:
 - Plan Information – Reopen account, return the money, reestablish the loan balance and resume repayments (this will need to be done in the Miss Peach Plan)
 - In reestablishing, remember that payments under the original schedule have been missed since November and will need to be corrected as discussed earlier
 - Reporting and Recordkeeping. – A Form 1099-R was already issued. Barb will have basis in the money returned to the Miss Peach Plan so it will not be taxed again at distribution.



ISSUE 6: LOAN FAILURES – PLUM (& PEACH) PLANS

Deemed Distribution and Offsetting

- Point 2 to address:
 - We are past the deadline for rollover of plan loan offset, so Barb cannot make her IRA whole
 - Past 60 days
 - TCJA extended to individual tax filing date – unless Barb is on extension, it's too late



QUESTIONS?



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