

**GENERAL EMPLOYEE PENSION COMMITTEE MEETING
WEDNESDAY, MAY 6, 2020 3:00 P.M.
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

A M E N D E D A G E N D A

- 1. CALL TO ORDER**
- 2. APPROVAL OF MINUTES**
 - A) February 26, 2020
- 3. AGENDA ADDITIONS, DELETIONS & ADOPTION**
- 4. PUBLIC COMMENT**
- 5. NEW BUSINESS**
 - A) Prudential Quarterly Investments
- 6. OLD BUSINESS**
- 7. ATTORNEY MATTERS**
 - A) Discussion Regarding Recovery of Overpayment for Deceased Participants'
- 8. NEXT MEETING DATE**
- 9. ADJOURNMENT**

This is a Public Meeting. Should any interested party seek to appeal any decision made by the Committee with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings and that, for such purpose he may need to ensure that a record of the proceedings is made which record includes the testimony and evidence upon which the appeal is to be based. Anyone who needs a special accommodation for the meeting may contact the City's Americans with Disabilities Act (ADA) Coordinator at least 48 hours in advance of the meeting.

GENERAL EMPLOYEE PENSION PLAN COMMITTEE MINUTES
Wednesday, February 26, 2020 3:00 PM
City Hall Council Chambers, Vero Beach, Florida

PRESENT: Monte Falls, City Manager; Tammy Bursick, City Clerk; Cindy Lawson, Finance Director; Gabrielle Manus, HR Director; John Turner, City Attorney. **Also Present:** Glenn Thomas, Committee Attorney; Kathy Taube, Risk & Benefits Administrator.

1. CALL TO ORDER

Mr. Falls called the meeting to order at 3:04 p.m.

2. APPROVAL OF MINUTES

Mrs. Bursick made a motion to approve the minutes of the November 14, 2019 meeting. Ms. Manus seconded the motion and it passed unanimously.

3. AGENDA ADDITIONS, DELETIONS & ADOPTIONS

The following items were requested to be added to today's agenda:

Added as 5C: Prudential Private Placement Fund Amendment

Added as 5D: Glenn Thomas - Rate Update for 2020

Ms. Manus made a motion to accept the changes to the agenda. Ms. Bursick seconded the motion, and it passed unanimously.

4. PUBLIC COMMENT

None

5. NEW BUSINESS

A. Prudential – December 31, 2019 Quarterly Investment Review

Full report on file at City Clerk's Office.

Mr. Dean Molinaro, Vice President, Investment Strategy of Prudential, presented the Quarterly Investment Review:

4th Calendar Quarter Return (1st Fiscal Quarter) 5.22%

Plan Year (Fiscal) Return 5.22%

1 year return 20.91%

3 year return 9.69%

5 year return 7.48%

10 year return 8.93%

Assets as of the end of September total \$100,204,493

Distribution of assets is overweight equities:

- 59.73% Traditional Equities (Diversified between Large, Mid & Small Cap US, and an allocation to Non-US Emerging Markets will develop)
- 4.96% Real Estate
- 35.31% Fixed Income

The following transfers will be implemented over a two month period beginning February 3rd, 2020 to rebalance the portfolio:

From:

\$1,390,000	Dryden S&P 500 Index
\$235,000	Large Cap Growth / JPMorgan Inv Mgmt Fund
\$200,000	International Blend / AQR
\$135,000	QMA Mid Cap Quant Core Equity
\$90,000	Emerging Markets Equity / QMA Fund
\$70,000	Small Cap Growth / TimesSquare #
\$65,000	Large Cap Value / Wellington
\$55,000	Small Cap Value / Silvercrest Asset Mgmt Fund

To:

\$1,600,000	Core Bond/ PGIM Fund
\$600,000	Prudential Short-Term
\$400,000	Real Estate / Cohen & Steers Fund

All managers are in good standing and not on a watch list.

B. Review and Approval of the 10/1/19 Actuarial Valuation Report from Segal

Mr. Malichi Waterman of Segal Consulting presented the 10/1/19 Actuarial Valuation Report. Full report is on file with the City Clerk's Office.

Ms. Lawson pointed out that the desired result of mostly eliminating the electric utility's portion of unfunded liability was successfully achieved by depositing additional funds over 3 quarters (approximately \$8.8mm total), received as a result of the electric utility sale, nearly equal to the amount of the electric utility's unfunded liability.

The unfunded actuarial accrued liability of \$18,123,557 is a decrease of \$9,854,014 since the prior valuation.

The funded ratio (the ratio of the value of assets to accrued liability) using the actuarial value is 83.94% vs 75.04% prior year. The funded ratio using market value is 85.42% vs 78.39% prior year.

The actuarially determined contribution for the upcoming year is \$3,069,174, a decrease of \$1,209,810 from last year.

The actuarial loss from investment and other experience is \$2,590,635, or 2.26% of actuarial accrued liability.

The net experience loss from sources other than investment experience was 2.76% of the actuarial accrued liability. The loss was primarily due to a combination of cost-of-living adjustments in 2018 and 2019 greater than expected and more retirements than expected.

The rate of return on the market value of assets was 4.56%. The return on the actuarial value of assets was 7.18%. This resulted in an actuarial gain when measured against the assumed rate of return of 6.50%. This gain decreased the employer contribution rate by \$96,917.

Ms. Lawson made a motion to accept the valuation. Ms. Bursick seconded, and it passed unanimously.

C. Prudential Private Placement Fund Amendment

This fund is invested in securities whereby Prudential is loaning money directly to organizations that are looking to borrow money. The notion of this portfolio is that it is “buy and hold” and that Prudential, by being able to control the covenants of the loan negotiations, is able to command a slightly higher rate and shorter duration on the portfolio. This is how the underlying securities in the fund are being invested.

Ms. Lawson commented that her understanding is that Prudential performs due diligence to ensure that these loans are highly rated and investment grade. Mr. Molinaro explained that these are indeed investment grade and there has never been a downgrade.

Ms. Bursick made a motion to accept the amendment. Ms. Manus seconded the motion, and it passed unanimously.

D. Lewis, Longman & Walker – Update of Hourly Billing Rates for 2020

Lewis, Longman & Walker submitted a revised rate schedule for 2020. Pension attorney Glenn Thomas’ revised rate will be \$300 per hour, up from \$270 per hour. Ms. Bursick made a motion to accept the revised rate schedule. Ms. Lawson seconded the motion, and it passed unanimously.

6. OLD BUSINESS

None

7. ATTORNEY'S MATTERS

None

8. NEXT MEETING DATE – Wednesday, May 6, 2020 at 3:00 p.m.

9. ADJOURNMENT

The meeting was adjourned at 3:54 p.m.

/kft

From: [Glenn Thomas](#)
To: [Lawson, Cindy](#); [Taubke, Kathy](#)
Subject: RE: Richard Russell
Date: Wednesday, March 11, 2020 10:49:03 AM
Attachments: [image008.png](#)

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Cindy,

The Committee can address the correction at its regular meeting in May. Prudential should be able to continue with any recoupment efforts; however it sounds like those efforts may have produced as much as they are going to produce. There are additional legal options available to the Plan, such as suing the estate. But in my experience those legal options are typically more costly to the Plan than the overpayment itself, and rarely result in any recovery. There may also be criminal fraud issues; since someone apparently continued to withdraw funds from the account for several years. But that too will be unlikely to result in any restitution.

What this all means is the overpayment (and interest) will most likely be repaid by the City. Since that amount could be included in the City's annual required contribution, no correction action would be required before the May meeting.

I would recommend a couple of actions before the meeting. First, the City can advise Prudential to continue its reasonable efforts to recover the funds. No approval of the Board is required for Prudential to continue those efforts. If they need approval for a specific action, the Committee could conduct a quick emergency meeting solely for that purpose.

Next, we should advise Prudential we'd like to discuss the verification process at the May meeting. I'm not sure of the extent to which Prudential is supposed to provide verification services for the Plan, but 5 years is much longer than is typical for continuation of payment after death. With the prevalence of direct deposit, continuous retiree/beneficiary verification has become an important component of plan administration. Pension plans are not always informed of deaths in a timely manner, so the verification process should be ongoing. If Prudential is not providing this service or only occasionally conducts searches, the Committee may want to consider a verification service. This can also be discussed in May as a component of the self-correction process.

Finally, at some point we should inform the actuary of the overpayment, and request that the amount with interest be calculated, and specifically addressed in the next actuarial valuation .

Glenn E. Thomas | Shareholder
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From: Lawson, Cindy [<mailto:CLawson@covb.org>]
Sent: Wednesday, March 11, 2020 10:06 AM
To: Glenn Thomas <gthomas@llw-law.com>; Taube, Kathy <KTaube@covb.org>
Subject: RE: Richard Russell

Glenn: Thank you for the analysis of this situation. I am glad that your opinion is that this falls under the self correction program without need for additional IRS reporting. My question: Is this time sensitive, or can it be placed on the next quarterly Committee agenda for discussion and action per your recommendations below?

Cindy

From: Glenn Thomas [mailto:gthomas@llw-law.com]
Sent: Tuesday, March 10, 2020 1:12 PM
To: Taube, Kathy
Cc: Manus, Gabrielle; Lawson, Cindy
Subject: RE: Richard Russell

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Kathy,

If Prudential is requesting the Retirement Committee's approval to continue recovery and collection efforts, then in my opinion the Committee should approve any such actions to the extent there is no additional cost to the Plan.

To the extent the IRS Employee Plans Compliance Resolution System ("EPCRS") is indicated, in my opinion the self-correction program for insignificant errors will suffice. This would not require reporting the failure to the IRS. There are a few reasons I don't believe the failure was significant. The overpayment was not a benefit calculation or vesting error and it wasn't made in violation of the benefit limits under section 415 of the Internal Revenue Code. And, since the overpayments were not made under a defined contribution plan, they don't constitute an erroneous allocation from another member's account. So, I don't see this as a significant administrative failure. In Revenue Procedure 15-27, section 2.02, which provides clarification to the correction rules on Overpayment failures, the IRS said:

(1) Reasonable and appropriate correction. Section 6.02(2) of Rev. Proc. 2013-12 provides that any correction of a failure should be reasonable and appropriate for the failure. Correction rules for dealing with Overpayments are described in sections 6.06(3) and 6.06(4) of Rev. Proc. 2013-12. Under these correction rules, the employer is to take reasonable steps to have the Overpayment returned to the plan.

(3)...an appropriate correction method may include using rules similar to the correction methods of sections 6.06(3) and 6.06(4) in Rev. Proc. 2013-12 **but having the employer or another person contribute the amount of the Overpayment (with appropriate interest) to the plan in lieu of seeking recoupment from plan participants and beneficiaries.** (Emphasis added).

All reasonable efforts should be made to recover the overpaid funds. However in doing so, the Plan should not expend additional Plan funds in a collection effort unless the chances of recovery are relatively certain. The amount of any overpaid funds that cannot be recovered would ultimately be included in the City's required annual contribution determined by the Plan actuary. Once the City has replaced those funds, the negative effects of the error will have been corrected.

Finally, the Committee and Prudential should review the incident to determine what went wrong procedurally. The procedures in place for determining whether retirees and beneficiaries are still living or still entitled to benefits should be reviewed and if necessary a new procedure implemented.

Let me know if you have any additional questions.

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From: Taube, Kathy [mailto:KTaube@covb.org]
Sent: Monday, March 9, 2020 3:13 PM
To: Glenn Thomas <gthomas@llw-law.com>
Cc: Manus, Gabrielle <GManus@covb.org>; Lawson, Cindy <Clawson@covb.org>
Subject: FW: Richard Russell

Glenn,

Please see below from Prudential regarding an overpayment to a deceased participant. Can you please offer guidance regarding the correction required to maintain our tax status?

Thank you.



Kathy Taube,
Risk and Benefits Administrator
City of Vero Beach
772-978-4923 | Fax 772-978-4915

From: Lawson, Cindy <Clawson@covb.org>
Sent: Monday, March 9, 2020 2:48 PM
To: Taube, Kathy <KTaube@covb.org>; Manus, Gabrielle <GManus@covb.org>
Subject: RE: Richard Russell

I agree with Prudential that this is an issue that needs to be reviewed by Glenn. I don't feel comfortable instructing Prudential without a legal opinion, particularly as it pertains to tax-qualified plan status.

Cindy

From: Taube, Kathy
Sent: Monday, March 09, 2020 12:17 PM
To: Lawson, Cindy; Manus, Gabrielle
Subject: FW: Richard Russell

From: Pamela Herkes <pamela.herkes@prudential.com>
Sent: Monday, March 9, 2020 7:48 AM
To: Taube, Kathy <KTaube@covb.org>
Subject: Richard Russell

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Hi Kathy,

The above passed away 1/8/15 and we were just notified in March of last year through a search that we completed.

His payments were sent via direct deposit and we were able to recover some of the payments but there is still an outstanding overage of \$15,717.36.

We have sent letters, certified, and they are being received but are not being answered.

Here is language that addresses overpayments:

This overpayment is a failure to follow the terms of the plan that could affect the tax-qualified status of the plan unless it is corrected in accordance with IRS guidelines. Information about IRS correction guidance is included below. As a directed recordkeeper, Prudential cannot take action without your written instruction. Since it is the Plan Administrator's responsibility to determine the acceptable correction method, Prudential recommends that you discuss correction with the plan's attorney

as you deem appropriate before providing direction to Prudential.

The IRS provides guidance with respect to correcting plan errors through its Employee Plans Compliance Resolution System (EPCRS). EPCRS consists of general correction principles that may be used to correct common errors and has three distinct correction programs:

- Self-Correction Program (SCP),
- Voluntary Correction Program (VCP) and
- Audit Closing Agreement Program (Audit CAP).

The attached document contains more information about these programs, and EPCRS in general.

Please let me know what you would like to do.

Pam

Pamela Herkes
Relationship Manager Prudential Retirement
280 Trumbull St, H08 | Hartford, CT 06103
p. 800.840.5452 f. 889.499.4315
Pamela.Herkes@prudential.com

NOTE: Please send all defined benefit investment trade requests to db_asset_change_request@prudential.com



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May 2017



PENSION ANALYST

Important information—Plan administration and operation



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IRS updates correction programs

Who's affected

These programs are available to sponsors of qualified pension, profit sharing and stock bonus plans to correct errors in plan operation, demographics, and documents that might otherwise disqualify a plan. They are also available to ERISA and non-ERISA 403(b) plans, simplified employee pension (SEP) plans and SIMPLE IRA plans. The programs available to correct a mistake depend upon the type of error being corrected and the timing of the correction.

Background and summary

Under the Employee Plans Compliance Resolution System (EPCRS), the IRS provides plan sponsors with the ability to identify and correct errors in both plan operation and plan documents while avoiding potential plan disqualification.

The IRS issued [Revenue Procedure 2016-51](#), which includes the latest guidance governing EPCRS and replaces and supersedes Revenue Procedure 2013-12. The new Revenue Procedure incorporates previously issued guidance regarding corrective options for overpayments and employee elective deferral errors. The Revenue Procedure also has been updated to reflect [changes to the determination letter program](#). These revisions do not affect the structure of the basic program, which continues to offer three correction options:

- Self-Correction Program (SCP);
- Voluntary Correction Program (VCP); and
- Audit Closing Agreement Program (Audit CAP).

This publication provides a summary of these revisions, as well as links to several useful tools for plan sponsors that have encountered errors.

Action and next steps

If errors in plan administration have occurred, plan sponsors should discuss the EPCRS options described in this *Pension Analyst* and [related documents](#) with their legal counsel to determine if any are appropriate for their situation.

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[Self-Correction Program \(SCP\)](#)
[Voluntary Correction Program \(VCP\)](#)
[Audit Closing Agreement Program \(Audit CAP\)](#)
[Specific errors and methods of correction under EPCRS](#)
[Plan sponsor next steps](#)

Related documents

[IRS Employee Plans Compliance Resolution System \(EPCRS\) options](#)
[Glossary of special EPCRS terms](#)
[General correction principles under EPCRS](#)
[Errors and acceptable correction methods](#)
[Earnings adjustments for corrective contributions](#)
[Form 8950](#)
[Form 8951](#)

EPCRS offers three types of correction programs:

- *Self-Correction Program.* SCP allows many plan sponsors to correct operational errors without having to make a formal filing with the IRS or pay a correction fee.
- *Voluntary Correction Program.* VCP allows plan sponsors to voluntarily correct errors before audit, pay a limited fee, and receive IRS approval of the correction. VCP contains special procedures for anonymous submissions and group submissions.
- *Audit Closing Agreement Program.* Under Audit CAP, plan sponsors may avoid plan disqualification if the IRS discovers an operational, plan document, demographic, or employer eligibility error upon audit.

Summary of EPCRS programs, including recent revisions

The latest version of EPCRS incorporates changes related to correction of overpayments and employee elective deferral failures, but also includes the following changes:

- Due to the elimination of the determination letter program for individually designed plans, the requirement to submit a determination letter application as part of an EPCRS correction, including a plan document failure, has been removed.
- Individually designed plans are no longer required to have a “current” determination letter to use SCP, but instead, the term Favorable Letter for these plans has been revised to “a determination letter issued with respect to the plan.”
- The VCP user fees will no longer be included in the EPCRS Revenue Procedure. Instead, they will now be included in the annual revenue procedure regarding all user fees.
- In the case of a failure to reach resolution regarding an anonymous submission, the IRS will no longer refund 50% of the applicable user fee.
- The revised program adds a new rule for “egregious failures,” under which the IRS reserves the right to impose a sanction that may be larger than the VCP user fee. For this purpose, an egregious failure would include any case in which the IRS concludes that the parties controlling the plan recognized that the action taken would constitute a failure and the failure either involves a substantial number of participants or beneficiaries or involves participants who are predominantly highly compensated employees.
- The model VCP submission documents and acknowledgement letter have been removed from the EPCRS Revenue Procedure and replaced by model forms available on the IRS website.

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A brief summary of the EPCRS programs, including recent changes, is provided below. For more information about a particular program, refer to the document titled *IRS Employee Plans Compliance Resolution System (EPCRS) options*.

Self-Correction Program (SCP)

SCP allows plan sponsors to correct operational errors without making a formal submission to the IRS. As a result, the plan sponsor does not request or receive approval of its correction method from the IRS. The IRS has assured plan sponsors that it will not disqualify a plan due to an error that has been corrected under SCP.

Errors considered to be “insignificant” may be corrected under this program at any time without IRS review. “Significant” errors generally must be corrected by the last day of the second plan year following the plan year in which the error occurred. EPCRS lists factors that should be considered in determining whether an error is considered “insignificant” or “significant.”

In order to self-correct significant operational errors, the plan must have a favorable determination letter. A 403(b) plan generally will be treated as having a favorable letter if either:

- The employer is an eligible employer and, on or before December 31, 2009 (or later date if the plan is established later), the employer adopted a written plan intended to comply with the final 403(b) rules, or
- The employer failed to adopt a written plan timely, and files a VCP submission to correct the failure.

Under the latest guidance, individually designed qualified plans are no longer required to have a “current” favorable determination letter to be eligible for a correction under SCP. Going forward, the favorable letter requirement can be satisfied with an initial or subsequent determination letter.

Certain errors (see details in document titled *Errors and acceptable correction methods*) may be corrected under SCP by adopting a retroactive plan amendment.

Voluntary Correction Program (VCP)

Plan sponsors may use VCP to correct operational errors, plan document errors, demographic errors, or employer eligibility errors. To use this program, the plan sponsor voluntarily discloses the error(s) to the IRS. The plan sponsor must also submit a proposed correction method and pay a correction fee. Once the IRS and plan sponsor agree on the appropriate correction, the IRS issues a Compliance Statement. The IRS may require a plan sponsor to sign and return the Compliance Statement within 30 calendar days. If this approach is taken and the Compliance Statement is not returned within 30 days, the IRS will close the VCP submission and the plan may be referred to Employee Plans Examination.

In an anonymous (“John Doe”) submission, the VCP procedures apply, but the plan sponsor is not identified in the submission itself. After the correction method is agreed upon in writing, the plan and plan sponsor must be identified within 21 calendar days from the date of the letter of agreement.

All VCP submissions must include:

- Form 8950, “Application for Voluntary Correction Program (VCP) Under the Employee Plans Compliance Resolution System (EPCRS),” and
- Form 8951, “User Fee for Application for Voluntary Correction Program (VCP) Under the Employee Plans Compliance Resolution System (EPCRS).”

A VCP submission must also include a description of the failures, a description of the proposed methods of correction, and other procedural items. Historically, the IRS has provided model documents to help applicants satisfy these requirements. The model VCP forms (Form 14568 series of forms) required for submissions are now available on the IRS website.

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The correction of Interim Amendment and Nonamender Failures must now be made by the date of submission. Corrective plan amendments required as a part of a VCP submission must be adopted no later than 150 days after the date of the compliance statement with special timing rules applicable to governmental plans.

The IRS also removed the user fee schedule from the EPCRS Revenue Procedure. Instead, user fees, including exceptions, will be included in the user fee revenue procedure published by the IRS annually. In addition, in the case of a failure to reach resolution regarding an anonymous VCP submission, the IRS will no longer refund 50 percent of the applicable user fee.

Audit Closing Agreement Program (Audit CAP)

Under Audit CAP, if the IRS discovers operational, plan document, demographic, or employer eligibility errors while performing a plan audit, the plan sponsor may enter into a closing agreement rather than face plan disqualification. Since errors are not voluntarily disclosed, the IRS historically imposed a penalty that was a negotiated percentage of the amount of tax the IRS would collect upon plan disqualification.

Under the new version of EPCRS, the penalty continues to be a negotiated amount, but is now based on facts and circumstances that include relevant factors related to the nature, extent, and severity of the failures. Sanctions will not be excessive, but will generally not be less than the applicable VCP user fee. The penalty may be reduced if correction is made before audit, even if that correction is made outside of the SCP or VCP.

Specific errors and methods of correction under EPCRS

In the EPCRS guidelines, the IRS provides a list of general correction principles that apply to all corrections. These guidelines are described in the document titled *General correction principles under EPCRS*. In addition, the IRS provides specific correction methods that may be used to correct certain errors under some of the programs.

The following errors may be corrected under SCP or VCP using the correction method(s) described in Appendices A and B of the EPCRS guidelines and the correction methods provided under EPCRS are deemed to be reasonable and appropriate methods of correcting a failure.

- Failure to properly provide the minimum top-heavy benefit to non-key employees.
- Failure to satisfy the ADP test, the ACP test, or the multiple use test (QNEC method or one-one method).
- Failure to distribute elective deferrals in excess of the section 402(g) limit.
- Exclusion of an eligible employee from contributions or accruals under the plan.
- Failure of a 403(b) plan to satisfy the universal availability rule.
- Failure to timely pay the required minimum distribution (RMD) under section 401(a)(9).
- Failure to obtain participant and/or spousal consent for a distribution subject to the participant and spousal consent rules.
- Failure to satisfy the defined contribution annual additions limit under section 415(c).
- Vesting errors.
- Failure to satisfy the defined benefit annual benefit limit.
- All overpayment errors.
- Failure to apply the \$200,000 (as indexed) compensation limit.

The following errors may be corrected by a plan amendment under SCP or VCP.

- Failure to apply the \$200,000 (as indexed) compensation limit.
- Hardship distribution and plan loan errors.
- Inclusion of an employee who has not met the plan's minimum age and service requirements or who was included too soon due to an incorrect plan entry date.

The following errors may be corrected only under VCP.

- Employer eligibility error.
- Loan amount exceeding the maximum permissible amount (\$50,000/50% Limit).
- Loan repayment period exceeds the maximum permissible repayment period.
- Loans that do not meet the level amortization requirement.
- Loan default errors.

Descriptions of the correction methods allowed under the EPCRS programs for the above list of errors can be found in the document titled Errors and acceptable correction methods. Guidelines regarding the calculation of lost earnings for some of these correction methods can be found in the document titled Earnings adjustments for corrective contributions.

Plan sponsor next steps

Plan sponsors that discover operational, plan document, demographic, or employer eligibility errors either during the course of normal plan administration or as the result of a self-audit should review their EPCRS options with the plan's legal counsel.

Plan sponsors that are interested in reviewing the details of EPCRS may access Revenue Procedure 2016-51, as well as related information through the IRS's website at <http://www.irs.gov/Retirement-Plans/Correcting-Plan-Errors>.

Pension Analyst by Prudential Retirement

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Editor: Julie Koos

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