



June 2019

PENSION ANALYST

Important information—Plan administration and operation



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IRS expands correction programs

Who's affected

These programs are available to sponsors of qualified pension, profit sharing and stock bonus plans to correct failures 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 failure 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 failures in both plan operation and plan documents while avoiding potential plan disqualification.

IRS [Revenue Procedure 2019-19](#) (Revenue Procedure), which is effective as of April 19, 2019, includes guidance governing EPCRS and replaces and supersedes Revenue Procedure 2018-52. The latest Revenue Procedure expands the Self-Correction Program (SCP) to permit correction of certain plan document and loan failures and provides for self-correction of certain operational failures by plan amendment. By expanding SCP, the Department of the Treasury and IRS expect increased compliance for plans and reduced costs and burdens by allowing additional circumstances under which plans may self-correct.

These revisions do not affect the structure of the basic program, which continues to offer three correction programs:

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

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

Action and next steps

If failures 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.

<p>In this issue</p> <p>Summary of EPCRS programs, including certain revisions contained in Revenue Procedure 2019-19</p> <p>Self-Correction Program (SCP)</p> <p>Voluntary Correction Program (VCP)</p> <p>Audit Closing Agreement Program (Audit CAP)</p> <p>Specific errors and methods of correction under EPCRS</p> <p>Plan sponsor next steps</p> <p>Related documents</p> <p>IRS Employee Plans Compliance Resolution System (EPCRS) options</p> <p>Glossary of special EPCRS terms</p> <p>General correction principles under EPCRS</p> <p>Errors and acceptable correction methods</p> <p>Earnings adjustments for corrective contributions</p>
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EPCRS offers three types of correction programs:

- *Self-Correction Program*. SCP allows many plan sponsors to correct operational failures 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 failures before an IRS 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 failure](#) upon audit.

Summary of EPCRS programs, including certain revisions in Revenue Procedure 2019-19

Revenue Procedure 2019-19 expands SCP to certain types of plan document and loan failures. It also allows for certain operational failures to be corrected by plan amendment.

Plan document and operational failures

For plans that are otherwise eligible to correct under SCP, certain plan document failures (e.g., the failure to adopt required or interim amendments) may now be corrected under SCP by retroactively adopting the required amendment. Self-correction of a plan document failure is available only to plans that have a favorable determination letter, or for a pre-approved plan, a current opinion or advisory letter. Plan document failures are considered significant failures, as defined by EPCRS, so the retroactive amendment must be adopted no later than the close of the second plan year following the plan year in which the amendment should have been adopted. The initial failure to adopt a qualified plan, and the failure to adopt a written 403(b) plan document timely are not eligible to be corrected under SCP.

Operational failures under the plan may also now be corrected through a retroactive plan amendment under SCP if:

- The plan amendment results in an increase in the benefit, right, or feature;
- The increase in the benefit, right, or feature is available to all eligible employees; and
- The increase is permitted by the Internal Revenue Code and satisfies the correction principles of EPCRS.

Loan failures

Certain plan loan failures may now be corrected under SCP including loan default errors and the failure to obtain spousal consent when requesting a loan. Self-correction is now available when a participant fails to repay a plan loan in accordance with plan terms, if the five-year repayment period has not expired. When a loan is not fully corrected and a Form 1099-R is required, the plan sponsor may report the deemed distribution in the year of the correction, rather than the year of the failure. Plan amendment is available through self-correction when participants are permitted to take out more loans than the number available under the terms of the plan.

Loan failures related to loans made in excess of the dollar limits, maximum loan period, or level amortization requirements are not eligible for self-correction. These failures must be corrected using either VCP or Audit CAP. Additionally, loan failures corrected under SCP will not satisfy the Department of Labor's (DOL's) Voluntary Fiduciary Correction Program (VFCP). The VFCP requires correction with IRS approval under the VCP program, and the DOL has provided guidance to the IRS that it will not issue a no-action letter under its VFCP unless such failures are corrected under VCP. As a result, to ensure the loan is not a prohibited transaction and not subject to excise taxes, a plan sponsor would file under the DOL's VFCP and the IRS' VCP program, as applicable.

A brief summary of the EPCRS programs 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 failures, certain plan document failures, and certain plan loan failures 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. Generally, the correction methods listed in EPCRS are considered to be acceptable correction methods by the IRS.

[Failures considered to be “insignificant”](#) may be corrected under this program at any time without IRS review. [“Significant” failures](#) generally must be corrected by the last day of the second plan year following the plan year in which the failure occurred. EPCRS lists factors that should be considered in determining whether a failure is considered “insignificant” or “significant.”

In order to self-correct significant operational failures, 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.

Individually designed qualified plans are no longer required to have a “current” favorable determination letter to be eligible for a correction under SCP. The favorable letter requirement can now be satisfied with an initial or subsequent determination letter.

Certain failures (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 failures, plan document failures, demographic failures, or employer eligibility failures. To use this program, the plan sponsor voluntarily discloses the failure(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.

Plan sponsors must use the pay.gov website to file a VCP submission and pay the applicable user fees. To file a submission, plan sponsors must first establish an account on pay.gov. Once an account has been established, [Form 8950](#) (Application for Voluntary Correction Program (VCP) Submission Under the Employee Plans Compliance Resolution System) must be completed and signed using the website.

A VCP submission must 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 available on the IRS website.

At the time of submission, a single PDF file that includes all required VCP submission documents must be uploaded on pay.gov and the user fee must be paid electronically. Detailed submission procedures and requirements are included in

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Section 11 of the Revenue Procedure. The user fee schedule, including exceptions, is included in the [user fee revenue procedure](#) published by the IRS annually.

The correction of Interim Amendment (as applicable) and Nonamender Failures must 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.

A confirmation is generated once the filing is complete and the user fee is paid. The IRS may or may not contact the plan sponsor during the review process. Additionally, if it is determined that a VCP submission is complete and sets forth an acceptable correction method, the IRS may issue a compliance statement without contacting the plan sponsor.

A plan sponsor may designate an authorized representative to complete a VCP submission via pay.gov, if the following documents are included in the submission:

- A penalty of perjury statement signed by the plan sponsor (or authorized representative for an anonymous submission); and
- Form 2848 (Power of Attorney and Declaration of Representative).

Audit Closing Agreement Program (Audit CAP)

Under Audit CAP, if the IRS discovers operational, plan document, demographic, or employer eligibility failures while performing a plan audit, the plan sponsor may enter into a closing agreement rather than face plan disqualification. Since failures 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.

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 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 or loan 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.](#)

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The following errors may be corrected by a plan amendment under SCP or VCP, if certain conditions are met.

- [Failure to apply the \\$200,000 \(as indexed\) compensation limit.](#)
- [Certain hardship distribution and plan loan errors \(permitted under SCP\).](#)
- [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.](#)
- [Loan default errors.](#)

The following errors may be corrected only under VCP.

- [Employer eligibility failure.](#)
- [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.](#)

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 failures 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 2019-19, 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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