

CSEA Practitioners Seminars January 2009

Correcting Retirement Plans

Edward Baier Manager, EP Exam

Galen Hsieh Revenue Agent, EP Exam





Agenda

- 5 Common Mistakes Made By Plan Sponsors/Administrators
- Correction Programs -Available under FPCRS
- Tools/Reference to Help Avoid Making Mistakes





5 Common Mistakes

- ▼ Non-timely or failure to amend plan for law changes
- ▼ Improper application of plan compensation
- ▼ Exclusion of Eligible Employees
- ▼ Violation of plan loan provisions
- ▼ Ignoring in-service withdrawal restrictions





1. Non-timely or failure to amend plan for law changes

- The plan document governs the operation of the plan.
- New pension laws are passed periodically.
- If the plan document's language is not upto-date, the entire plan's qualified status is jeopardized, even if the plan's annual testing is done correctly.



1. Non-timely or failure to amend plan for law changes

- New pension law must be adopted into the plan by the end of the applicable amendment period.
- Most common failures include: Not amending for GUST, EGTRRA, and the Final and Temporary regulations under IRC Section 401(a)(9).



2. Improper application of plan compensation

- The plan document spells out explicitly how plan compensation is defined.
- May include or exclude: bonuses, commissions, overtime, 401K deferrals, etc.
- Since plan contributions are often based off of compensation, this results in errors.

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3. Exclusion of Eligible **Employees**

May occur when:

- Incorrect or incomplete employee census information is used.
- Plan's eligibility requirements are not followed.
- Plans have more than one set of eligibility rules (e.g. 401K plans).



4. Violation of Plan Loan **Provisions**

Occurs when:

- Re-payment schedule is not followed.
- Maximum loan limit is exceeded.
- Plan provisions restrict multiple loans.
- Plan provisions disallow participant loans.





5. Ignoring hardship withdrawal restrictions

- Plan document may restrict in-service withdrawals altogether.
- All alternatives must have been considered prior to making the hardship withdrawal. (e.g. plan loan, sold the yacht)
- Hardship withdrawals must satisfy an "events" test and "needs" test.





5. Ignoring hardship withdrawal restrictions

- Events test: hardship based on specific hardship events (e.g. to prevent eviction, to pay for funeral expenses).
- Needs Test: amount of hardship withdrawal is proportionate to the need.
- There is a limit to how much of one's balance can be withdrawn.





#1 Cause of Plan Errors: Operation of the plan does not follow plan provisions



- Read the plan





How are these mistakes corrected?





Corrections Programs

EPCRS

Employee Plans Compliance Resolution System

- The official IRS corrections program for Retirement Plans.
- Mandated by Revenue Procedure 2008-50
- Revenue Procedure 2008-50 superseded Rev. Proc. 2006-27 on January 1, 2009



Eligibility for EPCRS

Employee Plans

- Plan must be a Qualified Plan, a 403(b) Plan, a SEP, or a SIMPLE IRA Plan.
- Cannot correct errors which arise from abusive tax avoidance transactions.
- Cannot correct errors which arise from intentional misuse of plan assets.





Corrections Programs

- EPCRS includes:
 - The Voluntary Compliance Program (VCP)
 - The Self-Correction Program (SCP)
 - The Audit Closing Program (Audit CAP)





Voluntary Correction Program

Employee Plans

- Can correct just about any plan error.
- Fees are based on the size of the plan.
- Application for VCP can be made anytime, with the exception that there no pending IRS audits.



| TE/GE | Voluntary Correction Program - Fees | | |
|---|--|----------|--|
| Employee Plans | # of Participants | Fees | |
| See Rev. Proc. 2008-50, adjustments may apply. | 20 or less | \$750 | |
| | 21 to 50 | \$1,000 | |
| | 51 to 100 | \$2,500 | |
| | 101 to 500 | \$5,000 | |
| | 501 to 1,000 | \$8,000 | |
| | 1,001 to 5,000 | \$15,000 | |
| | 5,001 to 10,000 | \$20,000 | |
| | Over 10,000 | \$25,000 | |



Self-Correction Program

Employee Plans

- Only operational failures can be corrected under SCP.
- Insignificant operational failures can be corrected at any time.
- Significant operational failures must be corrected within a certain time period.
- · No IRS involvement.
- No fees.





Self-Correction Program

Generally, an "Operational" error:

- Is an action by the administrator which deviates from what is dictated by the plan provisions.
- Must not involve plan language defects/deficiencies.
- Does not include prohibited transactions.





Self-Correction Program

Employee Plans

Definition of an "significant" error is based upon:

- The percentage of plan assets affected by the failure.
- The number of years the failure occurred.
- The percentage of participants affected.
- How long ago the error(s) occurred.
- The reason why the error(s) occurred.





Self-Correction Program

Correction Period for Significant Errors

• Plan must be corrected by the last day of the 2nd plan year subsequent to the plan year in which the error(s) occurred.





Self-Correction Program

Example:

An significant plan error occurs on January 1, 2009. The plan has until December 31, 2011 to correct the error under SCP.





Self-Correction Program

Employee Plans

What happens if a significant error is not corrected by the end of the 2-year correction period?





Self-Correction Program

The plan may be selected for IRS audit.

If this happens, significant errors that were not corrected may be ineligible for correction under SCP. The IRS agent auditing the plan may determine that the errors must be corrected under Audit CAP.





Audit Closing Agreement Program

Employee Plans

- Pertains to corrections made under IRS audit.
- Corrections made under Audit CAP are errors that cannot be corrected under SCP.
- Audit CAP is provided as an opportunity to keep a plan from becoming disqualified.



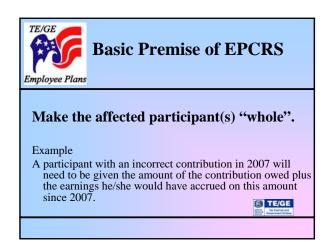


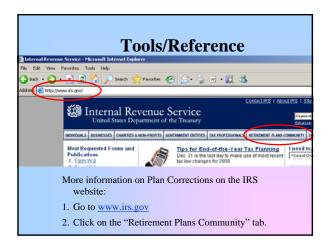
Audit Closing Agreement Program

Employee Plans

- In addition to correcting the plan, a sanction is paid by the plan sponsor.
- Sanction amount is determined by the Maximum Payment Amount (MPA)
- A MPA is monetary amount that is approximately equal to the tax the Service could collect upon plan disqualification.

| | EPCRS | |
|---|---|---|
| VCP — Voluntary Correction Program | SCP - Self- Correction Program | Audit CAP – Audit Closing Agreement Program |
| | PROS | |
| •Available for any type of plan correction (except fraud). •IRS assurance that plan has been corrected legitimately. | •Insignificant errors can be corrected at any time. •No IRS involvement •No IRS fees. | Can prevent plan disqualification. RS assurance that plan has been corrected legitimately. |
| | CONS | |
| •Available only if plan has not been selected for IRS audit. •IRS fees. | •Available only for OPERATIONAL failures. •No letter of approval issued from IRS. | •Available only after plan has been selected for IRS audit. •Sanctions are EXPENSIVE! |







Read All About It Correcting Plan Errors Retirement Plans Community Topics The Employee Plans Comphance Resolution System (EPCRS) offers a comprehensive cystem of correction programs for sponsors of retrement plans that are intended to satisfy the requirements of sections 4010, 4030, 4030, 40300, 40300, of 10400 of the helmal Revenue Code, but which have retremented for a period of time. This system allows plan sponsors to correct these studyers and movely of the PCRS Published Quidance EF FormsPubsiProducts Correcting Plan Errors ExaminationsEnforcement EF FAGS Times of Plans Contact EP/Sarvices More Topics More Topics Correcting Qualification Problems Through EPCRS Kneping a watchful eye on the retirement plan your business sponsors to help employees prepare for their retirement years is just smart unbiness spractice. Employees are counting on the benefit spractice of the plan and want to have benefit promised or the just and want to have benefit promised by the just and want to have benefit through a tac-divorse plan provides. Protecting through the tac-divorse plan provides. Protecting through through through through the tac-divorse plan provides. Protecting through the tac-divorse plan provides. Protecting through through through the tac-divorse plan provides. Protecting through the tac-divorse plan provides. Protecting through through through through the tac-divorse plan provides. Protecting through throu Revenue Procedure 2008-50 (HTML) Revenue Procedure 2008-50 (OF) Compliance & Enforcement Contact My Local Office Summary of Changes Topical Index e-file Forms and Publications Frequently Asked Guestions News Taxoayer Advocacy Where To File Revenue Procedure 2006-27 Other EPCRS Resources 9 & A's - Recent Outreach Events 401(A) First Guide Chinde-friendly version is available.) SEP Find Quide Chinde-friendly version is available.) SIMPLE AR A Fran Find I Quide Chinde-friendly version is available.) VCP Acknowledgement Letter VCP Application Guide Common VCP Application Errors

What do you need to do to protect this important plan?

Hopefully you've adopted the plan that best suits the needs of you and your employees and fits your business circumstances. The plan that Includes features appropriate for your business will make operating the plan much easier. For help in selecting the appropriate retirement plan, see Choosing a Retirement Solution for Your Small Business.

How do you take care of that plan day to day and year to year?

Setting up operating procedures for the plan is an important first step. If you need help, a benefits professional can help you set up a system that works for you and your retirement plan. As your business situation changes you'll want to review how these new circumstances will impact your plan and its operation. Buying a business? New payroll system provider? Change in accountants? Closing a plant? Any of these changes could have a big

Overview of EPCRS

Introduction
Sections of the EPCRS
Effect of the EPCRS
Effect of the EPCRS
Eliability, Definitions and
General Correction Principles
Correction Principles
Self-Correction Principles
Correction Principles
Self-Correction Program
- Eliability Flowcharts
Voluntary Correction Program
Audit Closing Agreement Program
- Audit Closing Agreement Program
- Neguentiv Asked Questions (E-60's)

"Self-Correcting Plan Mistakes" video a discussion on using the Self-Correction Program for a common plan mistake. (1:59 min.)

"Fixing Plan Mistakes Found During an IRS Audit" video - IRS EP Examinations Director discusses what happens when EP Agents find mistakes while examining retirement plans (4:45 min.)

More information on EPCRS found here.

| Ell | nployee Plans Pub | neations |
|---|---|--|
| Retirement Plans Community | Correcting Plan Errors | |
| Newsletters Buttering Constitute EP FormsPubsProducts Searchin Plan Errors ExaminationsEnforcement EP FAGs Types of Plans | The Emissione Plans Compiliance Resolution System (E- correction programs of spinsors of referenced plans correction programs of spinsors of referenced plans actions 401(4), 403(4), 403(4), 408(5), or 408(5) or fine I when these requirements for a learned of stime. This con- traction is a second of the Compiliance of the Compiliance basis. The components of EPCRS are the Self-Compiliance Program (NCP), and the Aust Closing Agreement Program | at are intended to satisfy the requirements of intended Revenue Code, but which have not a limited plan sponsors to correct these with retirement benefits on a tax-favored on Program (SCP), the Voluntary Correction |
| Contact EP/Services More Topics | De I Have a Qualification Problem? Keeping a watchful eye on the retirement plan your | Correcting Qualification Problems Through EPCRS |
| RS Resources | business sponsors to help employees prepare for their retirement years is just smart business practice. Employees are counting on the benefits | Revenue Procedure 2008-50 (HTML) |
| Compliance & Enforcement | promised by the plan and want to have the substantial tax benefits that saving for retirement | Revenue Procedure 2008-50 (PDF) |
| Contact My Local Office e-file Forms and Publications | through a tax-favored plan provides. Protecting these tax benefits is an important duty assumed by business owners when they adopt a retirement | Summary of Changes Topical Index |
| Frequently Asked | plan. | Revenue Procedure 2006-27 |
| Questions News Taxpayer Advocacy | Identifying, Correcting, and Avoiding Common Plan Errors | Other EPCRS Resources 9 & A's - Recent Outreach Events |
| Where To File | 40100 First Guide | VCP Tools |
| | SEP For B Guide Crimter friendly version is available.) SIMPLE IRA Pran Fire B Guide Crimter friendly version is available.) | VCP Acknowledgement Letter VCP Application Guide Common VCP Application Errors |

