


CSEA Practitioners Seminars  
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## Correcting Retirement Plans

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## Agenda

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



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## 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



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### 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 up-to-date, the entire plan's qualified status is jeopardized, even if the plan's annual testing is done correctly.



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### 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).



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### 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).



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### 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.



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### 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.



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Employee Plans

### 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.



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



- Read the plan
- Read the plan
- Read the plan
- Read the plan
- Read the plan
- Read the plan
- Read the plan



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### How are these mistakes corrected?



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## 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



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## Eligibility for EPCRS

- 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.



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## Corrections Programs

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



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## Voluntary Correction Program

- 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.



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## Voluntary Correction Program - Fees

# of Participants	Fees
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

See Rev. Proc. 2008-50, adjustments may apply.



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## Self-Correction Program

- 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.



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## 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.



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## Self-Correction Program

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.



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## Self-Correction Program

Correction Period for Significant Errors

- Plan must be corrected by the last day of the 2<sup>nd</sup> plan year subsequent to the plan year in which the error(s) occurred.



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## 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.



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## Self-Correction Program

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



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## 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.



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## Audit Closing Agreement Program

- 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.



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## Audit Closing Agreement Program

- 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.



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EPCRS		
VCP – Voluntary Correction Program	SCP – Self-Correction Program	Audit CAP – Audit Closing Agreement Program
PROS		
<ul style="list-style-type: none"> <li>•Available for any type of plan correction (except fraud).</li> <li>•IRS assurance that plan has been corrected legitimately.</li> </ul>	<ul style="list-style-type: none"> <li>•Insignificant errors can be corrected at any time.</li> <li>•No IRS involvement</li> <li>•No IRS fees.</li> </ul>	<ul style="list-style-type: none"> <li>•Can prevent plan disqualification.</li> <li>•IRS assurance that plan has been corrected legitimately.</li> </ul>
CONS		
<ul style="list-style-type: none"> <li>•Available only if plan has not been selected for IRS audit.</li> <li>•IRS fees.</li> </ul>	<ul style="list-style-type: none"> <li>•Available only for OPERATIONAL failures.</li> <li>•No letter of approval issued from IRS.</li> </ul>	<ul style="list-style-type: none"> <li>•Available only after plan has been selected for IRS audit.</li> <li>•Sanctions are EXPENSIVE!</li> </ul>

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## Basic Premise of EPCRS

**Make the affected participant(s) “whole”.**

Example  
A participant with an incorrect contribution in 2007 will need to be given the amount of the contribution owed plus the earnings he/she would have accrued on this amount since 2007.



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## Tools/Reference



More information on Plan Corrections on the IRS website:

1. Go to [www.irs.gov](http://www.irs.gov)
2. Click on the “Retirement Plans Community” tab.

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## Tools/Reference



3. Click on the link “Correcting Plan Errors”.

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## Tools/Reference



**Pub. 4460 "The Navigator"**

- Official catalog of Employee Plans Publications.
- Lists useful publications which can aid in compliance.
- Provides information on how to order the listed publications, which are all FREE.



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## Questions



Please note that the information disclosed by the speaker does not represent the official position of the IRS and is not binding.



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## Contact Information

Toll Free Number  
(877) 829-5500

E-mail  
[RetirementPlanQuestions@irs.gov](mailto:RetirementPlanQuestions@irs.gov)

Note: responses to e-mail will be answered by telephone, so in your email, please provide a telephone number.



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