

Update to Employee Plans Compliance Resolution System (EPCRS)



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Two of the most common errors in 401(k) and 403(b) plan administration is failure to update an employee's change in deferral elections in the company's payroll system and the failure of the employer to inform an employee of his eligibility once he meets the plan's eligibility requirements. Fortunately, the Internal Revenue Service (IRS) has provided relief for these errors via the Employee Plans Compliance Resolution System ("EPCRS"). The EPCRS is a system of IRS approved corrections that allow sponsors of retirement plans to resolve various types of failures and still continue to maintain the plan's tax-favored status.

There are three components to the correction program:

- Self-correction (SCP) – insignificant errors that the employer can correct without any reporting obligations, fees or sanctions;
- Voluntary correction (VCP) – errors that may be corrected by paying a limited fee; and
- Correction on Audit (Audit CAP) – errors that are identified on audit, but may still be corrected by paying a sanction.

The most recent EPCRS update was release in April 2019 (<https://www.irs.gov/pub/irs-drop/rp-19-19.pdf>) and expanded self-corrections to include certain plan document failures, correction options and possible relief from deemed distributions associated with certain failures involving plan loans made to participants, and created additional opportunities for correcting certain operational failures by plan amendment. These added options will make it easier to fix certain plan document and operational failures without having to file a VCP submission with the IRS.

In order to fix plan document failures, they must meet the following requirements:

- Applies only to IRC 401(a) plan which include 401(k) and 403(b) retirement plans.
- Plan document failures are considered a significant failure and must be corrected within the two-year period. For example, in the case of a plan document failure that happened in 2020, the failure must be corrected in 2021.
- Plan must have a favorable letter.

Please note that, SCP is not available to correct a failure to timely adopt an initial IRC 401(a) plan document. The late adoption of discretionary amendments is not considered a plan document failure. It is also required that a corrective amendment results in an increase to a participant's benefit, right or feature and the increase in benefit, right or feature is provided to all employees eligible to participate in the plan.

I have compiled a chart of the various failures and corrections of plans under EPCRS, incorporating the modified rules of 2019. Remember, you the plan sponsor/employer are responsible for keeping the plan in compliance with the regulations and tax laws. That is why it is so important to partner with vendors and tax professionals to aid you with keeping your plan in compliance.



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Common Errors	How to fix	Keep it from happening in the future
1) Plan documents are not in compliance. Failed to amend to reflect recent law changes.	Adopt amendments for missed law changes. If you missed the deadline to adopt an amendment you may need to use the IRS correction program.	Communication with your plan provider. Make sure you know who will be responsible for the document
2) You do not operate the plan in accordance with the plan document.	Use a reasonable correction method that would allow affected participants to be in a position that they would have been if the error had not occurred.	Communication with your plan provider. Review your process and procedures annually.
3) You do not follow the definition of compensation in the plan document for all deferrals and allocations.	Correct the contribution, reallocation or distribution what ever needs to be fixed.	Communication with your plan provider. Review your process and procedures annually.
4) Employer matching contributions was not made to all participants eligible for the match.	Use a reasonable correction method that would allow affected participants to be in a position that they would have been if the error had not occurred.	Communication with your plan provider. Review your process and procedures annually.
5) The plan failed the 401(k) ADP and ACP nondiscrimination tests.	Make qualified nonelective contributions for the nonhighly compensated employees or refunds to the highly compensated employees.	Communication with your plan provider. Review your process and procedures annually. Make sure they are done by the deadline.
6) Eligible employees weren't given the opportunity to make an elective deferral (exclusion of eligible employees).	Allow them to start deferring immediately and make a qualified nonelective contribution to compensates for the missed deferrals.	Communication with your plan provider. Review your process and procedures annually. Make sure you are aware of the eligibility date of all new employees.
7) Participants Elective deferrals were not limited to the IRS section 402(g) amounts for the year and excess deferrals weren't distributed.	Distribute the amounts over the 402(g) Limits.	Communication with your plan provider. Review your process and procedures annually. Work with your payroll provider to stop elective deferrals at the 402(g) Limit.
8) Employee elective deferrals are not deposited timely.	Deposit the elective deferrals and lost earnings. May have to file with DOL Voluntary Correction Program and File 5330 with the IRS.	Communication with your plan provider. Review your process and procedures annually. Work with your payroll provider to make sure deposits are done timely.
9) Participant loans don't conform to the requirements of IRC Section 72(p) or are prohibited transactions under IRC Section 4975.	You can correct some mistakes by corrective repayment and/or modify loan terms.	Communication with your plan provider to make sure the loans are not prohibited transactions. Review each participant loan, including the loan amount, term of the loan and repayment terms to make sure they are being administered correctly.
10) Hardship distributions did not follow the provisions in the plan document.	Amend plan retroactively to allow for hardship distributions and make sure you are following the plan document provisions.	Communications with your plan provider to make sure you are following the plan provisions.
11) The plan was top heavy and the required minimum contributions weren't made to the plan by the last day of the following year.	Properly contribute and allocate the required top heavy minimum, adjusted for earnings, to the affected non-key employees. Consider redesigning the plan to include safe harbor provisions to the plan document.	Communications with your plan provider to make sure you are following the plan provisions. Review the top heavy tests each year with your plan provider.
12) Failed to file a Form 5500 return.	File all delinquent returns with DFVCP as soon as possible.	Communications with your plan provider to make sure you are filing the Form 5500 returns timely.