Employee Plans Compliance Resolution System - Overview

The Internal Revenue Service (IRS) developed the Employee Plans Compliance Resolution System (EPCRS) to allow plan sponsors to correct certain plan failures while continuing to provide their employees with retirement benefits on a tax-favored basis. Revenue Procedure 2019-19 contains the latest consolidated procedures for the EPCRS correction programs and is available on the IRS website at https://www.irs.gov/retirement-plans/expanded-self-correction-program-epcrs-rev-proc-2019-19.

CORRECTION PRINCIPLES

Failures corrected under EPCRS must be made based on the correction principles outlined in the program. Generally, a failure is not corrected unless full correction is made for all affected participants and beneficiaries, for all taxable years during which the failure occurred. The guiding principles are:

- Restoration of benefits – the correction method should restore the plan to the position it would have been in had the failure not occurred.
- Reasonable and appropriate – The correction should be reasonable and appropriate for the failure. Any correction method described in Appendix A or B of Revenue Procedure 2013-12 is considered reasonable and appropriate. Whether any other correction method is reasonable and appropriate is determined based on the facts and circumstances of the situation and the following principles:
    - The correction should resemble one already provided under the Internal Revenue code (IRC), regulations or other guidance.
    - The correction should keep the assets in the plan except to the extent the IRC, regulations or related guidance would require a distribution to participants or beneficiaries.
    - Correction of nondiscrimination failures should provide benefits for non-highly compensated employees.
    - The correction method should not violate any other requirement under the IRC or the Employee Retirement Income Security Act (ERISA).
    - The IRS may take into account a correction method authorized by another government agency.
- Consistency – When more than one correction method is available for correction of an Operational Failure, one method should be used consistently in correcting all failures of the same type for the same plan year.

EPCRS PROGRAMS AVAILABLE

The Employee Plans Compliance Resolution System is an umbrella program that consists of three types of correction programs. The programs are:

- SCP – Self-Correction Program
- VCP – Voluntary Correction Program (requires a special filing and IRS Approval)
- Audit CAP – Audit Closing Agreement Program (requires IRS Approval)

The plan sponsor must determine which program may be used to correct any failures. Part of the determination will focus on whether the violation is significant or insignificant, which is based on all of the relevant facts and circumstances (number or percentage of employees/assets involved, years involved, number of violations, etc.).

Regardless of the ERCRS program selected (i.e., SCP, VCR or Audit Cap), the correction method chosen must be reasonable and appropriate under the relevant facts and circumstances as described above under Correction Principles.

Self-Correction Program (SCP) – allows plan sponsors who meet the eligibility requirements for this program, to self-correct both insignificant and significant **Operational Failures** under Qualified Plans (a plan that satisfies the requirements listed under §401(a) of the IRC) without any fees or penalties or IRS approval of the correction so long as the sponsor determines that the violation (whether significant or insignificant) is eligible for resolution under SCP.

If the plan sponsor determines that the identified violation is "insignificant" based on all of the relevant facts and circumstances, then there is no time limit for correction and the plan sponsor can elect to resolve the violation under the SCP.

If the violation is "significant", additional requirements must be met as noted in the table below summarizing the SCP eligibility requirements.

	SCP ELIGIBILITY REQUIREMENT
1	The employer must be correcting an Operational Failure
2	The violation is not an egregious failure
3	The plan must have established practices and procedures with regard to the violation being corrected.
4	**If the violation is significant**, the qualified plan must have either a favorable determination letter (individually designed or modified approved volume submitter plan), a current favorable opinion letter (master or prototype plan), or a current favorable advisory letter (unmodified approved volume submitter).
5	**If the violation is significant**, the plan must correct fully by the end of the second plan year following the plan year in which the violation took place.
6	**If the violation is significan**t, the SCP cannot be used to correct a failure if the plan comes under examination. However, if the correction of the failure is substantially completed before the plan comes under examination the plan sponsor may complete the correction of those failures under SCP.

The following factors are considered by the IRS in determining whether the violation is significant or insignificant:

	FACTORS – SIGNIFICANT or INSIGNIFICANT
1	Other failures of a different nature that occurred during the same period.
2	The amount of plan assets or plan contributions involved in the failure.
3	The number of years during which the failure occurred.
4	The percentage of total participants affected by the failure (total number of participants affected divided by total number of participants).
5	The percentage of potentially affected participants (number of affected participants divided by the number of participants who could have been affected by violation).
6	Whether the correction was made within a reasonable time period after the discovery of the violation.
7	The cause of the violation - data errors such as transposition of numbers, minor math errors, or transcription of data will most likely be treated as insignificant.

For audit trail purposes any corrections made under the SCP should be documented. The documentation should describe the failure, how it was corrected and how it will be prevented from occurring again and should be kept in the employer's plan file.

If the plan sponsor feels that the above criteria is not met and the SCP may not be used, or if the plan sponsor feels that IRS approval is desired or required, the plan sponsor may use the Voluntary Correction Program to get IRS approval or Correction on Audit.

Voluntary Correction with IRS Approval (VCP) –This program allows the plan sponsor to request IRS approval with regard to the correction of a violation under a qualified plan by submitting a special filing to the IRS. A specified IRS user fee schedule applies. Under this correction program, plan sponsors may submit their proposed correction anonymously, or as a group. The plan may use this approach as long as it is not under audit. Any correction may be made under VCP but as noted in the chart below certain failures may only be corrected under VCP or the Audit Closing Agreement Program.

Audit Closing Agreement Program (Audit CAP) – If a plan has a failure that was not corrected under the SCP or VCP and the failure is found while the plan is under examination the only option for correction is the Audit Closing Agreement Program. Under Audit CAP the plan sponsor may negotiate with the IRS a correction for the failure and a related monetary sanction.

Earnings Calculation Required – For all programs, earnings on any corrective contributions or distributions are required to be included on the corrective amounts. There are different earnings methods which may be used and these are described in EPCRS in Appendix B, Section 3. As a general rule the interest rate (or rates) earned by the plan during the applicable period(s) should be used in determining the earnings for corrective contributions or distributions.

FAILURES THAT MAY BE CORRECTED UNDER EPCRS

Below are the general types of failures that may be corrected under EPCRS. The plan must identify the failure type in order to determine which EPCRS Program(s) is available for the correction of the failure(s).

Type	Description	Correction Program Available
Operational Failures	The failure to follow the provisions of the plan document.	SCP, VCP and Audit CAP
Plan Document Failures	The failure to include all of the provisions required under Internal Revenue Code (Code) Section 401(a).	SCP, VCP and Audit CAP
Demographic Failures	The failure to satisfy nondiscrimination requirements under Code Sections 401(a)(4), 410(b), or 401(a)(26).	VCP and Audit CAP
Employer Eligibility Failures	The failure to prevent an ineligible employer from sponsoring a 401(k) plan.	VCP and Audit CAP

NOTE: The above comments are general suggestions and before taking any corrective measures the plan sponsor should discuss the violation, the correction program and the proposed correction method with the plan's legal counsel.

Since Voya Financial® cannot provide legal advice the plan sponsor should always seek the advice of the plan's legal counsel regarding any plan failures.

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This information is provided as general guidance. It is not intended to be legal or tax advice. Employers should contact their legal and/or tax advisors regarding the facts and circumstances around their own retirement plan and the applicability of the issues discussed in this communication.