IRS

Tax Exempt & Government Entities | Employee Plans

Correcting Retirement Plan Mistakes using IRS Correction Programs

Presenters

- Avaneesh Bhagat

  Manager, Voluntary Compliance Group

  El Monte, CA

- Stephanie Bennett

  Voluntary Compliance Program Coordinator

  Woodland Hills, CA

IRS

Filing | Payments | Refunds | Credits & De... | ...Help & Reso...

...ns | Language | Information For...

- Individuals
- Businesses
- Charities & Non-Profits
- Government Entities
- Tax Professionals
- Retirement Plans
- Tax Exempt Bonds

Finding our page:

-Click on Information For

-Click on Retirement Plans

Or simply type the URL:

www.irs.gov/retirement

Retirement Plans

Benefit Practitioner

Plan Participant, Employee

Plan Sponsor

Topics for Retirement Plans

- IRAs
- Types of Retirement Plans
- Required Minimum Distributions
- Retirement Plan FAQs
- Published Guidance
- Forms & Publications
- Correcting Plan Errors
- Newsletters
- More Topics

Tax Information for Retirement Plans Community

Help with Choosing a Retirement Plan
Web guide to help you compare plans

File a Retirement Plan Return
Forms 5500, 5500-SF, 5330, 5558 and 8955-SSA

Form 2848 - More Changes
Use the March 2012 version to designate a representative for retirement plan issues.

Retirement Plans Phone Forums
Check out upcoming phone forums

Fix-It Guides
Find, Fix and avoid common mistakes in plans

Cost-of-Living Adjustments (COLAs)
Limits on contributions and benefits

Examinations and Enforcement
Audit guide, compliance check letters and other programs

IRS

Filing | Payments | Refunds | Credits & De... | ...elp & Reso...

...ns | Language | Information For...

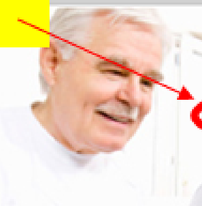
- Individuals
- Businesses
- Charities & Non-Profits
- Government Entities
- Tax Professionals
- Retirement Plans
- Tax Exempt Bonds

Finding our page:

-Click on Information For

-Click on Retirement Plans

Or simply type the URL:
irs.gov/retirement



Retirement Plans

Stay informed; choose your interest…

Topics for Retirement Plans

- IRAs
- Types of Retirement Plans
- Required Minimum Distributions
- Retirement Plan FAQs
- Published Guidance
- Forms & Publications
- Correcting Plan Errors
- Newsletters
- More Topics

Newsletters

Subscribe

For free IRS Newsletters

Employee Plans News

Geared toward retirement plan practitioners - attorneys, accountants, actuaries, and others - this newsletter presents information about retirement plans. View our current edition, browse the newsletter archive, or subscribe to future editions.

Retirement News for Employers

For employers, business owners and their tax advisors – the latest on retirement plan rules, forms, plain language publications from IRS and other federal agencies. View current or prior editions.

Governmental Plans Updates

Recent developments for governmental plans.

Browse the newsletter archive or subscribe to future editions.

Agenda

- The correction programs available under the Employee Plans Compliance Resolution System (EPCRS)
- Common failures and approaches to addressing them
- Procedural tips to facilitate VCP submissions processing
- The Voluntary Closing Agreement Program (VCAP) for issues that cannot be addressed under EPCRS
- Q&As—Responses to selected questions submitted in advance of the presentation

EPCRS correction programs

- EPCRS: Revenue Procedure 2013-12 (generally effective April 1, 2013)
- EPCRS consists of three correction programs
  - Self-Correction Program (SCP)
  - Voluntary Correction Program (VCP)
  - Audit Closing Agreement Program (Audit CAP)

EPCRS correction programs

- Goal:
  - Preserve tax deferred benefits for participants under §§ 401(a) (qualified plans), 403(b) (tax-sheltered annuities), 408(k) (SEPs and SARSEPs), 408(p) (SIMPLE IRAs)
  - Income/excise tax relief: §§ 72(p) (loans), 72(t) (early distributions), 4974 (min. distributions), 4972/4973 (excess contributions), 4979 (ADP/ACP test)

Correction Principles

ref: §6 of Rev. Proc. 2013-12

- Full correction includes all taxable years, whether or not the taxable year is closed
- Correction should restore the Plan and its participants to position they would have been in
- The correction should be reasonable and appropriate for the failure
  - Appendix A/B - correction deemed to be reasonable
  - Other: Consistency with the IRC; provide benefits to NHCEs; keep assets in plan

Changes under Rev Proc 2013-12

- Availability of corrections for 403(b) plans
  - Failure to adopt written plan
  - Failure to operate in accordance with plan terms (2009 onward; no issue prior to 2009)
  - Remedial amendment period and plan amendments (no correction issue in many cases)
- Availability of corrections for 457(b) plans
  - Governmental entities
  - Non Governmental Entities (limited)

IRS

Changes under Rev Proc 2013-12

- Defined Benefit Plans
  - Actuarial equivalence factors for corrective distributions
  - Impact of section 436 of the Internal Revenue Code on plan corrections

Changes under Rev Proc 2013-12

- Defined Contribution Plans (inc. 401(k))
  - Section 415(c) and availability of SCP
  - ADP/ACP corrections, QNECs and forfeitures
  - Improper exclusion of employees
    - Safe harbor 401(k) plans – 401(k)(12) and 401(k)(13)
    - SIMPLE Plans
    - 403(b) Plans
  - Corrective matching contributions- QNEC or not
  - Overpayments: In some cases, employer may not be liable for improper in-service distributions

Lost participants

- IRS & SSA letter forwarding programs no longer available search methods
- Reasonable efforts to locate could include:
  - mailing to the last known address using certified mail
  - the use of an additional search method e.g.:
    - a commercial locator service,
    - a credit reporting agency, or
    - internet search tools.

Lost participants

- A plan will not be considered to have failed to correct due to inability to locate an individual if:
  - reasonable actions to locate the individual have been undertaken, and
  - if the individual is later located, the additional benefits are provided to the individual at that time

IRS

Common 401(k) plan failures

- For common failures in 401(k) plans please see:

  http://www.irs.gov/Retirement-Plans/Plan-Sponsor/Fixing-Common-Plan-Mistakes

  - Common mistakes have been identified.
  - Ideas presented on steps that can be taken to:
    - Find errors, fix them and avoid them going forward (FIND, FIX, AVOID)

Common 401(k) plan failures

1. Update plan documents timely
2. Operate in accordance with plan terms:
   - Compensation
   - Matching contributions
   - ADP/ACP test
   - Eligible employees
   - 402(g) limit
   - Top Heavy contributions
   - Hardship distributions
   - Loans (incl. compliance with § 72(p))

Finding plan document mistakes

- Review of records including:
  - Original plan document
  - Subsequent amendments or restatements
  - Adoption Agreements
  - Opinion Letter or Advisory Letter issued by the IRS
  - Determination Letter issued by the IRS
  - Board of Directors’ resolutions/minutes
  - Summary Plan Description

Correcting plan document mistakes

- Adoption of corrective amendments
- VCP submission
  - Appendix C Sch. 1 available for interim amendments (and extended RAP has not expired);
  - Appendix C Sch. 2 available for non-amenders (i.e. extended RAP for law changes has expired) – DL application required if correction is made using individually designed plan.

Avoiding plan document mistakes

- Maintenance of plan document records
- Frequent interaction between employer and service provider
- Maintenance of a calendar that would provide deadlines by which certain amendments need to be adopted
- Consistency between plan and SPD

Identifying/avoiding plan operation mistakes

- Familiarity with the terms of the plan
  - Employer, Employees, Service providers
  - Communications between parties (e.g. Human Resources communicate to Payroll the definition of compensation used for determining elective deferrals)
- Periodic review of plan operations and terms (include review of systems, e.g. implementing automatic enrollment, auto-escalation)
- IRS checklist - www.irs.gov/pub/irs-pdf/p4531.pdf

Correcting operational mistakes

- Failure to operate plan in accordance with terms of plan document
  - See correction principles; App. A/B
  - SCP may be available

Selected correction issues

- Compensation:
  - Plan document definition is less/more inclusive than what was done in operation
  - If more inclusive than plan operation, difficulty with correction by plan amendment
- Exclusion of eligible employees:
  - Impact of auto-enrollment feature:
    - Failure to implement a negative election, or
    - Improper exclusion e.g. failure to receive enrollment materials?

IRS

Selected correction issues

- Failed ADP/ACP test:
  - Use of forfeitures for corrective QNEC
  - Can’t use forfeitures - limitations of IT Reg. 1.401k-6
- Safe Harbor 401(k) plans—Notice Failure:
  - Impact- improper exclusion of employee or simple administration failure
- Hardship Distributions:
  - Failure to suspend elective deferrals
  - Return of improper deferrals, forfeit match

Selected correction issues

- Loans:
  - 72(p) relief
  - Loan start date
  - Owner-Employee loans

VCP Procedural tips

- Complete required info on forms 8950 & 8951
- Appendix C Part I
- Use of schedules
- Supporting exhibits in the application
- Consistency of information provided
- Correct fee determination

VCP Procedural tips

- Form 2848-
  - Individual with authority signs
  - Subject matter- reference to VCP
  - Tax Form Number should reference Form 8950
  - Completion of box re: communications and notices

EP Voluntary Closing Agreements

- May use to address tax issues that cannot be addressed under EPCRS
  - e.g. the section 4975 excise tax for prohibited transactions
- Source of Voluntary Closing Agreement submissions
  - New proposals
  - Possible conversion of VCP submissions

EP Voluntary Closing Agreements

- New proposal:
  - Generally begins with an anonymous proposal outlining the issue
  - tax consequences if the issue is not resolved
  - proposed correction and a proposed sanction
- In general, the sanction would include:
  - taxes
  - interest and
  - possible relief from penalties

EP Voluntary Closing Agreements

- Voluntary closing agreements cannot be processed if the plan is under examination
- Article - www.irs.gov/Retirement-Plans/Employee-Plans-Voluntary-Closing-Agreements
- Contacts for more information:
  - Thelma Diaz (626) 927-1415
  - Paul Hogan (206) 220-6085

EP Voluntary Closing Agreements

- Send proposals to:
  - Internal Revenue Service
    TE/GE:EP:VC Group 7554: Gina Jacquez
    Request for Voluntary Closing Agreement
    9350 Flair Drive, 3rd Floor
    El Monte, CA 91731