

IRS Employee Plans Compliance Resolution System Program (EPCRS)

Frequently Asked Questions and Answers¹ :

1. What types of programs are offered under the Employee Plans Compliance Resolution System Program?

Self Correction Program (SCP) – SCP is available only for operational failures. Qualified plans and 403(b) plans are eligible for SCP with respect to significant and insignificant operational failures. SEPs and SIMPLE IRA plans are eligible for SCP only with respect to insignificant operational failures.

Voluntary Correction Program (VCP) - Qualified Plans, 403(b) Plans, SEPs, and SIMPLE IRA Plans are eligible for VCP. VCP provides general procedures for correction of all Qualification Failures: Operational, Plan Document, Demographic, and Employer Eligibility. VCP also provides general procedures for the correction of participant loans that did not comply with the requirements of § 72(p)(2).

Audit CAP – Generally, Audit CAP is available for Qualified Plans, 403(b) Plans, SEPs, and SIMPLE IRA Plans for correction of all failures found on examination that have not been corrected in accordance with SCP or VCP. Audit CAP also provides general procedures for the correction of participant loans that did not comply with the requirements of § 72(p)(2).

2. Can 403(b) plan failures be corrected through EPCRS?

Yes, including eligibility and failure to timely adopt a written plan.

Eligible failures - Section 403(b) plan sponsors can now correct failures arising from noncompliance with the form and operational requirements of the 403(b) final regulations and other guidance issued by the Internal Revenue Service (IRS). The changes generally permit 403(b) plan sponsors to correct failures affecting their plans in the same manner as a qualified plan with the same failure.

Failure to timely adopt a written plan - A plan sponsor may use the Voluntary Correction Program to correct a failure to timely adopt a written 403(b) plan. Plans can correct this failure using new Appendix C and Schedule 2.

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3. How do I determine if the operational errors are significant under SCP?

The factors to be considered in determining whether an operational failure under a plan is insignificant include, but are not limited to: (1) whether other failures occurred during the period being examined (for this purpose, a failure is not considered to have occurred more than once merely because more than one participant is affected by the failure); (2) the percentage of plan assets and contributions involved in the failure; (3) the number of years the failure occurred; (4) the number of participants affected relative to the total number of participants in the plan; (5) the number of participants affected as a result of the failure relative to the number of participants who could have been affected by the failure; (6) whether correction was made within a reasonable time after discovery of the failure; and (7) the reason for the failure (for example, data errors such as errors in the transcription of data, the transposition of numbers, or minor arithmetic errors). No single factor is determinative. Additionally, factors (2), (4), and (5) should not be interpreted to exclude small businesses.

In the case of a plan with more than one operational failure in a single year, or operational failures that occur in more than one year, the operational failures are eligible for correction under SCP only if all of the operational failures are insignificant in the aggregate.

4. What is the time frame for correcting significant operational errors?

Generally, the last day of the correction period for an operational failure is the last day of the second plan year following the plan year for which the failure occurred.

For more details and to learn more, refer to Section 9.02 of Revenue Procedure 2013-12.

5. What does the Voluntary Correction Program (VCP) mean to my 403(b) plan?

VCP is a voluntary correction program where plan sponsors can make a submission to the IRS based on failures raised by the plan sponsor or failures identified by the IRS in processing the submission. DRAFTING note – or if you prefer “Service,” then suggest define as such in item 2 where “IRS” is used.

VCP is not based upon an examination of the plan by the IRS. The IRS will not make any investigation or finding under VCP concerning whether there are failures.

To learn more, refer to Section 10 of Revenue Procedure 2013-12.

6. Will I receive something in writing from the IRS when filing under the VCP program?

Yes, if an agreement has been reached and all applicable compliance fees have been paid, the IRS will send to the plan sponsor a compliance statement signed by the IRS specifying the corrective action required. The IRS may require the plan sponsor to sign the compliance statement, which if required must be completed within 30 calendar days of the date the compliance statement is sent.

7. How quickly do I need to make the corrections under VCP?

Plan sponsors are given 150 days from the date of the compliance statement to implement specific corrections and administrative changes, unless the correction involves the failure to adopt timely good faith amendments, interim amendments, or amendments relating to the implementation of optional law changes, as described in Section 6.05(3)(a) of Revenue Procedure 2013-12.

Any request for an extension of this time period must be made prior to the expiration of the correction period in writing and must be approved by the IRS.

8. Will the IRS require proof that the correction has been made under VCP?

Once the compliance statement has been issued, the IRS may require verification that the correction methods have been complied with and that any plan administrative procedures required by the compliance statement have been implemented. This verification does not constitute an examination of the books and records of the employer or the plan (within the meaning of § 7605(b)). If the IRS determines that the plan sponsor did not implement the corrections and procedures within the stated time period, the plan may be referred to IRS' Employee Plans Examinations.

9. Can an “anonymous” submission be made under VCP?

Yes, a Qualified Plan, 403(b) Plan, SEP, and SIMPLE IRA Plan may submit without initially identifying the applicable plan, the plan sponsor, or the eligible organization. Information identifying the plan or the plan sponsor may be redacted (and the power of attorney statement and the penalty of perjury statement need not be included with the initial submission). All anonymous submissions must be numbered or labeled on the first page of the VCP submission by the plan sponsor or its representative to facilitate identification and tracking of the submission.

Once the IRS and the plan representative reach agreement with respect to the submission, the IRS will contact the plan representative in writing indicating the terms of the agreement. The plan sponsor will have 21 calendar days from the date of the letter of agreement to identify the plan and plan sponsor. If the plan sponsor does not submit the identifying material (including the power of attorney statement and the penalty of perjury statement) within 21 calendar days from the date of the letter of agreement, the matter will be closed and the compliance fee will not be returned.

10. What are some of the major changes to the EPCRS program?

New VCP Submissions Procedures – VCP submissions will now be completed on Form 8950, *Application for Voluntary Correction Program (VCP)*, and Form 8951, *Compliance Fee for Application for Voluntary Correction Program Submission*.

New Address for Submissions – The following new addresses that must be used when mailing VCP submissions to the IRS:

First class mail:

Internal Revenue Service
P.O. Box 12192
Covington, KY 41012-0192

Express mail or private deliver service:

Internal Revenue Service
201 West Rivercenter Blvd.
Attn: Extracting Stop 312
Covington, KY 41011

Overpayments – If an overpayment was made because a payment was made without a distributable event, but was otherwise a permissible distribution (e.g., an impermissible in-service distribution), the plan sponsor does not have to make the plan whole for the amount of the overpayment if the participant does not make the repayment.

403(b) Plan Modifications – Plan sponsors maintaining 403(b) plans may now generally correct 403(b) plan documents and operations, demographic, and employer eligibility failures in the same manner as may be permitted under Section 401(a) qualified plans, with some minor exceptions.

Failure to Comply With 403(b) Universal Availability – A safe harbor correction method is available for the improper exclusion of employees from making elective deferrals to a 403(b) plan. In lieu of determining the missed deferral based on the actual deferral percentage, the missed deferral is deemed equal to the greater of 3% of compensation or the maximum deferral percentage for which the plan sponsor provides a matching contribution rate that is at least as favorable as 100% of the elective deferral made by the employee.

11. What types of plan errors can be corrected using VCP?

Many types of errors can be corrected using VCP, which include and are not limited to:

Types of Errors	Correction Schedule
Interim and certain discretionary nonamender failures	Schedule 1
Nonamender failures and failure to adopt a 403(b) plan timely	Schedule 2
SEPS and SARSEPs	Schedule 3
SIMPLE IRAs	Schedule 4
Plan loan failures	Schedule 5
Employer eligibility failure	Schedule 6
Failure to distribute elective deferrals in excess of the § 402(g) Limit	Schedule 7
Failure to pay required minimum distributions timely under § 401(a)(9)	Schedule 8
Corrections by plan amendment	Schedule 9

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| <ul style="list-style-type: none"> • Section 401(a)(17) failure • Hardship distribution failure • Loans permitted in operation but not permitted by plan document • Early inclusion of otherwise eligible employee(s) | |
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12. What types of things are needed to file using VCP?

VCP submissions must include, as applicable, the following:

1. Identification of failures
2. Explanation
3. Proposed method of correction
4. Earnings or actuarial adjustments
5. Computations
6. Method that will be used to locate and notify former employees and beneficiaries
7. Change in administrative procedures
8. Request for excise tax relief or additional tax relief under §72(t)
9. Loan failures and income tax reporting relief
10. A description of the transaction, if the failure relates to assets that have been transferred out of the plan
11. 403(b) Plans. In the case of a 403(b) Plan submission, a statement that the Plan sponsor has contacted all other entities involved with the plan and has been assured of cooperation in implementing the applicable correction, to the extent necessary.
12. Forms 8950 and 8951
13. Plan document
14. Determination letter application, as applicable
15. Determination letter user fee, as applicable
16. VCP fee
17. Additional fee due for SEPS, SIMPLE IRA Plans, and Group Submissions
18. Power of attorney requirements
19. Penalty of perjury statement

See Revenue Procedure 2013-12 for additional details and requirements.

13. What are the VCP fees for Qualified Plans and 403(b) Plans?

The VCP fees are as follows. However, plan sponsors that failed to adopt a written plan document, including the “paper clip” version – see details under the answer to question 14 below -- by December 31, 2009 (or, if later, the date of adoption of the plan) may make a submission under the voluntary correction program (VCP) of the Employee Plans Compliance Resolution System (“EPCRS”) and receive a 50% fee reduction, if the only

failure is the failure to timely adopt a written plan document and the submission is made by December 31, 2013.

Number of Participants	Fee
20 or fewer	\$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

14. Can a “Paper Clip” approach be used as a written 403(b) Plan Document?

The IRS has publically stated the plan may be composed of the aggregate (“Paper Clip”) of a salary reduction agreement, the contracts that fund the plan and administrative procedures regarding eligibility, benefits, dollar limitations and nondiscrimination for universal availability for salary reductions and non-elective contributions. The “Paper Clip” written plan document must satisfy the requirements under IRC 403(b), both in form and operation.

A “Paper Clip” version should include, but may not be limited to:

- 1) Copies of all investment contracts under the plan
- 2) Copies of Salary Reduction Agreements
- 3) Written procedures and rules that govern the plan, which include provisions for:
 - a) Eligibility
 - b) Limitations and benefits, including time and form under which benefit distributions will be made
 - c) Loans
 - d) Rollovers
 - e) Plan-to-Plan Transfers
 - f) Contract-to-Contract Exchanges
 - g) Hardship Withdrawals
 - h) All other types of distributions
 - i) Full and immediate vesting of all contributions under the plan
 - j) Universal availability with respect to elective deferrals described in in § 1.403(b)-5(b), whether or not this requirement is applicable to the plan under § 1.403(b)-5.

- k) Limitation of compensation that can be taken into account with respect to any contribution under the plan to the limitation in effect under § 401(a)(17), whether or not this limitation is applicable to the plan under § 1.403(b)-5.
 - l) Terms that satisfy the applicable requirements of § 401(m) in the plan provides for matching or after-tax employee contributions, unless the employer is a governmental employer as defined in plan § 414(d) or a church plan as defined in § 414(e) for which the election under § 410(d) has not been made (a “nonelecting church plan”).
 - m) Procedures must include that in the event of any conflict between the terms of the plan and the terms of any annuity contract or custodial account under the plan, or any other document that is incorporated by reference in the plan, the terms of the plan shall control.
 - n) Procedures for amendment of the plan must be included, so that changes in the Code, regulations, revenue rulings, or the guidance published by the IRS, or corrections, may be applied.
- 4) Under § 1.415(f)-1(a)(3), all § 403(b) annuity contracts purchased by an employer for a participant are treated as one § 403(b) annuity contract for purposes of § 415. Every § 403(b) plan must include plan language reflecting this rule. In particular, the plan language must coordinate the application of the § 415 limits to all the § 403(b) plans of the adopting eligible employer and its related employers so that, if the only § 403(b) plans maintained by the adopting employer and its related employers are plans, the plans will satisfy § 415(c) and § 1.415(f)-1(a)(3) without requiring the addition of overriding plan language. The plan language must also allow the adopting eligible employer to add overriding language to the adoption agreement if necessary to coordinate the application of the § 415 limits where the adopting eligible employer or its related employers also maintain § 403(b) plans that are not prototype plans. For this purpose, the term “related employers” means all employers that are aggregated with the adopting eligible employer under § 414(b) and (c) (each as modified by § 415(h)), (m), and (o), including § 1.414(c)-5.
- 5) An Adoption Agreement showing adoption of the 403(b) plan and it must specify or indicate the following:
- a) Plan Type
 - i. Governmental plan as defined in § 414(d),
 - ii. Nonelecting church plan, or
 - iii. Eligible employer is an organization described in § 501(c)(3) and the plan is neither a governmental plan as defined in § 414(d) nor a nonelecting church plan.

- b) Allow the adopting eligible employer to add overriding plan language if necessary to satisfy § 415 because of the required aggregation of multiple plans.
- c) Identify who: (i) is responsible for the various administrative functions under the plan to comply with the requirements of § 403(b) and other tax requirements, including such requirements that apply on the basis of the aggregated contracts issued to a participant under the plan; and (ii) is responsible to maintain a list of all the vendors of annuity contracts and custodial accounts under the plan.
- d) Contain a dated employer signature line. The eligible employer must sign the adoption agreement when it first adopts the plan and must complete and sign a new adoption agreement if the plan has been restated. In addition, the eligible employer must complete a new signature page if it modifies any prior elections or makes new elections in its adoption agreement. The signature requirement may be satisfied by an electronic signature that reliably authenticates and verifies the adoption of the adoption agreement, or restatement, amendment or modification thereof, by the eligible employer.
- e) State that the prototype sponsor will inform the adopting eligible employer of any amendments made to the plan or of the discontinuance or abandonment of the plan.
- f) Sponsor's name, address, and telephone number (or a space for the address and telephone number of the prototype sponsor's authorized representative) for inquiries by adopting eligible employers regarding the adoption of the plan, the meaning of plan provisions, or the effect of the opinion letter.