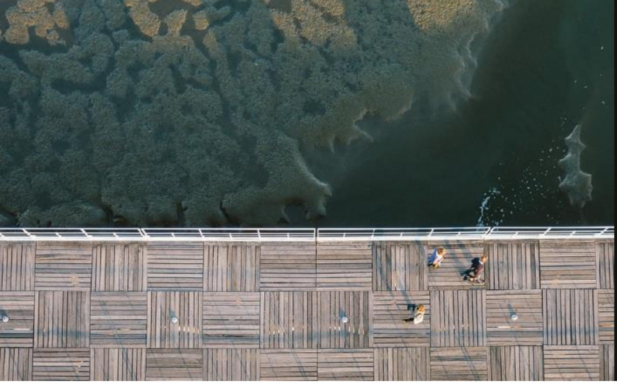

# EPCRS

Employee Plans Compliance Resolution Systems

The IRS developed the Employee Plans Compliance Resolution System ("EPCRS") as a way to remedy errors in operation and avoid potential consequences of plan disqualification. EPCRS has three programs available to correct mistakes:

**Self-Correction Program ("SCP")**
Permits certain plan failures to be corrected without contacting the IRS or paying a filing fee to the IRS.

**Voluntary Correction Program ("VCP")**
Permits plan failures to be corrected any time before audit, pay a filing fee and receive IRS approval for the correction.

**Audit Closing Agreement Program ("Audit CAP")**
While the plan is under IRS audit plan failure may be corrected providing the plan sponsor pays sanction and corrects the failure(s).

A general description of each program under EPCRS is provided below.

**SCP** – is the easiest and least expensive of the three programs. SCP permits plan sponsors to "self-correct" without involving the IRS and without paying an IRS fee or penalty. In order to be eligible for SCP plan sponsors must have established practices and procedures in place that are reasonably designed to promote and facilitate compliance with the law. In addition:

- SCP is only available to correct operational mistakes (i.e. not following the terms of your plan). SCP is not available to correct errors of not keeping your plan document current with law changes.
- Both significant and insignificant operational errors can be corrected using SCP but significant errors must be corrected within two years after the end of the plan year in which the error occurred. Insignificant errors do not have a deadline to correct. Significance is determined based on facts and circumstances. [i]
- If particular guidance is not provided as to the correction method, general correction principals should be followed.
- When using SCP, the plan sponsor should maintain adequate records to demonstrate correction in the event of an audit of the plan.

**VCP** - is used for errors that are out of the scope of SCP. Plan sponsors may correct one or more failures by bringing such failures to the attention of the IRS through VCP. The plan sponsor files a VCP application with the IRS and pays a filing fee. In addition:

- VCP is available to correct operational mistakes and plan document qualification issues.
- Additionally, mistakes which can be corrected through SCP may also be corrected through VCP if the plan sponsor wants the blessing of the IRS on the correction.
- To file under VCP, Randall + Hurley can work with the plan sponsor to prepare the application describing the error(s) and the correction.
- The IRS filing fee associated with VCP depends on the error and the net plan assets.

| STANDARD FEES BASED ON NET PLAN ASSETS | |
|---|---|
| $0 to $500,000 | $1,500 |
| Over $500,000 to $10,000,000 | $3,000 |
| Over $10,000,000 | $3,500 |

**Audit CAP** – If a mistake is discovered by the IRS under an audit, it can only be corrected through Audit CAP to prevent the plan from being disqualified and losing all tax benefits for the plan sponsor and participants. The plan sponsor is required to:

- Make the necessary corrections and then enter into a Closing Agreement with the IRS.
- Pay a sanction amount which is negotiated with the IRS. The amount will relate to the nature, extent, and severity of the failure(s) and will be more than the filing fee paid under VCP.
- The sanction amount is determined based on facts and circumstances. [ii]

[i] Facts and circumstances: other failures in the same period, percentage of plan assets and contributions involved; number of years the failure(s) occurred; participants relative to the total number of participants in the plan; participants affected relative to how many could have been affected; whether the correction was made soon after discovery and the reason for the failure. No single factor is determinative. Failures are not significant just because they occur in more than one year.

[ii] Facts and circumstances: presence of internal controls designed to ensure that the plan had no failures or that such failures were identified and corrected in a timely manner; number of affected employees; impact on non-highly compensated employees; whether it is a demographic failure or an employer eligibility failure; length of time the failure occurred; the reason for the failure; the Maximum Payment Amount as defined in sections 5.01, 5.01 of Rev. Proc. 2016-51; see Rev. Proc. 2016-51, section 14 for additional details and factors.

RANDALL + HURLEY

1328 N Whitman Lane, Liberty Lake, WA 99019
www.randall-hurley.com
info@randall-hurley.com
509 838 5500 I 888 682 4406