



Internal Revenue Service

Governmental Plans Roundtable

**EPCRS &
Governmental Plans**



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EPCRS Defined

- Employee Plans Compliance Resolution System
- Set forth in Revenue Procedure 2006-27
- Information about EPCRS can be found at www.irs.gov/ep - double click on the link “Correcting Plan Errors”



Basic Requirements

Basic requirements that pertain to all 401(a) plans:

- 1) Written document that details how the plan will operate and the benefits that it will provide (must comply in form with applicable requirements of Code section 401(a))
- 2) The plan must be operated in accordance with terms of plan



Consequences of Not Complying with Code Section 401(a)

- If either requirement is violated, the plan is not qualified under the Federal tax code
- May result in taxable events that would negatively impact most plan participants



Importance of EPCRS to Governmental Plans

EPCRS allows governmental plans to resolve qualification failures and avoid plan disqualification



Self-Correction Program

- Available to correct qualification failures where the terms of the plan have not been followed
- No involvement with the IRS



Self-Correction Program

Eligibility requirements for SCP:

- 1) Established practices and procedures reasonably designed to promote and facilitate compliance with Code section 401(a) requirements
- 2) Limited to certain qualification failures



Self-Correction Program

Time limits for SCP:

- Insignificant failures - can be corrected at any time (even on audit)
- Significant failures - must be corrected by last day of the second plan year following the plan year in which the failure occurred



Voluntary Correction with Service Approval

- Available to correct any qualification failure
- Written submission identifying qualification failures
- Payment of specified compliance fee
- IRS issues a compliance statement detailing qualification failures and correction proposals



Voluntary Correction with Service Approval

VCP compared to SCP:

- More flexibility in correction
- Eligible to request a waiver from certain excise taxes
- Covers more failures
- Requires written submission and fee
- Cannot be used if plan under examination



Correction on Audit

- Audit Closing Agreement Program (Audit CAP)
- Available to resolve qualification failures found on audit



Correction on Audit

Audit CAP Requirements:

- 1) Issues resolved through a written closing agreement between plan sponsor and IRS
- 2) Taxpayer must correct the failures and pay a negotiated sanction amount to the IRS



401(a) Requirements Applicable to Governmental Plans

The following items must be met in terms of plan language and plan operation:

- 1) 401(a)(1). This requires that the plan be in writing and that it detail the plan's benefits and the definitions that are used to operate the plan and that the plan follow these terms in operation.
- 2) 401(a)(2). Plan must contain language that complies with this requirement. Also, none of the plan's other language must conflict with requirement. The plan's operation, in all aspects, must be for the exclusive benefit of the plan's participants.



401(a) Requirements Applicable to Governmental Plans

- 3) 401(a)(7). Pre-ERISA rules relating to Code section 411 are applicable to the plan document and the plan's operation.
- 4) 401(a)(8). Applies to defined benefit pension plans. Forfeitures cannot be used to increase benefits for plan participants.



401(a) Requirements Applicable to Governmental Plans

- 5) 401(a)(9). Required minimum distributions. The plan document must also contain language that complies with the IRS Regulations that have been issued. Plan must have complied with this requirement in operation.
- 6) 401(a)(16). Maximum benefits provided by the plan cannot exceed the limits imposed by Code section 415(b). The plan document must also contain language that complies with the IRS Regulations that have been issued. Plan must have complied with this requirement in operation.



401(a) Requirements Applicable to Governmental Plans

- 7) 401(a)(17). Plan benefits cannot be determined using participant compensation that exceeds the limit imposed by this Code section. The plan document must also contain language that complies with the IRS Regulations that have been issued. Plan must have complied with this requirement in operation.
- 8) 401(a)(25). Actuarial assumptions must be specified in the plan document and not be subject to employer/plan administrator discretion.



401(a) Requirements Applicable to Governmental Plans

- 9) 401(a)(27). Applies to profit sharing and money purchase plans. Plan terms must specify what type of plan.
- 10) 401(a)(30). Applies to grandfathered 401(k) plans established prior to 5/6/86. Plan terms and operation must comply with this requirement.
- 11) 401(a)(31) . Applies to all 401(a) plans that allow for some type of lump sum distributions or refunds of employee contributions. Plan terms and operation must comply with this requirement.



VCP Cases That Have Come into Voluntary Compliance

VCP trends:

- 1) VCP submissions have included large state sponsored retirement plans to a single employer plan sponsored by a small city or municipality that covered a limited number of employees.
- 2) Plan types have been defined contribution and defined benefit.



VCP Cases That Have Come into Voluntary Compliance

Common qualification issues:

- 1) Failure to timely (or properly) amend the written terms of the plan to comply with various applicable changes in the Federal tax law such as TEFRA, TRA'86, UCA'92, OBRA'93, and GUST
- 2) Failure to adopt required interim plan amendments to reflect applicable changes made by EGTRRA and IRS guidance



VCP Cases That Have Come into Voluntary Compliance

Common qualification issues continued:

- 3) In operation, some plans failed to make required minimum distributions under Code section 401(a)(9) in a timely manner.
- 4) Where the plan terms and/or the plan has operated in a manner in which plan participants had the opportunity to make an impermissible cash or deferred election.



VCP Cases That Have Come into Voluntary Compliance

Common qualification issues continued:

- 5) In operation, some plans failed to comply with the requirements of Code section 401(a)(31).
- 6) Some plans provided benefits to individuals based upon service and compensation that was not associated with the plan sponsor or any participating employer.



VCP Cases That Have Come into Voluntary Compliance

Common qualification issues continued:

- 7) In operation, some plans computed benefits and required employee contributions using participant compensation that exceeded the limits imposed by Code section 401(a)(17).
- 8) In operation, some plans did not limit plan benefits as required by Code section 415(b).



VCP Cases That Have Come into Voluntary Compliance

Common qualification issues continued:

- 9) In form and operation, plan assets were used to fund retiree health insurance in a manner that did not comply with Code sections 401(a)(2) & 401(h).
- 10) In operation, the plan's eligibility provisions were not followed and some ineligible employees were allowed to participate while eligible employees were improperly excluded.



VCP Cases That Have Come into Voluntary Compliance

Common qualification issues continued:

- 11) In some plans, the benefits provided by the plan were not determined in accordance with the written terms of the plan.
- 12) In some plans, premature distributions were made to plan participants who had not satisfied the plan's conditions for receiving a distribution.



VCP Cases That Have Come into Voluntary Compliance

Common qualification issues continued:

- 13) In some DC plans, the allocation formulas were not definitely determinable.