

RETIREMENT PLAN CORRECTIONS: COMMON ERRORS PLAN ADMINISTRATORS MAKE & HOW TO FIX THEM

The complexity of managing a retirement plan can be worrisome for business owners and plan administrators and is a common reason that owners opt not to offer them. Retirement plans are governed by complicated rules and regulations, so there is a definite possibility for plan administrators to make errors in managing the plan. Luckily, the IRS has enacted and recently expanded programs to correct certain errors with reduced or no penalties. If you are a BFG retirement plan client, we will help you review your plan, identify errors and correct any administrative oversights. In the article below, we'll cover common plan errors, how to discover them, and what to do if you find an error has been made.

Common Retirement Plan Errors

Below are common plan errors to look out for:

- ❖ Missing Auto-Enrollment (that is, not setting someone up on auto enrollment when they should have been)
- ❖ Excluding Eligible Employees (or not starting deductions when someone has enrolled)
- ❖ Not Following a Plan's Automatic Deferral Escalation Provision
- ❖ Implementing the Wrong Deferral Amount (for example, deferring only 3% for an employee who elected to defer 6%.)
- ❖ Missing a Deferral Change that an Employee Requested
- ❖ Failing to Distribute Required Plan Notices
- ❖ Not Submitting Contributions by the Deadline
- ❖ Not starting Safe Harbor Contributions when Eligible (usually when eligibility differs from deferral eligibility)

The IRS's Employee Plans Compliance Resolution System (EPCRS) offers three programs for correcting retirement plan errors in order to preserve the retirement plan's tax-favored status:

- ❖ **Self-Correction Program (SCP):** Plan administrators may self-correct many retirement plan errors with no requirement to contact or pay a fee to the IRS, although they may have to make a special corrective contribution to the affected employee's retirement account. Errors eligible for self-correction are operational errors, which occur when the

written terms of the plan are not followed. Insignificant operational errors may be corrected at any time; operational errors that are significant may also be eligible for self-correction if action is taken in a timely manner. The following errors are eligible for self-correction:

- Failure to follow plan provisions
- Not making contributions promised under the plan terms
- Loan failures
- ❖ **Voluntary Correction Program (VCP):** Plan administrators who have made mistakes with the language in the plan document or running the retirement plan may apply to the IRS to correct the errors under the VCP as long as the retirement plan isn't currently being audited by the IRS. The process includes applying to the IRS and paying the user fee. The following errors are common and may be corrected with the VCP:
 - Not maintaining a valid, up-to-date plan document
 - Not following the terms of the plan document while operating the plan
 - Not complying with federal tax law requirements while operating the plan
- ❖ **Audit Closing Agreement Program (Audit CAP):** This third program is offered to a retirement plan with significant problems that are discovered by the IRS during audit or the determination letter application process. Generally, in these situations, the plan sponsor makes plan corrections, enters into a Closing Agreement with the IRS, and pays a sanction negotiated with the IRS. Per the IRS's website, "The sanction paid under Audit CAP should be greater than the user fee paid under the Voluntary Correction Program (VCP). However, it will not be excessive and will bear a reasonable relationship to the nature, extent, and severity of the failures" (<https://www.irs.gov/retirement-plans/audit-closing-agreement-program-general-description>).

Notable Updates

- ❖ **SCP:**
 - Plan administrators now have 3 years (rather than 2) to self-correct operational errors (without requiring any submission), provided the corrections otherwise comply with the current guidance for the SCP.
 - EPCRS has specified the level of completion necessary for the SCP program to apply. By the end of the self-correction period, plan administrators must have made the corrective contribution/adjustment to 65% of the plan participants whose accounts were impacted by the operational error. Certain plan document failures may also be corrected under the SCP when the specified requirements are satisfied.
- ❖ **VCP:** As of January 1, 2022, the EPCRS no longer permits anonymous requests for correction under the VCP. However, it now allows for an anonymous pre-VCP submission conference, wherein a plan administrator may complete certain forms to have a conference with an IRS agent and receive comments on a non-binding basis.
- ❖ **Overpayments:** EPCRS now provides a correction mechanism for defined benefit pension plan overpayments.
- ❖ **Excess Amounts:** The IRS increased the small Excess Amounts that did not require correction from \$100 to \$250, meaning a plan does not need to distribute an Excess Amount if it is less than \$250. The exception is amounts in excess of the annual contribution limit or other statutory limits.

Checking Your Work

Ultimately, it will cost you more if the IRS catches the error before you do. Per the EPCRS guidelines, fees for errors that the IRS discovers are greater than fees associated with voluntary corrections discovered by the plan administrator. Therefore, it is advantageous for plan administrators to discover errors on their own, rather than the IRS discovering these errors. In order to uncover any errors associated with the management of the retirement plan, we recommend doing an annual self-audit to check your processes and make sure all activity associated with the plan has been completed correctly and compliantly. We help you with this process as part of our Fiduciary Reviews each year.

Some things to look out for:

- ❖ Think about eligibility rules. Have all newly eligible employees been offered the opportunity to enroll?
- ❖ Does your retirement plan offer Auto-Enrollment? Check on new hires and rehires over the year to ensure they were auto-enrolled or opted out.
- ❖ Does your retirement plan offer Automatic-Escalation? Check on deferrals and requests to opt out to make sure that all plan participants are set up with the correct deferral amounts.
- ❖ Review requested changes from plan participants. Is everyone's deferral correct based on their instructions?
- ❖ Have you sent all required Plan Notices? And have you sent them all on time and to all required recipients including existing and terminated account owners and their heirs?

The IRS provides additional guidance on how to fix mistakes on its website:

- ❖ **Correcting Plan Errors:** <https://www.irs.gov/retirement-plans/correcting-plan-errors>
- ❖ **Fix-It Guides - Common Problems, Real Solutions:** <https://www.irs.gov/retirement-plans/plan-sponsor/fix-it-guides-common-problems-real-solutions>

Avoiding Errors in Plan Administration

Making occasional errors when managing a retirement plan is allowed (though of course, not encouraged) even under IRS rules; however, plan administrators have many resources available to help them minimize errors in the administration of their retirement plan.

Rely on your Retirement Plan Advisor

Retirement plan advisors work with clients to help them manage their retirement plan in accordance with best practices. Some retirement plan advisors, like BFG, also sign on as fiduciaries for their clients, meaning that they share in the liability of the plan and have a strong stake in the plan operating in a compliant manner.

As part of our process at BFG, we conduct regular plan reviews and report back to our clients with any findings. We look at certain features of the retirement plan to ensure the process is functioning correctly and consistently. For example, if we find that auto-enrollment numbers are low compared to a similar period, that may be a red flag that we will investigate further. In addition, our retirement team will also help manage eligibility and track loan repayment for our payroll clients.

Other times, our clients will call us to let us know that they have missed a contribution. At that point, we can calculate the correction for them and help guide them through the corrections process as needed.

Engage with 3(16) Service Providers

It can be advantageous for plan administrators to consider offloading duties by using 3(16) providers. A 3(16) fiduciary performs administrative functions for the retirement plan, including tracking eligibility, auto-enrollment, and loan repayment, signing forms, and distributing required notices to participants. These providers sometimes require very specific formats for uploads, so they are able to review the data, but they are a good option in many circumstances.

We can help plan administrators evaluate 3(16) providers and talk through any issues in order to prevent them from recurring.

For More Information

For more information or assistance, please contact our Corporate Retirement team at **210-745-6393**, toll-free at **1-888-757-2104**, or **CorporateRetirement@BFGonline.com**.



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