



**Tax Exempt &  
Government Entities**

**Changes to the Employee  
Plans Compliance  
Resolution System  
(Revenue Procedure 2013-12)**

**February 21, 2013- IRS Phone Forum-Retirement Plans**



## Revenue Procedure 2013-12

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## EPCRS DEFINED

- Employee Plans Compliance Resolution System (EPCRS)
- Currently set forth in Revenue Procedure 2013-12, which superseded Revenue Procedure 2008-50
- Information about EPCRS can be found at the [www.irs.gov/Retirement-Plans](http://www.irs.gov/Retirement-Plans) - double click on the link “Correcting Plan Errors”



## Objectives

- Review new Forms required for each Voluntary Correction Program (VCP) Submission
- Review Model Compliance Statements and new Appendices
- Discuss updates made to EPCRS definitions and corrections principles impacting 403(b) plans
- Review other important modifications to EPCRS



## Effective Date

- Rev. Proc. 2013-12 is mandatorily effective April 1, 2013.
- Plan Sponsors may apply the provisions of Rev. Proc. 2013-12 on or after December 31, 2012, however, the VCP submissions must be made in accordance with the procedures set forth under this revenue procedure including mailing the VCP submission to the new mailing addresses set forth in section 11.12.



## **Required VCP Forms**

All VCP submissions submitted under  
Rev. Proc. 2013-12

must include two new Forms:

Form 8950, Application for  
Voluntary Correction Program

and

Form 8951, Compliance Fee for Application for  
Voluntary Correction Program



# Form 8950

|   |                      |  |                        |                                       |
|---|----------------------|--|------------------------|---------------------------------------|
| <b>Form 8950</b><br>(January 2013)<br>Department of the Treasury<br>Internal Revenue Service  |                      | <b>Application for Voluntary<br/>         Correction Program (VCP)</b><br>Under the Employee Plans Compliance Resolution System (EPCRS)<br><small>Information about Form 8950 and its instructions is at <a href="http://www.irs.gov/form8950">www.irs.gov/form8950</a>.</small> |                        | OMB No. 1545-1073<br>For IRS Use Only |
| Review the attached Procedural Requirements Checklist before mailing this VCP submission to the IRS.  |                      |  |                        |                                       |
| 1a Name of plan sponsor (employer if single-employer plan)  |                      |  |                        |                                       |
| <input type="text"/>  |                      |  |                        |                                       |
| 1b Address of plan sponsor (if a P.O. box, see instructions)  |                      | 1c City or town  | 1d State               | 1e ZIP code                           |
| <input type="text"/>  |                      | <input type="text"/>   | <input type="text"/>   | <input type="text"/>                  |
| 1f Foreign country name   |                      | 1g Foreign province/country  | 1h Foreign postal code |                                       |
| <input type="text"/>  |                      | <input type="text"/>   | <input type="text"/>   |                                       |
| 1i Employer identification number   | 1j Telephone number  | 1k Fax number  |                        |                                       |
| <input type="text"/>  | <input type="text"/> | <input type="text"/>   |                        |                                       |
| 2a Person to contact if more information is needed. (see instructions)<br>(If a Power of Attorney is attached, check box and do not complete lines 2a through 2g.) <input type="checkbox"/>   |                      |  |                        |                                       |
| Name  |                      |  |                        |                                       |
| <input type="text"/>  |                      |  |                        |                                       |
| 2b Address  |                      | 2c City or town  | 2d State               | 2e ZIP code                           |
| <input type="text"/>  |                      | <input type="text"/>   | <input type="text"/>   | <input type="text"/>                  |
| 2f Telephone number   |                      | 2g Fax number  |                        |                                       |
| <input type="text"/>  |                      | <input type="text"/>   |                        |                                       |
| If more space is needed for any line items, attach additional sheets of the same size as this form. Identify each additional sheet with the plan sponsor's name and EIN and identify the corresponding line item.   |                      |  |                        |                                       |
| Under penalties of perjury, I declare that I have examined this VCP submission, including Form 8950 and all accompanying documents, and to the best of my knowledge and belief, they and the facts presented in support of this application and submission are true, correct, and complete. |                      |  |                        |                                       |
| SIGN HERE ▶   |                      |  |                        | Date ▶                                |
| <input type="text"/>  |                      | <input type="text"/>   |                        | <input type="text"/>                  |
| This application must generally be signed by the owner or an authorized employee of the plan sponsor. For exceptions, see instructions under Who Must Sign.   |                      |  |                        |                                       |
| Type or print name  |                      | Type or print title  |                        |                                       |
| <input type="text"/>  |                      | <input type="text"/>   |                        |                                       |
| For Paperwork Reduction Act Notice, see separate instructions.  |                      |  |                        |                                       |
|   |                      |  | Cat. No. 37760K        | Form 8950 (1-2013)                    |

Form 8950 solicits information, including some items previously submitted under separate cover. This includes :

- Initial penalty of perjury statement
- Abusive tax avoidance statement
- Examination statement
- Determination letter application statement
- Former Appendix C



# Form 8950

- Form 8950 includes a Procedural Requirements Checklist.
- The checklist is not required to be completed.

Form 8950 (1-2013)
Page 4

### Procedural Requirements Checklist

You do not have to use this checklist, but it may help prevent delayed IRS processing caused by an incomplete submission.

- 1 Is Form 8951, Compliance Fee for Application for Voluntary Correction Program (VCP) Under the Employee Plans Compliance Resolution System (EPCRS), attached to Form 8950?
- 2 Is the appropriate compliance fee for your submission (and a photocopy of the compliance fee check) attached to Form 8951?
- 3 If appropriate, is Form 2848, Power of Attorney and Declaration of Representative, and/or Form 8921, Tax Information Authorization, attached? For more information, see *Disclosure Request by Taxpayer* in the instructions and Rev. Proc. 2013-4 (or its successor).
- 4 Is the employer identification number (EIN) of the plan sponsor/employer (NOT the trust's EIN, or an individual's SSN) entered on line 11? See Line 11 in the instructions.
- 5 Is the application signed and dated? It generally must be signed by an authorized employee or the owner of the plan sponsor. See *Who Must Sign* in the instructions for situations where the signer may be a different person.
- 6 If you are submitting Appendix C, Part I, Model VCP Compliance Statement or Appendix C, Part II, Schedules, have you used the official versions of these documents that are located at [www.irs.gov/Retirement-Plans/Correcting-Plan-Errors/](http://www.irs.gov/Retirement-Plans/Correcting-Plan-Errors/)? The format of these documents may not be modified in any way. See Rev. Proc. 2013-12, sections 11.01 and 11.02.
- 7 If you answered "Yes" to line 7a, have you answered lines 7b and 7c and supplied the requested information?
- 8 If you answered "No" to line 7a, have you included a written explanation as requested by line 7b?
- 9 If you answered "Yes" to line 7a, have you included: a separate determination letter application that includes a Form 8717; a Form 5300, 5307, or 5310; a separate check for the user fee; and separate copies of plan documents, amendments, etc., required by the Form 5300 series application instructions? See Rev. Proc. 2013-12, sections 6.05 and 11.04.
- 10 If this is an anonymous VCP submission, have you included a signed statement from the plan sponsor's representative indicating the representative has the legal authorization to make this submission and is willing and able to submit Form 2848 to the IRS upon disclosure of the taxpayer's identity? See instructions and Rev. Proc. 2013-12, sections 10.10 and 11.08.
- 11 If this VCP submission involves an orphan plan, have you included appropriate documentation that establishes that this submission is being made by an eligible party? See instructions and Rev. Proc. 2013-12, sections 5.03 and 11.10.

NOTE: If you answered "Yes" to line 6, then items 12 through 19 on this checklist do not apply (as they have been incorporated into Schedules described in Rev. Proc. 2013-12, Appendix C, Part II). All applicable items on each of the Schedules need to be completed, and you must include the enclosure items listed on each applicable Schedule with your VCP submission. The Schedules may be used as part of a Model VCP Submission Compliance Statement described in Rev. Proc. 2013-12, Appendix C, Part I, to resolve certain qualification failures. If you combine the Schedules with the model compliance statement, you must specify in each section of the model compliance statement the Schedules being submitted in that section.

Form 8950 (1-2013)





# Form 8951

**Form 8951** Compliance Fee for Application for Voluntary Correction Program (VCP) OMB No. 1545-1673  
 (Rev. January 2013) Under the Employee Plans Compliance Resolution System (EPCRS) For IRS Use Only  
 Department of the Treasury Internal Revenue Service Information about Form 8951 and its instructions is at [www.irs.gov/form8951](http://www.irs.gov/form8951). Attach to Form 990. Amount paid \$ \_\_\_\_\_

1 Name of plan sponsor (employer if single-employer plan) \_\_\_\_\_

2 Plan sponsor's employer identification number \_\_\_\_\_ 3 Plan number \_\_\_\_\_ 4 Plan name \_\_\_\_\_

5 Number of plan participants. See instructions to determine this number. \_\_\_\_\_

6 If you are submitting a check for an additional VCP compliance fee that has been requested by an IRS employee in Voluntary Compliance, check this box:  and provide the check amount \$ \_\_\_\_\_ and the VCP Case Number \_\_\_\_\_.

7 General Compliance Fee Schedule

| Number of Plan Participants | General Compliance Fee Amount     |
|-----------------------------|-----------------------------------|
| (a) 0-20                    | <input type="checkbox"/> \$750    |
| (b) 21-50                   | <input type="checkbox"/> \$1,000  |
| (c) 51-100                  | <input type="checkbox"/> \$2,500  |
| (d) 101-500                 | <input type="checkbox"/> \$5,000  |
| (e) 501-1,000               | <input type="checkbox"/> \$8,000  |
| (f) 1,001-5,000             | <input type="checkbox"/> \$15,000 |
| (g) 5,001-10,000            | <input type="checkbox"/> \$20,000 |
| (h) Over 10,000             | <input type="checkbox"/> \$25,000 |

8 Exceptions to the General Compliance Fee Schedule. Check all boxes that apply: If a VCP submission consists solely of one or more applicable failures checked in 8(a) - (f) (and does not include any other failures), the compliance fee will be the lesser of: (1) the sum of the reduced compliance fee amounts; or (2) the general compliance fee amount (see instructions). If any box in 8(g) - (j) is checked, pay only the corresponding reduced compliance fee amount.

| Reduced Compliance Fee Eligibility  | Reduced Compliance Fee Amount   |
|---|---|
| (a) VCP submission relates to certain failures involving the late adoption of good faith amendments, interim amendments, or amendments required to implement optional tax law changes, as described in Rev. Proc. 2013-12, section 6.05(2)(a). See Rev. Proc. 2013-12, section 12.03(2).                            | <input type="checkbox"/> \$375  |
| (b) VCP submission relates to late nonamendment failures described in Rev. Proc. 2013-12, section 6.05(2)(a)(ii), and the VCP submission is made within a 1-year period following the expiration of the plan's remedial amendment period for complying with such changes. See Rev. Proc. 2013-12, section 12.03(1). | <input type="checkbox"/> General compliance fee amount from line 7 is reduced by 50%. |
| (c) VCP submission relates to a failure to comply with Internal Revenue Code (IRC) section 401(a)(9) minimum distribution rules affecting 50 or fewer plan participants. See Rev. Proc. 2013-12, section 12.02(2), for additional rules.  | <input type="checkbox"/> \$500  |
| (d) VCP submission relates to a failure of participant loans to comply with IRC section 72(p)(2) rules, provided no more than 25% of plan participants were affected in any year in which the failure occurred. See Rev. Proc. 2013-12, section 12.02(3), for additional rules.                                     | <input type="checkbox"/> General compliance fee amount from line 7 is reduced by 50%. |

For Paperwork Reduction Act Notice, see Instructions. Cat. No. 37771W Form 8951 (Rev. 1-2013)

❖ Specifies the compliance fee that is being submitted. It also helps applicants determine the applicable VCP compliance fee.

❖ Must be attached to Form 8950.

❖ Is similar to Form 8717, User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request.



## Forms 8950 and 8951

- ❖ Forms 8950 and 8951 must be included for each VC submission, including anonymous submissions, group submissions and submissions involving multiple employer, multiemployer and orphan plans.
- ❖ In order to prevent delays, each Form 8950 and Form 8951 needs to be properly completed.
- ❖ Generally Form 8950 must be signed by the owner or an authorized employee of the plan sponsor (For exceptions see instructions, under *Who Must Sign.*)



## Availability of Forms 8950 & 8951

The forms and related instructions have been published and are available to the public in the following ways:

### Internet:

- [Form 8950 and Instructions](#)
- [Form 8951](#)

### Telephone/Mail:

At the time of this presentation, the forms cannot be ordered via the IRS' 1-800-829-3676 telephone number and received via U.S mail. The internet at [www.irs.gov](http://www.irs.gov) is the only place the forms and instructions are available.



## **New Mailing Address**

All VCP submissions and non-VCP submissions involving 457(b) plans, and any determination application, if applicable, must be mailed to:

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

VCP submissions shipped by express mail or a delivery service should be sent to:

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



## Assembling the VCP Submission

- ❖ Section 11.14 was revised to:
  1. Incorporate Form 8950 and Form 8951 requirements.
  2. Remove duplicative items captured by Form 8950.
  3. Clarify that the IRS will process VCP submissions and accompanying determination letter applications (if applicable) separately. Any documents required to be filed for both the VCP submission and the accompanying determination letter application must be provided in duplicate.



## **Rev. Proc. 2008-50 Appendices Not Carried Over to New EPCRS**

- Appendices C, D, E and F that were part of Rev. Proc 2008-50 are no longer available under the new EPCRS Rev. Proc. 2013-12.
- These Appendices have been completely revised or no longer exist.



# **New Model Compliance Statement and Model Appendices**

Rev. Proc. 2013-12 includes a brand new Appendix C that contains:

- Part I Model VCP Submission Compliance Statement; and
- Part II: Model VCP Schedules 1 through 9 that resolve certain limited, specific qualification failures and which contain standardized correction methods. Such documents are designed to work with the model VCP submission compliance statement.



# Appendix C Part I

## Model VCP Compliance Statement

Appendix C Part I,  
Model VCP Submission  
Compliance Statement  
has replaced  
Appendix D and F of  
Rev. Proc. 2008-50

**APPENDIX C-PART I  
MODEL VCP SUBMISSION COMPLIANCE STATEMENT**

Plan Name: \_\_\_\_\_ EIN: \_\_\_\_\_ Plan #: \_\_\_\_\_  
(Please include the plan name, Applicant's EIN, and plan number on each page of the compliance statement.)

**SECTION I. PLAN INFORMATION**

1. APPLICANT'S NAME \_\_\_\_\_

2. APPLICANT'S EIN \_\_\_\_\_ 3. PLAN NO. \_\_\_\_\_  
(do not use Social Security Number)

4. PLAN NAME \_\_\_\_\_

**SECTION II. APPLICANT'S DESCRIPTION OF FAILURES**

Attach additional pages, as needed. Label attachment "SECTION II. APPLICANT'S DESCRIPTION OF FAILURES." List and number each failure separately. If using the Appendix C, Part II Schedules, simply specify the Schedule(s) that are to be part of this compliance statement and attach them to this compliance statement.

**SECTION III. APPLICANT'S DESCRIPTION OF THE PROPOSED METHOD OF CORRECTION**

Attach additional pages, as needed. Label attachment "SECTION III. APPLICANT'S DESCRIPTION OF THE PROPOSED METHOD OF CORRECTION." Describe the correction method applicable to each failure listed in Section II. If using the Appendix C, Part II Schedules, simply specify the Schedule(s) that are to be part of this compliance statement and attach them to this compliance statement.

**SECTION IV. APPLICANT'S PROPOSED PROCEDURES TO LOCATE AND NOTIFY FORMER EMPLOYEES OR BENEFICIARIES**

Attach additional pages, as needed. Label attachment "SECTION IV. APPLICANT'S PROPOSED PROCEDURES TO LOCATE AND NOTIFY FORMER EMPLOYEES OR BENEFICIARIES." Describe the method(s) that will be used to locate and notify former employees and beneficiaries, or provide an affirmative statement that no former employees or beneficiaries were affected by each failure listed in Part II or will be affected by the correction methods described in Section III. See section 6.02(5) (d) of Rev. Proc. 2013-12.





## **Appendix C Part I**

### **VCP Model Compliance Statement**

Appendix C Part I, Model Compliance Statement:

- Can be used for all VC submissions, but is not required.
- Can be combined with Appendix C Schedules 1 through 9.
- Requires narrative to be included on all VCP submissions that pertains to locating former participants



## Revisions of Appendices

- Appendix C, VCP Checklist, under Rev. Proc. 2008-50 has been done away with. However, some of its items have been revised and incorporated into the Form 8950 Procedural Requirement Checklist.
- Appendix D, VCP Submission, under Rev. Proc. 2008-50 has been replaced with Appendix D, Acknowledgment Letter.
- There is no longer an Appendix E or F.

## **Appendix C Part II: Schedules 1 through 9**



- Former Appendix F, Schedules 1 through 9 under Rev. Proc. 2008-50 have been revised and are now Appendix C Schedules 1 through 9.



# Appendix C Part II: Schedule 1

## The format of Schedule 1 has been changed.

- Page 1 now includes instructions as to when Schedule 1 can be used to report the correction of a failure to timely adopt good faith, interim amendments, or discretionary amendments required because of the plan's implementation of an optional law change.

**APPENDIX C PART II, SCHEDULE 1**  
**Interim and Certain Discretionary Nonamender Failures**

Plan Name: \_\_\_\_\_ EIN: \_\_\_\_\_ Plan #: \_\_\_\_\_  
(Please include the plan name, Applicant's EIN, and plan number on each page of the submission, including attachments.)

**Instructions:**

(1) This Schedule 1 can be used to report the correction of a failure to timely adopt good faith, interim amendments, or discretionary amendments required because of the plan's implementation of an optional law change. Correction under this Schedule 1 results in the corrective amendment being treated as if it had been timely adopted for purposes of determining the availability of the extended remedial amendment period. Thus, a Plan Sponsor may use this Schedule 1 for the failure to adopt a required interim or discretionary amendment ONLY if the corrective amendment was adopted before the expiration of the plan's extended remedial amendment period (as determined under Rev. Proc. 2007-44) for that amendment. If the corrective amendment was adopted after the expiration of the extended remedial amendment period, then the Plan Sponsor must use Appendix C Part II, Schedule 2.

(2) In accordance with (1) above, this Schedule 1 may be used to correct the failure to timely adopt a discretionary amendment required because of the plan's implementation of an optional law change. For other failures to operate the plan in accordance with plan terms, do not use this Schedule 1.

(3) All corrective amendments must be properly identified. Separate signed and dated amendments should be submitted. If the amendments are incorporated into a signed and dated restated document, the VCP submission must specify the page and section of the document that contains the amendment.

**SECTION I. IDENTIFICATION OF FAILURES**

(1) Were the amendments used to correct the failures under this Schedule 1 adopted before the expiration of the applicable extended remedial amendment period? Check applicable box and follow applicable instruction below:

YES  
 NO

If "Yes," proceed to (2) of this Section 1.  
If "No," **STOP - do NOT use this Schedule 1.** In cases where late or non-amender failures are corrected after the expiration of the plan's extended remedial amendment period, use Schedule 2.

(2) Were the amendments adopted to correct the failure to timely adopt interim amendments or amendments required to implement optional law changes (see section 6.05(3)(a) of Rev. Proc. 2013-12)?

YES  
 NO

If "Yes," proceed to (3) of this Section 1.  
If "No," **STOP - do NOT use this Schedule 1.**

## Appendix C Part II: Schedule 1



- Page 2 now requires a list of each statutory, regulatory, or other requirement for which the Plan was not timely amended. A general statement referring only to a cumulative list or statute is not acceptable.

Plan Name: \_\_\_\_\_ EIN: \_\_\_\_\_ Plan #: \_\_\_\_\_

(3) The Plan Sponsor identified did not timely adopt amendments for the following:

(List each statutory, regulatory, or other requirement for which the Plan was not timely amended, and specify for each such requirement the published cumulative list in which such requirement appears and the location of the corrective amendment in the documents included with the VCP submission (for example, by amendment number and paragraph number, or in the case of a restated plan, by page and section number). Do not use a general statement referring only to a cumulative list or statute. For instance, the following description would not be acceptable: "All interim amendments associated with the 20XX cumulative list [or the Pension Protection Act of 2006 (PPA)] were not timely adopted.")  
 Attach additional pages as needed. Label the attachment "Identification of Nonamender Failures" and include the plan name, plan sponsor's EIN and plan number on each page.)

**SECTION II. DESCRIPTION OF PROPOSED METHOD OF CORRECTION**

The Plan Sponsor has adopted amendments reflecting the items listed in Section I(3) of this Schedule 1. These amendments are effective retroactive to the effective dates of the specific provisions contained in the amendments. The signed and dated amendments have been enclosed with this submission.

**SECTION III. CHANGE IN ADMINISTRATIVE PROCEDURES**

The Applicant has taken the following step(s) to ensure that the failure(s) will not recur:

## Appendix C Part II: Schedule 2



Schedule 2 has been revised to include:

- all non-amender failures through the 2012 Cumulative List, including pre-approved DB and DC plans,
- failure to timely adopt an amendment associated with a favorable DL, and
- a failure to timely adopt a written 403(b) plan.

**APPENDIX C PART II, SCHEDULE 2**  
**Nonamender Failures (other than those to which Schedule 1 applies) and Failure to Adopt a 403(b) Plan Timely**

Plan Name: \_\_\_\_\_ EIN: \_\_\_\_\_ Plan #: \_\_\_\_\_  
 (Please include the plan name, Applicant's EIN, and plan number on each page of the submission.)

**SECTION I. IDENTIFICATION OF FAILURES**

A. **Qualified Plans:** The plan identified above was not amended to comply with the applicable provisions of the following legislative and regulatory requirements by the applicable deadlines in accordance with § 401(b) and the regulations thereunder.

- The Employee Retirement Income Security Act of 1974 (ERISA)
- The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)
- The Deficit Reduction Act of 1984 (DEFRA)
- The Retirement Equity Act of 1984 (REA)
- The Tax Reform Act of 1986 (TRA '86)
- The Unemployment Compensation Amendments of 1992 (UCA)
- The Omnibus Budget Reconciliation Act of 1993 (OBRA)
- GUST (includes The Uruguay Round Agreements Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Internal Revenue Service Restructuring and Reform Act of 1998, and the Community Renewal Tax Relief Act of 2000)
- The changes required by the Cumulative List for the plan's last on-cycle year:
  - The changes required by the 2004 Cumulative List (Notice 2004-84, 2004-2 C.B. 1030) for an eligible employer using a pre-approved defined contribution plan who failed to adopt the pre-approved plan by 4/30/10, as required by Announcement 2008-23, 2008-1 C.B. 731.
  - The changes required by the 2005 Cumulative List (Notice 2005-101, 2005-2 C.B. 1219) for Cycle A individually designed plans.
  - The changes required by the 2006 Cumulative List (Notice 2007-3, 2007-1 C.B. 255) for Cycle B individually designed plans, and any eligible employer using a pre-approved defined benefit plan who failed to adopt the pre-approved plan by 4/30/12, as required by Announcement 2010-20, 2010-15 I.R.B. 551.)
  - The changes required by the 2007 Cumulative List (Notice 2007-94, 2007-2 C.B. 1179) for Cycle C individually designed plans.
  - The changes required by the 2008 Cumulative List (Notice 2008-108, 2008-50 I.R.B. 1275) for Cycle D individually designed plans.
  - The changes required by the 2009 Cumulative List (Notice 2009-98, 2009-52 I.R.B. 974) for Cycle E individually designed plans.
  - The changes required by the 2010 Cumulative List (Notice 2010-90, 2010-52 I.R.B. 909) for Cycle A individually designed plans associated with the second submission under the remedial amendment cycle.
  - The changes required by the 2011 Cumulative List (Notice 2011-97, 2011-52 I.R.B. 923) for Cycle B individually designed plans associated with the second submission under the remedial amendment cycle.

## **Appendix C Part II: Schedules- other changes**



- Schedules 3, 4 and 9 were changed to reflect the revisions regarding the method of locating former participants or beneficiaries so that it coordinates with the Model VCP Submission Compliance Statement.



# Electronic, Interactive Versions of Appendix C & D Are Available

Interactive PDF versions of:

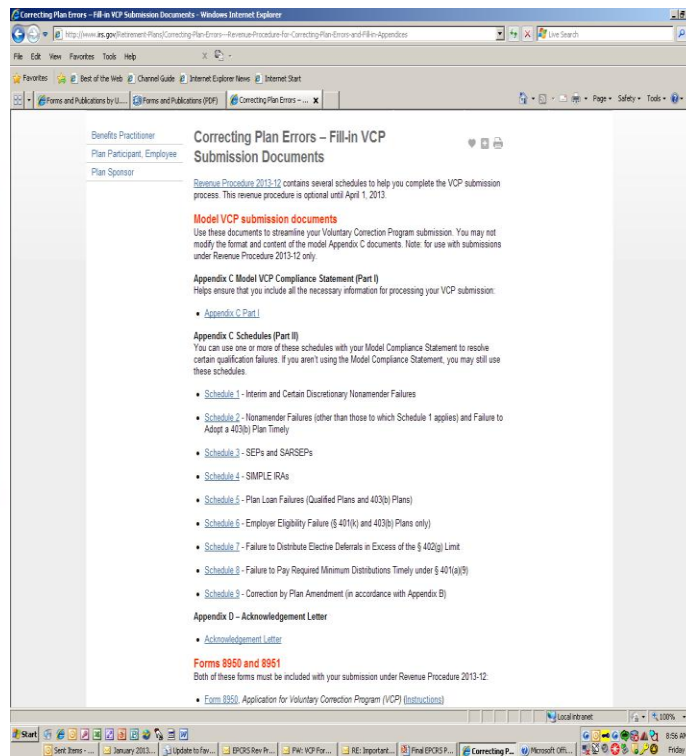
- Appendix C Part I
- Appendix C Part II-Schedules
- Appendix D: Acknowledgement Letter

• May be completed online and then printed out.

• Available at

[www.irs.gov/retirement](http://www.irs.gov/retirement) then

click on “Correcting Plan Errors” then click on “VCP fill-in-forms”







## **403(b) Plans-Major Changes**

- EPCRS was revised to allow for the correction of new plan document and operational failures involving 403(b) plans that failed to comply with the new requirements of the final 403(b) regulations beginning with the 2009 plan year.
- 403(b) failures arising in pre-2009 plan years may be resolved by EPCRS if they comply with Rev. Proc. 2008-50 definitions.



## **403(b) Plans-New & Revised Definitions**

- Section 5.02, Definitions for 403(b) Plans, has been modified to:
  - Add a definition of Plan Document Failure,
  - Revise the definitions of Operational Failure, Demographic Failure, and Employer Eligibility Failure to coordinate with the new definition of Plan Document Failure,
  - Add definitions of Overpayment and Favorable Letter.



## **403(b) Plans-New Correction Principles**

- Section 6.10 was added to provide correction principles for 403(b) Plans:
  - Generally correction for a 403(b) Plan is expected to be the same as the correction required for a Qualified Plan with the same Failure (i.e., Plan Document Failure, Operational Failure, Demographic Failure, and Employer Eligibility Failure).



## 403(b) Plans-New Correction Principles

- Section 6.10(2) provides for Special 403(b) correction principles:
  - Some 403(b) failures can be corrected by treating a contract as a § 403(c) annuity contract.
  - A 403(b) Plan generally will be treated as having a Favorable Letter if they have timely adopted a written 403(b) plan.
  - SCP availability to correct Operational Failures, the requirement to have established practices and procedures only applies for failures occurring after December 31, 2009.



## 403(b) Plans-New Correction Principles

- Section 6.10(3) provides correction principles for failure to adopt a written 403(b) plan:
  - Failure to adopt a written 403(b) plan timely in accordance with the final regulations under § 403(b) and Notice 2009-3 may be corrected under VCP and Audit CAP.
  - Issuance of a compliance statement or closing agreement for the failure to adopt a written 403(b) plan timely will result in the plan being treated as if it had been adopted timely for the purpose of making available the extended remedial amendment period set forth in Announcement 2009-89.



## 403(b) Plans-Temporary Reduced Fee

- Section 12.02 (5) was added to provide that the applicable compliance fee under section 12.02(1) is reduced by 50% if:
  - a) the VCP submission involves a failure to adopt a written 403(b) plan timely in accordance with the final regulations under § 403(b) and Notice 2009-3,
  - b) is the only failure included in the submission, and
  - c) the VCP submission is made within the one-year period beginning with the date of publication of this revenue procedure.

The VCP submission must be sent to the Service no later than **December 31, 2013** in order to be eligible for the reduced fee.

## **403(b) Plans-VCP Submissions Made Under Rev. Proc. 2008-50**

- 403(b) Plans, with plan document failures or certain operational failures arising from failure to comply with the final 403(b) regulations, that were not closed or returned by December 31, 2012, will have the option to apply Rev. Proc. 2013-12.
  - The plan sponsor or their Power of Attorney will be asked to submit a written request asking the IRS to process the submission under Rev. Proc. 2013-12 requirements.
  - The written request should **not** be submitted until instructed by the VC specialist that has been assigned to work the VCP case.
  - The VCP submission will have to be revised depending on the format in which the submission was submitted under Rev. Proc. 2008-50.





## Other Modifications- SCP Eligibility

- Section 4.04 was updated to promote the use of SCP for § 415(c) failures in certain defined contribution plans experiencing recurring excess annual additions if certain specified actions are taken in a timely manner by the plan sponsor.





## Other Modifications- SCP Eligibility

The conditions and actions are as follows:

1. Limited to a plan that provides for elective deferrals and nonelective employer contributions that are not matching contributions; and
2. Excess annual additions under § 415(c) are regularly corrected by return of elective deferrals to the affected employee within two and half months after the end of the plan's limitation year. The correction, however, should not violate another applicable Code requirement.



## Other Modifications- SCP Eligibility

- If all conditions mentioned on the previous slide are met, for SCP purposes, the Plan is not treated as failing to have established practices and procedures to prevent the occurrence of a § 415(c) violation.



## Other Modifications-457(b) Plans

- Section 4.09 has been modified:
  - Under Rev. Proc. 2008-50, 457(b) plans sponsored by tax exempt organizations were not allowed under any circumstances.
  - Availability of correction is generally limited to governmental entities.
  - The Service may consider a submission where, for example, the plan was erroneously established to benefit the entity's nonhighly compensated employees and the plan has been operated in a manner that is similar to a Qualified Plan.



## **Other Modifications-Funding of QNECS**

- Section 6.02(4)(c) and Appendix A, section .03, were modified to clarify that for purposes of correcting a failed ADP, ACP or multiple use test, any amounts used to fund QNECs must satisfy the definition of QNEC in § 1.401(k)-6.
- This regulation does not allow a QNEC to be funded by plan forfeitures.



## **Other Modifications-DB Underpayments**

- Section 6.02(4)(d) was modified to clarify that:
  - Delays in payment should be increased in accordance with the plan's provisions for actuarial equivalence in effect at time distribution should have been made.
  - Corrective distributions are not subject to the requirements of § 417(e)(3) if made to make up for missed payments for a benefit not subject to the requirements of § 417(e)(3).



## **Other Modifications-Failures Involving § 436 Restrictions**

- Section 6.02(4)(e) was added to correction principles to reflect possible restrictions imposed by § 436, and to deal with a plan's failure to comply with § 436 restrictions in operation.
- Corrective contributions generally required to be made to the plan to pay for corrective distributions or corrective amendments while subject to § 436 restrictions.



## Other Modifications-Lost Participants

- Section 6.02(5)(d) was revised to deal with lost plan participants who are owed benefits.
  - IRS letter forwarding program is no longer available as a safe harbor search method.
  - Specifies some methods that may be used to find lost participants (i.e. use of a non-IRS letter forwarding program, a commercial locator service, a credit reporting agency, or Internet search tools.)
  - A plan will not be considered to have failed to correct a failure due to the inability to locate an individual if reasonable actions to locate the individual have been undertaken in accordance with this section 6.02(5), provided that, if the individual is later located, the additional benefits are provided to the individual at that time.

## Other Modifications-Correction Principles

- Section 6.03 was revised to clarify that the benefits and responsibilities associated with this correction principle also apply if correction of the employer eligibility failure is accomplished via Audit CAP.
- Section 6.04(2)(c) was revised to add a sentence for plans under § 436 restriction. Corrective contributions may need to be made to a single employer DB pension plan if the spousal choice option discussed in this section is to be offered to the affected spouse.







## Other Modifications-Determination Letter Requirement

- Section 6.05 was revised to specify that a determination letter application **is not** to be submitted under EPCRS if:
  - Model amendments or IRS approved pre-approved plans are used to fix any type of qualification failure.
  - Demographic Failures.
  - Non-amender failures limited to specific late “good faith amendments”, “interim amendments” and “Optional law changes” defined in section 6.05(3)(a).
  - Operational failures corrected by plan amendments by off-cycle plan sponsors. Will need to submit a DL application when on-cycle.
  - Failure to adopt amendments required under the terms of a favorable determination letter.



## Other Modifications- Definitions and Compliance Statement Limits

- Section 6.05(3)(a) was revised to clearly define what is meant by “good faith amendments”, “interim amendments”, and “optional law changes”.
- Section 6.05(3)(c) [formerly part of 6.05(3)(b)] was revised to clarify the scope of reliance provided by a compliance statement or closing agreement.



## Other Modifications-Preapproved Plans

- Section 6.05(5) was added to address corrective amendments to pre-approved plans.
  - A plan sponsor may continue to rely on a pre-approved opinion letter even if the corrective amendment was not in the pre-approved plan document provided that:
    - (i) the corrective amendment would otherwise be permitted under the rules for pre-approved plans and
    - (ii) no other modification has been made to the plan that would cause the plan to lose its reliance on the opinion or advisory letter.

If these conditions are satisfied, the plan sponsor will be allowed to continue to rely on the plan's opinion or advisory letter.



## Other Modifications-Correction of Overpayments

- Section 6.06(3) was revised to clearly address the correction of Overpayments made from defined benefit plans.
  - DB Overpayments must be corrected by following similar rules that are specified in Appendix B, section 2.04(1) with regard to the “Return of Overpayment and “Adjustment of Future Payment” correction methods.

## Other Modifications-Correction of Overpayments



- Section 6.06(4) was added to specifically address the correction of Overpayments from defined contribution plans. In addition, it clarifies that a corrective employer contribution is not needed to fix premature distributions in some cases.



## Other Modifications-Miscellaneous

- Section 6.07 was revised to clarify that the correction principles of this section apply to Audit CAP.
- Section 10.07(8) was revised to improve clarity and to reference the new model compliance statement in Appendix C Part I.
- Section 10.10 was revised and section 11.08(2) was added to require that an individual who represents the plan sponsor and who submits an anonymous VCP submission must satisfy the Power of Attorney requirements and provide a penalty of perjury statement to that affect.

## Other Modifications-VCP fees



- Sections 10.11(1) and 12.05 were revised to clarify that in the case of either a prototype or specimen plan, the number of plans (for the purpose of determining the number of group submissions that may be required) is based on the number of basic plan documents, not adoption agreements.
- Section 10.12(2) was revised to clarify that the VCP compliance fee or Audit CAP sanction imposed in regard to multiple employer plans or multiemployer plans is based on participants rather than assets.

## **Other Modifications-Required VCP Documents**

- Section 11.04(3) was revised to provide that if a restated plan document is being submitted as evidence of correction then the plan sponsor must identify the corrective plan language in the restated plan that fixes the disclosed qualification failures.
- Section 11.05 now requires a photocopy of the check for the VCP compliance fee to be included with the submission.
- Section 12.01(2) provides notice that VCP compliance fee checks may be converted into an electronic fund transfer.







## Other Modifications- Reduced VCP Fees

- Section 12.03(3) now provides a flat \$500 compliance fee if:
  - the sole failure of the submission is the failure to adopt an amendment (upon which a favorable determination letter is conditioned) within the applicable remedial amendment period; and
  - the required amendment is or was adopted within three months of the expiration of the remedial amendment period for adopting the proposed amendment. Generally, if the amendment was adopted more than six months from the date of the original determination letter it does not qualify for the reduced compliance fee.



## Other Modifications- VCP Fees

- Sections 12.04 was added to provide that if a VCP submission includes multiple failures, each of which is subject to a reduced fee, then the fee for the submission will be the lesser of the sum of the reduced fees or the regular compliance fee.
- Section 12.08 was revised to clarify how to determine the number of plan participants if the Plan Sponsor is not required to file a Form 5500 series return with regard to a Qualified Plan or 403(b) Plan eligible for VCP.



## Other Modifications- CAP Fees Associated with Determination Letter Applications

➤ Section 14.04(1) & (2) were revised to update the fee schedule and its acronyms for nonamenders discovered during the determination letter application process not related to a VCP submission:

| Number of Participants | Employer's<br>2 <sup>nd</sup> 5 or 6 year<br>Remedial<br>Amendment<br>Cycle | Employer's<br>1 <sup>st</sup> 5 or 6 year<br>Remedial<br>Amendment<br>Cycle | GUST/<br>401(a)(9)<br>Regs | UCA/<br>OBRA<br>'93 | TRA<br>'86 | T/D/R    | ERISA    |
|------------------------|---|---|----------------------------|---------------------|------------|----------|----------|
| 20 or fewer            | \$ 2,500  | \$ 3,000  | \$ 3,500                   | \$ 4,000            | \$ 4,500   | \$ 5,000 | \$ 5,500 |
| 21-50                  | \$ 5,000  | \$ 6,000  | \$ 7,000                   | \$ 8,000            | \$ 9,000   | \$10,000 | \$11,000 |
| 51-100                 | \$ 7,500  | \$ 9,000  | \$10,500                   | \$12,000            | \$13,500   | \$15,000 | \$16,500 |
| 101-500                | \$12,500  | \$15,000  | \$17,500                   | \$20,000            | \$22,500   | \$25,000 | \$27,500 |
| 501-1,000              | \$17,500  | \$21,000  | \$24,500                   | \$28,000            | \$31,500   | \$35,000 | \$38,500 |
| 1,001-5,000            | \$25,000  | \$30,000  | \$35,000                   | \$40,000            | \$45,000   | \$50,000 | \$55,000 |
| 5,001-10,000           | \$32,500  | \$39,000  | \$45,500                   | \$52,000            | \$58,500   | \$65,000 | \$71,500 |
| Over 10,000            | \$40,000  | \$48,000  | \$56,000                   | \$64,000            | \$72,000   | \$80,000 | \$88,000 |



## **Other Modifications- CAP Fees Associated with Determination Letter Applications**

- Section 14.04(3) & (4) were added to provide reduced fee amounts for certain nonamender failures discovered during the determination letter application process not related to a VCP submission:
  - Section 14.04(3) – If the sole failure consists of a failure to timely adopt good faith amendments, interim amendments, or amendments required to reflect the changed operation of the plan on account of the Plan Sponsor’s decision to implement optional law changes by their applicable deadlines, but before the expiration of the plan’s extended remedial amendment period, the fee is 40% of the applicable fee under “Employer’s 2nd Remedial Amendment Cycle” on the chart in section 14.04(1).



## **Other Modifications- CAP Fees Associated with Determination Letter Applications**

- Section 14.04(4) provides for a flat \$1,000 fee if:
  - a) the sole failure discovered is the failure to adopt an amendment (upon which a favorable determination letter was conditioned) within the applicable remedial amendment period; and
  - b) the required amendment is or was adopted within three months of the expiration of the remedial amendment period for adopting the proposed amendment. Generally, if the amendment was adopted more than six months from the date of the original determination letter it does not qualify for the reduced fee.



## Other Modifications-Appendix A

- Appendix A, section .01 was revised to:
  - ❖ Clarify that all correction methods permitted in Appendix A and Appendix B are deemed to be reasonable and appropriate methods of correcting a failure.
  - ❖ Clarify that there may be more than one reasonable and appropriate correction method of a failure. Any correction method used that is not described in Appendix A or B would need to satisfy the correction principles of section 6.02.



## Other Modifications-Appendix A

- Appendix A, section .05 and related examples in Appendix B were revised to generally provide that:
  - matching contribution owed to a participant may be made in the form of a corrective employer matching contribution, instead of a QNEC.
  - corrective employer matching contribution (unlike a QNEC) would be subject to the vesting schedule under the plan that applies to employer matching contributions.



## Other Modifications-Appendix A

- Appendix A, section .05(2)(d) was revised and expanded to add safe harbor corrections relating to the improper exclusions of employees from safe harbor 401(k) plans under § 401(k)(12) and 401(k)(13)
  - Missed deferral amounts assumed to be equal to 3% of compensation. May be higher if the plan provides matching contributions on deferrals above 3% or if the plan's automatic deferral rate is higher.
  - No ADP/ACP testing allowed under this safe harbor correction method.





## Other Modifications- Appendix A

- Appendix A, section .05(6) was added to provide corrections relating to the improper exclusions of employees from making elective deferrals to 403(b) Plans:
  - Missed deferral amounts assumed to be equal to 3% of compensation. May be higher if the plan provides matching contributions on deferrals above 3%.
  - No ADP/ACP testing allowed under this safe harbor correction method.



## Other Modifications-Appendix A

- Appendix A, section .05(7) was added to provide corrections relating to the improper exclusions of employees from making elective deferrals to SIMPLE IRA plans:
  - Missed deferral amounts assumed to be equal to 3% of compensation.
  - No ADP/ACP testing allowed under this safe harbor correction method.



## Other Modifications- Appendix A

- Appendix A section .06 was revised to clarify that a correction involving the failure to timely pay a required minimum distribution in a defined benefit plan that is subject to a restriction under § 436 at the time of correction requires the Plan Sponsor to make a contribution to the plan
- Appendix A, section .07(2) was revised to clarify that a lump sum payment made to a spouse for purposes of correcting a failure to obtain spousal consent before making distributions to a participant, for a plan that is subject to a restriction on single-sum payments under § 436(d) at the time of correction, is available only if the Plan Sponsor (or other person) makes a contribution to the plan



## Other Modifications-Appendix B

- Appendix B, section 2.07(3) was revised to clarify that corrective plan amendments, used to resolve the early inclusion of otherwise eligible employees in a defined benefit plan, must consider the rules of § 436 if the plan is subject to restrictions on increase in liability for benefits under § 436(c) at the time of correction.



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