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New Revenue Procedures for the Employee Plan Compliance Resolution System, including 403(b) Plan Failures

The long awaited new Revenue Procedures for the Employee Plan Compliance Resolution System have been issued and will be effective, generally April 1, 2013. The information below from the IRS website highlights some of the changes.

New Revenue Procedure Updates EPCRS

Revenue Procedure 2013-12 was released on December 31, 2012. Revenue Procedure 2008-50 is modified and superseded by this revenue procedure. Significant changes to the Employee Plans Compliance Resolution System (EPCRS) include:

- *Expanded corrections for 403(b) plan failures*
- *Revised submission procedures for the Voluntary Correction Program (VCP)*
- *Rules for plans subject to section 436 restrictions*
- *Changes to safe harbor correction methods and fee structures*

403(b) Plan Failures

- **Eligible failures expanded** – 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 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 (section 2.03).
- **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.

New submission procedures

- **Forms 8950 and 8951** (available soon): The new VCP application forms must accompany all VCP submissions made under Revenue Procedure 2013-12.
- **Mail submissions to the IRS Service Center in Covington, KY:** Under Revenue Procedure 2013-12, VCP submissions will no longer be mailed to Washington, DC.
- **Appendices C, D & F are substantially revised:** The old

Appendices D and F are now Appendix C. Appendix C is revised to consist of two parts:

- A Model VCP Submission Compliance Statement, and
- Various Schedules (formerly Appendix F Schedules) containing standardized failure descriptions and correction methods

See sections 11.01, 11.02 and Appendix C for instructions.

- **The optional Acknowledgement Letter** (formerly Appendix E) has been revised and is the new Appendix D.
- **Appendix F Schedules** – All former Appendix F Schedules are now known as Appendix C Part II Schedules that may be used with the Appendix C Model VCP Submission Compliance Statement.
- **Anonymous VCP submissions** – The individual representing the plan sponsor must satisfy the power of attorney requirements and provide a statement to that effect under penalty of perjury (sections 10.10 and 11.08(2)).

Locating lost participants

As of August 31, 2012, the IRS letter Forwarding Program is no longer available as a search method for locating lost plan participants who are owed additional retirement benefits. The new procedure revises the reasonable actions that a plan sponsor must take to locate lost plan participants who are owed additional retirement benefits. It provides a limited extension of the SCP correction period and the VCP 150-day correction period for certain plan sponsors taking action to locate lost participants (section 6.02(5)(d)).

Safe harbor correction methods

- **Missed deferrals** – Appendix A now includes consistent safe harbor correction methods for certain missed deferrals in 403(b), SIMPLE IRA and safe harbor 401(k) plans.
- **QNECs** – Appendix A clarifies that QNEC contributions

must satisfy the definition of QNEC in Reg. section 1.401(k)-6 when used to correct a failed ADP, ACP, or multiple-use test under the safe harbor correction method. Under current IRS regulations, this means that forfeitures can't be used to fund QNEC contributions.

Self-correction of section 415(c) failures

Plan sponsors can use SCP to correct certain recurring excess annual additions if they take certain actions within a specified time (section 4.04).

Section 436 restricted defined benefit plans

These plans can correct operational failures related to noncompliance with applicable IRC section 436 restrictions. Plan sponsors also need to consider the effect of section 436 restrictions when making corrective distributions and/or corrective plan amendments. Plan sponsors may be required to make an additional corrective contribution (section 6.02(4)(e)).

VCP fees

- Late adoption of proposed amendments – A reduced fee may apply if a plan's sole failure is late adoption of a proposed plan amendment associated with a favorable determination letter (section 12.03). Specific conditions must be met in order to qualify for the reduced fee.
- Multiple failures may be eligible for reduced fees (section 12.04).
- Late adoption of a written 403(b) plan may be eligible for a reduced fee if it is the plan's sole failure and the submission is mailed by the specified date (section 12.02).

Miscellaneous

- **457(b) tax-exempt plans** – A very limited expansion of

correction for section 457(b) plans sponsored by tax-exempt entities was added (section 4.09).

- **Plan overpayments** – Correction principles for defined contribution and defined benefit plans were clarified and listed in separate subsections (section 6.06).
- **Reduced Audit CAP sanctions** – Reduced fees apply for certain late amender failures found during the determination letter application process (section 14.04(4)).

Effective date

- The procedure is generally effective April 1, 2013.
- Plan sponsors may elect to apply provisions on or after December 31, 2012. (Forms will be available soon.)
- For 403(b) plan failures that occurred prior to January 1, 2009, plans must use the definitions in Rev. Proc. 2008-50 to determine which failures may be resolved under EPCRS.

The IRS encourage you to contact them at RetirementPlanComments@irs.gov with your comments and suggestions. Many of the improvements in the new revenue procedure were the result of feedback from the retirement plans community.

Related links

- [Chart of Significant Changes to EPCRS](#)
- [Topical index for Revenue Procedure 2013-12](#)
- [Correcting Plan Errors](#)



[h6a]If you have any questions on this post or other matters of which we can be of service, please [Contact Us](#)[/h6a]



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Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional states that have passed firm mobility.

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