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Benefit Plan Audit Specialists

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## IRS Updates the Employee Plans Compliance Resolution System ( EPCRS )



In [Revenue Procedure 2018-52](#), the Internal Revenue Service (IRS) details new procedures under EPCRS that will require Plan sponsors to utilize [www.pay.gov](http://www.pay.gov)

website to file Voluntary Correction Program (VCP) submissions and pay user fees. Beginning on Apr. 1, 2019, the IRS will no longer accept paper VCP submissions or process user fees paid with a paper check. During the transition period from Jan. 1, 2019, through Mar. 31, 2019, plan sponsors may file VCP submissions with IRS either by using [www.pay.gov](http://www.pay.gov) or by filing paper VCP submissions. The Revenue Procedure also makes changes in certain Employee Plans programs, including changes to the Pre-approved Plan program for Qualified Plans and the Pre-Approved 403(b) plan program.

More specifically, the IRS has issued Revenue Procedures 2018-52 which modifies and supersedes Rev. Proc. 2016-51, 2016-42 I.R.B. 465, the most recent prior consolidated statement of the correction programs under EPCRS. This update to Rev. Proc. 2016-51 is a limited update and is published primarily to set forth new VCP submission procedures, including the required use of the [www.pay.gov](http://www.pay.gov) website. The IRS and the Department of the Treasury (Treasury Department) are currently developing guidance on other issues relating to EPCRS.

### **Modifications relating to VCP submission procedures.**

In general. Beginning April 1, 2019, Plan Sponsors must use the [www.pay.gov](http://www.pay.gov) website when filing a VCP submission and paying applicable user fees. To ease the transition to the new submission procedures, from January 1, 2019, through March 31,

2019, Plan Sponsors may file VCP submissions with the IRS either by using [www.pay.gov](http://www.pay.gov) in accordance with sections 10 and 11 of the revenue procedure or by filing paper VCP submissions in accordance with the procedures in sections 10 and 11 of Rev. Proc. 2016-51. However, the IRS will not accept paper VCP submissions postmarked on or after April 1, 2019.

### **Description of other modifications.**

The Treasury Department and the IRS also made modifications to [Rev. Proc. 2016-51](#) to reflect recent changes in certain Employee Plans programs, including changes to the Pre-approved Plan program for Qualified Plans and the Pre-Approved 403(b) plan program, and to make certain other changes.

The modifications to Rev. Proc. 2016-51 that are reflected in this revenue procedure include the following changes –

- Clarifying that the provisions of SCP for significant Operational Failures are available for a 403(b) Plan if the 403(b) Plan satisfies the conditions for being treated as having a Favorable Letter, and to make other minor modifications.
- Revising to reflect that applicants of submissions for § 457(b) plans must use the [www.pay.gov](http://www.pay.gov) website to file submissions.
- Revising the definition of the term “Favorable Letter” to reflect modifications made to the IRS Pre-approved Plan program for Qualified Plans.
- Clarifying why the IRS Letter Forwarding Program is no longer used as a means to search for participants and beneficiaries and to remove the transition rules.
- Revising to apply to 403(b) Pre-approved Plans.
- Detailing that the additional amount that a Plan Sponsor may pay as a condition for the IRS to not pursue some or all of the 10% additional tax under section 72(t) is a sanction, not an additional fee.
- Clarifying that, in certain cases, the IRS reserves the

right to not issue a compliance statement and to set forth the circumstances under which a user fee may or may not be refunded.

- Clarifying that, if the IRS determines that a submission is complete and agrees with the proposed correction method, a compliance statement may be issued without the IRS contacting the Plan Sponsor (or its authorized representative).
- Updating the procedural requirements for Anonymous Submissions to reflect changes for submissions made using the [www.pay.gov](http://www.pay.gov) website, including procedures for including a penalty of perjury statement in a submission.
- Updating special rules for Group Submissions to reflect changes to the [IRS Pre-approved Plan programs](#), and to make other minor modifications.
- Revising to remove former language relating to calculating the user fee with respect to a multiemployer or multiple employer plan and to clarify that the plan administrator of such a plan must file the VCP submission with respect to any plan failures, but that the plan administrator may designate an authorized representative to file a VCP submission with the IRS using the [www.pay.gov](http://www.pay.gov) website.
- Revising to provide that, beginning January 1, 2019, an applicant (generally, either a Plan Sponsor or a representative authorized pursuant to a valid Form 2848) is permitted to use the [www.pay.gov](http://www.pay.gov) website when filing a VCP submission and paying the applicable user fee. This electronic submission process becomes mandatory April 1, 2019.
- Revising to reflect that [changes to the VCP user fees](#) are included in annual revenue procedures issued by the IRS.
- Clarifying that the sanction under Audit CAP may be paid using the payment methods available on the [www.pay.gov](http://www.pay.gov) website.

- Revising to reflect that the procedural rules for Audit CAP are provided in Internal Revenue Manual (“IRM”) 4.71.3.3, EPCRS Closing Agreements, and IRM 7.11.8, EP Determinations Closing Agreement Program.
- Revising to reflect that changes to the VCP user fees (on which certain Audit CAP sanctions are based) are included in annual revenue procedures issued by the IRS.
- Correcting various citations, cross references, and typographical errors and making stylistic changes to improve clarity.

### **Future enhancements.**

In general. It is expected that the IRS and the Treasury Department will continue to update the EPCRS revenue procedure, in whole or in part, from time to time, including further improvements to EPCRS based on comments received. Accordingly, the IRS and Treasury Department continue to invite further comments on how to improve EPCRS.

### **Recoupment of Overpayments and potential modifications to SCP.**

The Treasury Department and the IRS requested comments in Rev. Proc. 2015-27, 2015-16 I.R.B. 914, on potential changes to EPCRS relating to the recoupment of Overpayments. The Treasury Department and the IRS received and are reviewing responsive comments, and are in the process of developing further changes to modify the EPCRS rules on the correction of Overpayments. In addition, the Treasury Department and the IRS have received comments relating to expanding SCP and are in the process of reviewing the comments received. The Treasury Department and the IRS are considering changes to the program based on those comments.



Plan sponsors contemplating utilizing EPCRS should read the new revenue procedure and consult ERISA counsel as necessary.



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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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