

# REVISED CORRECTION PROGRAM FOR RETIREMENT PLANS

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EMPLOYEE BENEFITS COMMITTEE MEETING  
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## A. GENERAL

1. Revenue Procedure 2008-50 supersedes Revenue Procedure 2006-27.
2. Revised EPCRS retains same basic components as existing program: SCP, VCP and Audit CAP.
3. Effective date: January 1, 2009. Plans have options to apply on or after September 2, 2008.

## B. MAJOR CHANGES

1. Objectives:
  - Streamline correction procedures.
  - Reduce fees.
  - Expand list of failures available for correction and correction options.
  - Permit use of SCP to correct operation errors even if plan is under IRS examination.
2. Streamlined application procedures and reduced fees.
  - a) Retained original options.
  - b) Added failures to amend:
    - Certain SEP, SIMPLE IRA failures.
    - Loan violations – even if plan documents does not include Section 72(p) requirements.
  - c) Streamlined application procedures – Appendix D and F.

- Must use application format and correction method provided in Rev. Proc. schedules. Enforcement Resolution (to be completed by IRS) must be included in application. If VCP application is acceptable, executed Enforcement Resolution serves as the Compliance Statement. See Section 11 for application rules.
- Streamlined application is available for the following errors:
  - Failure to timely adopt interim or optional law amendments (Schedule 1) or required legislative amendments (Schedule 2);
  - Certain SEP or SARSEP (Schedule 3) and SIMPLE (Schedule 4) plan failures;
  - Failure to administer loan requirements (Schedule 5);
  - Ineligible employer sponsorship of 403(b) or 401(k) plan (Schedule 6);
  - 402(g) failures (Schedule 7);
  - Required minimum distribution failures (Schedule 8);
  - Compensation limit errors (Schedule 9);
  - Lack of loan or hardship provisions in plan document (Schedule 9);
  - Improper inclusion of ineligible employees (Schedule 9).
- Application can have multiple schedules; same fee applies.

d) Reduced fee for loan failures.

- VCP Fee is reduced by 50% provided the loan failure is the only error and it does not affect more than 25% of plan participants.

### **C. TECHNICAL REVISIONS – (IRS Identified 24 Changes)**

1. Problem: Failure to implement 401(k) election.  
Correction: If plan knows the salary deferral percentage, QNEC must equal 50% of specified percentage rather than 50% of ADP for plan year.
2. Problem: Corrective distributions - De minimis amount  
Correction: De minimis amount increased from \$50 to \$75. No corrective distribution required if corrective amount does not exceed \$75.
3. Problem: Excess IRA rollover/overpayment.

- Correction: No 6% excise tax if excess/improper amount is distributed from IRA.
4. Problem: Failure to permit catch-up contributions.
- Correction: QNEC equal to 50% of catch-up amount. Only required if employee was catch-up eligible, the plan prevented the employee from making a catch-up contribution under the plan, and the employee had deferred up to the statutory or plan limit. Employer must also make up the matching contribution if the match applies to the catch-up contribution.
5. Problem: Exclusion of eligible employee for Roth deferral.
- Correction: Same correction as pre-tax deferrals.
6. Problem: Calculating earnings.
- Correction: Under the prior version of EPCRS, if precise investment returns or a reasonable estimate of investment returns was not possible, the plan could apply "a reasonable interest rate". The revised EPCRS allows the "reasonable interest rate" to be determined by using the DOL on-line calculator for interest in connection with the Voluntary Fiduciary Correction Program. Many comments requested use of the DOL on-line calculator for all earnings calculations, even when precise calculations or reasonable estimates were possible. The IRS rejected this proposal.
7. 415 Violations and Other Violations.
- Problem: Failure to comply with 415 limits , 401(a)(17) compensation limits or deferrals which exceed plan limit (not 402(g) or ADP test limit).
- Correction: Reallocation of excess amount to other participants; transfer excess amount to suspense account to reduce subsequent employer contributions; distribute elective deferrals and after-tax employee contributions, commencing with unmatched deferrals and then allocate excess amount between deferral and matching contributions (forfeiting the matching contributions).
8. Substantial Completion.
- Problem: What is "Substantial Completion"? Threshold for completion of correction prior to examination. Correction of significant operational failures must be "substantially completed" prior to the commencement of the audit.

Correction: Rev. Proc. expands the definition of “substantial completion” by increasing the time to complete the correction from 90 days until 120 days after notice of the exam. Substantial completion threshold has been reduced from 85% to 65% of the portion of the participants that require complete correction prior to receiving notice of exam.

#### **D. MISCELLANEOUS**

1. 457(b) Plans. Revised EPCRS still does not apply to Section 457(b) plans, for governmental plans or tax exempt plans.
2. Determination Letter Procedures. Rev. Proc. 2008-50 divides the procedures for submitting determination letter applications as part of the VCP into three categories:
  - a) Determination Letter Required. Applies to submissions and include a corrective amendment made during an on-cycle year or in connection with the plan termination year. Non-amender failures will also require determination letter application.
  - b) Determination Letter not Required. Any VCP off-cycle submission involving interim or optional amendment. Also applies to operational or demographic failures submitted under VCP in off-cycle year.
  - c) Determination Letter Optional. Applies to off-cycle submissions for new individually designed plans that would otherwise have to wait for two years for a designated on-cycle submission period. Also available for a plan with “urgent business needs”.
3. Correction Made Under DVFC. Deference given to corrections made under DOL's voluntary fiduciary correction program. IRS may now accept that correction as reasonable and appropriate for purposes of correcting a similar failure under EPCRS.
4. Intentional Failures. IRS may assess higher compliance fee than normal VCP fees for intentional qualification failures.
5. Modification of Compliance Statement. Modification can be requested up to 150 days after issuance of Compliance Statement (previously 30 days). Additional compliance fee is the lesser of (a) one half of original compliance fee or (b) \$1,500. Those fees have been cut in half; previous fee was the lesser of the entire compliance fee or \$3,000.
6. IRS Requests Comments. Request for Comments regarding 401(k) automatic enrollment failures and Roth Contributions that were improperly made on a pre-tax rather than after-tax basis.