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IRS Updates EPCRS Plan Correction Procedure

B. David Joffe

The Internal Revenue Service has updated its system of correction programs for retirement plans known as the Employee Plans Compliance Resolution System, which permits plan sponsors to correct certain operational and other failures in order to preserve the tax-favored status of their plan. The author of this article explains the changes.

Through Revenue Procedure 2018-52, the Internal Revenue Service (IRS) has updated its system of correction programs for retirement plans known as the Employee Plans Compliance Resolution System (EPCRS). EPCRS permits plan sponsors to correct certain operational and other failures in order to preserve the tax-favored status of their plan. It has become an increasingly important tool for plan sponsors to maintain compliance and avoid substantial penalties in an IRS audit.

The principal change in the new procedure is to require that submissions under the Voluntary Correction Program (VCP) be made online through the *www.pay.gov* website. Subject to a limited grace period, this means that VCP submissions will no longer be submitted on paper. The procedure also clarifies a number of different provisions in line with other changes in IRS processes.

EPCRS is divided into three components: the Self-Correction Program (SCP), VCP, and the Audit Closing Agreement Program (Audit CAP). The new procedures primarily affect VCP, but they also make some changes with respect to the other component programs.

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NEW VCP PROCEDURES

The new revenue procedure modifies and supersedes Revenue Procedure 2016-51, the most recent prior consolidated statement of EPCRS. The update is limited and was published primarily to set forth new online VCP submission procedures. In general, effective April 1, 2019, plan sponsors must use the *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* in accordance with the new revenue procedure or by filing paper VCP submissions in accordance with the prior revenue procedure; however, the IRS will not accept paper VCP submissions post-marked on or after April 1, 2019.

Revenue Procedure 2018-52 modifies and clarifies the requirements for satisfying the VCP procedures including the new procedures for filing a VCP submission and paying the applicable user fees on the *www.pay.gov* website. It also clarifies that a plan sponsor may designate an authorized representative to file the VCP submission if certain requirements are satisfied. The new electronic VCP submission must include many of the same documents as a paper VCP submission, but there are procedural differences:

- First, an applicant must use the *www.pay.gov* website to create a *pay.gov* account. The account will be used when filing a VCP submission and paying applicable user fees.
- Second, after a *pay.gov* account has been established, the applicant must complete Form 8950, Application for Voluntary Correction Program (VCP) Submission using the *www.pay.gov* website; beginning April 1, 2019, applicants are not permitted to submit a paper version of Form 8950.
- Third, documents relating to the VCP submission, including the description of failures, Form 14568 (Model VCP Compliance Statement), Schedules 1 through 9 of Form 14568, and any other applicable items for a VCP submission generally must be converted into a single PDF (Portable Document Format) document and then uploaded onto the *www.pay.gov* website. Because there is a 15 MB size limitation for uploading a PDF document, special instructions are provided for PDF files that exceed that limitation.
- Fourth, there are new procedures relating to the payment of user fees using the *www.pay.gov* website, including the generation of a payment confirmation. For submissions made using the *www.pay.gov* website, the IRS will no longer mail an

acknowledgment letter to the applicant. Receipt of a submission will be acknowledged through the generation of a unique *pay.gov* Tracking ID on the payment confirmation after the VCP submission is filed and the user fee is paid.

A plan sponsor may designate an authorized representative to file a VCP submission with the IRS using the *www.pay.gov* website. There are specific instructions in the new procedure on how to designate an authorized representative using the Form 2848, Power of Attorney and Declaration of Representation.

OTHER CHANGES

The Treasury Department and the IRS also made modifications to Revenue Procedure 2016-51 to reflect recent changes in certain Employee Plans programs, including changes to the pre-approved plan program for qualified plan and 403(b) plans. The modifications include:

- Clarifying that 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.” A 403(b) plan is generally treated as having a “Favorable Letter” if either the eligible employer, on or before December 31, 2009 (or the date the plan is established, if later), adopted a written 403(b) plan that is intended to satisfy Section 403(b) or the employer has failed to adopt a written 403(b) plan timely and corrects the failure under VCP or Audit CAP.
- Revising the provisions regarding 457(b) plans to indicate that applicants of such submissions must use the *www.pay.gov* website.
- Revising the definition of the term “Favorable Letter” to reflect modifications made to the IRS pre-approved plan program for qualified plans.
- Clarifying that the IRS Letter Forwarding Program is no longer used as a means to search for participants and beneficiaries in EPCRS because the IRS no longer forwards such letters.
- Revising provisions regarding corrective amendments to pre-approved plans to apply to pre-approved 403(b) plans.
- Clarifying 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 percent additional tax under Internal Revenue Code Section 72(t) is a sanction, not an additional fee.

- Clarifying the VCP submission process to indicate 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.
- Revising the provisions on review of VCP submissions to clarify 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).
- Clarifying procedures for including a penalty of perjury statement in a submission that is modified.
- Updating the procedural requirements for anonymous submissions to reflect changes for submissions made using the *www.pay.gov* website, including procedures for including a penalty of perjury statement in a submission; this requires that the authorized representative assert compliance with the power of attorney requirements.
- Updating special rules for group submissions to reflect changes to the IRS pre-approved plan programs.
- Revising provisions regarding user fees for a multiemployer or multiple employer plan and clarifying that the plan administrator must file the VCP submission with respect to any plan failures but may designate an authorized representative to file a VCP submission with the IRS using the *www.pay.gov* website.
- Reflecting that changes to the VCP user fees are included in annual revenue procedures issued by the IRS.
- Revising Audit CAP procedures to clarify that the sanction under Audit CAP may be paid using the payment methods available on the *www.pay.gov* website.
- Reflecting that the procedural rules for Audit CAP are provided in Internal Revenue Manual 4.71.3.3, EPCRS Closing Agreements, and IRM 7.11.8, EP Determinations Closing Agreement Program.
- Revising the Audit CAP procedures 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.

The new revenue procedure also corrects various citations, cross references, and typographical errors as well as makes some stylistic changes.

EFFECTIVE DATE

The new revenue procedure is generally effective January 1, 2019. However, as noted above, plan sponsors were permitted to file paper VCP submissions with the IRS in accordance with the instructions set forth in Sections 10 and 11 of Rev. Proc. 2016-51 through March 31, 2019. Beginning April 1, 2019, all VCP submissions must be filed on the *www.pay.gov* website, and the IRS will no longer accept paper VCP submissions.

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