



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

7.2.2

OCTOBER 18, 2022

## EFFECTIVE DATE

(10-18-2022)

## PURPOSE

- (1) This transmits revised IRM 7.2.2, TE/GE Closing Agreements, Employee Plans Compliance Resolution System (EPCRS).

## MATERIAL CHANGES

- (1) Updated IRM 7.2.2.1.4, Acronyms, Terms and Definitions for Technical Digital Communication (TDC) and additional items.
- (2) Revised IRM 7.2.2.2.1, EPCRS Programs and other IRM sections to refer to updated references.
- (3) Updated IRM 7.2.2.3, Processing VCP Receipts and Initial Processing by IRS or Pay.gov, to indicate that the new version of RCCMS automatically updates the statute date field if prompted by the Fast Unit.
- (4) Revised and updated IRM 7.2.2.3.1, Early Closing for Certain VCP Submissions, to remove outdated items and to clarify that the individual who makes the decision to close a VCP submission must follow the refund procedures in IRM 7.2.2.10.2, Refund Procedures and Instructions for VCP User Fees.
- (5) Updated IRM 7.2.2.3.2, Procedures to Fix Errors or Make Updates to Key RCCMS Fields, to indicate that if the screener is a program coordinator then it's not necessary to discuss with a group manager.
- (6) Updated IRM 7.2.2.3.3, Procedures for Correction Disposal of VCP cases on RCCMS, to reflect the current operating environment in RCCMS and to remove outdated items.
- (7) Updated IRM 7.2.2.4, Screening of VCP Cases and IRM 7.2.2.4.1, Screening VCP Cases in RCCMS, to reflect current screening procedures.
- (8) Updated IRM 7.2.2.6.1, Required Use of Form 5464 (or RCCMS Chronology Tab) And WebETS, to clarify the content that should be entered on the form by specialists and their managers consistent with other functions in Employee Plans and to specify the version of Form 5464 that needs to be used.
- (9) Updated IRM 7.2.2.6.2, Check and Update RCCMS Activity Record, to refer to new pre-submission conference requests work and updates made to RCCMS "Fee Types".
- (10) Revised IRM 7.2.2.7, VCP Submissions - Initial Review, to remove outdated items relating to paper based VCP submissions and to add a reference to the new IRM subsection on VCP workpapers.
- (11) Revised IRM 7.2.2.8, VCP Submissions-Technical Review Procedure, to add updated references and references to Microsoft Teams plus a reference to the new IRM subsection on VCP workpapers.
- (12) Added IRM 7.2.2.8.1 Converting a VCP Submission into a VCAP, to add the procedures describing the actions that must be followed if a VCP submission is converted into a VCAP case.
- (13) Revised IRM 7.2.2.10, Procedures for User Fee Issues, to add updated references.
- (14) Revised IRM 7.2.2.10.2, Refund Procedures and Instructions for VCP User Fees, to remove outdated items, reorganized for clarity, and other miscellaneous changes.

- (15) Updated IRM 7.2.2.12, Power of Attorney Form 2848 and Form 8821, to contain updated references, and to reflect the limits on the acceptance of electronic signatures.
- (16) Updated IRM 7.2.2.14, Contacting and Corresponding with Applicant and POA Representative, to reference updated policies regarding the acceptance of images of original signatures by fax, the approval to temporarily send or receive documents via email if certain conditions can be met through October 31, 2023, and to include the requirement that specialists must offer Taxpayer Digital Communication (TDC) when requesting additional information from taxpayers.
- (17) Clarified IRM 7.2.2.16, Dealing With Disagreements and Conference of Right, to provide the rules regarding a possible referral to EP Examinations also apply to cases where a compliance statement may be issued, but one or more failures included with the original submission were withdrawn due to a disagreement about correction.
- (18) Added new IRM 7.2.2.17.1, Workpapers for VCP Cases, to promote consistent and quality workpapers for VCP cases.
- (19) Added new IRM 7.2.2.17.2, Mandatory RCCMS Naming Convention for EP VC Cases, to require files in RCCMS to be organized and named in a specific, mandatory way.
- (20) Updated IRM 7.2.2.19, Correction by Retroactive Amendment to Resolve Operational Failures, to require the completion of a special retroactive amendment form if correction of an operational failure is being fixed via a retroactive plan amendment to conform the plan's terms to the plan's operation.
- (21) Updated IRM 7.2.2.20, Anonymous VCP Submissions, to contain information on a new IDRS command code that will be used to verify the accuracy of Attachment A listings.
- (22) Added new IRM 7.2.2.20.1, Pre-Submission Conferences, that discusses how these types of applications will be processed.
- (23) Revised IRM 7.2.2.23, Closing Procedures for Specialists, to remove outdated items and include reference to IRM 7.2.2.17.2.
- (24) Revised IRM 7.2.2.24, Closing Procedures for Group Managers, to update the timeframe when a case is to be closed from 5 to 10 days.
- (25) Updated IRM 7.2.2.25, Required Use of Standardized VC Letters, to reflect changes to official VCP letters.
- (26) Clarified IRM 7.2.2.31, Voluntary Compliance Referrals to EP Examinations and Fraud Referral Procedures, to say that the rules regarding a possible referral to EP Examinations also apply to cases where a compliance statement may be issued, but one or more failure included with the original submission were withdrawn from the submission due to a disagreement about correction.
- (27) Updated links and descriptions in Exhibit 7.2.2-1 and Exhibit 7.2.2-2 and other outside links listed in other IRM sections.
- (28) Various edits have been made throughout this IRM for clarity, removal of outdated items, and for plain language.

#### **EFFECT ON OTHER DOCUMENTS**

This supersedes IRM 7.2.2, TE/GE Closing Agreements, Employee Plans Compliance Resolution System (EPCRS), dated October 22, 2021.

**AUDIENCE**

Tax Exempt and Government Entities  
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7.2.2

Employee Plans Compliance Resolution System (EPCRS)

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7.2.2.1  
(10-18-2022)  
**Program Scope and Objectives**

- (1) Purpose: This IRM describes the procedures that Employee Plans (EP) Voluntary Compliance follows to process submissions made to the IRS under the Voluntary Correction Program (VCP), one of the correction programs in the Employee Plans Compliance Resolution System (EPCRS) as currently described in Rev. Proc. 2021-30.
- (2) Audience: EP employees in: EP Voluntary Compliance, Technical, Determinations, and Examination employees involved in processing VCP submissions.
- (3) Policy Owner: Director, Employee Plans.
- (4) Program Owner: Employee Plans.
- (5) Program Goals: The goal of EP Voluntary Compliance is to provide taxpayers top quality service by helping them understand and comply with applicable tax laws, and to protect the public interest by applying the tax law with integrity and fairness to all.
- (6) EP Voluntary Compliance focuses on encouraging taxpayers (administrators and employers) to:
  - Comply with income tax laws.
  - Voluntarily identify and fix problems identified in administering tax-favored retirement plans.
  - Protect plan participants and American retirement savings and avoid plan disqualification.

7.2.2.1.1  
(10-22-2021)  
**Background**

- (1) Certain retirement plans are qualified if they satisfy the requirements of the Internal Revenue Code (IRC) in form and operation. A qualified plan is entitled to favorable tax treatment.
- (2) EPCRS is a system of correction programs that encourages sponsors of retirement plans to voluntarily correct failures to comply with applicable requirements of the IRC. These programs allow certain tax favored retirement plans to maintain their qualified status.
- (3) Types of plans covered by EPCRS include:
  - Qualified plans intended to comply with IRC 401(a) or 403(a).
  - Tax deferred annuities or custodial accounts intended to comply with IRC 403(b).
  - Simplified Employee Pension (SEP) - A plan intended to satisfy IRC 408(k).
  - Salary Reduction Simplified Employee Pension (SARSEP) - A salary reduction SEP described in IRC 408(k)(6).
  - Savings Incentive Match Plan for Employees Individual Retirement Account (SIMPLE IRA) plan - A plan intended to satisfy IRC 408(p).

**Note:** In limited situations, IRS at its discretion, accepts voluntary requests for eligible plans of deferred compensation that comply with IRC 457(b).

- (4) Correction programs under EPCRS include the Self-Correction Program (SCP), the Voluntary Correction Program (VCP), and the Audit Closing Agreement Program (Audit CAP):

- SCP doesn't involve the IRS. Plan sponsors use it to fix certain failures when the plan's operation hasn't been consistent with its terms or the IRC. Plan sponsors don't have to file an application with the IRS. Beginning April 19, 2019, plan sponsors can correct some plan document failures (See IRM 7.2.2.2 (2) for the definition) under SCP.
  - VCP requires plan sponsors to submit a written application to the IRS.
  - Audit CAP is used to resolve certain failures discovered while the IRS is auditing a plan or reviewing a Form 5300 series determination letter application.
- (5) To help taxpayers ensure they're taking appropriate actions to fix qualification failures, EP Voluntary Compliance processes VCP submissions and issues compliance statements. In audits of employee plans, EPCRS permits EP to enter into closing agreements with plan sponsors to resolve tax qualification failures, avoiding plan disqualification.
- (6) If the plan's facts and circumstances satisfy a correction program's eligibility requirements and the plan sponsor/employer corrects the failure per the EPCRS correction principles, the IRS won't revoke the plan's tax-favored status. When a plan's tax-favored status is revoked, affected participants include additional income and plan sponsors are liable to withhold tax due to the failure.

7.2.2.1.2  
(10-18-2022)  
**Authority**

- (1) EPCRS's various correction programs, their requirements, detailed correction principles and other information/instructions are described in a revenue procedure (Rev. Proc. 2021-30).
- (2) VCP administration is delegated to the manager, EP Voluntary Compliance, and the authority to approve compliance statements under VCP is delegated to EP voluntary compliance group managers. See Delegation Order 7-12 and IRM 1.2.2.8.12.
- (3) The authority to enter into and approve a written closing agreement with any person about their federal tax liability is delegated to the Director, Employee Plans. See Delegation Order 8-3 and IRM 1.2.2.9.3.
- (4) Plan sponsors must pay a user fee to obtain a compliance statement starting in 2016, per the Revenue Act of 1987, P. L. 100-203, Act Section 10511. Before then, VCP fees were considered "compliance fees" and listed in the applicable EPCRS revenue procedure.
- (5) IRS publishes user fees for VCP submissions, for a given calendar year annually. Currently, see Rev. Proc. 2022-4, IRB 2022-01 161.

7.2.2.1.3  
(10-22-2021)  
**Responsibilities**

- (1) The Manager of EP VC supervises and is responsible for the group managers and employees in EP Voluntary Compliance.
- (2) The group managers of the EP VC groups supervise and are responsible for the employees in EP Voluntary Compliance.
- (3) EP Voluntary Compliance employees work on issues that VC group managers assign to them. This primarily includes reviewing and processing VCP submissions, including any related closing agreements and voluntary closing agreement requests submitted outside of EPCRS.



- (4) The Manager, EP Determinations Quality Assurance (QA), with a staff of senior determination specialists, independently oversees the review of closed VCP submissions and ensures case quality.

**Note:** QA reviews VC cases selected for Tax Exempt Quality Measurement System (TEQMS) review.

7.2.2.1.4  
(10-18-2022)  
**Acronyms, Terms and  
Definitions**

- (1) This table lists commonly used acronyms and their definitions.

Acronym/ Term	Definition
ACP	Actual Contribution Percentage
ADP	Actual Deferral Percentage
CCR	Form 5464, Case Chronology Record, or the Chronology Tab in RCCMS
CL	Cumulative List
EDS	EP/EO Determination System
EGTRRA	Economic Growth and Tax Relief and Reconciliation Act
EP	The Employee Plans Division.
EPDFR	EP Determinations Fraud Reviewer
EP SME	EP Fraud Subject Matter Expert
EPCRS	The Employee Plans Compliance Resolution System
FAST	Field Agent Support Team
FTA	Fraud Technical Advisor
HCE	Highly Compensated Employee
HQEP	Headquarters Employee Plans system
IDRS	Integrated Data Retrieval System
IRC	Internal Revenue Code
IRS	Internal Revenue Service
NHCE	Non-Highly Compensated Employee
POA	Power of Attorney. For purposes of this IRM, a designated individual who represents the VCP applicant before the IRS. Documented by a signed and completed Form 2848
QA	Manager, EP Determinations Quality Assurance
RAC	Remedial Amendment Cycle
RCCMS	Reporting Compliance Case Management System

<b>Acronym/ Term</b>	<b>Definition</b>
<b>ACP</b>	<b>Actual Contribution Percentage</b>
<b>ADP</b>	<b>Actual Deferral Percentage</b>
Specialist	Any Internal Revenue Agent or Tax Law Specialist in VC or EP who processes VCP cases or voluntary closing agreement requests
TDC	Taxpayer Digital Communication a/k/a Secure Messaging
TE/GE	Office of the Commissioner, Tax Exempt and Government Entities Division
TEQMS	Tax Exempt Quality Measurement System
TP	Taxpayer
TPA	Third Party Administrator
VC	The Employee Plans Voluntary Compliance Function
VCAP	Voluntary Closing Agreement Request Procedure
VCP	The Employee Plans Voluntary Correction Program

7.2.2.2  
(10-18-2022)  
**Types of Failures**

- (1) Failures eligible for EPCRS correction are defined in Rev. Proc. 2021-30, Section 5 and Section 6.07.
- (2) For plans intended to satisfy IRC 401(a) or IRC 403(a), there are four types of Qualification Failures:
  - a. Plan Document Failure — a plan provision (or absence of a plan provision) that, on its face, violates the requirements of IRC 401(a) or IRC 403(a).
  - b. Operational Failure — a failure that arises solely from the failure to follow plan provisions.
  - c. Demographic Failure — a failure to satisfy the requirements of IRC 401(a)(4), IRC 401(a)(26) or IRC 410(b).
  - d. Employer Eligibility Failure — an employer that fails to meet the employer eligibility requirements to establish an IRC 401(k) plan or that adopted a plan intended to include a qualified cash or deferred arrangement. This includes tax-exempt employers who were prohibited from adopting an IRC 401(k) plan between 1987 and 1986, and governmental employers who adopted an IRC 401(k) plan after May 6, 1986.
- (3) Specific types of failures that can be corrected under EPCRS follow in paragraphs IRM 7.2.2.2 (4) through IRM 7.2.2.2 (9).
- (4) A failure to satisfy IRC 408(k) SEP requirements or a failure to satisfy IRC 408(k)(6) SARSEP requirements.
- (5) A failure to satisfy IRC 408(p) SIMPLE IRA plan requirements.
- (6) A failure to satisfy IRC 72(p) participant loans requirements.

- (7) Under limited circumstances and at the discretion of the IRS, a failure to satisfy IRC 457(b). See IRM 7.2.2.21.

**Note:** Requests involving IRC 457(b) are handled outside of EPCRS.

- (8) These four types of IRC 403(b) failures can be fixed under EPCRS if they occurred in 2009 and later:
- a. Plan Document Failure — a plan provision (or the absence of a plan provision) that, on its face, violates the requirements of IRC 403(b). This includes the failure to adopt a written plan by December 31, 2009, that complied with the final IRC 403(b) Treasury regulations and the failure to amend the plan for any other new requirement that was not adopted within the plan's applicable remedial amendment period.
  - b. Operational Failure — a failure that arises solely from the failure to follow plan provisions. This includes failing to follow plan terms for availability of elective deferral contributions as discussed in IRC 403(b)(12)(A)(ii) and IRC 401(m) as applied to IRC 403(b) plans. See IRC 403(b)(12)(A)(i).
  - c. Demographic Failure — a failure to satisfy the requirements of IRC 401(a)(4), IRC 401(a)(26) or IRC 410(b) as applied to IRC 403(b) plans. See IRC 403(b)(12)(A)(i).
  - d. Employer Eligibility Failure — an employer that is not a tax-exempt organization described in IRC 501(c)(3) or a public educational organization described in IRC 170(b)(1)(A)(ii) that adopted an IRC 403(b) plan where such employer is not eligible to sponsor such plan.
- (9) For 403(b) failures before 2009. Issues that qualify as IRC 403(b) failures are limited to the three types of IRC 403(b) failures defined in Rev. Proc. 2008-50 CB 464, section 5.02:
- 1. **Operational Failure** — means a 403(b) plan's failure to:

- a. Satisfy the requirement for the availability of salary reduction contributions. See IRC 403(b)(12)(A)(ii).
  - b. Satisfy the requirements of IRC 401(m) as applied to 403(b) plans.
  - c. Limit participant compensation as required by IRC 401(a)(17) as applied to 403(b) plans. See IRC 403(b)(12)(A)(i).
  - d. Satisfy the distribution restrictions of IRC 403(b)(7) or IRC 403(b)(11).
  - e. Satisfy the incidental death benefit rules of IRC 403(b)(10).
  - f. Pay minimum required distributions required by IRC 403(b)(10).
  - g. Give employees the right to elect a direct rollover per IRC 403(b)(10), including the failure to give meaningful notice of that right.
  - h. Offer participants the right to elect a direct rollover required by IRC 403(b)(10) and IRC 401(a)(31) in the annuity contract or custodian agreement.
  - i. Satisfy the limit on elective deferrals required by IRC 403(b)(1)(E).
  - j. Limit elective deferrals as required by IRC 403(b)(1)(E) and IRC 401(a)(30) in the annuity contract or custodial agreement.
  - k. Correctly contribute or allocate Excess Amounts.
  - l. Satisfy the applicable requirements of IRC 403(b) that results in the loss of IRC 403(b) status for the plan, custodial account or annuity contract associated with the plan that is not a Demographic Failure or an Employer Eligibility Failure, or a failure related to contributions on behalf of individuals who are not employees of the employer.
2. **Demographic Failure** — a failure to satisfy the requirements of IRC 401(a)(4), IRC 401(a)(26) or IRC 410(b) as applied to IRC 403(b). See IRC 403(b)(12)(A)(i).
  3. **Employer Eligibility Failure** — any of the following:
    1. An employer that is not a tax-exempt organization described in IRC 501(c)(3) or a public educational organization described in IRC 170(b)(1)(A)(ii) adopts an IRC 403(b) plan.
    2. A failure to:
      - a. Satisfy the non-transferability requirement of IRC 401(g).
      - b. Initially establish or maintain a custodial account as required by IRC 403(b)(7).
      - c. Purchase (initially or subsequently) either an annuity contract from an insurance company (unless grandfathered by Rev. Rul. 82-102 or a custodial account from a regulated investment company using a bank or approved non-bank trustee/custodian).

- a. Sponsors of qualified plans that have a favorable letter or employers that offer a 403(b) plan, may self-correct any operational failure, even if significant, generally, within three years from the year in which the failure occurs as long as the SCP eligibility requirements are satisfied.
  - b. SEPs and SIMPLE IRA plans aren't eligible for self-correction of significant failures.
  - c. Plan sponsors may correct insignificant failures after the three year correction period, even if the plan or plan sponsor is under examination.
  - d. Plan sponsors may correct some plan document failures beginning April 19, 2019, under SCP if certain conditions are met. See Rev. Proc. 2021-30 , Section 4.01(b), Section 4.03, Section 4.04, Section 4.05(2)(c) and Section 9.02.
  - e. Plan sponsors may correct some participant loan failures involving IRC 72(p) beginning April 19, 2019, under SCP if certain conditions are met. See Rev. Proc. 2021-30 , Section 4.01(a), and Section 6.07.
- (2) VCP enables sponsors of qualified plans, 403(b) plans, and SEPs and SIMPLE IRA plans to:
- a. Voluntarily disclose to the IRS failures they discovered in their plan.
  - b. Propose a method of correcting the failures (including proposed modifications to administrative procedures, if any).
  - c. Pay a fixed user fee.
- (3) The IRS issues a compliance statement for the plan. The compliance statement contains the information the plan sponsor identified and provided, including:
- a. The applicable failures.
  - b. The correction methods.
  - c. Changes to administrative procedures and procedures to locate affected participants approved by the IRS.
- (4) VCP:
- a. Isn't available if the plan or plan sponsor is under an IRS examination.
  - b. Can be used to fix any qualification failure or any failure to comply with IRC 72(p) as defined in the EPCRS revenue procedure. It is the only voluntary program that permits a plan sponsor to fix Demographic Failures and Employer Eligibility Failures.
  - c. Can be used to fix problems in 403(b), SEP, SARSEP, and SIMPLE IRA plans.
  - d. Has special procedures for Group submissions and for submissions made by December 31, 2021, Anonymous submissions.
  - e. User fees for VCP submissions are set forth in Rev. Proc. 2022-4, Appendix A (updated annually).

**Note:** The user fee due corresponds to the control date of the submission.

- (5) A plan sponsor may submit an application for a IRC 457(b) plan, on a provisional basis, outside of EPCRS, through standards similar to EPCRS. The IRS has the complete discretion to accept the submission. Rev. Proc. 2021-30, Section 4.09 discusses the availability of correction for IRC 457(b) plans. See IRM 7.2.2.21.

- (6) The Audit Closing Agreement Program (Audit CAP) is a program established in EP Examinations Area offices available to:
  - a. A qualified plan, 403(b) plan, SEP or SIMPLE IRA plan that is under examination as defined in the EPCRS revenue procedure, section 5.
  - b. A determination letter application when EP Determinations discovers a plan document failure.
- (7) Under Audit CAP, the plan sponsor pays a negotiated monetary sanction. See Rev. Proc. 2021-30, Sections 4, 13, and 14 for information on Audit CAP.

## 7.2.2.3

(10-18-2022)

**Processing VCP  
Receipts and Initial  
Processing by IRS or  
Pay.gov**

- (1) A plan sponsor or their representative (POA) must submit VCP applications electronically using the Pay.gov website beginning April 1, 2019. The initial steps include:
  - a. Applicant/POA establishes an account on the Pay.gov website.
  - b. Applicant/POA refers to the IRS Instructions for Form 8950, Application for Voluntary Correction Program (VCP) Submission Under the Employee Plans Compliance Resolution System on the IRS.gov website.
  - c. Applicant/POA gathers attachments and documents required by Rev. Proc. 2021-30, Section 11.04, converts them into PDFs, and combines them into a single file that doesn't exceed 15 MB.
  - d. Applicant/POA accesses *Pay.gov* and finds Form 8950 or they can type <https://www.pay.gov/public/form/start/438392465> into their web browser.
  - e. Applicant/POA completes the Form 8950 and uploads the PDF attachments containing the VCP submission documents.
  - f. Applicant/POA pays the applicable user fee via a debit/credit card or through a transfer from a checking or saving account.
  - g. Pay.gov generates a payment confirmation receipt upon the successful filing of the VCP submission with the Pay.gov tracking ID number serving as the IRS control number for the VCP submission.
  - h. Applicant/POA faxes any required VCP submission documents that they couldn't include in the PDF due to the 15 MB size limitation to the IRS using the number published in Rev. Proc. 2021-30, Section 11.03(7).
  - i. Pay.gov website automatically transfers Form 8950 data the next business day to RCCMS.
  - j. RCCMS automatically creates a partially completed RCCMS activity record. It's in Status 02 and automatically assigned to the FAST Unit's RCCMS group number.
  - k. Beginning with the June 2022 release (Version 3.7.1) RCCMS automatically updates the "Statute" date field by entering a date that is two years from the date in the "Return received" field.
- (2) The FAST unit in Ogden:
  - a. Researches IDRS using the EIN listed on Form 8950. IDRS commands include INOLES, AMDISA using the EIN, the EIN with a "P" and the EIN with a "N".
  - b. Uploads the IDRS research to the "Office Documents" folder within the applicable RCCMS activity record.
  - c. Downloads for each electronic submission made via the Pay.gov website: the completed Form 8950, the PDF attachment of VCP submission documents, the general and detailed deposit records from the Pay.gov website and uploads all items to the Office Documents folder within the applicable RCCMS activity record.

- d. Updates the RCCMS status code to 08 and transfers the completed RCCMS record to the Manager of EP Voluntary Compliance.

**Note:** The IRS no longer issues an acknowledgement letter.

### 7.2.2.3.1 (10-18-2022)

#### Early Closing for Certain VCP Submissions

- (1) Screeners, specialists, or group managers close VCP cases on RCCMS. If you:
  - a. Determine that the plan or plan sponsor is “under examination” before the VCP submission was mailed to the IRS, prepare Closing Letter 5340 and Letter 937-A, if applicable. Upload them to the RCCMS office documents folder.
  - b. Have a duplicate record or submission, see IRM 7.2.2.3.3, Procedures for Correction Disposal of VCP Cases on RCCMS, for additional information.

**Note:** Generally, don't prepare a closing letter when closing duplicate records or submissions. You need a special closing letter if you refund duplicate user fees paid to the IRS in error. Contact a VC Program Coordinator to get a copy of this letter.

- c. Have a VCP submission that's withdrawn before it's assigned to a specialist for a full review. Use Letter 5350, No Compliance Statement-VCP Submission in Error as the closing letter.
- (2) Don't return the VCP Submission to the applicant/POA.
- (3) Enter the following closing information for the RCCMS closing record if you close a VCP submission due to their being **under examination**:
  - Disposal Code 772.
  - Primary Issue Code 197C.
  - Add plan assets and # of participants from Form 8950.
  - Add time charged to case and specialist's name.
  - Add any other information required for closing VCP cases on RCCMS.
- (4) If refunds of paid user fees apply, the individual who makes the decision to close a VCP submission is responsible for following the refund procedures in IRM 7.2.2.10.2, Refund Procedures and Instructions for VCP User Fees before the case is closed.

### 7.2.2.3.2 (10-18-2022)

#### Procedures to Fix Errors or Make Updates to Key RCCMS Fields

- (1) Specialists and group managers can't make changes to certain RCCMS fields:
  - TIN/EIN.
  - Work Unit.
  - Plan Number.
  - Tax Period.
  - Taxpayer or Plan Sponsor name.
- (2) Changes to the above RCCMS fields must be made when:
  - a. The screener or specialist or group manager discovers the RCCMS record has incorrect TIN/EIN, Work Unit, Plan number, Tax period and Taxpayer or plan sponsor name.



- b. Anonymous submissions in which the representative discloses the identity of the applicant and plan.
- (3) Specialist: Discuss with your group manager, then correct or update the key RCCMS fields in the steps below:

Actions	Steps, if necessary
Update RCCMS case record	<ol style="list-style-type: none"> <li>1. Open the activity record and go the “Codes/ Checksheet Tab.”</li> <li>2. Go to “Source Code” and click on the drop down menu: <ul style="list-style-type: none"> <li>• Choose code “73- Referral from Taxpayer.”</li> <li>• Click on “Save and close” button.</li> </ul> </li> <li>3. Make sure there is an entry for NAICS field.</li> </ol>
Transfer RCCMS case to your group manager.	<ol style="list-style-type: none"> <li>1. Click on Actions button and: <ul style="list-style-type: none"> <li>• Choose “Request Transfer”</li> <li>• Type “Transfer to Group 7558”. when dialog box appears and click on OK button.</li> <li>• Send the transfer request by syncing a few times after making the request by clicking on the “Send/Receive” button.</li> </ul> </li> </ol>
Send email to group manager	<p>Make sure the email:</p> <ol style="list-style-type: none"> <li>1. Informs them of the transfer and why it’s necessary.</li> <li>2. Lists the specific fields that require updating, changes needed, and indicate that the case must be transferred to Group 7558.</li> <li>3. Includes existing work unit number and taxpayer name currently on RCCMS.</li> </ol>

- (4) Group manager:
- a. Check RCCMS case to make sure that “73- Referral from Taxpayer” has been entered in the Source code field. Update the record if missing.
  - b. Check RCCMS case to make sure that the NAICS field is not blank. Update the record if missing.
  - c. Transfer the RCCMS case to Group 7558. Keep the status code in 12.
  - d. Send email to designated VC program assistant describing what they should revise.
- (5) Screeners follow the procedures in IRM Section 7.2.2.3.2 (3). If the screener is a VC Program Coordinator, then no involvement with a group manager is necessary.
- (6) Designated VC program assistant profiled for Group 7558:
- a. Update the RCCMS record by making requested changes to the TIN/EIN, Work Unit, Plan number, Tax period and Taxpayer or plan sponsor name as requested using the command code “Unestablish”.



- b. Transfer the updated RCCMS case back to the group that sent the request.
  - c. Contact the group manager to confirm that the case has been successfully returned.
- (7) Group manager: transfer the case back to the specialist working the case and confirm they successfully received it.
- (8) Specialist: verify that requested changes were made. If there are problems, contact your group manager immediately.

## 7.2.2.3.3 (10-18-2022)

### **Procedures for Correction Disposal of VCP Cases on RCCMS**

- (1) Generally, close a VCP submission case via correction disposal if the RCCMS record is a duplicate record of an existing case.
- (2) If the duplicate record was created by the applicant due to user fee problems with the initial VCP submission then that earlier case would be considered the duplicate VCP submission.
- (3) Close the VCP submission following the steps below:

Specialist's Actions	Steps
Research RCCMS, Pay.gov and any other applicable records about this case.	<ol style="list-style-type: none"> <li>1. Inform your group manager, or any VC program coordinator.</li> <li>2. Contact the staff assistant and program assistant to the VC manager to research both open and closed cases in RCCMS.</li> </ol>
Send email to group manager or VC program coordinator.	<ol style="list-style-type: none"> <li>1. Include RCCMS Work Unit numbers, the plan name, and the reason why this specific file needs to be correction disposed.</li> <li>2. Comment that both your group manager (and VC program coordinator, if applicable) agree that the VCP submission needs to be correction disposed.</li> <li>3. Document all actions on the CCR or Chronology tab and make sure you upload your CCR, workpapers, and any emails, to the appropriate RCCMS file.</li> </ol>

Specialist's Actions	Steps
Close RCCMS record as a correction disposal.	<ol style="list-style-type: none"> <li>1. Update case status to 51 and then submit an "Update" request to your group manager for approval. Don't forget to sync a few times after making the request by clicking on the "Send/Receive" button.</li> <li>2. When the request is approved: <ul style="list-style-type: none"> <li>• Open the Activity and prepare it for closing.</li> <li>• Prepare "Case Closing Record."</li> <li>• Use 776- Correction Disposal- Record never should have existed.</li> <li>• If not known, for Trust Assets, and # of affected participants enter "1.00."</li> <li>• For Principal Issue Code enter "196A".</li> </ul> </li> <li>3. Document all actions on the CCR or Chronology tab.</li> <li>4. Make sure the CCR or Chronology tab and applicable workpapers are complete and part of the RCCMS record. <p><b>Note:</b> Closing letters are not prepared for correction disposal cases unless a refund of paid user fees is going to be made.</p> </li> <li>5. Upload your CCR, workpapers, applicable emails and any other Pay.gov PDFs to the RCCMS record.</li> <li>6. Submit a Request Case Closure request. <p><b>Reminder:</b> Sync a few times by clicking on the Send/Receive button.</p> </li> </ol>

- (4) Screeners must follow the same procedures discussed above in IRM 7.2.2.3.3(2), including the handling of any VCP refunds, preparation and mailing of any applicable closing letters. However, for non-refund situations it will not be necessary to discuss the matter with a group manager.

#### 7.2.2.4 (10-18-2022)

#### Screening of VCP Cases

- (1) The Manager of VC supports assessing VCP cases before they're assigned to a specialist. Screening is part of evaluating cases. The Manager of VC designates employees (usually program coordinators) to screen cases following specific standards.
- (2) To promote case processing efficiencies, screening:
  - a. Identifies cases that can be immediately closed as a "Merit Closure" or are ineligible for VCP.
  - b. Promptly identifies cases subject to expedited treatment. See IRM 7.2.2.4 (3) for VC cases subject to expedited treatment.
  - c. Assigns VCP cases a grade per IRM 7.11.2, Employee Plans Determinations Letter Program, EP Case Assignment Guide.

- d. Checks the project code. Don't use project code "0999." The RCCMS project code for VCP cases represent the type of retirement plan reported on Form 8950, item 5. Current VC case project codes are in Document 6476 and in IRM 7.2.2.6(4).
  - e. Ensure that RCCMS activity records are updated to effectively manage case inventory.
- (3) Types of VCP submissions subject to expedited treatment include:
- a. Terminating plans, including orphan plan cases and VCP cases that have a related Form 5310 determination letter application.
  - b. Governmental plans.
  - c. Plans with participant loan issues involving a failure to comply with IRC 72(p) often submitted on Form 14568-E.
- (4) Screener: complete the following actions to screen a case:
- a. Grade the VCP case using the grading criteria in IRM 7.11.2, Employee Plans Determinations Letter Program, EP Case Assignment Guide and input the grade into the "Activity grade" field in the RCCMS grade.
  - b. Screen the VCP case, complete a screening checklist, and upload it to RCCMS.
  - c. Make sure there is an entry in RCCMS field relating to the NAICS code if this field is blank. Look to the code entered on Form 8950 and compare it to the available NAICS codes in RCCMS and choose the closest appropriate code.
  - d. If the user fee payment was dishonored (i.e. retired) or is clearly less than what is owed, the screener will attempt to secure a new payment by soliciting a Form 8951 as discussed in IRM 7.2.2.10.1, Instructions on Soliciting User Fees Owed.
  - e. Makes a specific written entry on to the RCCMS Chronology tab indicating that the case has been screened and chooses the appropriate action code. Generally, it's between "201-Merit Close" or "203-Full Review".
  - f. For merit closure cases, updates RCCMS by entering appropriate VC issue/failure codes in the RCCMS closing record. Enter up to four codes in the "Principal issue codes" field.
  - g. For merit closure cases, updates the RCCMS closing record by choosing the appropriate disposal code. Make sure to choose "771-Favorable-Merit (Screeners only)".
  - h. For merit closure cases, creates the issued compliance statement and places it into a "Closing Documents" subfolder in the RCCMS Office documents folder.
  - i. Check the plan type entered on Form 8950 plus the resulting project code on RCCMS and verify that it's accurate based on plan type and type of submission. See Document 6476 and IRM 7.2.2.6(4) for current project codes for VC cases.
  - j. Update RCCMS to designate whether the case is a "Full review" case or is a "Merit closure" by entering the appropriate classification code.
  - k. Update RCCMS to identify cases that have been screened by submitting an update request to change the status code from status 08 to Status 10.
- (5) Overall screening timeframes: Generally -

- a. Manager of VC assigns cases to screeners within 15 days of receiving VCP cases from the FAST unit.
- b. Screeners screen cases and return them to the Manager of VC (i.e. Group 7550) within 10 days of assignment.
- c. Designated employees (usually a VC program assistant) must close designated merit closure cases within 10 days from the date the screener identified the case for merit closure and transferred the RCCMS case file back to RCCMS Group 7550.

7.2.2.4.1  
(10-18-2022)

**Screening VCP Cases in  
RCCMS**

- (1) The Manager of VC or their staff assistant transfers newly arrived VCP cases within 15 days to designated screeners (usually program coordinators) profiled to work with RCCMS group 7550. Cases arrive as unassigned inventory in Status 08.
- (2) Screeners take the following actions within 10 days of case assignment:

Specialist's Actions	Steps, if necessary
Access Group 7550 in RCCMS	<ol style="list-style-type: none"> <li>1. Choose Group 7550 from your RCCMS profile.</li> <li>2. Click on the Send/Receive button to sync and update your screening inventory.</li> </ol>
Review Case File.	<ol style="list-style-type: none"> <li>1. Review case file, IDRS research and determine case grade using the criteria in IRM 7.11.2, Employee Plans Determinations Letter Program, EP Case Assignment Guide.</li> <li>2. Complete screening checklist: <ul style="list-style-type: none"> <li>• Identify whether the case is eligible for merit closing, must be assigned for a full review, or must be rejected.</li> <li>• Request missing minor administrative items if the case can be closed upon receipt. The case is still eligible for Merit Closing. Follow the procedures in IRM 7.2.2.14, Contacting and Corresponding with Applicant and POA representative.</li> <li>• Make sure to save all changes and Check-In these documents back into RCCMS.</li> </ul> </li> <li>3. Take these actions if you merit close the case: <ul style="list-style-type: none"> <li>• Go to Office Documents.</li> <li>• Click on File, choose Folder and then choose New folder.</li> <li>• Name the subfolder "Closing Documents."</li> <li>• Create the issued compliance statement from extracted documents, make sure all applicable relief/special paragraphs are checked and add the image of the Manager of VC's printed name and signature.</li> <li>• Upload document to RCCMS and transfer it to the closing documents subfolder.</li> <li>• Update the RCCMS closing record by entering the disposal code and all applicable issue/failure codes based upon the described failures.</li> </ul> </li> </ol>

Specialist's Actions	Steps, if necessary
<p>Update the RCCMS Record to show that the case has been screened.</p>	<ol style="list-style-type: none"> <li>1. Open the <b>Activity</b> associated with the screened case and Update it. Make sure information is complete and accurate in these fields: <ul style="list-style-type: none"> <li>• General tab.</li> <li>• "Plan type" field.</li> <li>• "Return received" field.</li> <li>• "Statute" - date must be two years from the date in the "Return received" field.</li> <li>• Expedite processing - check the box next to Primary, if applicable</li> </ul> </li> <li>2. Update <b>Codes/Checksheets Tab</b>: <ul style="list-style-type: none"> <li>• Name control - use the first four letters of the applicant's name.</li> <li>• Project code - check for accuracy and update if incorrect. See Document 6476.</li> <li>• "Status" code - "10".</li> <li>• Case grade - enter in the "Activity case grade" field.</li> <li>• Source code - use "20 - Regular Classification" if the case will be merit closed or use "92 - Data Driven Approaches-Lead Rtn" if the case is a full review.</li> </ul> </li> <li>3. Make a specific written entry to the RCCMS Chronology tab indicating that the case has been screened. Be sure to include: <ul style="list-style-type: none"> <li>• Action Code. Use "201-Merit Close" or "203-Full Review"</li> <li>• Text entry indicating the date and a specific comment saying the case has been "Screened".</li> </ul> </li> <li>4. Make a specific written entry to the RCCMS Chronology tab if the Form 8950 application Line 6B has a "YES" response. Be sure to include: <ul style="list-style-type: none"> <li>• Action code. Use "41-Pub. 5295 Sent".</li> </ul> </li> <li>5. Click on File and choose <b>Save and Close</b>.</li> <li>6. Request Update: <ul style="list-style-type: none"> <li>• Go to Actions button and choose Request update.</li> <li>• Click on OK until the request is processed.</li> <li>• Click Send/Receive a few times to sync and to send the request.</li> <li>• Wait for the Manager of VC's approval before you take further action.</li> </ul> <p><b>Note:</b> Screener's has 7 days from the date a merit closure case has been initially screened to perfect the submission, if needed. If the requested items are not submitted in a timely manner update the action code in the Chronology tab to "203-Full Review" plus update the Source code in the Codes/Checksheets Tab to "92" before transferring the case.</p> </li> </ol>

Specialist's Actions	Steps, if necessary
Notify the Manager of VC.	<ol style="list-style-type: none"> <li>1. Make sure the screening checklist is complete and part of the RCCMS record.</li> <li>2. Request Transfer: <ul style="list-style-type: none"> <li>• Go to Actions button and choose Request Transfer.</li> <li>• Click on OK until the request is processed.</li> <li>• Click Send/Receive a few times to sync and to send the request.</li> </ul> </li> </ol>

- (3) Manager of VC or their delegate (i.e. staff assistant or program assistant):  
Within five days, take the following additional actions:

- a. On a regular basis, check RCCMS and accept transfer status requests of status 10 cases.
- b. Check the status 10 inventory on a regular basis and assign screened cases identified for merit closing to a designated employee who is responsible for generating closing letters and mailing out issued compliance statements. Cases arrive as assigned inventory, but the case status remains in 10.

**Note:** If the staff assistant has been designated as the individual who closes merit closure cases, the identified status 10 cases will be transferred to RCCMS Group 7556 and ultimately be closed out of that group.

- (4) Designated employee: Within five days of assignment, close identified merit closure cases:

Specialist's Actions	Steps, if necessary
Access Group 7550 in RCCMS <b>Note:</b> If the designated employee is the program assistant, then merit closure cases are handled through Group 7556.	<ol style="list-style-type: none"> <li>1. Choose Group 7550 from your RCCMS profile.</li> <li>2. Click the Send/Receive button to sync and update your inventory.</li> </ol>
If not already done, Create "Closing Documents" subfolder	<ol style="list-style-type: none"> <li>1. Go to Office Documents.</li> <li>2. Click on File, choose Folder and then choose New folder.</li> <li>3. Name the subfolder "Closing Documents".</li> </ol>

Specialist's Actions	Steps, if necessary
Create and upload closing documents	<ol style="list-style-type: none"> <li>1. Prepare VCP closing letters</li> <li>2. Upload the PDF file that contains the initial VCP submission documents: <ul style="list-style-type: none"> <li>• If not already done, Extract or copy Form 14568, and the narrative attachments, if applicable, or the included Form 14568 Schedule, if present.</li> <li>• Upload to the Closing Documents subfolder.</li> </ul> </li> <li>3. Make sure to: <ul style="list-style-type: none"> <li>• Add the mailing date and the Manager of VC's printed name and signature to the closing letters.</li> <li>• Check all applicable boxes in the Enforcement section if requested relief/special paragraphs apply.</li> <li>• Add the image of the Manager of VC printed name and signature to the compliance statement, if missing.</li> <li>• Add the mailing date to the compliance statement.</li> </ul> </li> <li>4. Print and mail the documents to the applicant and representative, if applicable.</li> <li>5. Upload a copy of the mailed documents to the RCCMS file and place them in the Closing Documents subfolder.</li> </ol>
Update RCCMS Before Closing	<ol style="list-style-type: none"> <li>1. Open the Activity to Update: <ul style="list-style-type: none"> <li>• Codes/Checksheets Tab.</li> <li>• Change Status code to 51.</li> </ul> </li> <li>2. Request update: <ul style="list-style-type: none"> <li>• Go to Actions button and choose Request update.</li> <li>• Click OK until the request is processed.</li> <li>• Click the Send/Receive button a few times to sync and send the request to the Manager of VC.</li> <li>• Wait for the Manager of VC's approval before you take further action.</li> </ul> <p><b>Note:</b> If the program assistant is performing the RCCMS Update, additional approval is not needed.</p> </li> </ol>

Specialist's Actions	Steps, if necessary
Close the Merit Close Case on RCCMS	<ol style="list-style-type: none"> <li>Complete RCCMS Closing Record <ul style="list-style-type: none"> <li>Make sure the record is set to "Close"</li> <li>Use Disposal Code 771 for Merit Closings. <b>Do not use code 770.</b></li> <li>The closers name should be input as the agent's name.</li> <li>Enter "1.0" as the time charged.</li> <li>If the failure/issue code is missing contact the individual who screened the case in order to obtain the missing code and then make sure to enter it on the closing record.</li> <li>Save all of your changes to the closing record and click on the Send/Receive button a few times to sync.</li> </ul> </li> <li>Close the case: <ul style="list-style-type: none"> <li>Go to Actions button and choose Request Closure.</li> <li>Click on OK until the request is processed.</li> <li>Click the Send/Receive button a few times to sync and send the request to the Manager of VC.</li> <li>If the closer is the program assistant, then they will do the "Final Close" by updating Status 51 to Status 90.</li> </ul> </li> </ol>
Notify the Manager of VC.	<ol style="list-style-type: none"> <li>Email the Manager of VC or their delegate (i.e. staff assistant or program assistant) to let them know you closed the assigned cases and submitted a RCCMS closing request.</li> <li>The above step won't apply if the closer is the program assistant.</li> </ol>

- (5) Manager of VC or delegate (i.e. staff assistant or program assistant): Promptly complete the final close of the RCCMS record by reviewing the case file and if acceptable, update the case status to 90.

**Note:** If the closer is the program assistant, they'll perform the final close of the RCCMS record while the case is assigned to them in Group 7556.

#### 7.2.2.5 (10-22-2021)

#### General VCP Case Assignment Procedures for Group Managers

- (1) When specialists need work, VC group managers should:
- Contact the Manager of VC staff assistant or program assistant for cases, who will transfer cases to you.
  - Check if the Primary field has a **Yes** indicator to prioritize unassigned expedited processing cases.
  - Expedited work is assigned first and then all other cases are assigned using the first in first out rule based upon the received date.
  - Assign VCP cases via RCCMS by changing the status to 12.



## 7.2.2.6

(10-18-2022)

### Specialist's Actions Upon Receipt of Newly Assigned VCP Cases

- (1) **Check RCCMS:** Regularly sync by clicking on the Send/Receive button to see if new cases have been assigned to you. Contact your manager if you're concerned about the new cases in your RCCMS inventory.
- (2) **WebETS:** Generally, you must record newly assigned full review (i.e. status 12) VCP cases on WebETS within seven days of receipt.
  - a. You may use "operational time" because it captures more information such as the plan number and distinguishes VCP cases on WebETS.
  - b. Your manager may prefer you use the "Voluntary Compliance" category.
  - c. Don't ever use "other operational time" category. Use "EP Determ Case" as the case type.
  - d. Don't record individual RCCMS cases assigned for screening on WebETS. Use Activity Code 115 and project code 0999.
- (3) Find current WebETS activity and project codes for VCP cases in the Document 6476, Information Systems Code. The Project Code is generally based upon the type of plan as reported on Form 8950, Item 5. The common VC Activity Codes are as follows:

Activity Code	Description
110 (Effective 1-1-2022)	Use for time applied to processing a written request for a VCP Pre-submission Conference.
110 (Effective 1-1-2022)	Use for time applied to processing a written request for a Pre-submission conference for a potential VCAP request.
113	Use for VCP submissions that don't require a closing agreement: regular VCP, VCP Anonymous, VCP Group and VCP Group Submission Anonymous.
115	Use for time applied to screening VCP submissions for their eligibility/completeness and to identify cases that VC can close on merit.
118	Use for time applied to voluntary closing agreement requests involving 457(b) plans made under the EPCRS revenue procedure, including anonymous submissions, and any VCP Cases Changed into a VCAP closing agreement request case.
119	Use for time applied to voluntary requests for Delegation Order 8-3 closing agreements for issues/corrections that are outside of the EPCRS revenue procedure. This includes Anonymous requests and Group Submission requests.

**Note:** You may use project code 0999 for WebETS purposes when charging time to certain VC activity codes such as 101, 110, 111, 115, and 116 and occasionally, for cases using activity code 119 if none of the VC project codes fit.

(4) Project Codes for VC cases are as follows:

Project Code	Description
6700	Profit Sharing-Not 401(k)
6701	401(k)
6702	Stock Bonus
6703	Money Purchase
6704	Target Benefit
6705	Defined Benefit (Not cash balance or statutory hybrid)
6706	Cash Balance or other statutory hybrid
6707	ESOP
6708	KSOP
6709	403(b)
6710	457(b)
6711	Government 414(d) defined benefit
6712	Government 414(d) defined contribution
6713	SEP
6714	SARSEP
6715	SIMPLE IRA
6716	Group Submission defined contribution
6717	Group Submission defined benefit
6718	Other
6719	IRAs
6720	Group Submission-Multiple Types of Plans

(5) Generally, record time already charged by another specialist, as “Transfer Time” when establishing the case on WebETS.

**Note:** Don’t record time spent on screening as “Transfer Time” on WebETS. Time recorded on WebETS is limited to your actual time to process the assigned VCP submission.

(6) Create a CCR and if necessary, upload it to the RCCMS record for each assigned case to document case activity and time charged.

**Note:** Don't upload a CCR if you're using the RCCMS Chronology tab to document case activity and time charged.

- (7) Check the RCCMS case grade to verify it's not higher than your current grade, and inspect the VCP submission to verify that the case was properly graded before you contact the VCP applicant or representative. Find the case grading criteria in IRM 7.11.2, Employee Plans Determinations Letter Program, EP Case Assignment Guide. Contact your manager if it appears the case grade is incorrect or is above your current grade level.
  - a. Document your discussion and what was agreed upon on the CCR.
  - b. Your manager may decide to transfer the case to another specialist.
- (8) Review the VCP submission to determine if the case requires expedited treatment. Find indications of expedite treatment:
  - In the case file itself.
  - On the completed VCP Screening Checklist.
  - If the box next to "Primary" is checked in the RCCMS Activity record.
  - If the Primary column shows a "yes" in the RCCMS inventory case listing view.
- (9) Determine your work priority for newly received cases. Work cases in the following order of priority:
  - a. Cases subject to expedited treatment. See IRM 7.2.2.4 (3).
  - b. All other cases (oldest to newest based upon return received date).

7.2.2.6.1  
(10-18-2022)  
**Required Use of Form  
5464 (or RCCMS  
Chronology Tab) And  
WebETS**

- (1) Specialists: Record your time on an assigned VCP case on either Form 5464 or the RCCMS Chronology Tab using these procedures:
  - a. Use the official Form 5464, CCR or the RCCMS Chronology Tab to document all actions you took, people you contacted, time you charged and your planned follow-up date. Use the latest interactive PDF version of Form 5464 (currently the January 2022 version). If you first started working a case prior to that date and it's still open, you can use the earlier version of the Form that was available in the publishing depository.
  - b. Update Form 5464 or the RCCMS Chronology Tab each time you contact a person or take an action on the case. Stick to follow-up dates to ensure good case management.
  - c. Document and explain periods of inactivity or gaps in time, including gaps due to leave, training, or any other reason.

**Note:** Each written description of actions taken must clearly justify the amount of time charged or the specific actions taken or not taken. Vague descriptions of actions taken that do not justify the amount of time charged are not acceptable.
  - d. Ensure time charged on the CCR/Chronology Tab matches your case hours on WebETS.
- (2) Specialists and managers: Document managerial involvement on Form 5464 or the RCCMS Chronology Tab:

- a. Description of the group manager involvement, including discussions about case development and quality.
- b. Dates of formal, in-process case reviews, on-the-job-visitations, and workload reviews, if the case was discussed.

**Note:** Group managers must document their involvement on the CCR at the time it's provided. Because cases are electronic in RCCMS, specialists should either email their CCR to their group manager for them to add comments, or note in the CCR the place for the manager to record approval. If a specialist is using the RCCMS chronology tab to record their time, transfer the case to the group manager after having the discussion with the group manager so that they can make the necessary timely entry to the RCCMS chronology tab to record their involvement.

- c. The date the manager approved the case for closing.
- d. The date you closed the case to the group manager.

(3) Specialists: Record time on WebETS:

- a. List each full review case in your RCCMS inventory. Include assigned cases with no time charged.
- b. Don't list cases assigned for Screening separately.
- c. Record your time as you apply it.
- d. Make sure time charged on WebETS matches the hours you entered onto the CCR/Chronology Tab.
- e. If you receive a case transferred from another specialist, include their transferred time from their CCR or other information in the case file.

7.2.2.6.2  
(10-18-2022)

- (1) For status 12 cases, open the **Activity** record for each case and check certain data fields for completeness and accuracy:

**Check and Update**

**RCCMS Activity Record**

RCCMS Tab and Field	Steps, if necessary
TIN	<ol style="list-style-type: none"> <li>1. Check Form 8950 and IDRS research to see if the EIN is accurate and associated with the applicant.</li> <li>2. It may be blank if the case is anonymous or applicant tried to use a SSN.</li> </ol>
Name	Check Form 8950 and VCP submission documents to see if the entry is accurate.
Address	Add the applicant's address by clicking on the Address button.
General (1 of 2)- Type	Check VCP submission to see if the RCCMS type is accurate. See Document 6476.
General (1 of 2)- Work Unit	Compare the control number on the Pay.gov Deposit Ticket PDFs to see if the RCCMS Work Unit is accurate.
General (1 of 2)- NAICS	<ol style="list-style-type: none"> <li>1. Add NAICS if blank.</li> <li>2. Look on Form 8950, item 1(I).</li> <li>3. Secure number if blank.</li> </ol>

<b>RCCMS Tab and Field</b>	<b>Steps, if necessary</b>
General (1 of 2)- Plan type	Check Form 8950 to see if the plan type is accurate.
General (1 of 2)- Plan number	Check Form 8950 to see if the plan number is accurate. For RCCMS, use 990 as the plan number for SEP or SARSEP plans if one is not listed. The applicant should use a number that begins with: <ul style="list-style-type: none"> <li>• 401 for anonymous submissions or for pre-submission conference requests.</li> <li>• 901 for group submissions.</li> </ul>
General (1 of 2)- Plan name	Check Form 8950 and VCP submission documents to see if the entry is accurate.
General (1 of 2)- Return received	Check postmark date and verify.
General (1 of 2)- Statute	Check and verify that entered date is 2 years from the Return Received date. Can't be blank.
General (1 of 2)- Primary	Check this box if the VCP case is subject to expedited processing per IRM 7.2.2.4 (3).
Codes/Checksheets- Name control	Check and verify. Must be the 1st four letters of the applicant's name. Can't be blank.
Codes/Checksheets- Project code	Update Project code if it's not accurate. Code 0999 is not valid for most cases.
Codes/Checksheets- Status code	<ol style="list-style-type: none"> <li>1. Check and verify. Full review cases should be in Status 12 when you get them from your manager.</li> <li>2. If the status code is something different discuss with your manager before updating. Document this discussion on the CCR or Chronology Tab or in your workpapers.</li> </ol>
Codes/Checksheets- Activity grade	Enter a case grade if blank or review grade for correctness. See IRM 7.11.2, Employee Plans Determinations Letter Program, EP Case Assignment Guide, for VC case grading criteria.

RCCMS Tab and Field	Steps, if necessary
POA and Misc	<ol style="list-style-type: none"> <li>1. If missing, record fee information into the grid by indicating the type of fee, amount, and date. For Pay.gov cases, this information should already be entered.</li> <li>2. If there are indications of a dishonored/retired payment, record the information into the grid.</li> <li>3. Record subsequent collected fees (or sanctions) and list any requested refunds.</li> <li>4. Fee types include: A-F8950 PayGov Pmt, B-F8951 PayGov Pmt, 1-VCP User Fee, 2- VC Sanction Payment, 3- VCP refund, 4-Dishonored Pmt, 5-Refund requested, and 7-Manual PayGov Pmt.</li> </ol>

- (2) Specialists can't update TIN/EIN, Taxpayer name, Work Unit and Plan number entry errors. Instead, transfer the RCCMS case to Group 7558 as instructed in IRM 7.2.2.3.2, Procedures to Fix Errors or Make Updates to Key RCCMS Fields.
- (3) Be sure to select validate for Update and save all changes.
- (4) Check to see if any of your updates require your manager's approval.
  - a. Look for any pending actions. If yes, click on the "Actions" button and choose "Request update."
  - b. Remember that changes to Statute, Project code, Status code and Activity grade fields require manager approval.

7.2.2.7  
(10-18-2022)  
**VCP Submissions -  
Initial Review**

- (1) You must verify whether the VCP submissions assigned to you are complete and accurate, even though a VCP submission may have been screened.
- (2) Prepare written workpapers that document the issues in the submission, your analysis and any conclusions reached. Do **not** use the CCR or chronology tab in RCCMS as the case file's workpaper. Refer to IRM 7.2.2.17.1, Workpapers for VCP cases for additional procedures pertaining to workpapers applicable to all VCP cases.
- (3) Review the cover letters and narrative attachments. Note any unusual representations, and conflicting items.
- (4) Discuss with your manager if anything in the VCP case file suggests that the plan or plan sponsor is "Under Examination" as defined in the applicable EPCRS revenue procedure or any other issues that you've discovered based on your review. Document this discussion on the CCR, or chronology tab, or in your workpapers.
- (5) Verify the applicant paid the correct VCP fee:

Specialist's Actions	Steps, if necessary
Determine what fee the applicant paid.	Review: 1. Review the PDF Deposit Tickets that document the payment made under Pay.gov.
Verify if the submitted fee is correct.	1. Generally, look to Appendix A of Rev. Proc. 2022-4 (Updated annually) 2. The user fee owed corresponds to the control date of the submission. Submissions made before or after 2022 require the specialist to consult earlier or later revenue procedures.
Verify that the Pay.gov payment went through and was deposited.	1. Review the Pay.gov PDF Deposit Tickets. Look at the collection status. "Settled or Successful" means the payment went through and was deposited. 2. "Retired" means the payment was rejected by the payor's bank and did not go through.

- (6) If you discover potential fee issues, document the issue in the CCR or workpaper or chronology tab in RCCMS. Refer to:
- IRM 7.2.2.10, Procedures for User Fee Issues.
  - IRM 7.2.2.10.1, Instructions on Soliciting User Fees Owed, for instructions on soliciting additional user fee.
  - IRM 7.2.2.10.2, Refund Procedures and Instructions for VCP User Fees, for instructions on the processing of VCP Refunds of paid user fees.
  - IRM 7.2.2.10.3, User Fee Waiver Requests Involving Terminating Orphan Plans, for procedures for requested fee waivers for terminated orphan plans.
- (7) Verify that the user fee was not paid with plan assets:
- a. Review the cover letter or narrative in the VCP case file to determine if there's an indication that the plan paid the user fee.
  - b. Review the detailed Pay.gov Deposit Ticket PDF to see if there are indications that the plan paid the user fee.
  - c. Discuss with your manager if you see evidence that the plan paid the user fee. If the plan did pay the fee, ensure that the plan sponsor (or some other party) immediately reimburses the plan for the VCP user fees with interest. We can't further process the VCP submission until the plan has been reimbursed. Document the discussion and resolution in the CCR, or chronology tab in RCCMS, and applicable workpapers.
- Note:** If you see indications that the user fee was paid by a non-owner plan participant, take action to ensure that they are reimbursed by the plan sponsor.
- (8) Review Forms 2848, Power of Attorney and Declaration of Representative and/or Form 8821, Tax Information Authorization to verify that they are correctly completed before contacting or sending out any correspondence to the specified individuals. For additional procedures, refer to IRM 7.2.2.12, Power of Attorney Form 2848 and Form 8821.



- (9) Review the case file to determine if the plan or plan sponsor was “under examination” as defined in the applicable EPCRS revenue procedure. Specifically:
- Check for any IDRS printouts in the case file for any indication of IRS examination activity or problems with the EIN listed on the VCP submission documents. Examination activity will show up on IDRS printouts if some sort of record exists. To better understand IDRS printouts, view **Reviewing IDRS Reports in VC Cases** (VRJ859953) in Saba.
  - Review any cover letters or attachments to determine if it mentions any IRS examination activity.
  - Review Form 8950, Application for Voluntary Correction Program (VCP) Submission under the Employee Plans Compliance Resolution System (EPCRS), Line 10. A “Yes” response means that the plan is ineligible for VCP. If there’s no entry, it may indicate examination activity. Secure a replacement page with this question answered.
  - Review the Form 8950 question about abusive tax avoidance transactions (ATAT). If there’s no entry, it may indicate examination activity. Secure a replacement page with this question answered. If applicable, secure and review submitted attachments from the applicant.
  - If there’s evidence that the plan or plan sponsor may be “under examination,” determine whether the examination began before or after the VCP submission’s postmark date.
- (10) Take the following actions if the plan or plan sponsor is under examination:
- Discuss with your group manager immediately. Document this discussion in the CCR or in the chronology tab in RCCMS or in your workpapers.
  - Close the VCP case as ineligible per IRM 7.2.2.3.1, Early Closing for Certain VCP Submissions.
  - Use Letter 5341.
  - Issue a full refund of the user fee to the payor. See IRM 7.2.2.10.2, Refund Procedures and Instructions for VCP User Fees.
- (11) Review the case file to see if the required ATAT statement is enclosed:

If	Then
The ATAT statement is missing. Form 8950, Line 8 is checked “Yes.”	Secure a written statement signed by the applicant or their representative.
The VCP applicant indicated the plan or plan sponsor was involved in some sort of ATAT.	Review the required ATAT explanation. If it’s missing, secure the missing explanation.
The case file indicates an ATAT.	Contact your manager as you may need to coordinate with appropriate IRS employees. See Rev. Proc. 2021-30 for latest information.

- (12) Check whether the case file has a complete PDF of a submitted Form 8950. If missing, contact a VC program coordinator.



(13) Verify that the Form 8950 is:

- Signed by an authorized person. See Form 8950 *instructions*, “Who Must Sign,” for additional information.
- Complete and the applicant included all required attachments.

**Note:** For submissions made via the Pay.gov website, there is no pen and ink signature. However, the applicant or a properly authorized representative must sign the form by typing their name and title when completing the form.

(14) Inspect the VCP case file to determine if applicant submitted all required plan documents, plan amendments and sample computations. Refer to Rev. Proc. 2021-30, Section 11.04. This includes the following:

- Specific enclosure items listed on Form 14568 or Forms 14568-A through 14568-I.
- Detailed sample computations.
- Corrective plan amendments.
- Prior plan document in effect at the time of the specified qualification failure. For operational failures, taxpayers are permitted to submit relevant portions of the prior plan document.

**Note:** This requirement generally doesn't apply if the VCP submission is for failures for late good faith/interim amendment failures adopted before the end of the remedial amendment cycle that first included them.

- If the POA or TP indicates that the prior plan document doesn't exist, is missing or can't be found, see IRM 7.2.2.29, Missing Prior Plan Document (Relevant Sections), for additional procedures.

(15) Verify, if an authorized representative submitted the VCP submission, that they included a penalty of perjury statement, as described in Rev. Proc. 2021-30, Section 11.04(16), signed and dated, by the plan sponsor.

(16) Inspect Form 8950 to determine if the applicant answered all applicable lines and submitted all required attachments/explanations. Secure incomplete or missing items.

(17) Review the file for a written explanation to support a request for special tax relief offered by Rev. Proc. 2021-30, Section 6.09. If missing, secure the explanation. See IRM 7.2.2.11, Special Tax Relief Requests, for procedures on how to evaluate these requests.

(18) Request missing or incomplete items using Letter 5345, VCP-General Letter to Request Information.

(19) Document that you've completed the initial review procedures in your workpapers and uploaded your workpapers to RCCMS.

## 7.2.2.8

(10-18-2022)

**VCP Submissions-  
Technical Review  
Procedures**

- (1) Review the documents in the VCP submission for technical compliance and accuracy. Documents in the VCP submission may include:
- a. Form 8950, Application for Voluntary Correction Program (VCP) Submission under the Employee Plans Compliance Resolution System (EPCRS).
  - b. Form 2848, Power of Attorney and Declaration of Representative.
  - c. Form 8821, Tax Information Authorization.
  - d. Model VCP documents. These documents have been released as official forms.
  - e. Form 14568, Model VCP Compliance Statement.
  - f. Form 14568-A, Model VCP Compliance Statement - Schedule 1: Interim Nonamender Failures.
  - g. Form 14568-B, Model VCP Compliance Statement- Schedule 2: Other Nonamender Failures and Failure to Adopt a 403(b) Plan Timely.
  - h. Form 14568-C, Model VCP Compliance Statement- Schedule 3: SEPS and SARSEPs.
  - i. Form 14568-D, Model VCP Compliance Statement- Schedule 4: SIMPLE IRAs.
  - j. Form 14568-E, Model VCP Compliance Statement- Schedule 5: Plan Loan Failures (Qualified Plans and 403(b) Plans).
  - k. Form 14568-F, Model VCP Compliance Statement- Schedule 6: Employer Eligibility Failure (401(k) and 403(b) Plans only).
  - l. Form 14568-G, Model VCP Compliance Statement- Schedule 7: Failure to Distribute Elective Deferrals in Excess of the 402(g) Limit.
  - m. Form 14568-H, Model VCP Compliance Statement- Schedule 8: Failure to Pay Required Minimum Distributions Timely.
  - n. Form 14568-I, Model VCP Compliance Statement- Schedule 9: Limited Safe Harbor Correction by Plan Amendment.
  - o. Any narratives or attachments the POA or VCP applicant submitted describing the failures, correction methods and changes to administrative procedures.

**Note:** Taxpayers should be using the most current version of the forms listed above unless guidance has been issued permitting an exception. If an outdated form is submitted, specialists must require that the new form be submitted.

- (2) Do a preliminary review of the submission focusing on the submitted qualification failures, proposed correction methods and requests for tax relief (if any).

<b>If your preliminary review involves determining whether:</b>	<b>And</b>	<b>Then</b>
The described failures are eligible for VCP.	There appears to be a problem.	Discuss with your manager before contacting the POA or TP.  <b>Note:</b> To ensure that cases are being properly classified as ineligible, consult the Manager of VC and the program coordinators before closing the VCP submission as ineligible.

If your preliminary review involves determining whether:	And	Then
The plan sponsor is requesting tax relief.	The tax relief isn't authorized by the EPCRS revenue procedure.	Discuss with your manager, who will contact the Manager of VC and the program coordinators to discuss. <b>Note:</b> If the case becomes a VCAP follow the procedures in IRM 7.2.2.8.1

- (3) Prepare written workpapers that document the issues in the submission, your analysis, and any conclusions you reached. Do **not** use a CCR or chronology tab in RCCMS as the case file's workpaper. Refer to IRM 7.2.2.17.1, Workpapers for VCP cases for additional procedures pertaining to workpapers applicable to all VCP cases.
- (4) Review the RCCMS "Type" field and verify it's correct. The RCCMS Type field choices for VC cases are in Document 6476, Information Systems Codes FY 2023 Quick Reference for EP Agents/Specialists and in the RCCMS drop down menu for this field.
  - a. Contact your manager if there's an error to see if you should change the case type.
  - b. Update the RCCMS record if the category needs to be changed.

**Note:** You may reconsider your initial determination after receiving additional information from the applicant/representative.
- (5) Review the comments/issues (such as user fee issues, VCP eligibility issues, and issue development) the screener noted on the VCP Screening Checklist in the RCCMS Office documents folder. If you don't follow them or address them:
  - a. Document your reasons in your workpapers.
  - b. Request agreement from your manager.

**Caution:** The screener's notes on the checklist are not an all-inclusive or exhaustive list of issues with the case. They are not meant to be the only items that need addressing. Specialists must conduct their own independent review of the submission.
- (6) If the VCP submission contains Form 14568 plus any applicable Form 14568-A through 14568-I Schedules, see IRM 7.2.2.9, Reviewing Pre-Formatted Compliance Statement, for additional procedures.
- (7) Social security numbers (SSNs) are not used on compliance statements, model forms (including Schedules) or on RCCMS. If the VCP applicant used an SSN:
  - a. The applicant or plan sponsor must get an EIN at IRS.gov.
  - b. Secure revised VCP documents once the applicant has gotten an EIN.
  - c. Update the RCCMS record. Follow IRM 7.2.2.3.2, Procedures to Fix Errors or Make Updates to Key RCCMS Fields.

- (8) Consult with your local IRS field actuary if the VCP submission has:
- a. Defined benefit pension plans, cash balance plans, target benefit pension plans or any hybrid plan with any type of operational failure or plan design failure.
  - b. Demographic failures involving coverage and non-discrimination for IRC 401(a)(4) and IRC 410(b). This includes failures involving IRC 401(a)(26).
  - c. Any other issue or qualification failure that would require actuarial computations or an actuary's expertise.

**Note:** Document all discussions in the CCR or chronology tab in RCCMS or workpaper and upload all relevant internal correspondence (such as, Skype for Business or Microsoft Teams chat, email, fax) to the RCCMS case file.

**Exception:** See IRM 7.2.2.8(9) for a limited exception to this rule.

- (9) You don't have to consult/coordinate with your field actuary per IRM 7.2.2.8(8) if all of the following conditions are met:
- a. The failure is only about operational failures and doesn't require a plan amendment.
  - b. The original accrued benefit is correct and doesn't need to be adjusted as part of any reasonable correction; nor are accrued benefits being recalculated.
  - c. You and your manager agree that you don't need to coordinate with an IRS actuary.
  - d. You and your group manager get at least one VC program coordinator's written consent.

**Note:** If all of these conditions aren't met, coordinate with an IRS field actuary per IRM 7.2.2.8(8).

- (10) If Form 8950, Line 6b was answered **Yes** or if there are other indications that the submission resulted from an earlier pre-submission conference request then contact your manager:
- a. Manager: Must request the RCCMS case file associated with the pre-submission conference request from the VC staff assistant or program assistant.
  - b. Specialist: Must take a look at the closed pre-submission conference case file to see what feedback was provided and if the new submission differs from the information that was previously provided to the IRS.

- (11) Document your decisions and consultations with your manager on the CCR or chronology tab in RCCMS or workpaper and upload all relevant internal correspondence (such as, Skype for Business or Microsoft Teams chat, email, fax) to the RCCMS case file.

**Reminder:** Use the F12 keyboard shortcut to save a Skype conversation to a file that you can upload to RCCMS. For Microsoft Teams chat, create screenshots of the chat, using the print screen function and the Snag-It Program, and print them to PDF. The PDFs can be combined and uploaded to RCCMS.

7.2.2.8.1  
(10-22-2021)

### **Converting a VCP Submission into a VCAP**

- (1) After conducting the technical review, you might determine that the failures or correction methods described in a VCP submission need to be resolved under a closing agreement outside of EPCRS.
- (2) This occurs if the VCP case contains:
  - a. One of three events described in IRM 7.2.2.10(2)(b), (c) and (f); or
  - b. Described problems, failures, correction methods, and/or requests for tax relief fall outside the failures defined in Section 5, (or the specific correction principles and limited tax relief provided under Section 6) of Rev. Proc. 2021-30.
- (3) Discuss the matter with your manager and secure their approval before taking any action.

**Note:** Your manager should reach out to a program coordinator and the Manager of VC to see if they agree that the VCP case should be converted into a VCAP.

- (4) Upload and document the necessary approvals in RCCMS and any related workpapers, CCRs or on the Chronology tab.
- (5) Make sure you discuss the matter with the applicant and representative and get their informal approval.
- (6) Update RCCMS by going to the “General” tab. Go to the “Type” field and change it to “VCP Cases Changed Into VCAP.” Also, change the activity code to 118.
- (7) Update WebETS by changing the activity code to “118.” Keep the same project code.
- (8) Secure a new Form 2848 if the closing agreement wasn’t required by one of the events described in IRM 7.2.2.10.2(b), (c) or (f). See IRM 7.2.2.12(9) for further details on how they should complete Form 2848.
- (9) Follow the procedures in IRM 7.2.4 while you continue to work the case.
- (10) In certain cases, you must refund the previously paid user fee. Follow the procedures discussed in IRM 7.2.2.10(1), IRM 7.2.4.5(7) and IRM 7.2.2.10.2.

7.2.2.9  
(10-18-2022)

### **Reviewing Pre-Formatted Compliance Statements**

- (1) Pre-formatted compliance statements are model documents applicants may use in their submissions.
- (2) Form 14568 is the VCP Model Compliance Statement. Forms 14568-A through 14568-I support Form 14568 by presenting certain failures and standardized correction methods.
- (3) Verify the following when you review Form 14568 and, if applicable the model schedules (Form 14568-A through Form 14568-I):

<b>Review the Form 14568 series to determine whether:</b>	<b>Action</b>	<b>Examples</b>
1. The documents are submitted on plan sponsor or POA letterhead.	If submitted on plan sponsor or POA letterhead, secure a new form that is on plain white paper that doesn't contain any letterhead.	<ul style="list-style-type: none"> <li>Representative firm name or plan sponsor name appears on top or bottom of any page of the Form 14568 or Form 14568-A through I series.</li> <li>Plan sponsor or representative logo appears on any page of the Form 14568, Form 14568-A through I series or applicable narrative attachment.</li> </ul>
2. Outdated model forms have been submitted.	Secure a new form that uses the current version in effect when the VCP submission was sent to the IRS.	<ul style="list-style-type: none"> <li>A 2021 or 2022 VCP submission includes a completed Form 14568 that has a November 2017 revision date.</li> </ul>
3. The plan sponsor/POA modified the documents.	If modified: <ul style="list-style-type: none"> <li>The taxpayer must submit a new Form 14568 series form that hasn't been modified or,</li> <li>Prepare an individually drafted traditional compliance statement.</li> </ul>	Plan sponsor/POA: <ul style="list-style-type: none"> <li>Removed items and language from any form in the Form 14568 series.</li> <li>Changed the correction method on a Form 14568-A through I series.</li> <li>Changed the enforcement resolution language on Form 14568.</li> </ul>
4. The EIN, Plan Name and Plan # appear on each page of the documents.	Verify that these items are included on each page of the submitted documents and that the information is consistent. If items are missing or the information is inconsistent on all pages, secure revised pages as necessary.	<ul style="list-style-type: none"> <li>EIN is on one page, but is missing on other pages.</li> <li>Plan name listed on Form 14568, model compliance VCP statement is different than the plan name listed Form 8950 or an attached schedule associated with the Form 14568-A through I series.</li> </ul>
5. Section 1 of Form 14568 model VCP compliance statement is completed properly.	Verify that applicable line items are properly completed and are not left blank or labeled as "NA."	<ul style="list-style-type: none"> <li>Applicant's name is incomplete.</li> <li>Applicant's EIN is omitted or conflicts with other information in the case file or pages of the model documents.</li> </ul>
6. Attachments are properly referenced as official attachments to Form 14568 or Form 14568 series Schedule.	Verify that narrative attachments have been properly labeled as an attachment to the model documents.	<ul style="list-style-type: none"> <li>A list detailing specific late amender failures associated with the Pension Protection Act of 2006 (PPA 06) is not labeled as an attachment to Form 14568-A, Schedule 1.</li> <li>A representative's cover letter contains information about the correction method, but this information isn't part of the narrative attachment to Section III of Form 14568.</li> </ul>

Review the Form 14568 series to determine whether:	Action	Examples
7. Schedule 1 or Form 14568-A is accurate and complete.	<p>Review for the following types of issues:</p> <ul style="list-style-type: none"> <li>Incorrectly listing items as late interim amendments even though they were adopted after the end of the applicable remedial amendment cycle (RAC) that first included them.</li> </ul> <p><b>Note:</b> These failures are not late adoptions of interim amendments.</p> <ul style="list-style-type: none"> <li>Not including copies of executed amendments with the VCP submission as mentioned in Section II as a required enclosure.</li> <li>POA or TP lists incomplete failure descriptions in Section 1. The plan sponsor/ POA must send a list of each interim amendment(s) that was adopted late.</li> <li>Not incorporating by reference to an attached list of the interim amendments that were not timely adopted.</li> </ul>	<ul style="list-style-type: none"> <li>Schedule 1 lists several good faith amendments for EGTRRA that were adopted late. The corrective amendments included with the VCP submission were adopted in 2014. The RAC for EGTRRA amendments expired before 2014, therefore, Schedule 1 is not available. Applicant should've used Schedule 2 for the failure to timely adopt these amendments as the plan is a late amender for the applicable CL that first included these items.</li> <li>The Schedule 1 indicates that the plan failed to timely adopt interim amendments for final 415 regulations. The VCP case doesn't contain signed amendments.</li> <li>The Schedule 1 indicates that interim amendments for PPA 06 were adopted late, but didn't list the specific provisions that were adopted late.</li> <li>See example discussed above in item 5.</li> </ul>



Review the Form 14568 series to determine whether:	Action	Examples
8. Schedule 2 or Form 14568-B is accurate and complete.	<p>Review for the following types of issues:</p> <ol style="list-style-type: none"> <li>1. Multiple consecutive boxes for CL failures are checked.</li> <li>2. Missing copy of the plan document in effect before the adoption of the corrective amendments is included with the submission.</li> <li>3. Copies of corrective plan amendments or restatements, including a copy of a signed 403(b) written plan (if applicable) that resolve <b>all</b> late amender failures are not included with the VCP.</li> <li>4. Addition of amendment failures to the "Other Box" in Section 1 that are not late amendment failures. Instead, they are operational failures.</li> </ol>	<ul style="list-style-type: none"> <li>• Submission incorrectly checks consecutive cycles. Multiple CLs can be checked if the plan is late for more than one cycle.</li> <li>• Item #2: is a required item mentioned in the Section IV Enclosure list.</li> <li>• For late amender failures that occurred before 2002, it may be reasonable to accept <b>snap-on</b> amendments if a plan sponsor can't secure restated plan documents.</li> <li>• Item #3: These documents are required items mentioned in Section II and the Section IV Enclosure list. <ul style="list-style-type: none"> <li>• It's unacceptable to simply refer to interim amendments associated with a specific tax law or a CL.</li> <li>• Instead, each interim amendment provision that was adopted late must be listed separately.</li> <li>• Items must be described with a level of specificity similar to the descriptions in the CL. Any acronyms must be defined.</li> </ul> </li> <li>• Item #4: Examples include: <ul style="list-style-type: none"> <li>• References to "Technical Amendments".</li> <li>• Errors made while completing an adoption agreement or in the drafting of an adopted plan document.</li> <li>• References to late discretionary amendments.</li> </ul> </li> <li>• Item #5: Examples include: <ul style="list-style-type: none"> <li>• References to "Technical Amendments".</li> <li>• Errors made while completing an adoption agreement or in the drafting of an adopted plan document.</li> <li>• References to late discretionary amendments.</li> </ul> </li> </ul>



Review the Form 14568 series to determine whether:	Action	Examples
9. Missing Items.	If any of the above items are missing or the information is inconsistent on all pages, secure the missing items or request revised pages, as necessary.	<ul style="list-style-type: none"> <li>Page 1 of Form 14568 lists an EIN, however the EIN listed on subsequent pages is different.</li> </ul>

7.2.2.10

(10-18-2022)

## Procedures for User Fee

### Issues

- (1) IRS waives and/or refunds user fees for VCP submissions under limited circumstances for the following types of cases:

Types of Cases	Circumstances for Waiver or Refund:	Additional Information and Instructions
Ineligible Cases.	At the Manager of VC's discretion, refund the user fee if the case is closed as "ineligible." See IRM 7.2.2.10.2, Refund Procedures and Instructions for VCP User Fees, for refund procedures.	<p>Ineligible cases are VCP submissions in which the plan sponsor:</p> <ul style="list-style-type: none"> <li>fails to describe an actual qualification failure or other failure that can be addressed under EPCRS;</li> <li>was "Under Examination" at the time it was mailed to the IRS;</li> <li>403(b) submissions in which all of the failures reported are in pre-2009 years, but aren't one of the 403(b) operational failures in Rev. Proc. 2008-50, per IRM 7.2.2.2, Types of Failures. Typically, this involves a failure to follow the terms of a written plan in pre-2009 plan years.</li> </ul>
<p>VCP case converted into voluntary closing agreement request (VCAP) case.</p> <p><b>Note:</b> This section doesn't apply to VCP submissions that are converted into VCAPs due to one of three events described in IRM 7.2.2.10(2)(b), (c) and (f).</p>	Refund the user fee if a VCP is converted into a VCAP because the submission contains failures or requests for which relief isn't available under EPCRS or is clearly inconsistent with the correction principles of the EPCRS revenue procedure.	<ul style="list-style-type: none"> <li>Before taking any action, discuss with your manager and a VC Program Coordinator.</li> <li>Follow the refund procedures in IRM 7.2.2.10.2.</li> <li>Follow the refund procedures after the Specialist collects the owed sanction. See IRM 7.2.4.5(7).</li> </ul>

Types of Cases	Circumstances for Waiver or Refund:	Additional Information and Instructions
FDIC Cases and any other case where the plan sponsor is a federal agency.	The user fee isn't required (and if paid, will be refunded) if the VCP case was submitted by the Federal Deposit Insurance Corporation (FDIC) or any other federal agency. See IRM 7.2.2.10.2, Refund Procedures and Instructions for VCP User Fees.	<ul style="list-style-type: none"> <li>These are VCP submissions the FDIC makes on behalf of a bank that the FDIC has taken over and for which it is terminating its plan.</li> <li>Also, includes submissions involving a qualified 401(a) type plan that is sponsored by a federal agency for some or all of its employees.</li> <li>Don't pursue any missing user fees. Refund any fee that the FDIC or other applicable federal agency paid on any open case.</li> </ul>
457(b) Plans.	VC submissions involving 457(b) plans and VC declines to accept, and the plan sponsor included a payment with their submission.	See IRM 7.2.2.21, Voluntary Submissions involving 457(b) Eligible Plans of Deferred Compensation.
Orphan Plans.	The eligible party may request, in writing, waiver of the applicable user fee for a submission for a terminating orphan plan.	<ul style="list-style-type: none"> <li>Review the written explanation to see if it's appropriate to waive the user fee. See IRM 7.2.2.10.3, User Fee Waiver Requests Involving Terminated Orphan Plans, for detailed procedures on evaluating these requests.</li> <li>Document your consideration of the request, and decision in case workpapers.</li> </ul>
Fee Overpayments.	VCP submissions in which the applicant has simply overpaid the owed user fee.	Refund the difference between the full and reduced user fee. See IRM 7.2.2.10.2, Refund Procedures and Instructions for VCP User Fees.

(2) **Soliciting Additional User Fees:** Determine whether the plan sponsor owes additional fees to the IRS for their VCP submission under the following circumstances and follow these procedures to get the additional payment.

- a. **Errors** - An error discovered while verifying the correct fee as discussed in IRM 7.2.2.7, VCP Submissions-Initial Review.
- b. **Egregious or Intentional Failures** - Collect any additional amounts imposed as a sanction payment over any paid VCP user fee via a closing agreement per Rev. Proc. 2021-30, Section 4.10.
- c. **SEP or SIMPLE IRA with retention of excess assets** - Collect any additional amounts imposed as a sanction payment over any paid VCP user fee via a closing agreement per Rev. Proc. 2021-30, Section 6.11(5)(b).
- d. **Group Submission** - Collect the additional user fee imposed by Rev. Proc. 2022-4, and subsequent annual updates for group submissions covering more than 20 affected plans. Use Letter 5352, Request for Signature for Group VCP Submission to request the additional user fee.

- e. **Reserved.**
  - f. **Additional Amount-** The additional fee imposed in lieu of not pursuing additional income tax imposed by IRC 72(t) as allowed by Rev. Proc. 2021-30, Section 6.09(6) and subsequent EPCRS revenue procedures. The additional amounts are imposed as a sanction payment over any paid VCP user fee via a closing agreement.
  - g. Follow the collection procedures in Securing Additional Fees-Procedures in IRM 7.2.2.10.1, Instructions on Soliciting User Fees Owed if an additional user fee is owed for a group VCP submission.
  - h. Process sanction payments associated with DO 8-3 closing agreements under different procedures. See IRM 7.2.4.
- (3) Follow the detailed refund procedures in IRM 7.2.2.10.2, Refund Procedures and Instructions for VCP User Fees, for a full or partial refund of the paid VCP user fee.
- (4) Dishonored or Retired (i.e. Rejected) payments are generally identified by the TE/GE Adjustments Team, Group 7845, who informs the Manager of Employee Plans Voluntary Compliance and a designated VC employee.
- (5) Designated VC employee takes the following actions when they become aware of a retired/rejected payment:
- a. Get the necessary information from Pay.gov to document the dishonored/retired payment.
  - b. Take the necessary steps to upload the Pay.gov information into the RCCMS record.
  - c. For unassigned cases, reach out to the applicant/POA and ask them to submit a new payment using Form 8951. If the payment is not immediately made, mark the RCCMS case accordingly and assign the case for a full review.

**Note:** Be sure to enter information about the dishonored payment and any other payment information into “Fee Information” grid located in RCCMS’s POA/Misc tab.

- (6) If a VC specialist receives a VCP case with a retired/dishonored payment, take the following actions:
- a. Instruct the TP/POA to submit a new payment to the IRS via the Pay.gov website using Form 8951 as instructed in IRM 7.2.2.10.1.
  - b. Get confirmation from the TP/POA that a new Pay.gov payment has been made.
  - c. Wait about a week to 10 days from the payment date for the designated VC employee to send a three-page PDF file that includes detailed Pay.gov payment information and a copy of the submitted Form 8951.
- Note:** Follow-up with the designated VC employee if they don’t send the PDF. You can’t close the case until you receive the three page PDF file that documents a successful/settled new user fee payment.
- d. If the TP/POA doesn’t submit a new payment (or is unsuccessful) after repeated inquiries, discuss with your manager within a reasonable period to see if you can close the case as a failure to respond or ineligible case. Follow the procedures in IRM 7.2.2.31, Voluntary Compliance Referrals

to EP Examinations and Fraud Referral Procedures. Use Letter 5339, Uncollected Fee-VCP Closing Letter as the closing letter.

7.2.2.10.1  
(10-18-2022)

**Instructions on  
Soliciting User Fees  
Owed**

- (1) Follow these instructions/procedures to solicit additional or missing user fees owed on your VCP case.
  - a. Discuss the fee issue with your manager and make sure they agree that the additional (or missing) user fee is owed. Document your discussion on the CCR or the chronology tab in RCCMS or related paperwork.
  - b. Discuss the additional user fee with the TP/POA and get their agreement that they owe the additional fee to the IRS.
  - c. Ask for the owed user fee and give the TP/POA instructions. For regular VCP submissions, use Letter 5345, General Letter to Request Information.
  - d. Edit and use the following sample language to request an owed user fee: "Under Appendix A.XX of Rev. Proc. 20XX-04, the user fee for this 20XX VCP submission is \$XXXX based upon the asset information listed on Form 8950. It appears that you owe \$XXXX. For any VCP submission made in 20XX, you must refer to the annual revenue procedure that sets VCP user fees for that year. See Rev. Proc 20XX-XX, Section 12.01(2). If you disagree with the amount owed, contact me before taking any other action. To pay the owed user fee of \$XXXX follow these instructions: 1) Go to [www.pay.gov](http://www.pay.gov) website to make the payment using a credit or debit card or through the Automated Clearing House (ACH) transfer from a checking or savings account; 2) Go to Form 8951, Additional User Fee Payment for Open Application for Voluntary Correction Program (VCP) Under the Employee Plans Compliance Resolution System (EPCRS), by entering this address into your internet browser [www.pay.gov/public/form/start/438394394](http://www.pay.gov/public/form/start/438394394); 3) Complete the online Form 8951 by following its instructions. Use the control number associated with your VCP submission located at the top of this fax/letter; 4) Enter your payment and record your payment tracking ID number assigned to the new payment; 5) Send me a copy of the Pay.gov receipt for this payment."

- (2) The TP/POA pays the additional fee by:

- a. Going to the Pay.gov website and establish a Pay.gov account.
- b. Searching for Form 8951, Additional User Fee Payment for Open Application for Voluntary Correction Program (VCP) or enter [www.pay.gov/public/form/start/438394394](http://www.pay.gov/public/form/start/438394394) into their internet browser.
- c. Completing Form 8951 and submitting payment information. They can pay a user fee with a credit/debit card or by an Automated Clearing House (ACH) transfer from a checking or savings account.

**Note:** When completing Form 8951, the Control number is the RCCMS work unit number already assigned to the VCP submission.

**Note:** Once in a while, you may be asked to provide a special 10 digit IRS number to the applicant in order for the payment to be made via ACH with Form 8951. It's the ALC number plus 2. The number assigned to Form 8951 is 2009290005.

- (3) The Pay.gov website generates a receipt when a payment is submitted

- a. It may take 24 or 48 hours before an ACH payment is taken from the TP's or POA's bank account.

- b. The specialist can't close the VCP case until they receive and review certain Pay.gov deposit documents that pertain to the new payment as discussed below.
  - (4) Once the payment is made, a designated VC employee receives an alert from Pay.gov that a Form 8951 has been submitted.
- Note:** If you don't know who the designated VC employee is, contact a VC program coordinator.
- (5) About a week after the payment date, the designated VC employee goes to the Pay.gov website and downloads the PDFs that contain information about the payment and related deposit.
  - (6) The designated VC employee emails the information from the Pay.gov website, including a copy of the submitted Form 8951 to the specialist assigned the case. The specialist uploads these files to the RCCMS record.
  - (7) Specialist reviews the Pay.gov PDF deposit information to see if the proper payment was successfully made:

- a. Check for correctness by looking at the Transaction Amount to see if the payment was for the correct amount.
  - b. For ACH payments, check to see if the payment went through correctly. Look for "Collection Status." If it says "Settled" then there's no problem and the payment was successful and deposited by the IRS. If it says anything else, then the payment was unsuccessful and not made.

**Note:** Collection Status indicating "Retired" means the payment was rejected by the TP or POA's bank. The PDF with the detailed deposit information lists the reason why it was rejected.

- c. For credit/debit card payments if the Collection Status is "Successful" the payment was properly made.
  - d. Specialist: If the new payment was not in the correct amount or was unsuccessful (i.e. "Retired"), get a new or missing payment by having the TP/POA submit a new Pay.gov Form 8951.
  - e. Specialist: Record any dishonored or retired payment within the data grid located in the RCCMS POA/Misc Tab. Additional payments made with Form 8951 should automatically appear in the RCCMS record via the POA/Misc. tab the next business day after the transaction date. If they don't, contact a VC Program Coordinator and add the information manually to the grid.

**Note:** The appearance of this information in RCCMS doesn't mean a successful or settled payment was paid to the IRS. Wait to get the PDFs with Pay.gov deposit information from the designated VC employee.

- f. Contact the designated VC employee if you don't receive the PDFs with the Pay.gov information within 7 to 10 days after the TP submitted the payment to the Pay.gov website.

7.2.2.10.2  
(10-18-2022)**Refund Procedures and  
Instructions for VCP  
User Fees**

- (1) Follow these procedures if you believe a full or partial refund applies.
- (2) Specialists: Discuss the fee issue with your manager:
  - a. Confirm that a full or partial refund of the paid fee is due.
  - b. Document your discussion in your workpaper and the chronology tab in RCCMS or the CCR and include any email exchange.
- (3) Specialists: Discuss the fee issue with the TP/POA and get agreement that they are owed a full or partial refund as well as the amount.
- (4) Specialists: Complete Part 1 of the VCP Refund Form (Rev. March 2019) (located in RCCMS and on the VC SharePoint site):

**Note:** For items 1(A) through 1(G), look on the PDFs from Pay.gov to see who paid the user fee.

- a. **Part 1(A):** Click on the down arrow and choose "PAY.Gov."
- b. **Part 1(B):** Enter the Name of the payor or entity listed on the detail Pay.gov PDF. Also, enter the mailing address for the payor. If you don't have the payor/entity's actual mailing address, ask the TP/POA for it.

**Note:** IRS can only return user fees for VCP submissions to the payor/entity listed on the detail Pay.gov PDF. The plan sponsor is often not the one who paid the user fee via Pay.gov. If it's unclear who's entitled to the refund, contact the TP/POA to get the necessary information.

- c. **Part 1(C):** Enter the Name of the Plan.
- d. **Part 1(D):** Enter the Date Received that is recorded on RCCMS.
- e. **Part 1(E):** Enter the 8 digit alpha-numerical Pay.gov tracking number. The number you enter should match the number recorded as the RCCMS "Work Unit" field. If the numbers differ, contact your manager before proceeding any further.
- f. **Part 1(F):** Enter the fee originally paid as recorded on the Pay.gov PDF.
- g. **Part 1(G):** Enter "N/A" if the original payment was made via the Pay.gov website.
- h. **Part 1(H):** Enter "N/A" if the original payment was made via the Pay.gov website.
- i. **Part 1(I):** Enter the amount of the refund in the box next to "Amount To Be Refunded." Also, enter the refund amount in either column 1 or 2 of the table entitled "Refund Breakout." Payments received after 9/30/2014, are classified as **IRS AXX5432.5**
- j. **Part 1(J):** Enter "VCP Submission."
- k. **Part 1(K):** Explain why the paid fee is incorrect.
- l. **Part 1(L):** Sign and date the form electronically.

- (5) Specialists: Email the VCP refund form and copies of PDFs showing the original user fee payment to your manager and ask them to sign the form.
- (6) Group manager: when you receive a VCP refund request from a specialist:
  - a. Review the form for accuracy and consistency with prior discussions within five days. Contact the specialist for questions or improperly completed forms and secure a new refund form if necessary.
  - b. Electronically sign and date Part II of the refund form, if the form is correct and you think the refund should be issued.
  - c. Email the signed refund form back to the specialist.



- (7) Specialists: Take special actions to update the RCCMS case file record when you receive the signed refund from your manager:
- Go to the "Office Documents" folder and create a new subfolder entitled "Refund Documents".
  - Upload the signed refund form and Pay.gov PDFs to the Refund Documents subfolder.
  - Go to the POA/Misc tab and make sure the payment information is accurate and complete. Change if necessary. Look to the Pay.gov PDFs.
  - Update the grid by requesting a refund. Go to the "Fee Type" and choose "5-Refund Requested." Enter the refund amount as a negative number and the date.
  - Go to the Chronology tab and make a manual entry. Choose the action code in the "Z series" that corresponds with your RCCMS group number.
  - Save the changes.

- (8) Specialist: transfer the RCCMS case to your group manager. In the comment box, type: "Send RCCMS case to Group 7555."

**Note:** Generally, the case status code remains unchanged in "12." However, if your manager prefers to do the refund during the case closing, update the case status to 51 and get it approved before initiating a closing request. Don't forget to add the comment about transferring the RCCMS case to Group 7555.

- (9) Group manager transfers the case after receiving a transfer or closing request from a specialist that involves a VCP refund by taking the following actions:
- Transfer the case to Group 7555. In the comment box, request that the case is returned to your group number: "Return to Group 755X."
  - Email the TE/GE Adjustments team's manager and designated employees to advise them of the RCCMS transfer and the refund request. Find the designated employee's name on the VC SharePoint site.
  - Go to the POA/Misc tab to see if the refund was processed. There should be an entry in the grid that indicates "6-Refund issued" as the Fee type along with the refund amount and a date. Transfer the case back to Group 7555 if there is no entry or it's incorrect.
  - Transfer the RCCMS case back to the group's inventory when the refund request is processed.
  - If there are no problems, transfer the case back to the specialist if the case is still in status 12. Otherwise, do a final close if the case is ready to be closed.

## 7.2.2.10.3 (10-18-2022) User Fee Waiver Requests Involving Terminating Orphan Plans

- (1) IRS may not generally waive user fees associated with VCP submissions.
- (2) An eligible party who makes a VCP submission on behalf of a terminating orphan plan may request that the IRS waive any applicable user fee. This request isn't automatic nor granted in all circumstances. See Rev. Proc. 2021-30, Section 4.08. The VCP applicant must:
- Make the written request on their submitted Pay.gov version of Form 8950 by checking the "YES" box for Item 6.

- b. Satisfy the definition of “eligible party” in the EPCRS revenue procedure, section 5.03. As with all VCP submissions involving orphan plans, if the applicant hasn’t established that it’s an eligible party, VC won’t process the submission. Close it as a no action case after discussing with your group manager. See Form 8950 Instructions and Rev. Proc. 2021-30.
  - c. Include a written explanation that details or justifies why the IRS should waive the user fee. If missing, secure it.
- (3) Analyze all fee waiver requests based on the facts and circumstances. Don’t grant waiver requests unless the information presented justifies the IRS waiving it.
  - a. A claim of financial hardship alone is insufficient unless supported by additional information to show the financial hardship. Secure additional information to support the financial hardship.
  - b. If made by an eligible party who is a widow/widower and the sole beneficiary of a plan that has never been subject to ERISA, consider the assets they’ll receive upon plan termination when you determine whether a financial hardship exists. Generally, these retirement plans are/were sponsored by very small businesses where participation has always been limited to the owners and their spouses.
 

**Note:** Significant plan assets don’t mean that the widow/widower is not experiencing a financial hardship because they may have liabilities that exceed plan assets.
  - c. If the eligible party is a court appointed representative for the plan on behalf of the participants who have assets in the plan, you may apply a more liberal standard if there are multiple participants. However, they should still include an explanation to support the fee waiver request.
- (4) Recommend whether to waive the user fee. Discuss and seek your manager’s approval.
- (5) If you deny the fee waiver request, notify the eligible party or POA who made the VCP submission. Then, solicit the owed user fee from the eligible party following the procedures in IRM 7.2.2.10.1, Instructions on Soliciting User Fees Owed, before you continue the case.

7.2.2.11  
(10-18-2022)  
**Special Tax Relief  
Requests**

- (1) Generally, excise taxes and income tax consequences associated with qualification failures can’t be resolved through EPCRS. However, plan sponsors may ask the IRS in writing not to pursue certain specific income and excise taxes imposed by IRC 72(t), IRC 4972, IRC 4973, IRC 4974, and IRC 4979 for certain operational failures.
- (2) Most special tax relief is granted through VCP. It’s generally not available through SCP or Audit CAP.
- (3) Special tax relief is not granted automatically; VC approves it in appropriate cases and only if certain conditions are met. See the table below for the tax relief in Rev. Proc. 2021-30, Section 6.09, and the requirements/conditions to evaluate these requests.



Tax	Requirement/Conditions	Evaluating Criteria
IRC 72(t) - special additional income tax.	<ul style="list-style-type: none"> <li>Limited to correction of overpayments for premature distributions of a vested benefit.</li> <li>VCP submission must include a written request justifying tax relief.</li> <li>Participant/beneficiary must return the overpayment to the plan.</li> <li>No tax relief from regular income tax consequences of receiving an overpayment per Rev. Proc. 2021-30, Section 6.06.</li> </ul>	<ul style="list-style-type: none"> <li>Consult with your manager before discussing with plan sponsor.</li> <li>100% relief from the IRC 72(t) tax is appropriate if the overpayment was inadvertent. No additional fee is needed.</li> <li>For owner employees and HCE participants, you may appropriately deny relief if there are indications of deliberate overpayment distributions.</li> <li>If you're unclear after analyzing all facts and circumstances if the overpayment was deliberate or inadvertent: <ol style="list-style-type: none"> <li>Recommend tax relief from IRC 72(t), and</li> <li>Collect additional payment via a closing agreement of 50% of the additional 72(t) tax if you grant relief.</li> </ol> </li> </ul>
IRC 4972 - excise tax on non-deductible contributions.	<ul style="list-style-type: none"> <li>VCP submission must include written request justifying tax relief.</li> <li>Limited to situations where corrective contributions paid to a plan aren't tax deductible.</li> </ul>	<ul style="list-style-type: none"> <li>Consult with your manager before discussing with plan sponsor.</li> <li>You may recommend rejection if the corrective contributions primarily benefit HCE or owner employees.</li> <li>You may recommend IRC 4972 tax relief if the corrective contributions primarily benefit NHCE participants.</li> </ul>

Tax	Requirement/Conditions	Evaluating Criteria
IRC 4973 - excise tax imposed on excess contributions to a 403(b) plan and IRA.	<ul style="list-style-type: none"> <li>Limited to excess contributions made to a 403(b) plan or an IRA.</li> <li>VCP submission must include written request justifying tax relief.</li> <li>Participant/beneficiary must remove excess amounts (adjusted for earnings) from the 403(b) plan or IRA and either:               <ul style="list-style-type: none"> <li>treat it as a taxable distribution; or</li> <li>return it to the plan.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Consult with your manager before discussing with plan sponsor.</li> <li>You may recommend relief from the IRC 4973 tax if the excess contributions primarily benefits NHCE participants.</li> <li>You may recommend rejection if the corrective contributions primarily benefit HCEs or owner employees.</li> </ul>
IRC 4974 - excise tax imposed on late required minimum distributions of IRC 401(a)(9).	<ul style="list-style-type: none"> <li>If some affected participants are owner employees (including a 10% owner of a corporation), applicant must submit a written explanation supporting the request.</li> <li>Plan must distribute accumulated RMD amounts (adjusted for earnings) to the affected participants and beneficiaries.</li> </ul>	<ul style="list-style-type: none"> <li>If the affected participants are only NHCE participants, automatically approve the request unless there are some unusual facts or circumstances.</li> <li>For owner employees, approve the request if the failure was inadvertent and doesn't appear egregious.</li> <li>Consult your manager if unsure whether to grant relief or if the request involves some unusual circumstances.</li> </ul>
IRC 4979 -excise tax imposed on certain excess contributions defined in IRC 4979(c) and (d) resulting from an operational failure.	<ul style="list-style-type: none"> <li>Limited to ADP/ACP testing failures not corrected within 2 ½ months after close of plan year.</li> <li>Not available if the ADP/ACP test wasn't prepared within 2 ½ months after close of plan year.</li> <li>VCP submission must include a written request justifying tax relief.</li> </ul>	<ul style="list-style-type: none"> <li>Consult your manager before discussing with plan sponsor.</li> <li>Determine whether the original ADP/ACP test was performed timely, but was inaccurate due to incorrect data. If the original test was prepared after the 2 ½ month deadline, then don't approve tax relief request.</li> <li>If the original ADP/ACP test failed, determine if corrected within 2 ½ months after the end of the year.</li> </ul>

7.2.2.12  
(10-18-2022)  
**Power of Attorney Form  
2848 and Form 8821**

- (1) Individuals named on Form 8821 aren't considered taxpayer representatives and can't act as a power of attorney for any VCP submission. The only right they have is to receive copies of IRS correspondence addressed to the plan sponsor.
- (2) You may accept a faxed copy of a valid Form 2848 or Form 8821.
- (3) Verify that the Form 2848 is valid before you contact or send any correspondence to any named person who is not the plan sponsor.
- (4) Taxpayers should use Form 2848 or Form 8821 (Rev. 01-2021) for all VCP submissions on or after May 1, 2021. If they used an earlier version, solicit a new Form 2848 or Form 8821.
- (5) Taxpayers should use Form 2848 or Form 8821 (Rev. 02-2020) for all VCP submissions made before May 1, 2021. If they used an earlier version, solicit a new Form 2848 or Form 8821.

- (6) Review Form 2848 and make sure it's completed correctly:
  - a. The taxpayer name and EIN should be the plan sponsor or other entity making the submission. See "Who May File" on the Form 8950 Instructions.
  - b. It needs to be clear as to whether the named representative is entitled to copies of IRS correspondence. That authority is granted in Line 2, if the applicable box(s) located next to first two named representatives is checked. If the box is not checked the representative is not entitled to receive copies of IRS correspondence.

**Note:** If none of the correspondence boxes are checked, call the representative to see if it was an oversight when the form was completed. Secure a replacement form if it was not completed properly.

- c. Line 3 (Matters) should be filled out sufficiently to describe the matter covered, as described in IRM 7.2.2.12(7).
- d. The named representative must satisfy the power of attorney requirements in Rev. Proc. 2021-30, Section 11.08 and Rev. Proc. 2022-4, Sections 6.02(11) and (12). An unenrolled return preparer can't be a power of attorney for any VCP submission.
- e. The representative must sign and date the Form 2848. An original pen and ink signature isn't required. Photocopies are acceptable.
- f. The Form 2848 must be signed by an officer/owner of the plan sponsor. If the plan sponsor is other than an individual, ensure they include a printed name of an officer/owner, title, and name of business.

**Note:** Generally electronic signatures are not accepted. Look to the November 18, 2021, Memorandum (Control Number NHQ-01-1121-0004) issued by Douglas W. O'Donnell, Deputy Commissioner, Services and Enforcement for additional details and instructions.

- (7) Follow these instructions for completing Line 3 - Matters.
  - a. The entry for "Description of Matter" should clearly indicate that the representative is appointed to represent the taxpayer in connection with the

VCP submission. The matters description doesn't have to refer to the EPCRS Rev. Proc. as long as the correction program is referenced:

**Example:** The matters description may use terms like "Voluntary Correction Program Submission" or abbreviations such as: "VCP" or "RP."

- b. Tax Form Number should list "8950." The applicant doesn't have to list model IRS forms, such as "14568" but if they do, the Form 2848 is still acceptable.
- c. Generally, "Years or Periods column" should be marked with "Not applicable or N/A" as per the Form 2848 instructions. Or, it can include the years, as long as the dates listed correspond to the period of the failures noted in the submission.
- d. If the representative submitted the VCP submission on behalf of the applicant via the Pay.gov website, the Form 2848 must specifically grant that authority. To grant the necessary authority, the box next line 5a for "Other acts authorized" must be checked and the following description added: "signing and filing of the Form 8950 and accompanying documents as part of a VCP submission."

**Note:** The applicant must include a penalty and perjury statement, as described in Rev. Proc. 2021-30, Section 11.08, signed and dated, by the plan sponsor. See also Form 8950 Instructions.

- (8) An anonymous VCP doesn't include a Form 2848. See IRM 7.2.2.20, Anonymous VCP Submissions, for details on processing anonymous VCP cases.
- (9) When a VCP case is converted into a VCAP case, you must get a new Form 2848 because the original submitted form lacks the necessary authorization. Make sure:
  - a. Line 3 - Acts authorized contains something like "EP Voluntary Closing Agreement Request permitted by Rev. Proc. 2022-4."
  - b. Line 3 Tax Form Number and Years or periods should say "Not applicable."

7.2.2.13  
(10-18-2022)  
**Required Determination  
Letter Application with  
VCP Submission**

- (1) Applicants aren't required or permitted to submit a determination letter (DL) application for any VCP submission. See Rev. Proc. 2021-30, Section 6.05. Plan sponsors who want to submit determination letter applications must follow the instructions in Rev. Proc. 2016-37.

7.2.2.14  
(10-18-2022)  
**Contacting and  
Corresponding with  
Applicant and POA  
Representative**

- (1) You may call or write the POA/applicant. Document all contacts on the CCR or chronology tab on RCCMS and include the name of the person you contacted and a summary of what you discussed. You may document the summary in your workpapers.
- (2) Send letters or faxes to the applicant and properly authorized individual listed on Form 2848 or Form 8821, if applicable at the same time.
- (3) Use the table below for guidance on the types of taxpayer contact and conditions for using them:

Type of Contact	Special Conditions
Letter	<p>You must:</p> <ul style="list-style-type: none"> <li>• Use official IRS letters when requesting additional information or asking for an applicant's signature on a compliance statement or closing agreement.</li> <li>• Address most letters to the plan sponsor or applicant.</li> <li>• If authorized by Form 2848, send the POA a copy of all letters you sent to the applicant. Use Letter 937-A, Transmittal of Information to Power of Attorney, as a cover letter when sending the copy to the POA listed on Form 2848 or individual listed on Form 8821.</li> <li>• See IRM 7.2.2.25, Required Use of Standard VC Letters.</li> </ul>
Taxpayer Digital Communications (TDC) a/k/a IRS Secure Messaging	<ul style="list-style-type: none"> <li>• Permits taxpayers and the IRS to communicate electronically via a secure cloud based portal.</li> <li>• Specialists are required to offer this communication option when working cases where you request additional information or missing items.</li> <li>• All VCP letters that request taxpayers or their representatives to provide information or other documents have been updated to promote secure messaging.</li> <li>• Refer to the June 23, 2022, Memorandum (Control Number TEGE-04-0622-0018) issued by Edward T. Killen, Deputy Commissioner, Tax Exempt and Government Entities for additional details and instructions</li> <li>• Follow the instructions below in IRM 7.2.2.14(7).</li> </ul>
Fax	<ul style="list-style-type: none"> <li>• Contact the plan sponsor/POA before faxing if the fax includes personal identifiable information (PII).</li> <li>• Taxpayers may send faxed images of a scanned original signatures.</li> </ul>
Email	<ul style="list-style-type: none"> <li>• Don't email taxpayers or POAs. A taxpayer's email address is considered PII information.</li> <li>• If you use email, follow guidelines in IRM 1.10.3, Standards for Using Email.</li> <li>• If the VCP applicant or representative emails PII information, move it to a secure file or encrypt it.</li> </ul> <p><b>Note:</b> See IRM 7.2.2.14 (4) for information you can relay to the taxpayer and POA about sending email to the IRS.</p> <p><b>Note:</b> Due to COVID-19, the normal rules on email with applicants/ POA don't apply in some instances through October 31, 2023. Refer to the November 18, 2021, Memorandum (Control Number NHQ-01-1121-0004) issued by Douglas W. O'Donnell, Deputy Commissioner, Services and Enforcement for additional details and instructions which permit specialists to email or receive documents from taxpayers.</p>

(4) If a VCP applicant/POA wishes to send an email, inform them that:

- The IRS prefers that if they wish to submit information and documents electronically to the IRS that they use secure messaging via Taxpayer Digital Communications (TDC) for case related communications. Encourage them to submit Form 15314, TEGE Secure Messaging Taxpayer Authorization of Disclosure to Designated Users.
- Emails sent to the IRS aren't secure and the IRS can't guarantee the security of any information in them.
- The IRS prefers that they send information by TDC or mail or fax.

**Note:** Due to COVID-19, the normal policy described above has been modified. In some limited circumstances, you may send or receive email with VCP applicants or their representatives. Refer to the November 18, 2021, Memorandum (Control Number NHQ-01-1121-0004) for additional details and instructions

- (5) Write requests for additional information in plain language, and make sure they're free of grammatical and spelling errors.
- (6) Generally, allow a 21-day response time for initial information requests. Use Letter 5345, VCP- General Letter to Request Information.

If the plan sponsor:	Then
Doesn't respond to an initial information request.	<ol style="list-style-type: none"> <li>1. Call them within a reasonable time after the due date to ensure they received the initial request.</li> <li>2. Document the conversation on the CCR.</li> <li>3. Follow-up with a 10-day letter, Letter 5346, VCP 10 Day Follow up to Initial Information Request, within a reasonable time after the due date.</li> </ol>
Doesn't respond to the 10-day follow-up letter.	Call the plan sponsor/POA within a reasonable time after the due date to make sure they received the letter.
Received the 10-day letter but fails to respond to it.	Discuss with your manager as soon as possible to determine if you should close the VCP case using RCCMS disposal code 774- Discontinued review as a "Failed to Respond" case.

- (7) When requesting additional information from applicants you must offer the TP/ POA the opportunity to respond to your information request using the Taxpayer Digital Communications Secure messaging (TDC) portal. Take the following actions:

- a. Make sure the check box relating to the secure messaging paragraph is checked when preparing Letter 5345 and any other VC letter (Letter 5336, 5346, 5351, 5352 and 5359) where additional information or documents are being requested.
- b. Fax or mail Pub 5295, Secure Messaging for Tax Exempt and Government Entities to the TP/POA along with the applicable VC letter.
- c. Promptly follow-up with a telephone call to see if they are interested in using TDC, to provide the requested information.

**Note:** If the POA/TP are not interested in TDC, document the follow-up contact and their response in the CCR or RCCMS Chronology tab.

- d. Secure a fully completed and signed/dated Form 15314, TEGE Secure Messaging Taxpayer Authorization of Disclosure to Designated Users by fax or mail.
- e. Make sure Form 15314 is completed properly and signed properly by an authorized officer of the plan sponsor consistent with the submitted Form 2848.

**Note:** TDC/Secure Messaging is not available to individuals listed on Form 8821 or unenrolled return preparers.

- f. Email the completed Form 15314 to \*TEGE TDC TP Provisioning.
- g. After the form has been processed sign in to the TDC portal and send the initial welcome message and other applicable items.

**Exception:** If there are concerns about offering TDC to a particular POA/TP discuss the matter with your manager and obtain their approval. Document this approval and the specific reasons why TDC was not offered to this TP/POA on the CCR or chronology tab in RCCMS along with copies of any email discussion.

- (8) See IRM 7.2.2.25, Required Use of Standardized VC Letters, for a list of the appropriate letters to use. Find links to the official letters on the VC SharePoint site or the IRS intranet.
- (9) If you decide not to issue a compliance statement, consult with your group manager and the Manager of VC to determine whether to make a referral to EP Examinations before you close the case. See IRM 7.2.2.31, Voluntary Compliance Referrals to EP Examinations, for additional details.

**Note:** This requirement to consider a possible referral to EP Examinations also applies to cases where a compliance statement is issued, but one or more failures included with the original submission were withdrawn from the submission due to a disagreement about correction.



7.2.2.15  
(10-18-2022)

**Use and Types of VCP  
Compliance Statements**

- (1) A compliance statement is generally a written agreement between the IRS and a plan sponsor that results from a successful VCP submission. See Rev. Proc. 2022-4. See also Rev. Proc. 2021-30, Section 10.
- (2) Types of Compliance Statements, their characteristics and where to find them:

Type	Characteristics	Find at:
Model Compliance Statement, including Schedules.	Taxpayer may only use if they use the official IRS forms 14568 series.	IRS.gov as official forms. See Form 14568, Form 14568-A, Form 14568-B, Form 14568-C, Form 14568-D, Form 14568-E, Form 14568-F, Form 14568-G, Form 14568-Hand Form 14568-I.
Streamlined Compliance Statement.	<ul style="list-style-type: none"> <li>• Specialist prepares. You must draft detailed failure descriptions based on the information the TP/POA submitted.</li> <li>• Incorporate POA/plan sponsor's letters and narrative by reference. They are an official part of the issued compliance statement.</li> </ul>	The VC SharePoint site.
Traditional Compliance Statement.	<p>Specialist prepares. Structured into six basic sections:</p> <ol style="list-style-type: none"> <li>1. Describe the failures.</li> <li>2. Describe the proposed correction method.</li> <li>3. Describe the procedures used to locate and notify former employees and beneficiaries.</li> <li>4. Describe the changes made to administrative procedures so that failures do not recur.</li> <li>5. Enforcement Resolution.</li> </ol>	The VC SharePoint site.

- (3) If the applicant submits Form 14568 and applicable attachments (such as narrative attachments or if applicable, Form 14568-A through Form 14568-I,) those documents will generally be the issued compliance statement.
  - a. If you determine that it's in the IRS's and/or the plan sponsor's best interest, you may prepare a traditional compliance statement. This includes the situations discussed below in IRM 7.2.2.15(8).
  - b. Consult with your manager before preparing a traditional compliance statement.
  - c. Document your discussion on the CCR or the chronology tab in RCCMS.
- (4) Use the electronic sample documents posted on VC SharePoint, if sample language exists (and is appropriate) for failure descriptions to draft a streamlined or traditional compliance statement.
- (5) Get your manager's approval via email or EEFAX if you draft streamlined or traditional compliance statements before sharing the draft with the plan sponsor or POA.



- (6) Revise the compliance statements for any group manager comments/revisions. Make sure the manager approves the revised document. Fax the approved compliance statement draft to the plan sponsor or the POA for review. If the plan sponsor doesn't have a fax number, mail the documents to them.
- (7) Upload all email instructions/comments/approvals from your manager to the RCCMS case file.

**Note:** Document the plan sponsor's/POA's acceptance of the draft document on the CCR or the chronology tab in RCCMS. If the plan sponsor or POA wants to change the document, discuss it with your manager. Document the discussion on the CCR and chronology tab in RCCMS.

- (8) VCP Compliance statements generally don't have to be signed by the plan sponsor, except in the following situations:
  - a. Material change in fact or issues for which a new penalty of perjury statement hasn't and won't be secured. Including additional late amender failures isn't considered a material change in fact. However, adding new operational failures to an open VCP case is.
  - b. If plan sponsor/POA may be unaware of or not understand the compliance statement terms and it's in the interests of both parties that the plan sponsor sign it. Before asking for signature, consult with your manager and document your discussion in the CCR.
  - c. Group Submission compliance statements must be signed.
- (9) Form 14568 can't be signed by a plan sponsor. Secure a revised form or prepare a traditional compliance statement. See IRM 7.2.2.15(3).
- (10) If the traditional or streamlined compliance statement is to be signed by the plan sponsor, fax or mail one copy to the plan sponsor/POA. Use IRS Letter 5351, VCP Letter Used to Request a Taxpayer Signed Compliance Statement.

**Note:** When you use a streamlined compliance statement, attach the referenced letters to each compliance statement.

## 7.2.2.16 (10-18-2022) **Dealing With Disagreements and Conference of Right**

- (1) If any part of the submission is not acceptable, notify the POA or plan sponsor, request any necessary changes, and explain why they are necessary.
- (2) If you and the plan sponsor/POA disagree on any of the following, discuss with your manager:
  - a. How a qualification failure should be corrected.
  - b. Changes to administrative procedures.
  - c. Whether a failure has been properly described or is eligible for VCP.
  - d. Determination of a VCP user fee.
  - e. Requests for limited tax relief made under Rev. Proc. 2021-30, Section 6.09 as discussed in IRM 7.2.2.11, Special Tax Relief Requests.
  - f. Fee waiver requests made by terminating orphan plans as discussed in IRM 7.2.2.10.3, User Fee Waiver Requests Involving Terminating Orphan Plans.
- (3) The group manager and specialist consult with the Manager of VC and the VC program coordinators as appropriate.

- (4) If your position is upheld, seek agreement from the plan sponsor/POA, and inform them that you've discussed the issue with your manager.
- (5) If the applicant or their POA continues to disagree, they are entitled to a formal Conference of Right with your group manager.
  - a. Generally, the conference is held via conference call. The applicant or their POA has 21 calendar days after the conference date to submit additional information in support of his/her position.
  - b. The taxpayer must request any extension of the 21-day period in writing before it ends, and it must be approved by the group manager.
- (6) If after the conference call, and consideration of any additional information provided, the group manager and specialist maintain there are problems with the submission, they must discuss with the Manager of VC and the program coordinators to ensure consistent treatment of taxpayers.

**Note:** Where appropriate, you may need to schedule another conference call with the plan sponsor/POA. At least one program coordinator will attend.

- (7) If the IRS and plan sponsor/POA can't agree, the IRS closes the VCP submission and doesn't issue a compliance statement.
- (8) Generally, the IRS doesn't return the user fee to the payor if the disagreement is about failure descriptions, correction methods, changes to administrative procedures or a failure to provide requested information.

**Exception:** If the failure is ineligible for VCP or if there is a DO 8-3 closing agreement, the payor may be entitled to a 100% refund of any paid user fee. This applies to all VCP submissions. However, refunds under this exception are at the Manager of VC's discretion. See IRM 7.2.2.10, Procedures for User Fee Issues, and IRM 7.2.2.10.2, Refund Procedures and Instructions for VCP User Fees, for more information on possible refund.

- (9) If IRS doesn't issue a compliance statement, consult with your manager and the Manager of VC to determine if you should refer to EP Examinations. See IRM 7.2.2.31, Voluntary Compliance Referrals to EP Examinations, for additional details. Document all actions in the CCR or chronology tab in RCCMS, and the specialist's workpapers.

**Note:** This requirement to consider a possible referral to EP Examinations also applies to cases where a compliance statement may be issued, but one or more failure included with the original submission were withdrawn from the submission due to a disagreement about correction.

7.2.2.17  
(10-18-2022)  
**Analyzing Qualification  
Failures and Correction  
Methods in VCP  
Submissions**

- (1) Review plan sponsor/POA cover letters, or attachments to Form 14568 to determine if actual qualification failures exist and whether the correction proposal complies with IRC and EPCRS requirements.
- (2) In general, EPCRS may only be used to protect the qualified tax-favored status of certain retirement plans and provide limited relief from certain excise taxes or additional income taxes. However, if the plan sponsor/POA requests some additional relief not offered by EPCRS, discuss this request with your group manager to determine if a DO 8-3 closing agreement is appropriate.

**Note:** The group manager will routinely consult the Manager of VC and the program coordinators for these requests.

- (3) Review and analyze descriptions of failures, correction methods, and changes to administrative procedures using the following requirements and considering these common requirements and incomplete failure descriptions:

Description	Requirements that must be in every VCP Submission	Common Incomplete Failure Descriptions
General Rule.	A detailed and complete description of each qualification failure.	POA/plan sponsor doesn't describe an actual failure to comply with the IRC or with the terms of the written plan.
	A detailed explanation as to how and why each failure arose.	It's often missing or incomplete.
	A detailed description of the administrative procedures that were in effect at the time the failures occurred.	It's often missing or incomplete.
	For Operational, Demographic, or Eligible Employer failures.	The description doesn't specify the period of time in which the failures occurred; the number of affected employees and the estimated cost of correction per failure, if applicable.
	Detailed Correction method and changes in administrative procedures for each failure.	Proposed change in administrative procedures isn't an actual change, or wouldn't prevent future failures.
Plan Document Failure	Describe how the plan document is defective because either it: 1. Doesn't comply with the requirements of IRC 401(a) or 2. Wasn't updated to comply with tax law changes. <b>Note:</b> The applicant must list each specific tax law change that they didn't timely adopt.	Plan sponsor doesn't specify all the tax laws for which the plan was not amended. <b>Note:</b> The applicant must state why the plan didn't comply with 401(a).
	Late good faith/interim amendments or late amendments to reflect optional tax law changes can't be incorporated by a reference to a tax law or CL.	Plan sponsor doesn't define acronyms when describing late amender failures.

Description	Requirements that must be in every VCP Submission	Common Incomplete Failure Descriptions
		Amendment failures are described as late good faith/ interim amendment failures, but the corrective amendment was adopted after the end of the applicable cycle. EPCRS revenue procedure doesn't classify this item as a late interim amendment issue.
		Submission narrative doesn't indicate how the failures are being corrected. In most cases, the plan must be retroactively amended.
Operational Failure.	Description must describe a failure to comply with a specific IRC, such as 401(a) or 401(k) or 403(b), and/or a failure to follow the Plan's written terms. Correction method narrative must be complete and fully describe each step in the proposed correction.	Narrative limited to a failure to conduct testing or errors in testing that relate to Top Heavy, Actual Deferral Percentage/Actual Contribution Percentage, IRC 410(b) or IRC 401(a)(4).
	If sponsor will make corrective contributions, allocations, or repayments, the narrative must describe how earnings are determined.	Narrative that describes the plan's (or plan sponsor's) problems with IRC 414(h) and IRC 125, FICA compliance and requests special tax relief not authorized by EPCRS.
	For operational failures, sponsor must include separate corrective narratives that focus on how affected terminated plan participants will be handled.	Earnings method isn't included or doesn't specify that they'll be credited through the date of correction.
	Narrative must describe how sponsor will locate former employees, participants, and beneficiaries.	Submission lacks detail that justifies the use of reasonable estimates.
	Narrative must describe how lost participants or lost beneficiaries will be located.	Method for locating terminated participants or beneficiaries: <ul style="list-style-type: none"> <li>• is missing or incomplete from VCP correction narrative.</li> <li>• refers to discontinued IRS and SSA Letter forwarding programs.</li> </ul>

Description	Requirements that must be in every VCP Submission	Common Incomplete Failure Descriptions
Ineligible Employer.	Narrative must describe why plan sponsor is not eligible to sponsor the plan.	Correction narrative doesn't explain the necessary details why the plan sponsor is ineligible to sponsor the plan.
	Correction narrative must indicate that the plan has already been frozen and that all employer and employee contributions were suspended as of a stated date. This date generally can't be later than the date of the VCP submission.	Correction narrative doesn't include the date all employer and employee contributions ceased.
	Sponsor doesn't have to stop making contributions if continuing to make them wouldn't be an Employer Eligibility Failure (for example, for a tax-exempt employer sponsoring a 403(b) plan that lost its exempt status and then subsequently regained it).	Correction narrative indicates that contributions were allowed to continue past the date of the VCP submission.
	For IRC 403(b) and 401(k) plans, correction narrative must indicate that the plan will be terminated or that a frozen plan will be maintained subject to the distribution restrictions of the IRC.	Correction narrative indicates that contributions were allowed to continue past the date of the VCP submission.

- (4) Prepare workpapers that document the issues in the submission, your analysis and any conclusions reached. Do **not** use the CCR or the chronology tab in RCCMS as the case file's workpaper.
- (5) VCP allows the plan sponsor/POA to propose correction methods that are outside of the safe harbors described in the EPCRS revenue procedures.
  - a. Depending on specific facts and circumstances, we may accept alternative proposals.
  - b. When you evaluate other correction methods, consider if they're reasonable given the described facts and circumstances.
  - c. You may need to get information about the plan sponsor's current financial conditions to justify a special exception to full correction.
  - d. You must consult with your group manager to discuss the merits of other correction methods. When appropriate, consult the Manager of VC or the program coordinators.
- (6) 401(h) retiree health benefits issues: To ensure consistency, specialists, and VC group managers must consult with the VC Program Coordinators if a submission involves retiree health benefit issues under IRC 401(h).

- (7) Governmental 401(a) plan sponsors can't use VCP to resolve issues involving IRC 414(h) pickup contributions because the taxation of employee contributions doesn't satisfy the definition of a qualification failure and is ineligible for EPCRS relief.

**Note:** Don't forget to consult with an IRS actuary if the circumstances are described in IRM 7.2.2.8(8).

7.2.2.17.1  
(10-18-2022)

**Workpapers for VCP Cases**

- (1) The specialist's workpapers are the link between the initial VCP submission and depth of the specialist's/screener's review and must support the conclusion reached. Workpapers include the following:
  - a. A description of the failures and correction proposals.
  - b. Address any discrepancies, unusual or questionable items. This includes addressing any and all comments made by the Screeners as noted on the Screening checklist.
  - c. Provide an analysis.
  - d. Provide a conclusion.
- (2) Specialist's workpapers must be clear, concise, legible, organized, labeled, and dated.
  - a. Make sure to use the naming convention discussed in IRM 7.2.2.17.2, Mandatory RCCMS Naming Convention for EP VC Cases for individual files uploaded to RCCMS.
  - b. Make sure that no uploaded workpaper or supporting exhibit is encrypted.
  - c. Don't use the CCR or chronology tab in RCCMS as the case file's workpaper.
- (3) The workpapers should not just be a cut and paste from the Form 14568-A through Form 14568-I Schedules or the narrative attachments to Form 14568.
- (4) Workpapers must fully explain the work performed. Simply stating that a correction proposal is okay, is not sufficient.
- (5) To ensure that issues were properly addressed and that the appropriate legal provisions were applied, workpapers should include references, where applicable, to:
  - a. Relevant portions of the IRM.
  - b. Cite to relevant guidance you relied on or considered, such as the Internal Revenue Code, Treasury Regulations, Revenue Rulings, Revenue Procedures, or court decisions.
- (6) Create, upload, and save the workpapers electronically within RCCMS in a timely manner as work progresses.
- (7) Superseding documents should be clearly identified and labeled in addition to an explanation in the case file's workpapers.
- (8) Be sure all correspondence, including letters, faxes, emails, internal communications, items from TDC are uploaded to the RCCMS record and organized consistent with naming convention in described below in IRM 7.2.2.17.2.

- (9) Workpapers and all correspondence items must be uploaded and saved to RCCMS in a timely manner consistent with the instructions and timeframes specified in the August 14, 2020 Memorandum of Understanding Between The National Treasury Employees Union and the Internal Revenue Service Dealing with the Expanded use of RCCMS. This requires the specialist to:
  - a. Upload specialist created workpapers and taxpayer provided documents to RCCMS within seven workdays of creation or receipt.
  - b. Set their RCCMS sync settings to provide for a scheduled sync every two hours when connected to the IRS internal network
  - c. If the specialist is working offline, they must connect to the IRS network and perform an RCCMS sync once per workday.
  - d. Workpaper updates need to be completed within RCCMS and all work associated with the case must be controlled in RCCMS.

7.2.2.17.2  
(10-18-2022)

## **Mandatory RCCMS Naming Convention for EP VC Cases**

- (1) Specialists must organize every VCP case assigned to them consistent with the naming convention described in this IRM.
- (2) The naming convention groups the files in all VC cases into five broad categories that is similar to what is used by EP Examinations to organize files uploaded to examination cases processed under RCCMS.
- (3) Specialists must use the following naming convention when organizing the files in every RCCMS record associated with Activity Code 110, 113, 118 and 119:

Category	Included Items and Examples
2. Screening Documents	<ol style="list-style-type: none"> <li>a. Screening Checklist. Naming convention is: "2. VCP Screening Checklist for [Work Unit #]"</li> <li>b. Emails pertaining to the initial screening of the case.</li> <li>c. Faxes from POA/TP relating to the screening of the case.</li> <li>d. For (b) and (c), the naming convention is: "2. YYYY-MM-DD [brief description]"</li> </ol>
3. Closing Documents <b>Note:</b> Move these documents to a separate RCCMS subfolder labeled "Closing Documents" which is part of "Office Documents."	<ol style="list-style-type: none"> <li>a. Copies of issued VC closing Letter plus 937-A Letter, if applicable.</li> <li>b. Compliance statement or closing agreement that is to be issued, and any mailing address sheets for applicant and POA if applicable.</li> <li>c. Example 1: "3 L5353 to TP"</li> <li>d. Example 2: "3. L937-A Letter POA1"</li> <li>e. Example 3: "3. Issued CS"</li> </ol>



Category	Included Items and Examples
<p>4. All files that were part of the initial application request plus:</p> <ul style="list-style-type: none"> <li>• New or revised Form 2848/8821 that are picked up during case processing.</li> <li>• Additional IDRS research</li> <li>• Special payment items associated with the collection of additional user fees or refund documents, if applicable as well as closing agreement sanction payments.</li> </ul> <p><b>Note:</b> For refunds of user fees, place all applicable documents in a separate folder as required by IRM 7.2.2.10.2</p>	<ul style="list-style-type: none"> <li>a. Name Convention “4. [brief description]”</li> <li>b. Includes initial files from Pay.gov such as the Form 8950, initial user fee payment, uploaded PDF, and initial IDRS research.</li> <li>c. For VCAP cases, this includes initial request documents sent via fax, HQEP User Fee print out and IDRS research.</li> <li>d. Additional user fees: include Form 8951, Pay.gov Credit Card and ACH Transaction detail.</li> <li>e. For refunds: signed refund request form and copies of Pay.gov payment files.</li> <li>f. For sanction payments: F3210, F5734, F3244. special memorandum, Pay.gov Credit Card or ACH Transaction Detail, and Voucher Summary.</li> <li>g. Examples: “4. F3210-Signed and dated” or “4. F5734” or “4. ACH Trans Detail”.</li> </ul>
5. CCR record (Form 5464) and Case File Workpapers, including internal correspondence with other IRS Employees	<ul style="list-style-type: none"> <li>a. If you use the Chronology Tab in RCCMS to record your actions/time on a case; then the references to F5464 won't apply.</li> <li>b. Use F5464 PDF with a revision of 1-2022.</li> <li>c. Naming Convention: “5. F5464-CCR.”</li> <li>d. Naming Convention: “5. Main Workpaper”</li> <li>e. If spreadsheets or supplemental documents were prepared by the specialist in addition to the main workpaper those files would be listed separately. Example: “5. Excise Tax calcs”</li> <li>f. Naming Convention for internal correspondence is: “5. YYYY-MM-DD [brief description]”.</li> <li>g. Results in items being listed in chronological order based on date sent or received.</li> <li>h. Includes emails, attachments, faxes and scanned documents</li> </ul>
6. Correspondence with POA/TP	<ul style="list-style-type: none"> <li>a. Naming convention is “6. File Name”. However, each file is named in chronological order using the date sent or received. The file name must identify the letter that was sent.</li> <li>b. Example 1: “6. YYYY-MM-DD L5345 Faxed to TP and POA”</li> <li>c. Example 2: “6. YYYY-MM-DD Letter/Fax from POA”.</li> </ul>

7.2.2.18  
(10-18-2022)  
**IRC 72(p) Participant  
Loan Failures**

- (1) Under VCP, Audit CAP, and SCP (for some IRC 72(p) loan failures corrected on or after April 19, 2019), IRS permits limited tax relief for participant loans that didn't comply with IRC 72(p) requirements (Rev. Proc. 2021-30 or earlier EPCRS Rev. Proc., Section 6.07). The plan sponsor may either:



- a. Issue a Form 1099-R in the year of correction rather than in the year of the deemed distribution. In VCP, the plan sponsor/POA must request this relief.
  - b. Request relief from a deemed distribution's income tax consequences. The IRS will approve this relief in appropriate circumstances if the plan sponsor complies with all of the requirements in section 6.07.
- (2) Applicants may use Form 14568-E to report participant loans that do not comply with IRC 72(p).
- (3) Some noted problems in VCP cases involving participant loans that don't comply with IRC 72(p):
  - a. Sample computations showing original loan terms, but new amortization schedules aren't included with the submission.
  - b. Sample computations and correction narrative don't explicitly state how the loan failure is being corrected.
  - c. For defaulted loans, narrative and sample computations don't indicate that missed interest is included in the re-amortized amount.
  - d. For regular loans not used to purchase a principal residence, the re-amortized loan period exceeds the five year period measured from when the plan lent the money to the plan participant.
- (4) If the applicant has requested income tax relief from the deemed distribution rules, generally allow income tax relief if all of the applicable rules in Section 6.07 of the EPCRS revenue procedure have been met and the failure appears to have been inadvertent. However, it may be appropriate to deny income tax relief if:
  - a. Indications that the participant loans weren't bona fide loans as evidenced by a lack of a signed loan agreement(s), or no real intent that the plan participants would repay the loans.
  - b. We hold the affected loans to owner employees or HCE participants to a higher standard if the HCE is responsible for ensuring the loans satisfy the requirements.
  - c. Affected loans greatly exceed the maximum loan amount specified by IRC 72(p)(2).
- (5) If the participant loan exceeds \$75,000, alert your group manager. They'll coordinate with the Manager of VC and the VC program coordinators to determine whether it would be appropriate to provide income tax relief from the deemed distribution.

7.2.2.19  
(10-18-2022)  
**Correction by  
Retroactive Amendment  
to Resolve Operational  
Failures**

- (1) A plan sponsor's correction by adopting a retroactive amendment that conforms an IRC 401(a) or 403(b) plan document to the plan's actual operation is:
  - a. Authorized by Rev. Proc. 2021-30 Section 4.05 or earlier EPCRS revenue procedures.
  - b. Permitted under VCP or Audit CAP.
  - c. Only applies to 403(b) plans failures in 2009 and later. Before 2009, there was no written plan requirement under the IRC nor was there a requirement to follow the terms of a 403(b) written plan even if one existed.

**Exception:** A very limited exception allows a plan sponsor to use SCP to correct certain specific Operational Failures by a plan amendment to conform the plan terms to the plan's prior operations for Operational Failures listed in section 2.07 of Appendix B.

- d. Permitted under SCP for additional Operational Failures on or after April 19, 2019, if certain conditions can be met. See Rev. Proc. 2021-30, Section 4.05 and Appendix B, Section 2.07.
- (2) The corrective plan amendment must comply with IRC 401(a), including IRC 410(b), IRC 401(a)(4) and IRC 411(d)(6). So, when you review a VCP case that uses this type of correction method to resolve operational or demographic failures, you must verify that the amendment complies with those IRC requirements.

**Note:** A collectively bargained agreement signed by the plan sponsor and a union does not supersede the requirements of the IRC.

- (3) If the corrective plan amendment increases participant benefits, you must:
- a. Determine if an IRC 401(a) qualified retirement plan (and for 2009 and later years, a 403(b) plan) is permitted to provide the additional benefits.
  - b. Determine if the amendment would violate IRC 411(d)(6). Allowing some plan participants, including terminated plan participants to retain excess contributions/allocations in a defined contribution plan may violate IRC 411(d)(6) in some circumstances because had the plan sponsor followed the plan's written terms when operating the plan, other participants would've received higher allocations or additional benefits.

**Exception:** If the plan is a governmental plan or 403(b) plan, there is no need to evaluate IRC 411(d)(6) since it doesn't apply.

**Note:** However, 26 CFR 1.401-1(a) and (b) require a qualified retirement plan to operate according to its written terms. Beginning in 2009, a similar requirement was imposed on 403(b) plans. See 26 CFR 1.403-3(b)(3). Therefore, as a general rule, don't ignore this requirement by approving retroactive plan amendments to conform the written plan to the plan's operation if it would deny some plan participants benefits specified by the plan document's written terms.

- c. If the affected plan participants are subject to a collectively bargained agreement, be sure there is evidence in the case file indicating that the union consents to the adoption of the corrective amendment.
- d. Determine if the corrective amendment is non-discriminatory as permitted by IRC 401(a)(4). If HCEs are benefiting, secure additional information to determine if the corrective amendment is non-discriminatory, such as detailed: benefits/rights or features demonstration, general test, or IRC 401(a)(26) participation test. For amendments impacting the plan's definition of compensation, you may need to secure a demonstration that it doesn't favor the HCE if the plan is using an alternative definition that falls outside of the safe harbors 26 CFR 1.414(s)-1.
- e. When evaluating a corrective plan amendment and related general test or average benefits test or participation test, confirm that the plan doesn't

use short service employees to pass these tests. Refer to the VC Share-Point for the October 22, 2004, Memorandum from the Director of Employee Plans.

- f. For DB plans - ask about the plan's funding status. Ask for the most recent Adjusted Funding Target Attainment Percentage (AFTAP) certification in effect at the time of correction to determine if the plan's funding ratio is below 80%. IRC 436 may prohibit any retroactive plan amendments that increase participant benefits or allow for certain restrictive payments.
- (4) If the amendment appears to decrease accrued benefits or other protected benefits described under the written plan, carefully review this correction proposal. Follow these instructions when evaluating these kinds of correction proposals:
- a. Reject the amendment if it doesn't comply with IRC 411(d)(6), and ask the TP/POA to propose an alternative correction method that is consistent with EPCRS correction principles. However, we'll deem an IRC 411(d)(6) violation to not have occurred if the plan sponsor can establish that the plan's written terms were drafted incorrectly.
  - b. If the plan sponsor states the plan document was drafted incorrectly, review the file to determine if the applicant has established, through clear and convincing evidence, employer intent and employee expectations for the way the plan would be administered.
- Note:** You may not rely on affidavits from the plan sponsor or affected employees to establish employer intent or employee expectations. This includes self-serving statements in narrative attachments or correspondence associated with the submission.
- c. For a governmental plan or 403(b) plan, see IRM 7.2.2.19, Correction by Retroactive Amendment to Resolve Operation Failures, section 3B.
- (5) If it's necessary to determine employer intent or employee expectations, consider the following documents, if available (this list is not exhaustive):
- a. Present and former SPD documents.
  - b. Present and former employee handbooks.
  - c. Present and former versions of the plan document and amendments.
  - d. If affected plan participants are subject to collective bargaining, copies of the signed and dated collectively bargaining agreements that were in effect during the period of failure.
  - e. Letters to actuaries, accountants, TPAs, lawyers about the plan's design and operation.
  - f. Past emails or memos to employees about plan benefits.
  - g. Employment offer letters.
  - h. Additional documents that help establish employer intent and employee expectations such as: PowerPoint presentations given to employees, employee newsletters, enrollment forms or benefit distribution forms, or plan highlights or other written documents distributed to plan participants.
- (6) Consult with the EP actuaries for:
- a. Any actuarial issues involving DB plans.

- b. Correction methods for any plan type which use the IRC 410(b) average benefits test, or the general test allowed by IRC 401(a)(4), or an IRC 401(a)(26) participation test to correct any operational or demographic failures.
- (7) After developing the case, recommend whether to approve the amendment and discuss your recommendation with your group manager, who must approve your recommendation. Document your analysis, discussion, and manager's approval in your workpapers and in the RCCMS case file as well as the CCR or chronology tab in RCCMS. In addition, the following actions should be taken:
- a. Specialist: Complete the Proposed Correction Via Retroactive Amendment form and email it along with any necessary attachments to your manager if you determine the amendment should be approved.
  - b. Manager: Review the form and attachments. Indicate whether the correction proposal should be approved or denied. If the proposal is denied, be sure to explain why the amendment was not approved and return the signed form to the specialist. Generally, a new correction proposal will be needed if the corrective amendment is not approved because it failed to satisfy the requirements of Rev. Proc. 2021-30, Section 4.05.
  - c. If corrective amendment appears to result in the appearance of an IRC 411(d)(6) cutback, but the manager and specialist determine the amendment should be approved because of facts and circumstances as permitted above in IRM 7.2.2.19(4) and IRM 7.2.2.19(5), a VC program coordinator must be consulted and they must also sign the form before it's returned to the specialist.
  - d. Manager: Check the appropriate box on the form indicating the possible appearance of a IRC 411(d)(6) cutback. Email the signed form and applicable attachments to the appropriate VC Program Coordinator in order to obtain 2nd level approval.
  - e. VC Program Coordinator: The program coordinator reviews the form and included attachments. If they agree that the amendment should be approved, they will sign and date the form and return it to the group manager and the specialist. If the program coordinator determines the amendment should not be approved they will mark and sign the form indicating the correction proposal was not approved. An explanation for the denial will be listed on the form.
- Note:** If the group manager does not agree with the program coordinator's decision, they may make an appeal to the Manager of VC.
- f. Specialist: Upload the signed form to the RCCMS case file.
- (8) Taxpayers may not request nor may VC grant IRC 7805(b) relief, even if the plan received a favorable determination letter for its plan document.
- (9) If the plan is a pre-approved plan and the corrective amendment isn't one of the pre-approved plan options, see IRM 7.2.2.28, Corrective Plan Amendments to Pre-Approved Plans, for special instructions.
- (10) The requirement to complete the Retroactive Amendment Form and to seek approval from a manager does not apply to screener's who are program coordinators.

7.2.2.20

(10-18-2022)

**Anonymous VCP  
Submissions If Made to  
the IRS Before  
12/31/2021**

- (1) Anonymous VCP cases are generally worked the same way as other VCP cases except that the plan sponsor's identity is not disclosed to the IRS until there is agreement on correction. See Rev. Proc. 2019-19.
- (2) Analyze the failures, correction methods and changes to administrative procedures following the described procedures in other sections of this IRM. As part of that process, secure your manager's approval and document it in the CCR/Chronology tab and in your workpapers.
- (3) See IRM 7.2.2.16, Dealing With Disagreements and Conference of Right, if you have ongoing disagreements with the representative over the disclosed failures and proposed correction methodology.
- (4) If you agree on the failures, correction methods and changes to administrative procedures, prepare a draft anonymous compliance statement as agreed to by your manager and the POA.

**Note:** Or, if the POA wants to use Form 14568, work with the POA to get revised narrative attachments to attach to the model compliance statement.

- (5) Send a draft compliance statement to your manager for review and approval before you request the disclosure of the plan sponsor's identity or present the draft compliance statement to the POA.
- (6) Once there is full agreement between VC and the POA, formally request the disclosure of the plan sponsor's identity. Use IRS Letter 5336 for this purpose.

**Note:** The TP/POA may fax the disclosure information and other necessary documents to you.

- (7) Upon disclosure of the taxpayer's identity, tell your manager the plan sponsor's identification, including the EIN, name of plan sponsor, name of plan, and plan number. Your manager directs an IDRS check to verify that the plan sponsor/plan is not under examination. If the submission is "Under Examination" as of the date of disclosure, they're ineligible for VCP and a compliance statement will not be issued.
- (8) After the IDRS check, update the key data fields in RCCMS by working with your group manager to transfer the case to Group 7558. Refer to IRM 7.2.2.3.2 for detailed case processing procedures. After the updated RCCMS case is returned to you, proceed with the next step.
- (9) If ATAT issues were included with the disclosure documents, contact your manager as you may need to coordinate with appropriate IRS employees. See Rev. Proc. 2019-19, Section 4.12.
- (10) If there are no "Under Examination" or ATAT issues, revise the draft compliance statement to include the necessary identifying information and share with the plan sponsor/POA to get feedback on accuracy.
- (11) IDRS check requirement applies to Anonymous Group VCP cases. Take these actions once you have received the Attachment A listing that identifies participating employers and plans:
  - a. Provide a copy of the Attachment A listing to your group manager.

- b. The group manager contacts the Manager of VC and the VC Staff Assistant to request help with an IDRS check to see if the disclosed EINs are valid and if there is examination activity involving the plan sponsors and plans listed on Attachment A.
- c. VC Staff assistant conducts the necessary research on IDRS using the generalized IDRS interface application -EICTRAA (GII-EICTRA).
- d. If the information on Attachment A is inaccurate or if there is examination activity involving any company listed on Attachment A or any of its retirement plans, it's possible they can't be party to the group VCP compliance statement as they are ineligible for VCP. See Rev. Proc. 2019-19, Section 5.08. If either problem occurs, the specialist must secure a revised Attachment A.
- e. VC can't close the group submission case until this IDRS check is performed, and if necessary, a revised replacement Attachment A is associated with the group compliance statement that we'll issue.

**Caution:** As of January 1, 2022, it's not permitted for VCP submissions to be made anonymously. If you are assigned an anonymous VCP submission case with a received date of January 1, 2022 or later, discuss the matter with your group manager and immediately request the identity of the plan sponsor, the name of the plan, plan #, fully completed Form 2848, and non-redacted VCP submission documents. If the POA refuses to provide the identity of the plan sponsor and plan, and any other necessary documents, close the case without issuing a compliance statement. See Rev. Proc. 2021-30, Section 10.10.

7.2.2.20.1  
(10-18-2022)  
**Pre-Submission  
Conferences**

- (1) As of January 1, 2022 a written request for a formal pre-submission conference regarding a possible VCP submission or involving an IRC 457(b) plan is permitted.
- (2) Requests are made via the Pay.gov Form 8950.
- (3) These submissions are worked from start to finish by the VC Program Coordinators who will prepare any necessary workpapers.
- (4) The program coordinators will contact the representative and schedule the pre-submission conference within 30 days from the case received date.
- (5) During the conference, feedback is provided on the issues and proposed correction methodology that were submitted.
- (6) The program coordinators issue Letter 5341, Closing Letter for EP Voluntary Compliance (VC) Pre-submission Conference Request indicating that a pre-submission conference was held and close the case after holding the pre-submission conference.
- (7) The representative receives no reliance from this request and if they want to receive a compliance statement they must submit a new Form 8950 application with a fully disclosed applicant and plan. See Rev. Proc. 2021-30, Section 10.01 for details.
- (8) Specialists who receive a VCP submission where Form 8950 Line 6b indicates that there was a prior pre-submission conference must reach out to their manager to request the RCCMS case file and review the pre-submission conference case file. See IRM 7.2.2.8, VCP Submissions-Technical Review Procedures.



7.2.2.21  
(10-22-2021)

**Voluntary Submissions  
involving 457(b) Eligible  
Plans of Deferred  
Compensation**

- (1) Rev. Proc. 2021-30, Section 4.09 permits plan sponsors to voluntarily submit a closing agreement request for their 457(b) plan if they're either:
  - Government entities.
  - Tax exempt organizations (in limited circumstances).
- (2) These filings are not VCP submissions. Rather, any 457(b) failure is resolved outside of EPCRS, via a DO 8-3 closing agreement signed by the plan sponsor and the Director of EP Rulings and Agreements.
- (3) Look to IRM 7.2.4 for additional case processing procedures.

7.2.2.22  
(10-18-2022)

**Group VCP Submission  
Procedures**

- (1) A Group VCP submission is submitted by an eligible organization for qualification failures affecting at least 20 individual client plans. The qualification failures must result from a systemic error involving the eligible organization.
- (2) Generally, a single submission is made. If the qualification failure affects more than one of the eligible organization's pre-approved plans, then the organization may need to submit additional VCP submissions.

**Exception:** Group VCP submissions can't include or mention any IRC 457(b) plans. If IRC 457(b) plans are affected by the systemic error, the applicant must make a separate application request for those plans by making a Non-VCP 457(b) submission using the Pay.gov Form 8950 application. The resulting submission is a closing agreement case. Follow the procedures in IRM 7.2.2.21 and IRM 7.2.4 for additional case processing procedures.

- (3) Review the submission to:
  - Determine if the proper number of submissions have been made.
  - Determine if the group submission satisfies the group submission eligibility requirements.
  - Make sure that the submission does not pertain to any IRC 457(b) plans.
- (4) Discuss with your manager before you contact the applicant/POA if:
  - The applicant should make additional submissions or made too many related group submissions.
  - The group submission doesn't satisfy the group submission requirements.
- (5) The Group VCP submission should enclose a \$10,000 fee. If more than 20 plans will be part of the submission, collect the remaining fee near the end of the VCP process. The additional fee is \$250 per plan in excess of 20 with the total fee capped at \$50,000. In 2021 and 2022 refer to Rev. Proc. 2021-4 or Rev. Proc. 2022-4 for fee amounts. In 2023, refer to the annual EP revenue procedure that list the fees in effect for that year.
- (6) Fix problems with the initial user fee payment:
  - a. If the minimum fee was not fully paid, collect any amounts owed as soon as possible.

- b. If the minimum fee was not paid at all, consider not processing the submission unless it can be promptly collected unless there are indications of unique circumstances.
  - c. If (a) or (b) applies, discuss with your manager before taking any action.
  - d. If more than \$10,000 was submitted, determine that the amount submitted is the appropriate user fee for the group submission.
  - e. Follow IRM 7.2.2.10.1, Instructions on Soliciting User Fees Owed, to collect initial owed user fee.
- (7) Generally, review group submissions like any other VCP submission.
- (8) The Model Compliance Statements and Schedules (Form 14568 series) aren't designed for Group VCP Submissions, so don't use them as the issued compliance statement.
- (9) If the stated qualification failures or correction methods don't uniformly apply to the listed employers/plans in the group submission, the applicant must clearly indicate which specific failures apply to specific employers/plans in submitted attachments and narratives.
  - a. The group submission compliance statement must include a narrative and listing that clearly shows which specific failures apply to the employers/plans.
  - b. If using the sample group submission compliance statements on the VC SharePoint site, this information would be part of a modified Attachment A or a separate attachment (for example, Attachment B).
- (10) Once the issues and correction methods have been finalized, prepare a draft group submission compliance statement that the eligible organization and the IRS will sign. See sample group compliance statements posted to the VC SharePoint site.
- (11) A group manager must approve all correction methods and the draft compliance statement before it is sent out to the POA/eligible organization.
- (12) When your group manager approves the draft group submission compliance statement:
  - a. Share the draft with the POA/eligible organization and request their comments or approval.
  - b. If the POA/eligible organization accepts the draft document, mail, or fax one copy to the eligible organization for signature along with Letter 5352, Request for Signature for Group VCP Submission.
  - c. Get the required certifications, listing of participating employers, if not already provided, and collect the additional owed user fee via Letter 5352. See Rev. Proc. 2021-30, Section 10.11.

**Note:** The POA/eligible organization may have an extended deadline of 120 days to submit these items.
- (13) We're required to check IDRS for every Group VCP submission. Take these actions after you receive the signed compliance statement and Attachment A listing of participating employers and their plans:
  - a. Give your manager a copy of the Attachment A listing.



- b. Group manager: contact the Manager of VC and the VC Staff Assistant to request help with an IDRS check to see if there's examination activity for the plan sponsors and plans listed on Attachment A.
  - c. If IDRS shows examination activity for any company listed on Attachment A or any of their retirement plans, they may not be party to the group VCP compliance statement because they are ineligible for VCP. See Rev. Proc. 2021-30, Section 5.08. If it occurs, the specialist must secure a revised Attachment A.
  - d. Specialist: you can't close the group submission case until this IDRS check is performed, and if necessary, you must include a revised replacement Attachment A with the group compliance statement compliance that we issue.
- (14) Group submissions are closed like any other VCP submission. Follow the procedures in IRM 7.2.2.23.

7.2.2.23  
(10-18-2022)  
**Closing Procedures for  
Specialists**

- (1) When a VCP case is ready for closing, take the following actions:
- a. Create a subfolder in the RCCMS Office Documents folder to store the closing letters, issued compliance statement and address documents. Name this subfolder "Closing Documents."
  - b. Prepare a VCP closing letter for the taxpayer and POA or individual listed on Form 8821, if applicable. Closing letter types are described more fully in IRM 7.2.2.25, Required Use of Standardized VC Letters, on the required use of standardized official IRS letters.
  - c. Do not date the closing letters or compliance statements. Make sure the typed name and signature of the current Manager of VC is on the letter and the compliance statement that is to be issued.
  - d. Use Letter 5353 for VCP cases closed favorably with or without a refund. There are several no action letters for cases not closed favorably. (IRM 7.2.25).
  - e. Prepare and upload a MS Word document or PDF to the RCCMS case record that contains the mailing address for applicant and POA or individual listed on Form 8821, if applicable.
  - f. Upload closing letters and compliance statement to the RCCMS record and place them in the "Closing Documents" subfolder in Office Documents.

Document	Number of Copies
Closing Letter	Original
Closing Letter-POA, or individual listed on Form 8821 if applicable.	Original

Document	Number of Copies
Model Compliance Statement.	Original version is part of the RCCMS case file. Extract a copy of the final version and add the manager of VC's printed name and signature. Upload it to the RCCMS record. <b>Note:</b> On the extracted pages remove references to fax numbers, the sender and receiver that often appear at the top and bottom of received fax pages.
Streamlined Compliance Statement	Original <b>Note:</b> Extract a copy of all referenced letters. Create a single PDF and upload it to the RCCMS record. Attach this PDF to each streamlined compliance statement.
Traditional Compliance Statement	Original
<sup>1</sup> This assumes one POA listed on Form 2848, or a single individual listed on Form 8821. You don't have to print extra copies if there's no POA or other individual named authorized to receive copies of written correspondence. You may need to print and mail additional copies if multiple individuals are listed on Form 2848 or 8821 and the box has been checked indicating that they will be sent notices and communications. To reduce costs, we limit the maximum number of POA letter packages to two.	

- (2) Go to the Activity record and update status code to "51". After saving and closing send an "Update request" by clicking on the Actions button. Don't forget to sync a few times by clicking on the "Send/Receive" button. Wait for the group manager to approve the request. Try clicking on "Send/Receive" every few minutes.
- (3) In the Activity record, make sure you input all fee information in the "POA and Misc" tab. This includes:
  - a. The initial fee paid.
  - b. Subsequent VCP user fees collected or sanctions if a closing agreement.
  - c. Refunds requested.
  - d. Dishonored or retired payments.
- (4) In the Activity record, make sure the project code is accurate and reflects the correct plan type.
- (5) Organize the compliance statement items mentioned above within the Office documents folder. Set up a Closing Documents subfolder and try to order them as follows (top to bottom):
  - a. Closing Letter to VCP applicant (generally Letter 5353).

- b. Closing Letter 937-A to POA or individual listed on Form 8821, if applicable,
  - c. Compliance statement (Form 14568 series or a drafted streamlined or traditional).
  - d. Referenced attachments, if using a model or streamlined compliance statement.
  - e. Address sheet/label for large windowed envelopments.
- (6) Make sure you have scanned and/or upload all emails, faxes, paper correspondence, exhibits, workpapers, files, you created or obtained during your review to the RCCMS record.

**Note:** After uploading scanned images of paper documents, refer to the *TE/GE Record Retention Guide* for information on the proper way to retire paper documents to the Federal Record Center.

- (7) Organize your files in VCP cases in RCCMS using these general guidelines:
- a. Follow the naming convention described in IRM 7.2.2.17.2, Mandatory RCCMS Naming Convention for EP VC Cases.
  - b. Place all closing documents into a Closing Documents subfolder.
  - c. Use file names that make sense and inform the user as to what the file is by looking at its name consistent with naming convention for EP VC cases.
  - d. Consider creating sub-folders in the Office Documents folder to help organize the non closure files and material in the submission.
- (8) Open the Activity. Set “Validate” to “Close”. Be sure all “red” items have an entry.
- (9) Go to the Closing Records tab and click on “New compliance.” When it opens, be sure the Validate is set to “Close.”
- (10) Take action on all “red” items. Complete the following fields in the closing record:

Closing Record	Steps, if necessary
General Tab- Disposal Code.	Enter a VC disposal code. Valid codes are between 770 through 780.
General Tab- Closed by: PBC.	Choose 400.
General Tab- Closed by: SBC.	Choose or enter 12401.
General Tab- Closed by: EGC.	Choose or enter Specialist’s group number.
Details Tab- Total Trust Assets.	Enter Asset number recorded on Form 8950, Line 4d.
Details Tab-Number of participants affected.	Enter the number of participants listed on Form 8950, Line 4e.

Closing Record	Steps, if necessary
Details Tab-Examiner's time.	Enter the total time you charged to the case. Include transferred time (time that a prior specialist charged) to the case. Total time should include all hours worked by all specialists (other than screener time).
Details Tab- Examiner's Name.	Enter or choose your name.
Individuals/Bus. (2 of 3).	Enter or choose Principal issue codes. These are VC failure codes. You may enter up to four. Find the codes in Document 6476 and in a list on the VC SharePoint. See Exhibit 7.2.2-1.

- (11) If your VCP submission has more than four failures, refer to the list on the VC SharePoint for instructions on how to choose the Principle issue codes to enter into RCCMS.
- (12) Save and close after you complete all required items.
- (13) If the case is ready to be closed, click on the "Actions" button and choose "Request Closure." After making the request, don't forget to sync a few times by clicking on the Send/Receive button.

#### 7.2.2.24 (10-18-2022)

#### Closing Procedures for Group Managers

- (1) Group manager:
  - a. Monitor your RCCMS inventory and look for cases in Status 51 with pending closing requests. Accept them as soon as possible.
  - b. Generally, within ten business days of receiving a RCCMS VCP case file for closing, issue the compliance statement and closing letters and update RCCMS or, if the case is not ready for closure, send the case back to the specialist via RCCMS.
  - c. Upload applicable files to RCCMS and do a final close via RCCMS update on the same date.
- (2) Group manager closes cases by taking these actions:
  - a. Review the case file, including the RCCMS closing record, applicable RCCMS activity screens, the closing letters, and compliance statements to determine if the VCP case is ready for closure.
  - b. Return the VCP case to the specialist for correction or further development if there are errors or the case was not properly developed. Be sure to document the reasons for the return by updating the CCR or the RCCMS Chronology tab as instructed by IRM 7.2.2.6.1(2)(a).
  - c. Address and correct errors in the compliance statement or closing letters before final close on RCCMS.
  - d. Sign and date the compliance statements and closing letters. If missing, add the printed name and signature of the Manager of VC.

**Note:** At the manager's discretion, a clerical person can sign and date. If you choose to do this, the RCCMS case will be temporarily transferred to the clerk.

  - e. Promptly mail one approved compliance statement plus applicable closing letters to the VCP applicant and copies to the POA or designated

individual listed on Form 8821, if applicable. Upload one set of the signed and dated documents to the RCCMS case's Office Documents folder.

**Note:** At the manager's discretion, a clerical person can mail and upload.

- f. Update RCCMS and close the case off the system by clicking on the "Actions" button and choosing "Final Close." Update the status code to 90- Final Close.

## 7.2.2.25 (10-18-2022) Required Use of Standardized VC Letters

- (1) Specialists and group managers must use specific official IRS letters when corresponding with plan sponsors for VCP submissions. This includes VC's closing letters.
- (2) VCP closing letters have the title "Manager of Voluntary Compliance" and his/her printed name and signature.
- (3) Use the specialist's signature and address for all letters requesting missing or additional information.
- (4) Customize official IRS letters where allowable and necessary, however don't change the content and format of these letters in any way.
- (5) The representative or appointee listed on Form 2848 or Form 8821 must receive concurrent copies of all letters the IRS sends to the applicant if the applicable box on Form 2848 and Form 8821 was checked. Specialists use Letter 937-A to send the POA and the appointee the copy of the applicant's or plan sponsor's letter.
- (6) Use the following table for a list of all published official IRS VC letters. Use the most recent version and discard any previous versions or sample letters. If a letter previously listed on the VC SharePoint is not on this list or in the publishing depository, it's not a valid letter. See *IRS Product Catalog Information* for the latest version of these letters.

Letter #	Letter Type	Description	When to Use
Letter 937-A	Transmittal Letter to POA/Appointee.	Cover letter for authorized persons listed on Form 2848 or Form 8821 who receive copies of any IRS letters addressed to VCP applicant.	Use as a cover letter when sending copies of any IRS letters addressed to the applicant to the authorized persons listed on Form 2848 and Form 8821, along with a copy of the issued compliance statement when applicable.
Letter 5336	Disclosure Request for Anonymous VCP	Cover letter to POA requesting plan sponsor's identity.	Use to request the applicant and plan identity for anonymous VCP submissions.
Letter 5338	Returning Paper VCP Cases Mailed to IRS on or after April 1, 2019.	Cover letter the TE/GE Adjustments group uses to return a paper VCP submission sent to the IRS on or after April 1, 2019.	Used only by TE/GE Adjustments to return paper VCP submissions mailed to the IRS.

Letter #	Letter Type	Description	When to Use
Letter 5339	Uncollected Fee-VCP Closing Letter.	Closing letter when a VCP submission has an unpaid user fee.	Use when you close a VCP submission because: <ul style="list-style-type: none"> <li>No user fee paid.</li> <li>A dishonored payment.</li> <li>Part of the user fee is still owed.</li> </ul> and the applicant refused to make the payment.
Letter 5340	Closing Letter-Ineligible VCP Submissions.	Closing letter for ineligible VCP cases - no action taken.	Use for the following ineligible VCP submissions: <ul style="list-style-type: none"> <li>No IRS qualification failures or 403(b) failures or participant loan failures.</li> <li>The plan or the exempt organization who sponsors the plan is under examination.</li> </ul> Taxpayer may be entitled to 100% user fee refund. See IRM 7.2.2.10.
Letter 5341	Closing Letter for EP Voluntary Compliance (VC) Pre-submission Conference Request	Closing letter for pre-submission conference request cases	Issue this closing letter after conducting a pre-submission conference with the named representative.
Letter 5345	VCP-General Letter to Request Information.	Request missing or additional information for all VCP submissions.	Use to request missing or additional information for VCP submissions made under any EPCRS revenue procedure.
Letter 5346	VCP 10 Day Follow-up to Information Request.	Follow up letter if no response to a request for information.	Use if plan sponsor/POA: <ul style="list-style-type: none"> <li>Doesn't submit Requested information.</li> <li>Responds incompletely to a previous information request.</li> </ul>
Letter 5347	VCP- No Action Letter-Failure to Agree.	<ul style="list-style-type: none"> <li>No action letter used when IRS and POA disagree on correction method. Generally, no refunds of paid fees.</li> <li>Partial refund permitted if the applicant originally overpaid their VCP fee.</li> </ul>	<ul style="list-style-type: none"> <li>Use for VCP cases where the IRS and POA can't agree on how to describe or correct a failure.</li> <li>No refund owed where the POA or TP refuses to provide requested information or if case has been substantively processed.</li> </ul>
Letter 5349	Failure to Respond-VCP Closing Letter.	No action closing letter used when we don't receive a response to any requests for additional information.	Use where the TP/POA doesn't respond or is unwilling to fulfill IRS requests for missing or additional information.

Letter #	Letter Type	Description	When to Use
Letter 5350	No Compliance Statement- VCP Submission in Error.	No action letter for cases where the TP/POA realizes that the VCP submission was made in error.	<ul style="list-style-type: none"> <li>• Use when the TP/POA informs VC that they submitted to VC in error.</li> <li>• Usually occurs when TP/POA obtains new information or realizes that no qualification failure occurred.</li> <li>• No refunds permitted if VC has substantively processed the case.</li> </ul>
Letter 5351	VCP Request a Taxpayer Signed Compliance Statement.	Cover letter when the compliance statement must be signed by the plan sponsor.	Use when material change in VCP narrative affecting failures and correction and you haven't secured a new penalty of perjury statement
Letter 5352	Request for Signature for Group VCP Submission.	Cover letter to request signed group submission compliance statement, and final procedural items.	Use for all VCP group submissions.
Letter 5353	Favorable VCP Closing Letter.	Regular favorable letter sent to the VCP applicant with the issued compliance statement.	Use for favorable closings.
Letter 5356	Letter to Extend 150-day correction period.	Letter that extends the standard VCP correction period.	Use if the group manager grants a request for an extension to the 150-day correction period on a closed VCP case. You might need to coordinate with the Manager of VC. IRM 7.2.2.26., Extension of the 150-Day VCP Correction Period.
Letter 5359	VC Request Signed DO 8-3 Closing Agreement	Cover letter requesting plan sponsor to sign DO 8-3 closing agreement for a 457(b) plan or any voluntary closing agreement case.	Use this letter to request a signed closing agreement along with payment of the owed sanction.



Letter #	Letter Type	Description	When to Use
Letter 5360	Closing Letter-No Action -Decline to Process.	<ul style="list-style-type: none"> <li>Closing letter used when VC declines to issue a compliance statement in the interests of sound tax administration.</li> <li>Closing letter when VC declines to process a submission involving a 457(b) plan.</li> </ul>	<ul style="list-style-type: none"> <li>Use if no compliance statement is issued in the interests of sound tax administration.</li> <li>Use if VC management and others decline to process a submission involving a 457(b) plan.</li> <li>Refund paid user fee, if any. Follow IRM 7.2.2.10.2, Refund Procedures and Instructions for VCP User Fees.</li> </ul>
Letter 5361	Closing Letter-No Action-457(b) governmental plan using SCP.	Cover letter when a plan sponsor/POA withdraws a governmental 457(b) submission because they may resolve any described failures using SCP rules available to these plans.	Use when a governmental plan sponsor chooses to use SCP after being informed of the liberal SCP already in the IRC and Regs. Refund any initial user fee payment per IRM 7.2.2.10.2, Refund Procedures and Instructions for VCP User Fees.
Letter 5362	Closing Letter-Favorable Letter for 457(b) submissions.	Favorable closing letter.	Issue after securing signed closing agreements and sanction payment.

7.2.2.26  
(10-18-2022)  
**Extensions of the  
150-Day VCP Correction  
Period**

- (1) Specialists or group managers may receive requests to extend the 150-day correction period in a closed VCP case. VC will consider these requests if the request:
  - a. Is in writing to a group manager or specialist before the end of the 150-day correction period in the issued compliance statement.
  - b. Explains why the extension is needed and specifies the amount of additional time sought.
- (2) Group manager:
  - a. Contact the Manager of VC's staff assistant to get the closed case file from RCCMS.
  - b. If possible, review the request in consultation with the specialist who worked the case.
- (3) Group manager can generally approve or deny the request. However, the manager should seek approval from the Manager of VC if:
  - a. The extension request exceeds six months.
  - b. The TP/POA requests a second extension.
- (4) Group manager:

- a. Issue Letter 5356, VCP Letter That Extends the 150-day Correction Period extending the 150-day correction period.
  - b. Contact the staff assistant to the Manager of VC to upload a copy of the issued Letter 5356 to the closed RCCMS VCP case.
- (5) VC doesn't charge a fee for an extension of the correction period.
- (6) Group manager: If you deny the request or it's not timely submitted, advise the taxpayer that they need to file a new VCP submission to obtain a new compliance statement if they're still eligible for VCP. The old compliance statement is no longer valid as the taxpayer has failed to comply with its terms.

7.2.2.27  
(10-18-2022)  
**Information Requests  
Regarding Open and  
Closed VCP Cases**

- (1) A VCP submission and any resulting compliance statement are subject to the confidentiality requirements of IRC 6103 and are not a written determination per IRC 6110.
- (2) Generally, VC doesn't give copies of compliance statements or information about specific individual VCP applicants to other functions of the IRS, including EP Examinations.
- (3) In order to provide efficient tax administration and to lessen taxpayer burden, VC provides limited information about a VCP submission under the following circumstances:
- a. VC will fax a copy of the issued compliance statement to EP Determinations for VCP submissions with a received date before 1/1/2017, associated with a determination letter application required by the EPCRS revenue procedure.
  - b. EP Determinations and EP Examinations should contact VC if they determine that an open or closed VCP submission is ineligible due to the plan sponsor or plan being "under examination" at the time of the VCP filing. "Under examination" is defined in the EPCRS revenue procedure.
  - c. EP Determinations or EP Examinations may, with the plan sponsor's consent, contact VC to get information about a past submission if a plan sponsor has lost, misplaced, or never received a copy of their compliance statement.
- (4) Ask about a VCP case at the VCP Status Inquiry Line at 626-927-2011. If you don't get a full and timely response, EP Examinations and EP Determinations may call or email a VC program coordinator, the Manager of VC or VC group managers.
- (5) Generally, EP Determinations and EP Voluntary Compliance take the following actions where there are determination letter cases with late amender failures and the employer or their POA has disclosed that they have a pending VCP submission with the IRS:
- a. EP Determinations specialists: Send an email to their manager which contains the name of the plan, name of the employer/plan sponsor, employer identification number, and plan number asking to verify the filing of the VCP submission with VC.
  - b. EP Determinations group managers forwards the email to the manager of Voluntary Compliance's staff assistant along with a copy to the manager

- of VC and requests verification of the VCP filing as well as the name of the VC specialist assigned to the case and RCCMS work unit number assigned to the submission.
- c. VC staff assistant or administrative assistant checks RCCMS and provides the requested available information. If the case is not assigned to a VC specialist at the time of the inquiry they will disclose that information to the EP Determinations group manager.
  - d. EP Determinations specialists: Contact the VC specialist assigned to the VCP case via email. Ask the specialist to confirm the late amender failures disclosed in the VCP case and the date those late amendments were adopted.
  - e. VC specialist: Provide a written response via email based upon the information in the RCCMS VCP case file.
- (6) If we determine a submitted VCP case was “under examination” when it was mailed to the IRS, close the submission as ineligible if it’s still open. If IRS closed the VCP case favorably, the issued compliance statement is invalid. While, not required, VC may choose to rescind the issued compliance statement.
- (7) If the VCP case was submitted before becoming “under examination,” the EP Examinations function should suspend their examination while the VCP is in process. The VC specialist should coordinate with EP Examinations when they resolve the VCP case. To coordinate with EP Examinations, refer to the memos issued to EP Examinations and Voluntary Compliance employees dated 9/12/05 and 9/26/06.
- (1) A corrective plan amendment to a pre-approved document that modifies the terms of a prototype plan or a volume submitter plan may cause that plan to lose reliance on the plan’s opinion or advisory letter. The corrective plan amendment won’t cause the plan to lose reliance if:
- a. The corrective amendment would otherwise be permitted per the rules for pre-approved plans; and
  - b. The plan sponsor hasn’t made any other modifications to the pre-approved plan that would cause the plan to lose its reliance on the opinion or advisory letter.
- (2) If the corrective amendment would normally cause the plan sponsor to lose reliance on the plan’s opinion or advisory letter, or if you’re not sure if it will:
- a. Ask your manager to contact the pre-approved plan coordinators and ask whether the corrective amendment is permitted for pre-approved plans.
  - b. Document the response and the coordinator’s name who responded in your case file.
  - c. If the amendment is acceptable to the pre-approved plan coordinators, include a caveat on the compliance statement in the enforcement section. See Form 14568 for sample language for this enforcement caveat.
  - d. If the corrective amendment is for an operational failure or demographic failure, it must also satisfy Rev. Proc. 2021-30. If this document is missing, the VCP submission is incomplete.

7.2.2.28  
(10-18-2022)  
**Corrective Plan  
Amendments to  
Pre-Approved Plans**

7.2.2.29  
(10-22-2021)  
**Missing Prior Plan  
Document (Relevant  
Sections)**

- (1) VCP submissions for nonamender failures must include a copy of the plan document that was in effect at the time of the described qualification failures (Rev. Proc. 2021-30, Section 11.04). If this document is missing, the VCP submission is incomplete.

**Note:** We don't enforce this rule if the submission is limited to late interim/good faith amendments that were adopted before the end of the extended remedial amendment cycle that first included them.

- (2) VCP submissions for most other qualification failures, generally must include a copy of the plan document (or relevant sections) that was in effect during the time of the described failures (Rev. Proc. 2021-30, Section 11.04). If these documents are missing, the VCP submission is incomplete.
- (3) Secure the missing documents. If the applicant or POA refuses to provide them, close the case as a Failure to Respond.
- (4) For nonamender failures (Form 14568-B, Schedule 2 failures) **only**, if the TP/POA informs you that they can't submit a copy of the prior plan document because it doesn't exist or they can't find it, the VC or eligible EP Determination Letter specialist working a VCP case should:
- Check all appropriate IRS records, including EDS and IDRS to determine if there is some evidence of a prior plan document or issued determination letter.
  - Consider it resolved if you find evidence for VCP processing purposes even though you don't have an actual document.
- (5) If there's no IRS record of a prior plan document, allow the applicant or POA to expand the VCP submission to include the failure to timely adopt an initial plan document. The applicant/POA must provide clear evidence that a qualified retirement plan existed in these earlier years and was made available to all eligible employees. They can prove this by submitting:
- Old financial statements in the name of the plan or trust.
  - Forms 5500. IDRS command code EMFOLI lists filed Forms 5500 for an EIN and plan number.
  - Old correspondence to employees.
  - Old annual plan statements issued to individual plan participants.
  - Correspondence with legal advisors and past TPAs.
  - An IRS Employee Plans favorable examination closing letter.
- (6) Correction is for the plan sponsor to retroactively adopt a plan document back to the initial plan year.
- (7) If the applicant/POA can't establish that a plan existed in prior plan years, consult with your manager to determine if you should close the case as a no action case. Consider using VC Closing Letter 5350.
- (8) If you don't expand the VCP submission to include a new failure, use one of the no action closing letters because the VCP submission is incomplete due to the missing prior plan document. You may waive this requirement, if appropriate, if it is an FDIC case or orphan plan.

7.2.2.30  
(10-18-2022)

**Taxpayer Requests for Modifications to Issued Compliance Statements Relating to Closed VCP Cases**

- (1) Once IRS issues a compliance statement to a VCP applicant, we don't change it or reopen it.
- (2) If the former VCP applicant or their representative requests a change to any of the issued compliance statement provisions such as the failure descriptions, factual information, changes to administrative procedures or correction method, they must submit a new VCP submission for a new compliance statement. See Rev. Proc. 2021-30. If this document is missing, the VCP submission is incomplete.
- (3) The applicant must pay a new user fee based on the amounts in effect when they make the new submission to the IRS. See Rev. Proc. 2022-4, Appendix A (and its annual successors).
- (4) Charge the time spent working these types of VCP submissions to the new VCP case. Don't reopen the original VCP case or charge any new time/fees to it.
- (5) If a VCP applicant/POA notifies a specialist or group manager that a *recently* issued compliance statement has IRS clerical errors and is inconsistent with the information in the VCP submission, the group manager may issue a corrected compliance statement. The procedures mentioned in IRM 7.2.2.30 (2) don't apply.

**Example:** Some examples of clerical errors include: incorrect plan name, incorrect EIN, and incorrect name of plan sponsor or VCP applicant.

- (6) Use the same execution date as the original issued compliance statement in the revised compliance statement - discussed in IRM 7.2.2.30 (5).
- (7) If IRM 7.2.2.30 (5) applies, don't open the original VCP submission. Charge time you spend preparing and mailing the revised compliance statement to group manager time (WebETS Code 680) or VC Coordination (WebETS Code 111) depending on who prepares the revised compliance statement.
- (8) In rare situations, VC may need to reopen a closed VCP case. The group manager:
  - a. Gets the Manager of VC's written permission.
  - b. Asks the Manager of VC's staff assistant to pull the closed case from the RCCMS Library.

7.2.2.31  
(10-18-2022)

**Voluntary Compliance Referrals to EP Examinations and Fraud Referral Procedures**

- (1) Generally, Employee Plans VC doesn't make referrals to the IRS Examination functions.
- (2) Historically, the EPCRS revenue procedures permit VC to consider making a referral to EP Examinations in limited, specific situations.
- (3) The specific plan sponsor-caused situations that **may** result in a referral to EP Examinations and the specific EPCRS revenue procedure sections include:
  - a. Applicant doesn't timely provide requested information needed to bring the submission to resolution - Section 10.07(4).
  - b. IRS and plan sponsor can't agree - Section 10.07(7).
  - c. Applicant doesn't return a signed compliance statement to the IRS (and any owed user fee) within 30 days of request - Section 10.07(8).

- d. Plan sponsor doesn't timely begin the corrections and the administrative procedures required by the compliance statement - Section 10.07(11).
- (4) If any of the specific situations apply, discuss with your manager and the Manager VC to see if you should make a referral to EP Examinations. Document this discussion in the CCR, or chronology tab in RCCMS, workpapers, or email.

**Note:** Use these procedures for any VCP submission in which you aren't issuing a favorable compliance statement, or where a compliance statement may be issued but one or more failure were withdrawn from the original submission due to disagreements on how to correct.

- (5) Specialists follow the steps below if making a referral to EP Examinations:

Actions	Steps, if necessary
Complete Form 5666, TE/GE Referral Information Report.	<ol style="list-style-type: none"> <li>1. Complete Form 5666 boxes: <ul style="list-style-type: none"> <li>• A-F (for plan year generally use the most current plan year for which a Form 5500 has been filed.</li> <li>• J (if applicable).</li> <li>• L- Add your electronic signature.</li> <li>• P-1-P12 (i.e. EIN of plan sponsor)</li> <li>• P40-P42 (Plan #).</li> <li>• O.</li> </ul> </li> <li>2. When completing Box O include the following information: <ul style="list-style-type: none"> <li>• Full plan name.</li> <li>• Specialist name and telephone #.</li> <li>• Describe the qualification failures in the VCP submission. Include the type of failure, related tax issues if known, the plan years in which the failure occurred. Describe the IRC 401(a) violations, listing the specific Code section. Explain your reasoning for referring the plan for examination (for example, "there could be a potential prohibited transaction because..." or, "the plan has violated Code section because....," or "the correction proposal was not reasonable citing the appropriate section in the EPCRS revenue procedure."</li> <li>• Be sure to indicate that we're not going to issue a VCP compliance statement.</li> </ul> </li> </ol>

Actions	Steps, if necessary
Create PDF copy of relevant documents from the VCP submission.	Include: <ul style="list-style-type: none"> <li>Documents that describe the qualification and or tax issue.</li> <li>For failure to respond cases, include copies of the case chronology record and VC letters sent to the applicant.</li> </ul>
Sign Form 5666 electronically.	Sign using Adobe.
Secure email the completed Form 5666 and the PDF attachments to group manager. <b>Note:</b> Group Manager reviews Form 5666 and if approved returns a signed and dated form to the specialist.	Group manager: Using Adobe, sign and date Item M on Form 5666.
Update the RCCMS record.	Go to the Office Documents folder and create a subfolder called "Referral to EP Exam."
Upload documents to the Referral to EP Exam subfolder.	Upload: <ul style="list-style-type: none"> <li>Documentation of discussion with your manager and the Manager of VC about the referral.</li> <li>Signed Form 5666 and PDF attachment.</li> </ul>
Send the referral to the Referrals Group.	<ol style="list-style-type: none"> <li>Use secure, encrypted email.</li> <li>Type in the subject line "EP Referral from VC."</li> <li>Send email to <i>EOclass@irs.gov</i></li> <li>Upload a printed copy of the sent email to RCCMS and place in the Referral to EP Exam subfolder.</li> </ol>

(6) Find sample versions of completed Form 5666 on the VC SharePoint.

7.2.2.31.1  
(10-18-2022)  
**Fraud Referral  
Procedures**

- (1) Tax fraud is defined as an intentional wrongdoing by a taxpayer, with the specific purpose of evading a tax known or believed to be owed.
- (2) Tax fraud requires:
  - a. A tax due and owing, and
  - b. A fraudulent intent.
- (3) Taxpayers who knowingly understate their tax liability often leave evidence in the form of indicators. Fraud indicators are divided into two categories:
  1. **Indications of Fraud** are a sign or symptom, or signify that actions may have been done for the purpose of deceit, concealment or to make things seem other than what they are.
  2. **Affirmative Acts (Firm Indications) of Fraud** are those actions that establish that a particular process was deliberately done for the purpose of deceit, subterfuge, camouflage, concealment, some attempt to color or obscure events, or make things seem other than what they are.



- (4) Don't pursue fraud unless affirmative acts are present. For examples, see IRM 25.1.1.3, Fraud Handbook, Indicators of Fraud vs. Affirmative Acts of Fraud.
- (5) Follow these procedures for potential fraud referrals:

If:	Then:
1. You discover potential fraud during the review of a VCP submission.	Discuss any possible issues with your group manager.
2. Your manager agrees that potential fraud may exist.	Contact the EP Determinations Fraud Reviewer (EPDFR) at <i>TE/GE Connect-Fraud</i> .
3. The EPDFR agrees that potential fraud may exist.	The EPDFR contacts the EP SME in EP Examinations.
4. The EP SME agrees that potential fraud may exist.	The EP SME may contact the TE/GE Fraud Specialist.
5. The EP SME wants to discuss the matter with VC.	The EP SME arranges a conference call to discuss the case with the: <ul style="list-style-type: none"><li>• Specialist.</li><li>• Specialist's group manager.</li><li>• Manager of VC.</li><li>• EPDFR, and TE/GE Fraud Specialist.</li></ul>
6. If the FTA agrees that potential fraud exists.	The EP SME arranges a conference call to discuss the case with the: <ul style="list-style-type: none"><li>• Specialist.</li><li>• Specialist's group manager.</li><li>• Manager of VC.</li><li>• EPDFR, TE/GE Fraud Specialist and FTA.</li></ul>

- (6) At any point, the parties may decide that a fraud referral is not appropriate and instruct the specialist to:
  - a. Make a referral to EP Examinations. Follow the procedures in IRM 7.2.2.31 to make the referral.
  - b. Make a promoter referral using Form 14242 Report Suspected Abusive Tax Promotions or Preparers, to the Lead Development Center.
  - c. Make a referral to other areas such as the Office of Professional Responsibility, another IRS operating division, or another agency.
- (7) The group manager and the Manager of VC determine whether or not VC will issue a compliance statement in the interest of sound tax administration or because it would be inappropriate.
- (8) If all parties agree that the case should be developed for fraud:
  - a. Specialist: complete Form 11661, Fraud Development Recommendation - Examination and send the completed form to your manager via encrypted email.

**Note:** EP SME and TE/GE Fraud Specialist and FTA help complete the form.

- b. Group manager: review the form and if acceptable sign it electronically and return to the specialist.
  - c. Specialist: send the signed form to the EPDFR, EP SME and TE/GE Fraud Specialist.
  - d. Specialist: you may need to take additional actions as instructed.
- (9) If criminal fraud is suspected, then specialist completes Form 2797, Referral Report of Potential Criminal Fraud Cases. Follow procedures similar to those in IRM 7.11.10.3.1.1 Criminal Fraud Procedures.

**Exhibit 7.2.2-1 (10-18-2022)****Miscellaneous Links to the VC SharePoint site**

Listing of internet links to the VC SharePoint site for various miscellaneous items

1. *Summary Listing of Published VC Letters*
2. *VC Failure Codes Used as RCCMS Primary Issue Code lookup table*
3. *VC Codes in RCCMS*
4. *VC Refund Form mentioned in IRM 7.2.2.10.2, Refund Procedures and Instructions for VCP User Fees*
5. *Email contacts in TE/GE Adjustments With Regard to VCP Refund Requests mentioned in IRM 7.2.2.10.2, Refund Procedures and Instructions for VCP User Fees*
6. *Sample Compliance Statements*

**Exhibit 7.2.2-2 (10-18-2022)****Guide to VCP Case Processing Procedures**

Guide to VCP Case Processing Procedures:

*Processing VCP Receipts and Initial Processing by the IRS or Pay.gov*

*Early Closing for Certain VCP Submissions*

*Procedures to Fix Errors or Make Updates to Key RCCMS Fields*

*Procedures for Correction Disposal of VCP Cases on RCCMS*

*Screening of VCP Cases and Screening VCP Cases in RCCMS*

*General VCP Case Assignment Procedures for Group Managers*

Procedures for Specialists Working VCP Cases at the Group Level:

1. *Required Use of Form 5464 (or RCCMS Chronology Tab) and WebETS*
2. *Actions To Be Taken Upon Receipt of New VCP cases*
3. *Check and Update RCCMS Activity Record*
4. *Reviewing VCP Cases-Initial*
  - a. *Basic Responsibilities*
  - b. *Verify correctness of fee and check to see if paid with plan assets*
  - c. *Check Form 2848*
  - d. *Check to see if Under Examination*
  - e. *Check ATAT Statement*
  - f. *Check for missing or incomplete Forms 8950*
  - g. *Check for required enclosures*
  - h. *Check prior plan document*
  - i. *Check for missing explanations for special tax relief*
  - j. *Check for penalty of perjury-Anonymous Submissions if the case is a paper submission*
  - k. *Request additional information*
  - l. *Documentation*
5. *Reviewing VCP Cases-Technical Review Procedures*
  - a. *Basic Responsibilities*
  - b. *Conduct an initial review of the submission*
  - c. *Check category type*
  - d. *Review and respond to screener comments*
  - e. *Model compliance statements*
  - f. *Check and see if SSN is being used*
  - g. *Converting a VCP Case into a VCAP*
6. *Model Compliance Statements*
  - a. *Reviewing pre-formatted compliance statements*
7. *Procedures Involving User Fee Issues*

## Exhibit 7.2.2-2 (Cont. 1) (10-18-2022) Guide to VCP Case Processing Procedures

- a. *Special fee waivers/refunds*
  - b. *Additional fees and Instructions*
  - c. *VCP Refunds and Instructions*
  - d. *Dishonored User Fee Payments*
  - e. *Terminating Orphan Plans*
8. Special Tax Relief Requests permitted by section 6.09 of Rev. Proc. 2021-30.
- a. *Basic Principle and authority*
  - b. *IRC 72(t) additional income tax*
  - c. *IRC 4972, IRC 4973, and IRC 4974*
  - d. *IRC 4979*
9. Power of Attorney Form 2848 and Limitations of Form 8821
- a. *Limitations and basic requirements*
  - b. *Verify that Form 2848 correctly completed*
  - c. *Anonymous submissions*
10. Procedures for contacting and corresponding with POA and VCP applicant
- a. *Permitted contacts and conditions involving Letters, Fax, and email*
  - b. *Use of plain language*
  - c. *Letter Types*
  - d. *Procedure if no response*
11. Compliance Statements
- a. *Defined*
  - b. *Types and characteristics*
  - c. *General procedures*
12. *Conference of Right and dealing with disagreements with VCP Applicant/POA*
13. Analyzing qualification failures
- a. *Principle*
  - b. *General rule and plan document failures*
  - c. *Operational failures*
  - d. *Ineligible employer*
  - e. *Corrections outside of Appendix A/B safe harbors*
  - f. *Required coordination*
  - g. *Pick-up contributions permitted by IRC 414(h)*
14. *Workpapers for VCP Cases*
15. *Mandatory RCCMS Naming Convention for EP VC Cases*
16. *Participant loan failures-IRC 72(p) violations only*
17. Procedures for handling retroactive plan amendments that conform the written plan to the plan's operation

**Exhibit 7.2.2-2 (Cont. 2) (10-18-2022)****Guide to VCP Case Processing Procedures**

- a. *Basic rules*
- b. *Amendment increases benefits*
- c. *Amendment decreases benefits*
- d. *Required coordination*
- e. *Effect on Pre-approved plans*

## 18. Dealing with Anonymous Submissions

- a. *General rule*
- b. *Analyze case and required coordination*
- c. *Requesting disclosure of plan sponsor's identity*
- d. *Check audit status as of date of disclosure*

19. *Pre-Submission Conferences*

## 20. Procedures for 457(b) submissions

a. *Special rules*

- 21. *Procedures for Group VCP Submissions*
- 22. *Closing procedures for Specialists*
- 23. *Closing procedures for Group Managers*
- 24. *Required use of Standardized VC letters; listing of official letters*
- 25. *Extensions to 150-day correction period*
- 26. *Information requests from EP Examinations and EP Determinations*
- 27. *Amendments to Pre-approved plans*
- 28. *Procedures- Missing prior plan document*
- 29. *Modifications to issued compliance statements associated with closed VCP cases*
- 30. *Voluntary Compliance Referrals to EP Examinations*
- 31. *Fraud Referral Procedures*