

## Appendix D – VCP Submission Instructions

### General Instructions

Appendix D is designed to help applicants under the Voluntary Correction Program (“VCP”) satisfy the application requirements for a VCP submission provided in [section 11 of Rev. Proc. 2008-50, 2008-35 I.R.B. 464](#). Use of Appendix D helps ensure that VCP submissions are consistent and complete. Please ensure that the name of the plan, the plan number, and the applicant’s employer identification number (“EIN”) appear at the top left of each page of Appendix D and any attachments thereto.

Appendix D contains seven parts. A complete VCP application using Appendix D must contain all seven parts (with supplemental information as required by the Appendix), whether or not they are relevant to the request being submitted. The contents of Appendix D should not be modified. However, if additional space is needed to respond to any of the questions or to provide pertinent information, pages may be added, so long as they are properly referenced in the Appendix itself. Also, since the application may form part of a document that is executed by the Internal Revenue Service (“Service”), the Appendix (as distinguished from any cover letter or other supplemental letters that the applicant is not required to but chooses to provide) should not be submitted under the letterhead of the applicant or the applicant’s authorized representative.

Please be sure to include the *Enforcement Resolution* (Part VII); however, you should complete only Parts I through VI of Appendix D. The Enforcement Resolution may only be completed by the Service. If the application is acceptable as submitted, the Service may execute the Enforcement Resolution to indicate its approval of the submission. In such a situation, the executed Enforcement Resolution will be made part of the compliance statement issued with respect to the plan.

If you are submitting a VCP request using Appendix D, then Part I of Appendix C does not need to be completed.

**NOTE** : If the submission contains some failures that can be addressed by using one or more of the schedules in Appendix F, but also contains failures that cannot be addressed under Appendix F, you may submit Appendix D along with the appropriate schedule or schedules from Appendix F. In making such a submission please:

1. Omit the “general” portion of Appendix F (i.e., Parts I through IV)
2. Refer to the Appendix F schedules that are attached to Appendix D under Part II (“*Applicant’s Description of Failures*”), Part III (“*Applicant’s Description of the Proposed Method of Correction*”) and Part IV (“*Applicant’s Proposed Revision to Administrative Procedures*”).

## Special Rules for Anonymous Submissions

When preparing Appendix D in conjunction with the Anonymous Submission procedures under [section 10.10 of Rev. Proc. 2008-50](#), please complete all information unless such information would identify the plan or the applicant. Examples of items you should omit are the name of the applicant, the name of the plan, and the applicant's EIN. You may wish to prepare a complete application including such information, then remove or redact any identifying information before submitting the application to the Service. If the Service and the plan's authorized representative agree that the failures identified in the submission may be corrected under VCP using the methods described in the submission, the Service will request that you submit a non-redacted version of Appendix D.

## When is a Determination Letter Application Required under VCP?

Under certain circumstances, a determination letter application may be required to be submitted to the Service along with a VCP submission.

Nonamender failure - Nonamender failure - If the VCP submission contains failures relating only to required good faith plan amendments under the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16 (EGTRRA good faith amendments), (2) interim amendments described in [section 5.01 of Rev. Proc. 2007-44, 2007-28 I.R.B. 54](#), or (3) amendments required to reflect the changed operation of the plan on account of the plan sponsor's decision to implement optional law changes as described in [section 6.05\(3\) of Rev. Proc. 2008-50](#), and the end of the plan's applicable remedial amendment cycle under Rev. Proc. 2007-44 has not passed, a determination letter application should not be filed with the VCP submission. A plan's applicable remedial amendment cycle is the cycle during which falls the amendment's adoption deadline under § 401(b). For example, in the case of a Cycle D individually designed plan where the sole qualification failure is the failure to adopt an interim amendment listed in the 2008 Cumulative List of Changes in Plan Qualification set forth in [Notice 2008-108, 2008-50 I.R.B. 1275](#), so long as the VCP request is submitted by January 31, 2010, the end of the applicable cycle with respect to such interim amendment, no determination letter request should be filed along with the VCP submission. However, if such VCP request is submitted after January 31, 2010, a determination letter application would be required to be submitted along with the VCP request. Similarly, if the deadline for adopting an interim amendment falls within the plan's next cycle, so long as the applicant submits its VCP request by January 31, 2015, a determination letter application should not be submitted along with the VCP request. (Note that even if a determination letter application is not required to be submitted with a VCP request, if the plan is on-cycle, the plan sponsor should ensure that a determination letter application is filed with the [Cincinnati Submission Processing Center](#) by the end of the applicable cycle.)

For all nonamender failures other than those described in the preceding paragraph, a determination letter application is required to be submitted along with the VCP request and both items must be mailed to the address in Washington, D.C. (see *Where to Mail Your VCP Submission*, below). This is true whether the plan is on-cycle or off-cycle.

Correction by plan amendment of operational or demographic failures - Under certain circumstances, operational and demographic failures are permitted to be corrected through a retroactive plan amendment that either modifies plan provisions to reflect the way the plan was operated or corrects a nondiscrimination failure (see [Rev. Proc. 2008-50, section 4.05](#)). If the plan is off-cycle when such failure is submitted under VCP, the plan sponsor should not submit a determination letter application with its VCP submission. If the plan amendment is accepted as a proper correction for the failure, the compliance statement under VCP will constitute a determination on the effect of the plan amendment on the qualification of the plan; however, the compliance statement is subject to the condition that the amendment be submitted as part of a separate determination letter application to the [Cincinnati Submission Processing Center](#) during the plan's on-cycle year (or if earlier, in connection with the plan's termination), and that a favorable determination letter be issued with respect to the plan. If the plan is on-cycle when the operational or demographic failure is submitted under VCP, the plan sponsor should generally submit its determination letter application with the VCP submission. However, if the VCP submission is made early in the plan's cycle, and the plan sponsor wishes to submit its determination letter application at the end of the plan's cycle, the plan sponsor may make its VCP submission and request that the Service not require a determination letter application to be processed along with the VCP submission.

Exceptions - Notwithstanding the above, a determination letter application is not required if correction by plan amendment is achieved through the adoption of an amendment that is designated as a model amendment by the Service or through the adoption of a prototype or volume submitter plan with an opinion or advisory letter as provided in [Rev. Proc. 2009-6, 2009-1 I.R.B. 189](#), on which the plan sponsor has reliance.

In addition, in the case of a defined contribution plan that is a pre-approved plan (that is, a master and prototype (M&P) or volume submitter (VS) plan), the adoption of an amendment required to correct a failure under VCP will not require the submission of a determination letter with the VCP application and will not cause the plan to lose its status as an M&P or VS plan, provided that no other modification has been made to the plan that would cause the plan to lose its reliance on the opinion or advisory letter. The adopting employer will be allowed to remain within the six-year remedial amendment cycle provided in [Rev. Proc. 2007-44](#). The issuance of the compliance statement with respect to the plan will constitute a determination on the effect of the corrective plan amendment on the qualification of the plan, and a subsequent filing of a determination letter request on such amendment will not be required until the expiration of the next six-year remedial amendment cycle (which currently is January 31, 2017, as provided in [section 18.01 of Rev. Proc. 2007-44](#)). For

further information see, [memo on Corrective Amendments to Pre-Approved Plans, dated March 11, 2009](#).

Applicable cumulative list - Pursuant to [Rev. Proc. 2008-50, section 6.05\(1\)](#), if a determination letter is required, then, unless otherwise specified, the provisions of [Rev. Proc. 2007-44](#) apply. Thus, for example, in the case of an ongoing individually designed plan, a determination letter application will be reviewed with respect to all items of the cumulative list (as defined in [Rev. Proc. 2007-44, section 4](#)) that would apply to the cycle during which the determination letter application is filed.

The following chart summarizes the requirement to submit a determination letter application under VCP:

<b>Type of Qualification Failure</b>	<b>Off-Cycle Sponsors</b>	<b>On-Cycle Sponsors</b>
Nonamender failures with respect to EGTRRA good faith, interim and optional amendments (for which the applicable remedial amendment period has not expired).	No determination letter (DL) application required. Corrective amendments to be included with subsequent on-cycle DL filing along with copy of the VCP compliance statement.	No DL application required. Corrective amendments to be included with on-cycle DL filing along with copy of the VCP compliance statement.
Nonamender failures other than EGTRRA good faith, interim and optional amendments.	DL application required. The DL application must be included with the VCP submission and mailed to Washington DC. Plan must comply with the cumulative list in effect on the date the application is mailed to the Service.	DL application required. The DL application must be included with the VCP submission and mailed to Washington DC. Plan must comply with the cumulative list in effect on the date the application is mailed to the Service.
Operational and demographic failures that are corrected via retroactive plan amendment.	No DL application required. Corrective amendments to be included with subsequent on-cycle DL filing to Cincinnati Submission Processing Center, along with copy of VCP compliance statement.	DL application required and must be included with the VCP submission mailed to the Washington DC address.

## Where to Mail Your VCP Submission

Mail your VCP submission and accompanying determination letter application, if applicable (see *When is a Determination Letter Application Required under VCP*

above), along with the VCP compliance fee and appropriate determination letter user fee, if applicable, to the following address:

Internal Revenue Service  
Attention: SE:T:EP:RA:VC  
P.O. Box 27063  
Washington, DC 20038-7063

## Line Instructions - Appendix D

### Part I – Plan Information

Line 1 *Applicant's Name*: If the applicant is someone other than the current sponsor of the plan, please attach an explanation along with all identifying information (name, EIN, address, etc.) for the plan sponsor.

Line 5 *Applicant's EIN*: Please make sure to enter the EIN of the applicant, not the EIN of the plan's trust. Do not enter a Social Security Number. If the applicant does not have an EIN, the applicant should apply for an EIN using [the procedures found here](#).

Line 6 *Plan No.*: Enter the unique three-digit plan number used to identify this plan on Form 5500. Not required for SEPs or SIMPLEs.

Line 7 *Plan Name*: List the full name of the plan, as shown on Form 5500 or other related documents.

Line 8 *Type of Submission*: Check only one box.

Line 9 *Type of Plan*: Check only one box.

Line 11 *Number of participants in the plan as provided on the most recently filed Form 5500 series*: With respect to Form 5500, this is the number shown on line 7(f) of the most recently filed Form 5500 series return. Plans that are not required to file a Form 5500 series return should enter the number of participants as of the last day of the most recently ended plan year. Plans that have been terminated should enter the number of participants on the Form 5500 series return filed for the year prior to the year of termination

Line 12 *Assets in the plan as of the last day of the most recently ended plan year (round to nearest dollar)*: Please provide the total end of year asset information as shown on the most recently filed Form 5500 series return. Plans that are not required to file Form 5500 series return should enter the amount of assets to the extent that information is available to the applicant.

Line 13 *Applicant's Representative's Name*: List an individual (not a corporate or firm name) authorized to represent or receive information about the applicant as shown on [Form 2848](#) or [Form 8821](#). You may list up to three individuals on Form 2848; however, please enter only the primary representative's name on this line.

Line 18 *Representative's E-Mail Address (optional)*: Please note that we may initiate communications with an authorized representative via e-mail, but we will not use any information that might identify the applicant (e.g., name or EIN) in such electronic communications. Any e-mails will refer only to the nine-digit control number we have assigned to the submission and that will be provided to the representative if Appendix E ("Acknowledgment Letter") is properly completed and included with the submission. Therefore, it is important to make note of this control number.

#### **Part VI – Applicant's Representations**

Item B: One of these boxes must be checked.

Item D: The penalty of perjury statement must be signed by the applicant, and not the applicant's representative. If the applicant is not an individual, the signature must be of a person authorized to sign such documents on behalf of the applicant (e.g., a corporate officer). The penalty of perjury statement should not be completed on the initial filing of an anonymous submission.

#### **Part VII – Enforcement Resolution**

The applicant must include the Enforcement Resolution with its VCP submission. Do not complete the Enforcement Resolution. The Enforcement Resolution may only be completed by the Service.