

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

**Bulletin No. 2015-16**  
**April 20, 2015**

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### INCOME TAX

#### **REG-133489-13, page 926.**

Proposed regulations relating to the allocation of the credit for increasing research activities to corporations and trades or businesses under common control. Also contains proposed regulations relating to the allocation of the railroad track maintenance credit, and the election for a reduced research credit.

#### **T.D. 9717, page 910.**

Final and temporary regulations relating to the allocation of the credit for increasing research activities to corporations and trades or businesses under common control. Also contains final and temporary regulations relating to the allocation of the railroad track maintenance credit, and the election for a reduced research credit.

### EMPLOYEE PLANS

#### **Rev. Proc. 2015-27, page 914.**

This revenue procedure contains modifications to Revenue Procedure 2013-12, 2013-4 I.R.B. 313. The modifications

reflected in this revenue procedure include miscellaneous changes made to improve EPCRS, such as reducing VCP compliance fees relating to failures to meet the requirements of § 72(p) with respect to participant loans, and clarifying that for certain Overpayments, as defined in sections 5.01(3)(c) and 5.02(4) of Rev. Proc. 2013-12, a plan may use correction methods other than the correction methods set forth in section 6.06(3) and 6.06(4) of Rev. Proc. 2013-12. This revenue procedure also requests comments on recoupment of Overpayments.

#### **Rev. Proc. 2015-28, page 920.**

This revenue procedure contains modifications to Revenue Procedure 2013-12, 2013-4 I.R.B. 313. The modifications reflected in this revenue procedure include new safe harbor EPCRS correction methods relating to automatic contribution features (including automatic enrollment and automatic escalation of elective deferrals) in plans described in § 401(k) and § 403(b); and special safe harbor correction methods established for plans (including those with automatic contribution features) that have failures that are of limited duration involving elective deferrals.

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## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

T.D. 9717

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

### Allocation of Controlled Group Research Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the allocation of the credit for increasing research activities (research credit) to corporations and trades or businesses under common control (controlled groups). This document also contains final and temporary regulations relating to the allocation of the railroad track maintenance credit and the election for a reduced research credit. The text of these temporary regulations also serves as the text of the proposed regulations (REG-133489-13) published in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective date:* These regulations are effective April 3, 2015.

*Applicability date:* For dates of applicability, see §§ 1.41-6T(j), 1.45G-1T(g), and 1.280C-4T(c).

FOR FURTHER INFORMATION  
CONTACT: James Holmes, at (202) 317-4137; (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background

This document contains final and temporary regulations for § 1.41-6, § 1.45G-1, and § 1.280C-4 of the Income Tax Regulations (26 CFR Part 1). These regulations update the rules in a manner that is consistent with the amendments made to section 41(f)(1)(A)(ii) and section 41(f)(1)(B)(ii) in Section 301(c) of the Act.

#### Explanation of Provisions

##### *Section 41—Research Credit*

Section 41(a) provides an incremental tax credit for increasing research activities and is based on a percentage of a taxpayer's qualified research expenses over a base amount, basic research payments as determined under section 41(e)(1)(A), and amounts paid or incurred to energy research consortiums (collectively, "QREs"). Under section 41(f)(1) and § 1.41-6(b), all members of a controlled group are treated as a single taxpayer for purposes of computing the research credit for the group (group credit). Section 1.41-6(b) provides that the group credit is computed by applying all of the section 41 computational rules on an aggregate basis. Section 1.41-6(c) provides a method of allocating a group research credit among the members of the controlled group.

Section 301(c) of the Act amended section 41(f)(1)(A)(ii) and section 41(f)(1)(B)(ii) by requiring the allocation of research credits to each controlled group member "on a proportionate basis to its share of the aggregate of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, taken into account by such controlled group for purposes of this section." Section 301(c) of the Act applies to taxable years beginning after December 31, 2011.

Former section 41(f)(1)(A)(ii) and former section 41(f)(1)(B)(ii) provided that the research credit allowable to a controlled group member shall be its proportionate shares of the QREs giving rise to the credit. Prior to these regulations, § 1.41-6(c)(1)(i) required a controlled group to allocate the group credit in proportion to each member's stand-alone entity credit, as defined in § 1.41-6(c)(2), in cases in which the group credit does not exceed the sum of the stand-alone entity credits of all of the members. If the group credit does exceed this sum, then the excess of the group credit over the sum of the stand-alone entity credits of all of the members was allocated in proportion to

the QREs of the members of the controlled group. See § 1.41-6(c)(1)(ii).

Notice 2013-20 (2013-15 IRB 902 (April 8, 2013)) was released on March 9, 2013, to provide interim guidance relating to the allocation of the controlled group research credit and is effective for taxable years beginning after December 31, 2011. Notice 2013-20 provides that the group credit is allocated to group members based on each member's share of QREs, without regard to whether the member would have a stand-alone entity credit or what the amount of any such credit would be.

The final and temporary regulations implement the Act's changes to the allocation of the controlled group research credit by revising the allocation method in § 1.41-6(c), (d), and (e). Section 1.41-6T(c) provides an allocation method that follows the approach taken in Notice 2013-20. Section 1.41-6T(c) provides that the group credit is allocated to group members based on a member's proportionate share of the controlled group's aggregate QREs. Members are no longer required to calculate a stand-alone entity credit. The temporary regulations also remove references to the stand-alone entity credit in § 1.41-6(d)(1) and (3). New examples are provided in § 1.41-6T(e). The first example illustrates a general application of the allocation method provided in these temporary regulations. The second example demonstrates an allocation under these temporary regulations where a consolidated group is treated as a single member of a controlled group pursuant to § 1.41-6T(d).

A commenter to Notice 2013-20 suggested that the IRS adopt a safe harbor under § 1.41-6(c) that permits taxpayers to calculate and allocate group credits for taxable years ending prior to January 1, 2013, under the new law. The commenter's proposal would effectively make the Act's amendments retroactive to before the effective date of the statutory change (change effective for taxable years beginning after December 31, 2011). Therefore, the regulations do not adopt this suggestion for taxable years beginning before January 1, 2012. For taxable years begin-

ning before January 1, 2012, taxpayers must apply the rules applicable to such taxable years.

#### *Section 45G—Railroad track maintenance credit (RTMC)*

Section 45G, subject to limitations, generally provides a RTMC in an amount equal to fifty percent of the qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during the year. Section 45G(e)(2) provides, for controlled groups, that rules similar to the rules of section 41(f)(1) shall apply for purposes of section 45G. Section 1.45G-1(f) provides guidance on determining the amount of RTMC under section 45G if a taxpayer is a member of a controlled group. Section 1.45G-1(f) applies rules similar to the rules of § 1.41-6 for allocating a group RTMC.

The temporary regulations add § 1.45G-1T(f)(4) to provide an allocation method for the RTMC that is consistent with the Act's amendments to section 41(f)(1). Section 1.45G-1T(f)(5)(i) and (ii) of the temporary regulations remove references to the stand-alone entity credit.

#### *Section 280C(c)—Credit for Increasing Research Activities*

Section 280C(c)(1) generally disallows otherwise allowable deductions for QREs in an amount equal to the research credit determined under 41(a) for a taxable year. Section 280C(c)(3) provides a method to elect a reduced amount of research credit. Section 280C(c)(4) provides, by reference to section 280C(b)(3), that in the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 41(f)(5)) or a trade or business treated as being under common control with other trades or business (within the meaning of section 41(f)(1)(B)), section 280C(c) shall be applied under rules prescribed by the Secretary similar to the rules applicable under section 41(f)(1)(A) and (B). Section 1.280C-4(b) relates to the election under section 280C(c)(3) that a member of a controlled group may make. Section 1.280C-4(b)(2) contains an example that includes references to the rules in § 1.41-6(c). The temporary regulations update the example in § 1.280C-

4(b)(2) because it describes the rules of section 41(f) in effect before the Act's amendments.

#### **Effect on Other Documents**

Notice 2013-20 (2013-15 IRB 902) is obsolete for taxable years beginning on or after April 3, 2015.

#### **Effective/Applicability Dates**

The temporary regulations are applicable for taxable years beginning on or after April 3, 2015 and expire on April 2, 2018. A taxpayer may apply §§ 1.41-6T, 1.45G-1T, and 1.280C-4T to taxable years beginning after December 31, 2011, but before April 3, 2015. For a taxpayer that does not apply these temporary regulations to a taxable year beginning after December 31, 2011, but before April 3, 2015, the guidance that applies to such taxable year is contained in Notice 2013-20 (2013-15 IRB 902).

#### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### **Drafting Information**

The principal author of these regulations is James Holmes, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \*

#### **Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

#### **PART 1—INCOME TAXES**

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.41-6T also issued under 26 U.S.C. 41(f)(1) \* \* \*

Section 1.45G-1T also issued under 26 U.S.C. 45G(e)(2) \* \* \*

Section 1.280C-4T also issued under 26 U.S.C. 280C(c)(4) \* \* \*

Par. 2. Section 1.41-0 is amended by removing the entries in the table of contents for § 1.41-6(c)(1) and § 1.41-6(c)(2) and adding an entry for §§ 1.41-6(j)(4) and (5) to read as follows:

*§ 1.41-0. Table of contents.*

\* \* \* \*

(j) \* \* \*

(4) *Taxable years beginning after December 31, 2011.*

(5) *Taxable years ending before January 1, 2012.*

Par. 3. Section 1.41-6 is amended by revising paragraphs (c), (d)(1) and (3), and (e) and adding paragraphs (j)(4) and (5) to read as follows:

*§ 1.41-6. Aggregation of expenditures.*

\* \* \* \*

(c) [Reserved]. For further guidance, see § 1.41-6T(c).

\* \* \* \*

(d) \* \* \*

(1) [Reserved]. For further guidance, see § 1.41-6T(d)(1).

\* \* \* \*

(3) [Reserved]. For further guidance, see § 1.41-6T(d)(3).

(e) [Reserved]. For further guidance, see § 1.41-6T(e).

\* \* \* \*

(j) \* \* \*

(4) *Taxable years beginning after December 31, 2011.* [Reserved]. For further guidance, see § 1.41-6T(j)(4).

(5) *Taxable years ending before January 1, 2012.* [Reserved]. For further guidance, see § 1.41-6T(j)(5).

Par. 4. Section 1.41–6T is added to read as follows:

*§ 1.41–6T. Aggregation of expenditures (temporary).*

(a) through (b) [Reserved]. For further guidance, see § 1.41–6(a) through (b).

(c) *Allocation of the group credit.* The group credit is allocated to each member of the controlled group on a proportionate basis to its share of the aggregate of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums (collectively “QREs” for purposes of paragraphs (c), (d), and (e) of this section) taken into account for the taxable year by such controlled group for purposes of the credit.

(d) *Special rules for consolidated groups—(1) In general.* For purposes of applying paragraph (c) of this section, members of a consolidated group who are members of a controlled group are treated as a single member of the controlled group.

(2) [Reserved]. For further guidance, see § 1.41–6(d)(2).

(3) *Special rule for allocation of group credit among consolidated group members.* The portion of the group credit that is allocated to a consolidated group is allocated to each member of the consolidated group on a proportionate basis to its share of the aggregate of the QREs taken into account for the taxable year by such consolidated group for purposes of the credit.

(e) *Examples.* The following examples illustrate the provisions of paragraphs (c) and (d) of this section.

*Example 1. Controlled group.* A, B, and C are a controlled group. A had \$100x, B \$300x, and C \$500x of qualified research expenses for the year, totaling \$900x for the group. A, in the course of its trade or business, also made a payment of \$100x to an energy research consortium for energy research. The group’s QREs total 1000x and the group calculated its total research credit to be \$60x for the year. Based on each member’s proportionate share of the controlled group’s aggregate QREs, A is allocated \$12x, B \$18x, and C \$30x of the credit.

*Example 2. Consolidated group is a member of controlled group.* The controlled group’s members are D, E, F, G, and H. F, G, and H file a consolidated return and are treated as a single member (FGH) of the controlled group. D had

\$240x, E \$360x, and FGH \$600x of qualified research expenses for the year (\$1,200x aggregate). The group calculated its research credit to be \$100x for the year. Based on the proportion of each member’s share of QREs to the controlled group’s aggregate QREs for the taxable year D is allocated \$20x, E \$30x, and FGH \$50x of the credit. The \$50x of credit allocated to FGH is then allocated to the consolidated group members based on the proportion of each consolidated group member’s share of QREs to the consolidated group’s aggregate QREs. F had \$120x, G \$240x, and H \$240x of QREs for the year. Therefore, F is allocated \$10x, G is allocated \$20x, and H is allocated \$20x.

(f) through (i) [Reserved]. For further guidance, see § 1.41–6(f) through (i).

(j)(1) through (3) [Reserved]. For further guidance, see § 1.41–6(j)(1) through (3).

(4) *Taxable years beginning after December 31, 2011.* Section 1.41–6T is applicable for taxable years beginning on or after April 3, 2015. Taxpayers may apply § 1.41–6T to taxable years beginning after December 31, 2011, but before April 3, 2015. For a taxpayer that does not apply § 1.41–6T to a taxable year beginning after December 31, 2011, but before April 3, 2015, the guidance that applies to such taxable year is contained in Notice 2013–20 (2013–15 IRB 902).

(5) *Taxable years beginning before January 1, 2012.* See § 1.41–6 as contained in 26 CFR part 1, revised April 1, 2014.

(6) *Expiration date.* The applicability of § 1.41–6T expires on April 2, 2018.

Par. 5. Section 1.45G–0 is amended by removing the entries in the table of contents for § 1.45G–1(f)(4)(i) and § 1.45G–1(f)(4)(ii) and adding an entry in the table of contents for §§ 1.45G–1(g)(4) and (5) to read as follows:

*§ 1.45G–0. Table of contents for the railroad track maintenance credit.*

\* \* \* \* \*

(g) \* \* \*

(4) *Taxable years beginning after December 31, 2011.*

(5) *Taxable years beginning before January 1, 2012.*

Par. 6. Section 1.45G–1 is amended by revising paragraphs (f)(4) and (f)(5)(i) and (ii) and adding paragraphs (g)(4) and (5) to read as follows:

*§ 1.45G–1. Railroad track maintenance credit.*

\* \* \* \* \*

(f) \* \* \*

(4) [Reserved]. For further guidance, see § 1.45G–1T(f)(4).

(5) [Reserved]. For further guidance see § 1.45G–1T(f)(5).

(g) \* \* \*

(4) *Taxable years beginning after December 31, 2011.* [Reserved]. For further guidance see § 1.45G–1T(g)(4).

(5) *Taxable years beginning before January 1, 2012.* [Reserved]. For further guidance see § 1.45G–1T(g)(5).

Par. 7. Section 1.45G–1T is added to read as follows:

*§ 1.45G–1T. Railroad track maintenance credit (temporary).*

(a) through (e) [Reserved]. For further guidance, see § 1.45G–1(a) through (e).

(f)(1) through (3) [Reserved]. For further guidance, see § 1.45G–1(f)(1) through (3).

(4) *Allocation of the group credit.* The group credit is allocated to each member of the controlled group on a proportionate basis to its share of the aggregate of the QRTMEs taken into account for the taxable year by such controlled group for purposes of the credit.

(5) *Special rules for consolidated groups—(i) In general.* For purposes of applying paragraph (f)(4) of this section, members of a consolidated group who are members of a controlled group are treated as a single member of the controlled group.

(ii) *Special rule for allocation of group credit among consolidated group members.* The portion of the group credit that is allocated to a consolidated group is allocated to each member of the consolidated group on a proportionate basis to its share of the aggregate of the QRTMEs taken into account for the taxable year by such consolidated group for purposes of the credit.

(6) through (8) [Reserved]. For further guidance, see § 1.45G–1(f)(6) through (8).

(g)(1) through (3) [Reserved]. For further guidance, see § 1.45G–1(g)(1) through (3).

(4) *Taxable years beginning after December 31, 2011.* Section 1.45G-1T is applicable for taxable years beginning on or after April 3, 2015. Taxpayers may apply § 1.45G-1T to taxable years beginning after December 31, 2011, but before April 3, 2015. For a taxpayer that does not apply § 1.45G-1T to a taxable year beginning after December 31, 2011, but before April 3, 2015, the guidance that applies to such taxable year is contained in Notice 2013-20 (2013-15 IRB 902).

(5) *Taxable years ending before January 1, 2012.* See § 1.45-1 as contained in 26 CFR part 1, revised April 1, 2014.

(6) *Expiration date.* The applicability of § 1.45G-1T expires on April 2, 2018.

Par. 8. Section 1.280C-4 is amended by revising paragraph (b)(2), redesignating paragraph (c) as (c)(1) and adding paragraphs (c)(2) and (3) to read as follows:

*§ 1.280C-4. Credit for increasing research activities.*

\* \* \* \* \*

(b) \* \* \*

(2) [Reserved]. For further guidance, see § 1.280C-4T(b)(2).

\* \* \* \* \*

(c) \* \* \*

(2) [Reserved]. For further guidance, see § 1.280C-4T(c)(2).

(3) [Reserved]. For further guidance, see § 1.280C-4T(c)(3).

Par. 9. Section 1.280C-4T is added to read as follows:

*§ 1.280C-4T. Credit for increasing research activities (temporary).*

(a) [Reserved]. For further guidance, see § 1.280C-4(a).

(b) *Controlled groups of corporations; trades or businesses under common control.* (1) [Reserved]. For further guidance, see § 1.280C-4(b)(1).

(2) *Example.* The following example illustrates an application of paragraph (b) of this section: A, B, and C, all of which are calendar year taxpayers, are members of a controlled group of corporations (within the meaning of section 41(f)(5)). A, B, and C each attach a statement to the 2012 Form 6765, "Credit for Increasing Research Activities," showing A and C were the only members of the controlled group to have qualified research expenses when calculating the group credit. A and C report their allocated portions of the group credit on the 2012 Form 6765 and B reports no research credit on Form 6765. Pursuant to § 1.280C-4(a), A and B, but not C, each make an election for the reduced credit under section 280(c)(3)(B) on the 2012 Form 6765. In December 2013, B determines it had qualified research expenses in 2012 resulting in an increased group credit. On an amended 2012 Form 6765, A, B, and C each report their allocated portions of the group credit. B reports its credit as a regular credit under section 41(a) and reduces the credit under section 280(c)(3)(B). C may not reduce its credit under section 280(c)(3)(B) because C did not make an election for the reduced credit with its original return.

(c)(1) [Reserved]. For further guidance, see § 1.280C-4(c)(1).

(2) *Taxable years beginning after December 31, 2011.* Section 1.280C-4T is applicable for taxable years beginning on or after April 3, 2015. Taxpayers may apply § 1.280C-4T to taxable years beginning after December 31, 2011, but before April 3, 2015. For a taxpayer that does not apply § 1.280C-4T to a taxable year beginning after December 31, 2011, but before April 3, 2015, the guidance that applies to such taxable year is contained in Notice 2013-20 (2013-15 IRB 902).

(3) *For taxable years ending before January 1, 2012.* See § 1.280C-4 as contained in 26 CFR part 1, revised April 1, 2014.

(4) *Expiration date.* The applicability of paragraph (b)(2) expires on April 2, 2018.

John Dalrymple,  
*Deputy Commissioner for  
Services and Enforcement*

Approved: March 16, 2015.

Mark J. Mazur,  
*Assistant Secretary of the  
Treasury (Tax Policy)*

# Part III. Administrative, Procedural, and Miscellaneous

## Rev. Proc. 2015–27

### SECTION 1. PURPOSE

The Employee Plans Compliance Resolution System (“EPCRS”) sets forth a comprehensive system of correction programs for sponsors of retirement plans that are intended to satisfy the requirements of § 401(a), 403(a), 403(b), 408(k), or 408(p) of the Internal Revenue Code (“Code”), but that have failed to meet those requirements for a period of time. The components of EPCRS are the Self-Correction Program (“SCP”), the Voluntary Correction Program (“VCP”), and the Audit Closing Agreement Program (“Audit CAP”). EPCRS permits plan sponsors to correct failures and thereby continue to provide employees with retirement benefits on a tax-favored basis. The most recent restatement of EPCRS is set forth in Rev. Proc. 2013–12, 2013–4 I.R.B. 313. The modifications to Rev. Proc. 2013–12 reflected in this revenue procedure include miscellaneous changes made to improve EPCRS, such as reducing VCP compliance fees relating to failures to meet the requirements of § 72(p) with respect to participant loans, and clarifying that for certain Overpayments, as defined in sections 5.01(3)(c) and 5.02(4) of Rev. Proc. 2013–12, a plan may use correction methods other than the correction methods set forth in sections 6.06(3) and 6.06(4) of Rev. Proc. 2013–12. This revenue procedure also requests comments on recoupment of Overpayments.

### SECTION 2. BACKGROUND

.01 The Internal Revenue Service (Service) is issuing this revenue procedure to improve and update EPCRS by making limited modifications and clarifications to Rev. Proc. 2013–12. These modifications to EPCRS are described in Section 3, and revisions to Rev. Proc. 2013–12 implementing these modifications are set forth in Section 4.

.02 Section 2.05 of Rev. Proc. 2013–12 provides that it is expected that the EPCRS revenue procedure will continue to be updated, in whole or in part, from time to time. It is anticipated that updates will provide further improvements to

EPCRS based on comments that are currently being evaluated and on additional comments that may be received.

.03 The Treasury Department and the Service continue to invite further comments on how to improve EPCRS. For information about how to submit comments, see section 7 of this revenue procedure.

### SECTION 3. DESCRIPTION OF MODIFICATIONS TO EPCRS

.01 *Effect on programs.* This revenue procedure modifies, but does not supersede, Rev. Proc. 2013–12.

.02 *Clarification to the correction rules on Overpayment failures.* (1) *Reasonable and appropriate correction.* Section 6.02(2) of Rev. Proc. 2013–12 provides that any correction of a failure should be reasonable and appropriate for the failure. Correction rules for dealing with Overpayments are described in sections 6.06(3) and 6.06(4) of Rev. Proc. 2013–12. Under these correction rules, the employer is to take reasonable steps to have the Overpayment returned to the plan. The Service has been informed that some plans have demanded recoupment of large amounts from plan participants and beneficiaries on account of plan administration errors made over lengthy periods of time, and that plan participants and beneficiaries, particularly those who are older individuals, may have financial difficulty meeting some corrective actions that have been sought by plan administrators, including the return of Overpayments with substantial accumulated interest.

(2) *Flexibility in correction of Overpayment failures.* Some plans may be interpreting the correction rules in Rev. Proc. 2013–12 as requiring a demand for recoupment from plan participants and beneficiaries in all cases. However, depending on the facts and circumstances, correcting an Overpayment under EPCRS may not need to include requesting that an Overpayment be returned to the plan by plan participants and beneficiaries.

(3) *Description of modifications to clarify that there is flexibility in correcting Overpayment failures.* Sections 6.06(3) and 6.06(4) of Rev. Proc. 2013–12 are

modified to clarify that there is flexibility in correcting an Overpayment under EPCRS. For example, depending on the nature of the Overpayment failure (such as an Overpayment failure resulting from a benefit calculation error), an appropriate correction method may include using rules similar to the correction methods of sections 6.06(3) and 6.06(4) in Rev. Proc. 2013–12 but having the employer or another person contribute the amount of the Overpayment (with appropriate interest) to the plan in lieu of seeking recoupment from plan participants and beneficiaries. Another example of an appropriate correction method includes a Plan Sponsor adopting a retroactive amendment to conform the plan document to the plan’s operations in accordance with section 4.05 of Rev. Proc. 2013–12. Any correction method used must be consistent with the correction principles in section 6.02 and any applicable rules under EPCRS. The modifications are in sections 4.06 and 4.07 of this revenue procedure.

(4) *Comments relating to recoupment of Overpayments.* The Service intends to make further revisions to Rev. Proc. 2013–12 regarding the correction of Overpayments and seeks comments on this issue. For information about how to submit comments, see section 7 of this revenue procedure. Comments relating to recoupment of Overpayments will be shared with the Department of Labor. Comments are requested on—

(a) whether, and under what circumstances and conditions, correction should require employer make-whole contributions rather than recouping prior Overpayments from participants and beneficiaries;

(b) whether guidance should be provided on Overpayments relating to benefit calculation errors and whether the correction method should follow rules similar to the rules on the recoupment of overpayments issued by the Pension Benefits Guaranty Corporation in 29 C.F.R. § 4022.82;

(c) whether additional guidance is needed regarding the calculation of interest on Overpayments for benefit calculation errors; and

(d) whether any other changes or additional guidance is needed relating to the

recoupment of Overpayments, including guidance on any unusual circumstances in which full corrective payments to a plan should not be required for Overpayments.

*.03 Description of other modifications.*

The other modifications to Rev. Proc. 2013–12 consist of the following revisions:

- Revising section 4.04 of Rev. Proc. 2013–12 to extend SCP eligibility so that repeated corrections of excess annual additions will not prevent certain plans from satisfying the SCP requirement to have established practices and procedures as long as the plan corrects excess annual additions through the return of elective deferrals to affected employees within 9½ months after the end of the plan’s limitation year. See section 4.01 of this revenue procedure.
- Revising section 6.02(5)(d) of Rev. Proc. 2013–12 to delete a reference to the Social Security letter forwarding program because the Social Security Administration has announced that the program is no longer available as a method for locating lost plan participants who are owed additional retirement benefits. See section 4.04 of this revenue procedure.
- Revising sections 6.05(1), 6.05(2), and 6.05(3)(c) of Rev. Proc. 2013–12 to clarify that, if corrective plan amendments are used to correct Qualification Failures as defined in section 5.01(2), the requirement to submit a determination letter application to the Service does not apply to certain amendments made to prototype or volume submitter plans. Section 6.05(1) is also revised to provide that a determination letter application is not required to be submitted if more than 12 months have passed since distribution of substantially all plan assets as part of the plan’s termination. See section 4.05 of this revenue procedure.
- Revising section 10.07(9) of Rev. Proc. 2013–12 to extend the correction period for adopting certain corrective plan amendments in situations in which a determination letter application is required to be submitted concurrently with the VCP submission. See sections 4.08 of this revenue procedure.

- Revising sections 11.01 and 11.02 of Rev. Proc. 2013–12 to require that applicants electing to use model VCP submission documents submit such documents by completing the Form 14568 series. As the model VCP submission documents are now published on forms, Appendix C model VCP submission documents are no longer part of Rev. Proc. 2013–12. See section 4.09 of this revenue procedure.
- Revising section 11.11 of Rev. Proc. 2013–12 to provide that applicants wishing to obtain an acknowledgment of receipt of a VCP submission must use IRS Letter 5265, *Form 8950 Application for Voluntary Correction Program Acknowledgment Letter*. See section 4.11 of this revenue procedure.
- Revising section 12.02(2) of Rev. Proc. 2013–12 to expand the availability of a reduced compliance fee for submissions under VCP that involve the failure to satisfy the minimum distribution requirements. See section 4.12 of this revenue procedure.
- Revising section 12.02(3) of Rev. Proc. 2013–12 to modify the method for determining compliance fees for submissions under VCP relating solely to participant loans that do not satisfy the requirements of § 72(p). This change is being made to provide an improved method for determining compliance fees for large plans that have a relatively small number of loans that do not satisfy the requirements of § 72(p). See section 4.13 of this revenue procedure.
- Removing Appendices C and D in light of other modifications made in this revenue procedure. See section 4.17 of this revenue procedure.
- Revising sections 4.11, 5.01(3)(c), 11.10, 12.06(2), Appendix A .08, and Appendix B, section 2.07(2)(b), Example 26, of Rev. Proc. 2013–12 to reflect appropriate citations or cross references. See sections 4.02, 4.03, 4.10, 4.14, 4.15, and 4.16 of this revenue procedure.

**SECTION 4. MODIFICATIONS TO REV. PROC. 2013–12**

.01 Section 4.04 of Rev. Proc. 2013–12 is revised to provide for an extended period of time to correct excess annual ad-

ditions through the return of elective deferrals to affected employees by changing the reference “two and a half months” to “9½ months.” As revised, section 4.04 reads as follows:

4.04 *Established practices and procedures.* In order to be eligible for SCP, the Plan Sponsor or administrator of a plan must have established practices and procedures (formal or informal) reasonably designed to promote and facilitate overall compliance with applicable Code requirements. For example, the plan administrator of a Qualified Plan that may be top-heavy under § 416 may include in its plan operating manual a specific annual step to determine whether the plan is top-heavy and, if so, to ensure that the minimum contribution requirements of the top-heavy rules are satisfied. A plan document alone does not constitute evidence of established procedures. In order for a Plan Sponsor or administrator to use SCP, these established procedures must have been in place and routinely followed, and an Operational Failure must have occurred through an oversight or mistake in applying them. SCP may also be used in situations where the Operational Failure occurred because the procedures that were in place, while reasonable, were not sufficient to prevent the occurrence of the failure. A plan that provides for elective deferrals and nonelective employer contributions that are not matching contributions is not treated as failing to have established practices and procedures to prevent the occurrence of a § 415(c) violation in the case of a plan under which excess annual additions under § 415(c) are regularly corrected by return of elective deferrals to the affected employee within 9½ months after the end of the plan’s limitation year. The correction, however, should not violate another applicable Code requirement. In the case of a failure that relates to Transferred Assets or to a plan assumed in connection with a corporate merger, acquisition, or other similar employer transaction between the Plan Sponsor and the sponsor of the transferor plan or the prior Plan Sponsor of an assumed plan, the plan is considered to have

established practices and procedures for the Transferred Assets if such practices and procedures are in effect for the Transferred Assets by the end of the first plan year that begins after the corporate merger, acquisition, or other similar transaction. (See section 6.10(2) for special rules regarding established practices and procedures for 403(b) Plans.)

.02 Section 4.11 of Rev. Proc. 2013–12 is revised by deleting all references to section 12.06 and replacing them with references to section 12.07, clarifying language regarding a defined contribution plan “to which” a contribution is made, and, to be consistent with other references to the Internal Revenue Service in Rev. Proc. 2013–12, replacing “IRS” with the term “Service.” As revised, section 4.11 reads as follows:

.11 *Egregious failures.* SCP is not available to correct Operational Failures that are egregious. Egregious failures include: (a) a plan that has consistently and improperly covered only highly compensated employees; (b) a plan that provides more favorable benefits for an owner of the employer based on a purported collective bargaining agreement where there has in fact been no good faith bargaining between bona fide employee representatives and the employer (see Notice 2003–24, 2003–1 C.B. 853, with respect to welfare benefit funds); or (c) a defined contribution plan to which a contribution is made on behalf of a highly compensated employee that is several times greater than the dollar limit set forth in § 415(c). VCP is available to correct egregious failures. However, egregious failures are subject to the VCP fees described in section 12.07 and, for purposes of section 12.07, an egregious failure would include any case in which the Service concludes that the parties controlling the plan recognized that the action taken would constitute a failure and the failure either involves a substantial number of participants or beneficiaries or involves participants who are predominantly highly compensated employees. Audit CAP also is available to correct egregious failures.

.03 Section 5.01(3)(c) of Rev. Proc. 2013–12 is revised by modifying the last

sentence to clarify that the corrections for overpayments from defined benefit plans and defined contribution plans are described in sections 6.06(3) and 6.06(4) of Rev. Proc. 2013–12, respectively. As revised, section 5.01(3)(c) reads as follows:

(c) *Overpayment.* The term “Overpayment” means a Qualification Failure due to a payment being made to a participant or beneficiary that exceeds the amount payable to the participant or beneficiary under the terms of the plan or that exceeds a limitation provided in the Code or regulations. Overpayments include both payments from a defined benefit plan and payments from a defined contribution plan (either not made from the participant’s or beneficiary’s account under the plan or not permitted to be paid under the Code, the regulations, or the terms of the plan). However, an Overpayment does not include a payment that is made pursuant to a correction method provided under this revenue procedure for a different Qualification Failure. Overpayments must be corrected in accordance with section 6.06(3) for defined benefit plans and section 6.06(4) for defined contribution plans and 403(b) Plans.

.04 Section 6.02(5)(d) of Rev. Proc. 2013–12 is revised by deleting the reference to the Social Security letter forwarding program. As revised, section 6.02(5)(d)(i) reads as follows:

(d) *Locating lost participants.* (i) Reasonable actions must be taken to find all current and former participants and beneficiaries to whom additional benefits are due, but who have not been located after a mailing to the last known address. In general, such actions include, but are not limited to, a mailing to the individual’s last known address using certified mail and, if that is unsuccessful, an additional search method, such as the use of a commercial locator service, a credit reporting agency, or Internet search tools. Depending on the facts and circumstances, the use of more than one of these additional search methods may be appropriate. A plan will not be considered to have failed to correct a failure due to the inability to locate an individual if reasonable actions to locate the individual have

been undertaken in accordance with this paragraph, provided that, if the individual is later located, the additional benefits are provided to the individual at that time.

.05 Sections 6.05(1), 6.05(2), and 6.05(3)(c) of Rev. Proc. 2013–12 are clarified to state that the requirement to submit a determination letter application to the IRS does not apply to corrective amendments made to pre-approved plans on which the adopting employer has reliance if such amendments are part of an adopted prototype or volume submitter plan on which the adopting employer continues to have reliance after the adoption of the corrective amendments and in cases in which more than 12 months have passed since the distribution of substantially all the plan assets following a plan termination.

(a) As revised, sections 6.05(1) and 6.05(2) of Rev. Proc. 2013–12 read as follows:

.05 *Submission of a determination letter application.* (1) *In general.* This section 6.05 sets forth the situations in which a determination letter application is required to be submitted as part of the correction of a Qualification Failure if the correction includes a plan amendment. If a determination letter application is required under this section 6.05, then, unless otherwise specified in this revenue procedure, the provisions of Rev. Proc. 2007–44 will 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 included in the Cumulative List (as defined in Rev. Proc. 2007–44) that would apply to the remedial amendment cycle during which the determination letter is filed. Notwithstanding any other part of this section 6.05, a determination letter application is not required and may not be submitted with the VCP submission if (a) the correction by plan amendment is achieved through (i) the adoption of an amendment that is designated as a model amendment by the Service, (ii) the adoption of a prototype or volume submitter plan with an opinion or advisory letter as provided in Rev. Proc. 2015–6, 2015–1 I.R.B. 194, on which the Plan Sponsor has

reliance (or is treated as having reliance pursuant to section 6.05(5) below), or (iii) the adoption of an amendment to a previously adopted prototype or volume submitter plan with an opinion or advisory letter as provided in Rev. Proc. 2015–6, on which the Plan Sponsor has reliance (or is treated as having reliance pursuant to section 6.05(5) below) after the adoption of such amendment, (b) the failure corrected is a Demographic Failure, or (c) more than 12 months have elapsed since the date of distribution of substantially all plan assets in connection with the termination of the plan.

(2) *Determination letter application required.* (a) *VCP and Audit CAP.* (i) *Operational failure corrected by plan amendment during on-cycle year.* Except as provided in section 6.05(1), to correct an Operational Failure that includes a plan amendment (in a case in which the Plan Sponsor submits the failure under VCP or corrects the failure under Audit CAP during an on-cycle year or in connection with a plan termination), a determination letter application is required for individually designed plans. An “on-cycle year” means the last 12 months of the plan’s remedial amendment cycle set forth in Rev. Proc. 2007–44.

(ii) *Nonamender failure.* Except as provided in section 6.05(1) and (3)(a), a determination letter application is required for individually designed plans in order to correct a nonamender failure under VCP or Audit CAP, whether or not the plan is submitted under VCP or corrected under Audit CAP during an on-cycle year. For this purpose, the term “nonamender failure” means a failure to amend the plan to correct a disqualifying provision described in § 1.401(b)–1(b) within the applicable remedial amendment period. In general, a disqualifying provision includes a provision in the plan document that violates a qualification requirement of the Code or the absence of a provision that causes the plan to fail to satisfy a qualification requirement of the Code. A disqualifying provision also includes any provision designated by the Commissioner as a disqualifying provision under § 1.401(b)–1(b)(3).

(b) *SCP.* Except as provided in section 6.05(1), in the case of any correction of an Operational Failure through plan amendment under SCP that is permitted under section 4.05(2) of this revenue procedure, a Plan Sponsor must submit a determination letter application for the plan, including the corrective plan amendment, during the plan’s next on-cycle year if individually designed, or earlier, if in connection with the plan’s termination. The determination letter application should be mailed to the address provided in the instructions for the applicable Form 5300 or 5310. As part of the determination letter submission, the cover letter must identify the amendment as a corrective amendment under SCP. In addition, the Plan Sponsor must include in the cover letter to the application: (1) a statement that neither the plan nor the Plan Sponsor has been a party to an abusive tax avoidance transaction (as defined in section 4.13(2) of this revenue procedure); or (2) a brief identification of any abusive tax avoidance transaction to which the plan or the Plan Sponsor has been a party.

(b) As revised, section 6.05(3)(c) of Rev. Proc. 2013–12 reads as follows:

(c) *Operational Failures corrected through plan amendment under VCP and Audit CAP during an off-cycle year.* If, during an off-cycle year, a Plan Sponsor submits an Operational Failure under VCP or corrects such a failure under Audit CAP, then a determination letter application is not required and may not be submitted with the VCP submission or as part of the correction of the failure under Audit CAP. If the plan amendment is accepted as a proper correction for an Operational Failure, the compliance statement under VCP or closing agreement issued under Audit CAP constitutes a determination on the effect of the plan amendment on the qualification of the plan. The reliance provided by a compliance statement or closing agreement is limited to the specific failures and years specified and does not provide reliance for any other failure or year. Except as provided in section 6.05(1), with respect to correction of an Operational

Failure through plan amendment, the compliance statement issued under VCP or closing agreement issued under Audit CAP is subject to the condition that the amendment be submitted as part of a determination letter submission during the plan’s next 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. Generally this determination letter application requirement is limited to individually designed plans. The determination letter application should be mailed to the address listed in the instructions of the applicable Form 5300, or 5310 and should include a copy of the related compliance statement or closing agreement. A Plan Sponsor that corrects an Operational Failure through a plan amendment under Audit CAP during an off-cycle year should also include a copy of the closing agreement when submitting a determination letter application during the plan’s next on-cycle year, or if earlier, in connection with the plan’s termination.

.06 Section 6.06(3) of Rev. Proc. 2013–12 is revised to clarify that there is flexibility in correcting an Overpayment in a defined benefit plan as long as the correction method is consistent with the correction principles in section 6.02 and any other applicable rules under EPCRS. As revised, section 6.06(3) reads as follows:

(3) *Correction of Overpayment (defined benefit plans).* An Overpayment from a defined benefit plan is corrected in accordance with rules similar to the Return of Overpayment and Adjustment of Future Payments correction methods described in section 2.04(1) of Appendix B or any other appropriate correction method. Depending on the nature of the Overpayment failure, an appropriate correction method may include using rules similar to the correction method described in section 2.04(1) of Appendix B but having the employer or another person contribute the amount of the Overpayment (with appropriate interest) to the plan in lieu of seeking recoupment from plan participants and beneficiaries. Another example of an appropriate correction method

includes a Plan Sponsor adopting a retroactive amendment to conform the plan document to the plan's operations (subject to the requirements of section 4.05). Any other correction method used must satisfy the correction principles of section 6.02 and any other applicable rules in this revenue procedure.

.07 Section 6.06(4)(f) of Rev. Proc. 2013-12 is added to clarify that there is flexibility in correcting an Overpayment in a defined contribution plan as long as the correction method is consistent with the correction principles in section 6.02 and any other applicable rules under EP-CRS. As added, section 6.06(4)(f) reads as follows:

(f) *Other correction methods.* Other appropriate correction methods may be used to correct Overpayment failures from a defined contribution plan. Depending on the nature of the Overpayment failure, an appropriate correction method may include using rules similar to the correction method in section 6.06(4)(a) but having the employer or another person contribute the amount of the Overpayment (with appropriate interest) to the plan in lieu of seeking recoupment from plan participants and beneficiaries. Another example of an appropriate correction method includes a Plan Sponsor adopting a retroactive amendment to conform the plan document to the plan's operations (subject to the requirements of section 4.05). Any other correction method used must satisfy the correction principles of section 6.02 and any other applicable rules of this revenue procedure.

.08 Section 10.07(9) of Rev. Proc. 2013-12 is revised to extend the period to adopt certain corrective plan amendments and eliminate a cross-reference. Section 10.07(9) is also reorganized for clarity. As revised, section 10.07(9) reads as follows:

(9) *Timing of correction.* (a) *In general.* The Plan Sponsor must implement the specific corrections and administrative changes set forth in the compliance statement within 150 days of the date of the compliance statement. Any request for an extension of this time period must be made in writing prior to the ex-

piration of the correction period and must be approved by the Service.

(b) *Good faith, interim, or optional law change amendments.* Correction of the failure to adopt timely good faith amendments, interim amendments, or amendments relating to the implementation of optional law changes, as described in section 6.05(3)(a), must be made by the date of the submission. Thus, the submission should include the executed amendments that would correct this failure.

(c) *Other plan amendments.* Except as provided in section 10.07(9)(b), if a determination letter application is required to be filed with a VCP submission as described in section 6.05, the corrective plan amendment must be adopted by the later of 150 days after the date of the compliance statement or 91 days after a favorable determination letter is issued. However, for a governmental plan (within the meaning of § 414(d)), the corrective amendment must be adopted by the later of 150 days after the date of the compliance statement or the 91st day after the close of the first legislative session that begins more than 120 days after a favorable determination letter is issued.

.09 Revising sections 11.01 and 11.02 of Rev. Proc. 2013-12 to require that Plan Sponsors that choose to use Model VCP Submission Documents must submit such documents by completing Form 14568, *Appendix C Part I, Model VCP Submission Compliance Statement* (and, if applicable, Form(s) 14568-A through 14568-D). As revised, sections 11.01 and 11.02 read as follows:

.01 *General rules.* (1) A VCP submission must satisfy the requirements of this section 11.

(2) A VCP submission must include completed Forms 8950 and 8951.

(3) A VCP submission must include a description of the failures, a description of the proposed methods of correction, and other procedural items set forth in this section 11. Appendix C to Rev. Proc. 2013-12 provided assistance to applicants in satisfying these requirements. In 2014, the Appendix C Model Compliance Statement and related Schedules were published by the

Service as official IRS forms. The submission of a Model Compliance Statement and Schedules remains optional. However, if an applicant wishes to submit a Model Compliance Statement, Form 14568, *Appendix C Part I, Model VCP Submission Compliance Statement*, and, if appropriate, one or more schedules, Forms 14568-A through 14568-I, must be used. Appendix C model documents were deleted pursuant to Rev. Proc. 2015-27, 2015-16 I.R.B. 914, and those documents may not be submitted as Model Compliance Statements. To avoid confusion, Form 14568 and Forms 14568-A through 14568-I will be revised to remove references to "Appendix C". In the meantime, applicants may use the current versions of Form 14568 and Forms 14568-A through 14568-I that are available on the IRS website ([www.irs.gov](http://www.irs.gov)). The Service also reserves the right to modify the Form 14568 series to improve usability, reflect changes in law, or create additional Schedules by adding new forms to the Form 14568 series.

.02 *Use of Schedules (Forms 14568-A through 14568-I).* (1) Schedules 1 through 9 provide descriptions of common qualification failures and standardized correction methods which may be submitted in lieu of individually drafted descriptions. For applicants that do not choose to use the Model Compliance Statement, the Schedules can be used to satisfy certain requirements of this revenue procedure.

(2) Multiple Schedules may be included in a single VCP submission.

(3) A Schedule may be used only if its printed content applies without modification to the applicant's situation.

(4) The following failures are described in the Schedules:

(a) *Form 14568-A, Schedule 1 - Interim and Certain Discretionary Nonamender Failures.* If the Plan Sponsor failed to adopt timely good faith amendments, interim amendments, or amendments required to reflect the changed operation of the plan on account of the Plan Sponsor's decision to implement optional law changes (see section 6.05(3)(a) of this revenue procedure for a de-

scription of each of these amendments), the Plan Sponsor may submit Form 14568–A, which may be used only if the corrective amendment was adopted before the expiration of the plan’s extended remedial amendment period (as determined under Rev. Proc. 2007–44) for that amendment.

(b) *Form 14568–B, Schedule 2 – Nonamender Failures (other than those to which Schedule 1 applies) and Failure to Adopt a 403(b) Plan Timely.* If the Plan Sponsor failed to adopt timely amendments to comply with required legislative or regulatory changes (other than as described in section 11.02(4)(a)) or failed to adopt a written 403(b) Plan timely in accordance with the final regulations under § 403(b) and Notice 2009–3, the Plan Sponsor may submit Form 14568–B.

(c) *Form 14568–C, Schedule 3 – SEPs and SARSEPs.* If the Plan is a SEP or a SARSEP and experienced one or more of the failures shown on Schedule 3 and the Plan Sponsor proposes to correct such failure(s) by using the method(s) provided on such schedule, the Plan Sponsor may submit Form 14568–C.

(d) *Form 14568–D, Schedule 4 – SIMPLE IRAs.* If the Plan is a SIMPLE IRA and experienced one or more of the failures shown on Schedule 4 and the Plan Sponsor proposes to correct such failure(s) by using the method(s) provided on such schedule, the Plan Sponsor may submit Form 14568–D.

(e) *Form 14568–E, Schedule 5 – Plan Loan Failures (Qualified Plans and 403(b) Plans).* If the Plan Sponsor failed to administer loans in accordance with the provisions of § 72(p)(2), the failure solely relates to employees who are neither key employees (as defined in § 416(i)(1)) nor self-employed individuals (as defined in § 401(c)(1)(B)), and the Plan Sponsor proposes to correct such failure(s) by using the method(s) provided on Schedule 5, the Plan Sponsor may submit Form 14568–E.

(f) *Form 14568–F, Schedule 6 – Employer Eligibility Failure (§ 401(k) and 403(b) Plans only).* If the Plan Sponsor failed to satisfy the criteria for an employer to sponsor either a § 401(k) plan or a 403(b) Plan and proposes to correct such failure by

using the method provided on Schedule 6, the Plan Sponsor may submit Form 14568–F.

(g) *Form 14568–G, Schedule 7 – Failure to Distribute Elective Deferrals in Excess of the § 402(g) Limit.* If the plan failed to distribute elective deferrals made in excess of the § 402(g) limit and the Plan Sponsor proposes to correct such failure using the method described in Appendix A, section .04, the Plan Sponsor may submit Form 14568–G.

(h) *Form 14568–H, Schedule 8 – Failure to Pay Required Minimum Distributions Timely under § 401(a)(9).* If the plan failed to make required minimum distributions pursuant to § 401(a)(9) and proposes to correct such failure using the method described in Appendix A, section .06, the Plan Sponsor may submit Form 14568–H.

(i) *Form 14568–I, Schedule 9 – Correction by Plan Amendment (in accordance with Appendix B).* The Plan Sponsor may submit Form 14568–I if a proposed correction to one or more of the failures described in Schedule 9 is being made.

.10 Section 11.10 of Rev. Proc. 2013–12 is revised to replace “Eligible Person” with “Eligible Party.” As revised, section 11.10 reads as follows:

.10 *Orphan Plan.* The VCP submission should indicate, if appropriate, that it concerns an Orphan Plan and should include information that establishes that the applicant is an Eligible Party as defined in section 5.03(2).

.11 Section 11.11 of Rev. Proc. 2013–12 is revised to provide that applicants that wish to obtain an acknowledgment of receipt of a VCP submission must use IRS Letter 5265. As revised, section 11.11 reads as follows:

.11 *Acknowledgement letter.* The Service will acknowledge receipt of a VCP submission (or non-VCP submission for a § 457(b) plan, as permitted by section 4.09) only if the Plan Sponsor or the Plan Sponsor’s representative completes IRS Letter 5265, *Form 8950 Application for Voluntary Correction Program Acknowledgement Letter*, and includes it in the submission. A separate IRS Letter 5265 should be included for each plan submitted.

.12 Section 12.02(2) of Rev. Proc. 2013–12 is revised to expand the availability of a reduced compliance fee for submissions under VCP involving the failure to satisfy the minimum distribution requirements. As revised, section 12.02(2) reads as follows:

(2) If (a) a VCP submission involves a failure to satisfy the minimum distribution requirements of § 401(a)(9), (b) such failure is the only failure described in the submission, and (c) the failure would result in the imposition of the excise tax under § 4974, the compliance fee is \$500 if 150 or fewer participants are affected and \$1,500 if 151 to 300 participants are affected. If the number of affected participants is greater than 300, the general fee under section 12.02 applies.

.13 Section 12.02(3) of Rev. Proc. 2013–12 is revised to modify the method for determining compliance fees for submissions under VCP relating solely to participant loans that do not satisfy the requirements of § 72(p). As revised, section 12.02(3) reads as follows:

(3) If (a) a VCP submission involves a loan failure corrected in accordance with section 6.07, (b) the failure does not affect more than 25% of the Plan Sponsor’s participants in any year in which the failure occurred, and (c) the failure is the only failure described in the submission, the compliance fee will be:

Number of Participants with Loan Failures	Compliance Fee
13 or fewer	\$ 300
14 to 50	\$ 600
51 to 100	\$1,000
101 to 150	\$2,000
Over 150	\$3,000

.14 Section 12.06(2) of Rev. Proc. 2013–12 is revised to replace a reference to section 6.10(1) with a reference to section 6.11(1). As revised, section 12.06(2) reads as follows:

(2) In any case in which a SEP or SIMPLE IRA Plan correction is not similar to a correction for a similar Qualification Failure (as provided under section 6.11(1)), the Service

may impose an additional fee. If the failure involves an Excess Amount under a SEP or a SIMPLE IRA Plan and the Plan Sponsor retains the Excess Amount in the SEP or SIMPLE IRA Plan, a fee equal to at least 10% of the Excess Amount with no adjustment for Earnings will be imposed. This is in addition to the SEP or SIMPLE IRA Plan compliance fee set forth in section 12.06(1).

.15 Appendix A .08 of Rev. Proc. 2013–12 is revised by replacing the reference to section 6.06(3) of Rev. Proc. 2013–12 in the last sentence with a reference to section 6.06(4). As revised, Appendix A .08 reads as follows:

.08 *Failure to satisfy the § 415 limits in a defined contribution plan.* For limitation years beginning before January 1, 2009, the permitted correction for failure to limit annual additions (other than elective deferrals and after-tax employee contributions) allocated to participants in a defined contribution plan as required in § 415 (even if the excess did not result from the allocation of forfeitures or from a reasonable error in estimating compensation) is to place the excess annual additions into an unallocated account, similar to the suspense account described in § 1.415–6(b)(6)(iii) (as it appeared in the April 1, 2007 edition of 26 CFR part 1) prior to amendments made by the final regulations under § 415, to be used as an employer contribution, other than elective deferrals, in the succeeding year(s). While such amounts remain in the unallocated account, the Plan Sponsor is not permitted to make additional contributions to the plan. The permitted correction for failure to limit annual additions that are elective deferrals or after-tax employee contributions (even if the excess did not result from a reasonable error in determining compensation, the amount of elective deferrals or after-tax employee contributions that could be made with respect to an individual under the § 415 limits) is to distribute the elective deferrals or after-tax employee contributions using a method similar to that described under § 1.415–6(b)(6)(iv) (as it appeared in the April 1, 2007 edition of 26 CFR part 1) prior to amendments made by the final reg-

ulations under § 415. Elective deferrals and after-tax employee contributions that are matched may be returned to the employee, provided that the matching contributions relating to such contributions are forfeited (which will also reduce excess annual additions for the affected individuals). The forfeited matching contributions are to be placed into an unallocated account to be used as an employer contribution, other than elective deferrals, in succeeding periods. For limitation years beginning on or after January 1, 2009, the failure to limit annual additions allocated to participants in a defined contribution plan as required in § 415 is corrected in accordance with section 6.06(2) and (4) of this revenue procedure.

.16 In Appendix B, section 2.07(2)(b) of Rev. Proc. 2013–12, the correction for *Example 26* is modified by replacing the first reference to 2005 in the last sentence with 2007. As revised, the correction reads as follows:

*Correction:*

Employer K corrects the failure under VCP by adopting a plan amendment in 2007, effective January 1, 2005, to provide a hardship distribution option that satisfies the rules applicable to hardship distributions in § 1.401(k)–1(d). The amendment provides that the hardship distribution option is available to all employees. Thus, the amendment satisfies § 401(a), and the plan as amended in 2007 would have satisfied § 401(a) (including § 1.401(a)(4)–4 and the requirements applicable to hardship distributions under § 401(k)) if the amendment had been adopted in 2005.

.17 Appendices C and D of Rev. Proc. 2013–12 are removed.

## SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2013–12 is modified by this revenue procedure.

## SECTION 6. EFFECTIVE DATE

This revenue procedure is generally effective July 1, 2015. However, Plan Sponsors are permitted, at their option, to apply

the provisions of this revenue procedure on or after March 27, 2015.

## SECTION 7. PUBLIC COMMENTS

The Treasury Department and the Service invite comments on this revenue procedure. Send submissions to CC:PA:LPD:PR, (Rev. Proc. 2015–27), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044. Comments may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: Internal Revenue Service, CC:PA:LPD:PR, (Rev. Proc. 2015–27), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington DC. Alternatively, comments may be submitted via the Internet at [notice.comments@irs.counsel.treas.gov](mailto:notice.comments@irs.counsel.treas.gov) (Rev. Proc. 2015–27). For the request for comments in section 3.02(4) of this revenue procedure, please submit written comments by July 20, 2015. All comments will be available for public inspection.

## SECTION 8. PAPERWORK REDUCTION ACT

The collection of information contained in Rev. Proc. 2013–12 has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1673. The modifications made in this revenue procedure to Rev. Proc. 2013–12 do not impose any additional paperwork burden.

## SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Kathleen Herrmann of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure, contact Kathleen Herrmann or Vernon Carter at (202) 317-6799 (not a toll-free number).

# Rev. Proc. 2015–28

## SECTION 1. PURPOSE

The Employee Plans Compliance Resolution System (“EPCRS”) sets forth a

comprehensive system of correction programs for sponsors of retirement plans that are intended to satisfy the requirements of § 401(a), 403(a), 403(b), 408(k), or 408(p) of the Internal Revenue Code (“Code”), but that have failed to meet those requirements for a period of time. The components of EPCRS are the Self-Correction Program (“SCP”), the Voluntary Correction Program (“VCP”), and the Audit Closing Agreement Program (“Audit CAP”). EPCRS permits plan sponsors to correct failures and thereby continue to provide employees with retirement benefits on a tax-favored basis. The most recent restatement of EPCRS is set forth in Rev. Proc. 2013–12, 2013–4 I.R.B. 313. The following modifications to Rev. Proc. 2013–12 are reflected in this revenue procedure:

- New safe harbor EPCRS correction methods relating to automatic contribution features (including automatic enrollment and automatic escalation of elective deferrals) in plans described in § 401(k) and § 403(b); and
- Special safe harbor correction methods for plans (including those with automatic contribution features) that have failures that are of limited duration and involve elective deferrals.

## SECTION 2. BACKGROUND

.01 Section 2.05 of Rev. Proc. 2013–12 provides that it is expected that the EPCRS revenue procedure will continue to be updated, in whole or in part, from time to time, including in response to questions received from the public.

.02 Section 2.05(2) of Rev. Proc. 2013–12 specifically requested comments regarding methods to correct failures to implement automatic contribution features (including automatic escalation features that were affirmatively elected) with respect to elective deferrals in a § 401(k) plan or a § 403(b) Plan.

.03 The Internal Revenue Service (“Service”) has received comments requesting special correction methods with respect to a failure to implement automatic contribution features. Commenters have stated that the cost associated with correcting failures to implement automatic contribution features under the current rules in EPCRS, as set forth in Rev.

Proc. 2013–12, discourages employers from adopting plans with automatic contribution features because implementation errors are more common for plans with automatic contribution features (particularly automatic escalation features). The commenters also noted that implementation errors typically are discovered in connection with the preparation of a plan’s Form 5500 series return/report for a plan year. In addition, commenters expressed the view that current EPCRS safe harbor correction methods for the exclusion of eligible employees in a § 401(k) plan or § 403(b) Plan, or for failing to implement a salary reduction election in a § 401(k) plan or § 403(b) Plan, create a “windfall” for affected employees because those employees receive both their full salary and a 50% make-up corrective contribution. Commenters argue that this correction overcompensates affected participants for failures that last a short period of time because the participants usually have the opportunity to increase elective deferrals in later periods.

.04 The 50% make-up corrective contribution mentioned by commenters was first provided with respect to the improper exclusion of eligible employees in Rev. Proc. 2006–27, 2006–1 C.B. 945, and was extended to failures to implement employee elections with respect to elective deferrals in Rev. Proc. 2008–50, 2008–2 C.B. 464. Previously, Rev. Proc. 2003–44, 2003–1 C.B. 1051, had provided for a make-up corrective contribution based on the actual deferral percentage for an affected employee’s group multiplied by the affected employee’s compensation. The correction principle underlying the 50% make-up corrective contribution was that corrective contributions should make up for the value of the lost opportunity for an employee to have a portion of his or her compensation accumulate with earnings tax deferred in the future assuming the participant would not have the opportunity to increase elective deferrals in later periods to make up for missed contributions and earnings that would have accumulated until retirement.

.05 The Service is issuing this revenue procedure to improve and update EPCRS by making limited modifications to Rev. Proc. 2013–12. These modifications to EPCRS are described in Section 3, and

revisions to Rev. Proc. 2013–12 implementing these modifications are set forth in Section 4.

.06 The Treasury Department and the Service continue to invite further comments on how to improve EPCRS. For information about how to submit comments, see section 7 of this revenue procedure.

## SECTION 3. DESCRIPTION OF MODIFICATIONS TO EPCRS

.01 *Effect on programs.* This revenue procedure modifies, but does not supersede, Rev. Proc. 2013–12.

.02 *Description of special safe harbor methods to correct failures related to automatic contribution features in a § 401(k) plan or § 403(b) Plan.* This revenue procedure modifies the safe harbor correction methods and examples in Appendices A and B to Rev. Proc. 2013–12 to provide alternative correction methods for Employee Elective Deferral Failures (as defined in section 3.04 of this revenue procedure) associated with missed elective deferrals for eligible employees who are subject to automatic contribution features under § 401(k) plans or § 403(b) Plans (including employees who made affirmative elections in lieu of automatic contributions but whose elections were not implemented correctly).

(1) *Modified safe harbor correction method for Employee Elective Deferral Failures to implement an automatic contribution feature.* If the failure to implement an automatic contribution feature for an affected eligible employee or the failure to implement an affirmative election of an eligible employee who is otherwise subject to an automatic contribution feature does not extend beyond the end of the 9½ month period after the end of the plan year of the failure (which is generally the filing deadline of the Form 5500 series return, including automatic extensions), no qualified nonelective contribution (“QNEC”) (as defined in § 1.401(k)–6 of the Income Tax Regulations) for the missed elective deferrals is required, provided that the following conditions are satisfied:

(a) correct deferrals begin no later than the earlier of (i) the first payment of compensation made on or after the last day of the 9½ month period after the end of the

plan year in which the failure first occurred for the affected eligible employee or (ii) if the Plan Sponsor was notified of the failure by the affected eligible employee, the first payment of compensation made on or after the last day of the month after the month of notification;

(b) notice of the failure that satisfies specified requirements in new section .05(8)(c) of Appendix A of Rev. Proc. 2013–12 is given to the affected eligible employee not later than 45 days after the date on which correct deferrals begin; and

(c) corrective contributions to make up for any missed matching contributions are made in accordance with timing requirements under SCP for significant operational failures (described in section 9.02 of Rev. Proc. 2013–12) and are adjusted for Earnings. See section 9.04 of Rev. Proc. 2013–12.

(2) *Calculation of Earnings for certain failures to implement automatic contribution features.* This revenue procedure provides an alternative safe harbor method for calculating Earnings for Employee Elective Deferral Failures under § 401(k) plans or § 403(b) Plans that have automatic contribution features and that are corrected in accordance with the procedures in section 3.02(1) or 3.03 of this revenue procedure. If an affected eligible employee has not affirmatively designated an investment alternative, missed Earnings may be calculated based on the plan's default investment alternative, provided that, with respect to a correction made in accordance with the procedures in section 3.02(1) of this revenue procedure, any cumulative losses reflected in the Earnings calculation will not result in a reduction in the required corrective contributions relating to any matching contributions.

(3) *Availability of safe harbor correction method.* The safe harbor correction method under section 3.02(1) of this revenue procedure is available only for plans with respect to failures that begin on or before December 31, 2020. At a later date, the Service will consider whether to extend the safe harbor correction method for failures that begin in later years. In deciding whether to extend the safe harbor correction method, the Service will take into account, among other relevant factors, the extent to which there is an increase in the

number of plans implemented with automatic contribution features.

*.03 Description of modifications to encourage the early correction of Employee Elective Deferral Failures.*

(1) *Safe harbor correction method for Employee Elective Deferral Failures that do not exceed three months.* This safe harbor correction method creates a rolling correction period for Employee Elective Deferral Failures that do not exceed three months. Under this safe harbor, no QNEC for the missed elective deferrals is required provided that the following conditions are satisfied:

(a) correct deferrals begin no later than the earlier of (i) the first payment of compensation made on or after the three-month period that begins when the failure first occurred for the affected eligible employee or (ii) if the Plan Sponsor was notified of the failure by the affected eligible employee, the first payment of compensation made on or after the last day of the month after the month of notification;

(b) notice of the failure that satisfies specified requirements in new section .05(9)(c) of Appendix A of Rev. Proc. 2013–12 is given to the affected eligible employee not later than 45 days after the date on which correct deferrals begin; and

(c) corrective contributions to make up for any missed matching contributions are made in accordance with timing requirements under SCP for significant operational failures (described in section 9.02 of Rev. Proc. 2013–12) and are adjusted for Earnings. See section 9.04 of Rev. Proc. 2013–12.

(2) *Safe harbor correction method for Employee Elective Deferral Failures that extend beyond three months but do not extend beyond the SCP correction period for significant failures.* This revenue procedure creates a safe harbor correction method for Employee Elective Deferral Failures if the period of failure exceeds three months (or the conditions for the safe harbor correction method described in section 3.02 or 3.03(1) are not met by the Plan Sponsor). This safe harbor correction would permit the Plan Sponsor to make a corrective contribution equal to 25% of the missed deferrals (25% QNEC) in lieu of the higher QNEC required in sections .05(2)(b) and .05(5)(a) of Appendix A and section .02(1)(B) of Appendix

B to Rev. Proc. 2013–12. In order to use this safe harbor correction, the Plan Sponsor must satisfy the following conditions:

(a) correct deferrals begin no later than the earlier of (i) the first payment of compensation made on or after the last day of the second plan year following the plan year in which the failure occurred or (ii) if the Plan Sponsor was notified of the failure by the affected eligible employee, the first payment of compensation made on or after the last day of the month after the month of notification;

(b) notice of the failure that satisfies specified requirements in new section .05(9)(c) of Appendix A of Rev. Proc. 2013–12 is given to the affected eligible employee not later than 45 days after the date on which correct deferrals begin; and

(c) corrective contributions (including the 25% QNEC and employer contributions to make up for any missed matching contributions) are made in accordance with timing requirements under SCP for significant operational failures (described in section 9.02 of Rev. Proc. 2013–12) and are adjusted for Earnings. See section 9.04 of Rev. Proc. 2013–12.

*.04 Employee Elective Deferral Failure.* For purposes of this revenue procedure, an Employee Elective Deferral Failure is a failure to correctly implement elective deferrals in a § 401(k) plan or § 403(b) Plan including elective deferrals pursuant to an affirmative election or pursuant to an automatic contribution feature (including an automatic escalation feature) and a failure to afford an employee the opportunity to make an affirmative election because the employee was improperly excluded from the plan.

#### **SECTION 4. MODIFICATIONS TO REV. PROC. 2013–12**

.01 Appendix A of Rev. Proc. 2013–12 is revised to add the following new section .05(8) to Appendix A. As revised, section .05(8) of Appendix A reads as follows:

(8) *Special safe harbor correction method for failures related to automatic contribution features in a § 401(k) plan or a 403(b) Plan.* (a) *Eligibility to use safe harbor correction method.* This safe harbor correction method is available for certain Employee Elective Deferral

Failures (as defined in section .05(10) of this Appendix A) associated with missed elective deferrals for eligible employees who are subject to an automatic contribution feature in a § 401(k) plan or 403(b) Plan (including employees who made affirmative elections in lieu of automatic contributions but whose elections were not implemented correctly). If the failure to implement an automatic contribution feature for an affected eligible employee or the failure to implement an affirmative election of an eligible employee who is otherwise subject to an automatic contribution feature does not extend beyond the end of the 9½ month period after the end of the plan year of the failure (which is generally the filing deadline of the Form 5500 series return, including automatic extensions), no QNEC for the missed elective deferrals is required, provided that the following conditions are satisfied:

(i) Correct deferrals begin no later than the earlier of the first payment of compensation made on or after the last day of the 9½ month period after the end of the plan year in which the failure first occurred for the affected eligible employee or, if the Plan Sponsor was notified of the failure by the affected eligible employee, the first payment of compensation made on or after the end of the month after the month of notification;

(ii) Notice of the failure that satisfies the content requirements of section .05(8)(c) of this Appendix A is given to the affected eligible employee not later than 45 days after the date on which correct deferrals begin; and

(iii) If the eligible employee would have been entitled to additional matching contributions had the missed deferrals been made, the Plan Sponsor makes a corrective contribution (adjusted for Earnings) on behalf of the employee equal to the matching contributions that would have been required under the terms of the plan as if the missed deferrals had been contributed to the plan in accordance with timing requirements under SCP for significant operational failures (described in section 9.02 of this revenue procedure).

(b) *Calculation of Earnings for certain failures to implement automatic contribution features.* This correction method provides an alternative safe harbor method for calculating Earnings for Employee Elective Deferral Failures under § 401(k) plans or 403(b) Plans that have automatic contribution features and that are corrected in accordance with the procedures in this section .05(8). If an affected eligible employee has not affirmatively designated an investment alternative, missed Earnings may be calculated based on the plan's default investment alternative, provided that, with respect to a correction made in accordance with the procedures in this section .05(8), any cumulative losses reflected in the Earnings calculation will not result in a reduction in the required corrective contributions relating to any matching contributions. The Plan sponsor may also use the Earnings adjustment methods set forth in section 3 of Appendix B of this revenue procedure.

(c) *Content of notice requirement.* The notice required under section .05(8)(a)(ii) of this Appendix A must include the following information:

(i) General information relating to the failure, such as the percentage of eligible compensation that should have been deferred and the approximate date that the compensation should have begun to be deferred. The general information need not include a statement of the dollar amounts that should have been deferred.

(ii) A statement that appropriate amounts have begun to be deducted from compensation and contributed to the plan (or that appropriate deductions and contributions will begin shortly).

(iii) A statement that corrective contributions relating to missed matching contributions have been made (or that corrective contributions will be made). Information relating to the date and the amount of corrective contributions need not be provided.

(iv) An explanation that the affected participant may increase his or her deferral percentage in order to make up for the missed deferral

opportunity, subject to applicable limits under section 402(g).

(v) The name of the plan and plan contact information (including name, street address, e-mail address, and telephone number of a plan contact).

(d) *Sunset of safe harbor correction method.* The safe harbor correction method described in this section .05(8) of this Appendix A is available for plans only with respect to failures that begin on or before December 31, 2020.

.02 Appendix A of Rev. Proc. 2013–12 is revised to add the following new section .05(9) to Appendix A. As revised, section .05(9) of Appendix A reads as follows:

(9) *Safe harbor correction methods for Employee Elective Deferral Failures in § 401(k) plans or 403(b) Plans.* (a) *Safe harbor correction method for Employee Elective Deferral Failures that do not exceed three months.* Under this safe harbor correction method, an Employee Elective Deferral Failure (as defined in section .05(10) of this Appendix A) can be corrected without a QNEC for missed elective deferrals if the following conditions are satisfied:

(i) Correct deferrals begin no later than the earlier of the first payment of compensation made on or after the last day of the three-month period that begins when the failure first occurred for the affected eligible employee or, if the Plan Sponsor was notified of the failure by the affected eligible employee, the first payment of compensation made on or after the end of the month after the month of notification;

(ii) Notice of the failure that satisfies the content requirements of section .05(9)(c) of this Appendix A is given to the affected eligible employee not later than 45 days after the date on which correct deferrals begin; and

(iii) If the eligible employee would have been entitled to additional matching contributions had the missed deferrals been made, the Plan Sponsor makes a corrective contribution (adjusted for Earnings, which may be calculated as described in section .05(8)(b) of this Appendix A) on behalf of the em-

ployee equal to the matching contributions that would have been required under the terms of the plan as if the missed deferrals had been contributed to the plan in accordance with timing requirements under SCP for significant operational failures (described in section 9.02 of this revenue procedure).

(b) *Safe harbor correction method for Employee Elective Deferral Failures that extend beyond three months but do not extend beyond the SCP correction period for significant failures.* This safe harbor correction is for failures that exceed three months (or the conditions for the safe harbor correction method described in section .05(8) or .05(9)(a) of Appendix A of this revenue procedure are not met by the Plan Sponsor). Under this safe harbor correction, the required corrective employer contribution is equal to 25% of the missed deferrals (25% QNEC) in lieu of the higher QNEC required in sections .05(2)(b) and .05(5)(a) of Appendix A of this revenue procedure. In order to use this safe harbor correction method, the Plan Sponsor must satisfy the following conditions:

(i) Correct deferrals begin no later than the earlier of the first payment of compensation made on or after the last day of the second plan year following the plan year in which the failure occurred or, if the Plan Sponsor was notified of the failure by the affected eligible employee, the first payment of compensation made on or after the end of the month after the month of notification;

(ii) Notice of the failure that satisfies the content requirements of section .05(9)(c) of this Appendix A is given to an affected participant not later than 45 days after the date on which correct deferrals begin; and

(iii) Corrective contributions (including the 25% QNEC and employer contributions to make up for any missed matching contributions) are made in accordance with timing requirements under SCP for significant operational failures (described in section 9.02 of this revenue procedure), including adjustments for Earnings, which may be calculated

as described in section .05(8)(b) of this Appendix A.

(c) *Content of notice requirement.* The notice required under section .05(9)(a)(ii) and section .05(9)(b)(ii) of this Appendix A must include the following information:

(i) General information relating to the failure, such as the percentage of eligible compensation that should have been deferred and the approximate date that the compensation should have begun to be deferred. The general information need not include a statement of the dollar amounts that should have been deferred.

(ii) A statement that appropriate amounts have begun to be deducted from compensation and contributed to the plan (or that appropriate deductions and contributions will begin shortly).

(iii) A statement that corrective contributions have been made (or that corrective contributions will be made). Information relating to the date and the amount of corrective contributions need not be provided.

(iv) An explanation that the affected participant may increase his or her deferral percentage in order to make up for the missed deferral opportunity, subject to applicable limits under section 402(g).

(v) The name of the plan and plan contact information (including name, street address, e-mail address, and telephone number of a plan contact).

.03 Appendix A of Rev. Proc. 2013–12 is revised to add the following new section .05(10). As revised, section .05(10) of Appendix A reads as follows:

(10) *Employee Elective Deferral Failure.* For purposes of sections .05(8) and .05(9) of this Appendix A, an “Employee Elective Deferral Failure” is a failure to implement elective deferrals correctly in a § 401(k) plan or 403(b) Plan, including elective deferrals pursuant to an affirmative election or pursuant to an automatic contribution feature under a § 401(k) plan or 403(b) Plan, and a failure to afford an employee the opportunity to make an affirmative election because the employee was improperly excluded from the plan. Automatic contribu-

tion features include automatic enrollment and automatic escalation features (including automatic escalation features that were affirmatively elected).

## SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2013–12 is modified by this revenue procedure.

## SECTION 6. EFFECTIVE DATE

This revenue procedure is effective April 2, 2015.

## SECTION 7. PUBLIC COMMENTS

The Treasury Department and the Service invite comments on this revenue procedure. Send submissions to CC:PA:LPD:PR, (**Rev. Proc. 2015–28**), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044. Comments may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: Internal Revenue Service, CC:PA:LPD:PR, (**Rev. Proc. 2015–28**), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington DC. Alternatively, comments may be submitted via the Internet at [notice.comments@irs.counsel.treas.gov](mailto:notice.comments@irs.counsel.treas.gov) (**Rev. Proc. 2015–28**). All comments will be available for public inspection.

## SECTION 8. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1673.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in sections 4.01 and 4.02. This information is required to enable the Commissioner, Tax Exempt and Government Entities Division of the Internal Revenue Service to consider the issuance of various types of closing agreements and compliance statements. This

information will be used to issue closing agreements and compliance statements to allow individual plans to continue to maintain their tax favored status. As a result, favorable tax treatment of the benefits of the eligible employees is retained. The likely respondents are individuals, state or local governments, businesses or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

The estimated total annual reporting or recordkeeping burden is 5,643 hours.

The estimated annual burden per respondent/recordkeeper varies from .5 to 10 hours, depending on individual circumstances, with an estimated average of 5.25 hours. The estimated number of respondents or recordkeepers is 1,075.

The estimated frequency of responses is occasional.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns

and tax return information are confidential, as required by 26 U.S.C. § 6103.

## **SECTION 9. DRAFTING INFORMATION**

The principal author of this revenue procedure is Kathleen Herrmann of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure, contact Kathleen Herrmann or Vernon Carter at (202) 317-6799 (not a toll-free number).

## Part IV. Items of General Interest

### Notice of Proposed Rulemaking Allocation of Controlled Group Research Credit

#### REG-133489-13

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the allocation of the group credit. The proposed regulations will affect certain taxpayers claiming the credit. In the Rules and Regulations section of this issue of the **Bulletin**, the IRS is issuing temporary regulations providing guidance relating to the allocation of the credit for increasing research activities (research credit) to corporations and trades or businesses under common control (controlled groups). The temporary regulations also contain rules relating to the allocation of the railroad track maintenance credit (RTMC) and the election for a reduced research credit. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Comments and requests for a public hearing must be received by July 2, 2015.

ADDRESSES: Send submissions to: CC: PA:LPD:PR (REG-133489-13), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-133489-13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Submissions may also be sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-133489-13). The public hearing will be held in the IRS Auditorium, Internal Revenue

Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, James A. Holmes, (202) 317-4137; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor at (202) 317-6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background

Temporary regulations in the Rules and Regulations section of this issue of the **Bulletin** amend the Income Tax Regulations (26 CFR Part 1) relating to section 41. The temporary regulations amend §§ 1.41-6, 1.45G-1, and 1.280C-4. The regulations are being prescribed to update the regulations in a manner that is consistent with the amendments made to sections 41(f)(1)(A)(ii) and 41(f)(1)(B)(ii) in Section 301(c) of the Act. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to those regulations explains the amendments.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration

will be given to any comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

#### Drafting Information

The principal author of these regulations is James A. Holmes, Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.41-6 also issued under 26 U.S.C. 41(f)(1) \* \* \*

Section 1.45G-1 also issued under 26 U.S.C. 45G(e)(2) \* \* \*

Section 1.280C-4 also issued under 26 U.S.C. 280C(c)(4) \* \* \*

Par. 2. Section 1.41-6 is amended to read as follows:

§ 1.41-6. *Aggregation of expenditures.*

[The text of the amendments to this proposed section is the same as the text of §1.41-6T published elsewhere in this issue of the **Bulletin**].

Par. 3. Section 1.45G-1 is amended to read as follows:

§ 1.45G–1. *Railroad track maintenance credit.*

[The text of the amendments to this proposed section is the same as the text of § 1.45G–1T published elsewhere in this issue of the **Bulletin**].

Par. 4. Section 1.280C–4 is amended to read as follows.

§ 1.280C–4. *Credit for increasing research activities.*

[The text of the amendments to this proposed section is the same as the text of § 1.280C–4T published elsewhere in this issue of the **Bulletin**].

John M. Dalrymple,  
*Deputy Commissioner for  
Services and Enforcement*

(Filed by the Office of the Federal Register on April 2, 2015, 8:45 a.m., and published in the issue of the Federal Register for April 3, 2015, 80 F.R. 18171)

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with modified, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with amplified and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the sub-

stance of a prior ruling, a combination of terms is used. For example, modified and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.  
ER—Employer.

ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel’s Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.

PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2014–27 through 2014–52 is in Internal Revenue Bulletin 2014–52, dated December 28, 2014.

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<sup>1</sup>A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2014–27 through 2014–52 is in Internal Revenue Bulletin 2014–52, dated December 28, 2014.

# **Internal Revenue Service**

## **Washington, DC 20224**

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The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/*.

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