

Employee Plans News

Issue 2015-5, May 6, 2015

[Changes to EP determination letter application processing](#) – effective date depends on whether you file Form 5300, 5307 or 5310

New revenue procedures update the Correction Program

- [overpayment rules, lower fees and other revisions](#)
- [reduced corrective contributions for 401\(k\) and 403\(b\) elective deferral errors](#)

[Form 5500-EZ late filer penalty relief](#) – remember to file by June 2

[Sponsoring a 403\(b\) plan](#) – make sure you have your 501(c)(3) status or meet another eligibility requirement

[Updated FAQs](#): multiple employer plans

[Notice 2015-7](#) – the IRS and Treasury Department anticipate issuing proposed regulations under Internal Revenue Code Section 414(d) to define the term “governmental plan.” This notice describes the guidance under consideration, which would provide that employees of a public charter school may participate in a State or local retirement system if certain conditions are satisfied, and requests comments by May 11, 2015.

EP Determination Application Processing Changes - Effective Dates by Form Type

Employee Plans is changing the determination letter program for retirement plans ([Revenue Procedure 2015-6](#), section 6.13). Revised processing procedures will apply to all Form 5300 series determination letter applications. The effective date will vary based on form type.

Effective dates

Applications on Form:

- [5300](#), *Application for Determination for Employee Benefit Plan*, submitted for the second “E” remedial amendment cycle beginning February 1, 2015.
- [5310](#), *Application for Determination for Terminating Plan*, postmarked on or after February 1, 2015.
- [5307](#), *Application for Determination for Adopters of Modified Volume Submitter Plans*, submitted for the second six-year remedial amendment cycle for pre-approved defined benefit plans. The IRS has not yet announced the beginning

of the 2-year adoption period for defined benefit plan documents restated for the 2012 Cumulative List.

These effective dates allow consistent processing of all individually designed and pre-approved plan applications submitted during each cycle.

Related resources

- [Changes to the EP Determination Process Begin in 2015](#)
- [Apply for a Determination Letter - Individually Designed Plans](#)
- [Determination Letter Review Process - Cycle D2 and Earlier](#)
- [Pre-approved Retirement Plans - Adopting Employer](#)
- [FAQs: Pre-Approved Retirement Plan Adopting Employers](#)
- [Terminating a Retirement Plan](#)

New Revenue Procedure Updates EPCRS

[Revenue Procedure 2015-27](#), released March 27, 2015, modifies but does not replace the Employee Plans Compliance Resolution System ([EPCRS](#)) Revenue Procedure [2013-12](#). Changes include:

- **Recoupment.** Clarifies correction rules for overpayments made to participants and requests public comments on recoupment of plan overpayments
- **Excess contributions.** Modifies the Self-Correction Program (SCP) for IRC Section 415(c) failures
- **Fees.** Lowers compliance fees for certain VCP submissions
- **Submission forms.** New acknowledgement letter form and other VCP model document changes
- **Miscellaneous.** Miscellaneous modifications to correction rules and revision of citations and cross references

Revenue Procedure 2013-12 not superseded

Use Revenue Procedure 2015-27 with the existing EPCRS revenue procedure – the new revenue procedure does not completely replace the existing guidance. Revenue Procedure 2015-27 modifies only specific targeted sections of Revenue Procedure 2013-12.

Correction of overpayment failures

The revenue procedure clarifies existing correction rules for overpayments paid to plan participants. Plans have some flexibility to correct this plan failure and don't have to secure overpayments from affected plan participants or beneficiaries in every situation.

Request for comments – For a limited time, the IRS is requesting comments from the public on expanding EPCRS correction rules to provide additional guidance on the recovery or recouping of overpayments. (See sections 3.02(4) and 7.)

Self-correction of Section 415(c) failures

Plan sponsors can use SCP to correct certain recurring excess annual additions if they act within a specified time. The timeframe to distribute excess annual additions is increased from 2 ½ months to 9 ½ months.

VCP fees

- **Required minimum distributions** – Reduced fees may apply to a larger group of plan sponsors if a plan's sole failure is late payment of required minimum distributions and affects 300 or fewer plan participants. Plans must meet specific conditions to qualify for reduced fee.
- **Participant loans that do not comply with IRC 72(p)** – Plan sponsors may be eligible for new reduced fees based upon the number of participants with bad loans. They must meet specific conditions to qualify for the reduced fee.

Submission forms

- **New IRS Acknowledgement Letter (replaces Appendix D)** – Applicants who want a written acknowledgment letter from the IRS for their VCP submission must include a partially completed [IRS Letter 5265](#). Fill in the applicant's name, address, and plan name and number. Appendix D is superseded and no longer permitted.
- **Required use of IRS forms** – If a VCP applicant wishes to use model VCP documents, the plan sponsor must submit the current version of Form 14568 (and, if applicable, Forms 14568-A through 14568-I).
- **Appendices C and D removed** – Appendix C, Appendix C Schedules and Appendix D are no longer part of Revenue Procedure 2013-12 because they were replaced by official IRS forms and letters.

Required determination letter applications

The revenue procedure clarifies when a plan sponsor is required to submit a determination letter application to the IRS when they are resolving qualification failures by adopting retroactive plan amendments, including IRS pre-approved plans.

Expanded correction period for determination letter applicants

The correction period for adopting certain corrective plan amendments is extended if the plan sponsor submits a required determination letter application concurrently with a VCP submission.

Locating lost participants

Reference to the discontinued Social Security letter forwarding program has been removed.

Miscellaneous

Several items in Revenue Procedure 2013-12 are revised to update citations or cross-references.

Table of Rev. Proc. 2013-12 sections modified

Topic	Rev. Proc. 2015-27 section(s)	Revises Rev. Proc. 2013-12 section(s)
Overpayments	3.02, 4.06 and 4.07	6.06(3) and 6.06(4)
415(c) failure - self-correction	4.01	4.04
VCP fees - late RMDs	4.12	12.02(2)
VCP fees - loans	4.13	12.02(3)
Acknowledgement letter	4.11	11.11
Required Form 14568 series	4.09	11.01 and 11.02
Appendices C and D removed	4.09 and 4.17	11.02 and 11.02; and removes Appendix C, Appendix C Schedules and Appendix D
Required determination letter application	4.05	6.05(1), 6.05(2) and 6.02(3)(c)

Expanded correction period	4.08	10.07(9)
Locating lost participants	4.04	6.02(5)(d)
Miscellaneous - updated cross reference	4.02	4.11
Miscellaneous - updated cross reference	4.03	5.01(3)(c)
Miscellaneous - eligible party	4.10	11.10
Miscellaneous - updated cross reference	4.14	12.06(2)
Miscellaneous - updated cross reference	4.15	Appendix A .08
Miscellaneous - updated example	4.16	Appendix B, section 2.07(2)(b), example 26

Effective date

- The revenue procedure is generally effective July 1, 2015.
- Plan sponsors may elect to apply provisions on or after March 27, 2015.

Additional resources

- [Correcting Plan Errors](#)
 - [Acknowledgement Letter \(IRS Letter 5265\)](#)
 - [New Methods for Correcting Elective Deferral Errors](#)
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New Methods for Correcting Elective Deferral Errors

Plan sponsors can avoid or pay reduced corrective contributions for certain elective deferral errors in 401(k) and 403(b) retirement plans, including:

- Incorrect automatic contributions or automatic escalation of elective deferrals
- Failure to correctly determine or withhold elective deferrals
- Exclusion of eligible employees

[Revenue Procedure 2015-28](#) contains the details and conditions for new safe harbor correction methods. These methods supplement, but do not replace, Revenue Procedure 2013-12.

Auto contribution and escalation errors

Sponsors of 401(k) and 403(b) plans with automatic contribution and escalation features generally don't need to make corrective contributions for missed or incorrectly calculated employee elective deferrals if certain conditions are met. Revenue Procedure 2015-28 adds new Appendix A, section .05(8), to Revenue Procedure 2013-12.

No corrective contributions are required if correct deferrals begin by the first payment of compensation made on or after the earlier of:

- **9½ months** after the end of the plan year in which the failure first occurred, or
- the last day of the month after the month the affected employee first notified the plan sponsor of the error.

The plan sponsor must issue a written notice to affected employees (and provide corrective matching contributions, if applicable). See below.

Sunset – This safe harbor is not available for failures occurring after 2020, but the IRS will consider whether to extend it.

Early correction of elective deferral errors

To encourage early correction of employee elective deferral failures, all 403(b) and 401(k) plan sponsors pay less for early correction of employee deferral errors. Revenue Procedure 2015-28 adds Appendix A, section .05(9) to Revenue Procedure 2013-12.

No corrective contributions are required for missed employee elective deferrals if correct deferrals begin by the first payment of compensation made on or after the earlier of:

- **three months** after the failure first began for the affected employee, or
- the last day of the month after the month the affected eligible employee first notified the plan sponsor.

25% corrective contributions for missed employee elective deferral failures are required if the period of failure exceeds three months but correct deferrals begin by the first payment of compensation made on or after the earlier of:

- **the last day of the second plan year** after the plan year in which the failure first began for the affected employee, or
- the last day of the month after the month the affected eligible employee first notified the plan sponsor.

The plan sponsor must issue a written notice to affected employees (and provide corrective matching contributions, if applicable). See below.

Notice, matching contributions and missed earnings

To use the new safe harbor corrections for employee elective deferral failures, the plan sponsor must:

1. Give written notice to the affected employee no later than 45 days after the date correct deferrals begin; and
2. If applicable, make corrective contributions to make up for missed matching contributions, plus earnings on all missed contributions and deferrals, within the two-year timeframe used to correct significant operational failures under Revenue Procedure 2013-12 (see [self-correction of plan errors](#)).

If these requirements are **not** met, the plan sponsor may use the other safe harbor correction methods under Revenue Procedure 2013-12, Appendix A, section .05 or Appendix B.

Calculating earnings

Plans with automatic contribution arrangements - earnings may be calculated using the plan's default investment alternative if the participant hasn't chosen an investment alternative.

- Cumulative losses don't reduce the corrective contributions.
- Plan sponsors can't use this method unless they meet the conditions specified in Revenue Procedure 2015-28.

No automatic contribution feature or haven't met the conditions - determine earnings according to Revenue Procedure 2013-12.

Content of written notice issued to affected employees

The specific content that needs to be in the written notice is listed the new Appendix A language added by Revenue Procedure 2015-28, [Section 4](#).

- No need to list specific dollar amounts of missed deferrals
- No need to list dollar amounts of corrective contributions

Additional resources

- [Correcting Plan Errors](#)
- [New Revenue Procedure Updates ECPRS](#)
- [401\(k\) Plan Fix-It Guide](#)
- [403\(b\) Plan Fix-It Guide](#)

Maintaining Eligibility to Sponsor a 403(b) Plan

Did you know only certain tax-exempt employers are eligible to sponsor an Internal Revenue Code Section [403\(b\)](#) plan?

Tax-exempt employers that may sponsor a 403(b) plan are:

- Tax-exempt organizations established under IRC Section 501(c)(3)
- Public school systems
- Cooperative hospital service organizations
- Uniformed Services University of the Health Sciences Civilian faculty and staff
- Public school systems organized by Indian tribal governments
- Certain ministers:
 - Employed by a 501(c)(3) organization
 - Self-employed
 - Ministers not employed by a 501(c)(3) organization, but functioning as a minister in their daily responsibilities with their employer, such as a hospital chaplain

An organization may meet more than one of the above criteria, so even if it loses its 501(c)(3) status, it may still be eligible to sponsor its 403(b) plan under another category.

The Employee Plans Compliance Unit conducted a [project](#) related to 403(b) plan sponsorship eligibility for organizations that lost their 501(c)(3) exempt status due to the automatic revocation for not filing a required return for three consecutive years. Some entities were unaware that their 501(c) status affected their eligibility to sponsor a 403(b) plan.

Reporting requirements for 501(c)(3) organizations

Generally, all entities exempt from federal income tax under Internal Revenue Code Section [501\(a\)](#) are required to file an annual return reporting their operations and activities (IRC Section [6033](#)). Exempt entities must file an annual notice with the IRS using a [Form 990 series](#) return (IRC Section [6033\(j\)](#) as added by the Pension Protection Act of 2006). The exempt status of entities that don't file a required return or notice for three consecutive years is automatically revoked.

501(c)(3) reinstatement

If you received a CP120A Notice, your organization's tax-exempt status has been revoked for failure to file a Form 990 series return for three consecutive years. You may be able to apply to have your exemption reinstated by completing [Form 1023](#) or [Form 1023-EZ](#). You must file an application for reinstatement even if you weren't originally required to complete one for tax-exempt status. To continue to maintain your 403(b) eligibility sponsorship, you should request a retroactive reinstatement.

Alternative ineligible employer correction

If you make errors in your 403(b) plan, you may be eligible to use the IRS Employee Plans Compliance Resolution System ([EPCRS](#)) to fix your mistakes and avoid the consequences of 403(b) annuity contracts or custodial accounts disqualification. You may be able to use the [Voluntary Correction Program](#) to maintain your plan's qualified status.

Additional Resources

- [IRC 403\(b\) Tax-Sheltered Annuity Plans](#)
- [Retirement Plans FAQs regarding 403\(b\) Tax-Sheltered Annuity Plans](#)
- [Understanding Your CP120A Notice](#)
- [Stay Exempt](#)
- [Correcting Plan Errors](#)
- [403\(b\) Plan Fix-It Guide](#)