

Chart of Significant Changes to EPCRS

Rev. Proc. 2013-12 Section	Topic	Changes from Rev. Proc. 2008-50
2.02 (new)	VCP submission procedures	<ul style="list-style-type: none"> • Completed Forms 8950 and 8951 must be included with all VCP submissions • New mailing addresses for VCP submissions (Section 11.12) • Plan sponsors may elect to apply the new procedures early (as permitted by Section 16)
2.03 (new)	403(b) plans	<ul style="list-style-type: none"> • May correct failures to comply with the §403(b) final regulations • Definitions for 403(b) failures are now substantially the same as those for qualified plans (use Rev. Proc. 2008-50 for pre-2009 failures) • Correction principles take into account relief provided by: <ul style="list-style-type: none"> ○ Notice 2009-3 ○ Announcements 2009-34 and 2009-89
2.04 (new)	List of Modifications	Lists other modifications to Rev. Proc. 2008-50
2.05 (formerly section 2.02)	Request for comments	<p>Asks for comments on EPCRS improvements including:</p> <ul style="list-style-type: none"> • How to correct failures to implement automatic enrollment for elective deferrals in a 401(k) or 403(b) plan • Whether Appendix A.05(2)(d)(ii) should also be applied to a 401(k)(13) safe harbor plan that has automatic escalation in elective deferrals • How to resolve specific issues relating to safe harbor notices and designated Roth contributions
4.04	SCP and excess contributions	<ul style="list-style-type: none"> • Promotes use of SCP by plans experiencing recurring excess annual additions if timely actions are taken • Limited to a plan that provides for

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		<p>elective deferrals and nonelective employer contributions that are not matching contributions</p> <ul style="list-style-type: none"> • Excess annual additions are regularly corrected by return of elective deferrals to the affected employee within two and half months after the end of the plan's limitation year
4.08	Orphan plans	Clarifies that SCP is not available for orphan plans.
4.09	457(b) plans	Provides a limited expansion for voluntary submissions (outside of EPCRS) involving 457(b) plans sponsored by certain tax-exempt entities.
5.02	Definitions for 403(b) plans	<p>Provides new definitions for 403(b) failures that occurred on or after January 1, 2009 because of the application of the 403(b) final regulations:</p> <ul style="list-style-type: none"> • 403(b) plan document failure added • Modified definitions of Operational Failure, Demographic Failure, Employer Eligibility failure, and Excess Amount. • Overpayment and Favorable Letter definitions added.
5.04 (new)	Defined term for Earnings calculations	Defines earnings for EPCRS purposes. Generally includes both gains and losses.
6.02(4)(c)	Funding of corrective contributions	Clarifies that for purpose of correcting a failed ADP, ACP, or multiple use test, any amounts used to fund QNECs must satisfy the definition of QNEC in Reg. §1.401(k)-6.
6.02(4)(d)	Defined benefit plans - corrective distributions	<ul style="list-style-type: none"> • Clarifies the actuarial equivalence factors that should be used to determine a corrective distribution from a defined benefit plan. • Provides that a corrective distribution isn't subject to the §417(e)(3) present value rules if it is made to make up for

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		missed payments for a benefit not subject to these requirements.
6.02(4)(e)(i) (new)	Defined benefit plans – failing to comply with §436 restrictions in operation	<ul style="list-style-type: none"> • Generally requires a sponsor to make a corrective contribution to a defined benefit plan to correct a failure to satisfy §436(b), (c), or (e). • Premature payment of benefits exceeding the §436(d) limitations will be treated and corrected as overpayment failures according to section 6.06(3). • Plan sponsors may correct overpayment failures arising from payments exceeding the limitations under §436(b), (c), or (e) by following section 6.06(3).
6.02(4)(e)(ii) (new)	Defined benefit plans – impact of §436 restrictions on corrective distributions	Provides that if a defined benefit plan is under a §436 restriction at the time of correction, the plan sponsor must make a special contribution to the plan in order to make a corrective distribution or corrective plan amendment. Also, no special corrective contribution is required if the corrective distribution is not a prohibited payment under §436.
6.02(5)(d)	Locating lost participants	<p>Clarifies and provides additional details regarding the reasonable actions that must be taken to locate lost plan participants who are owed additional retirement benefits. In general, such actions include, but are not limited to:</p> <ol style="list-style-type: none"> 1. A mailing to the individual’s last known address using certified mail, and, if that is unsuccessful, 2. An additional search method, such as the Social Security letter forwarding program, a commercial locator service, a credit reporting agency, or Internet search tools. <p>Depending on the facts and circumstances,</p>

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		<p>the use of more than one of these additional search methods may be appropriate.</p> <p>The IRS letter Forwarding Program is no longer available as of August 31, 2012 as a search method for locating lost plan participants who are owed additional retirement benefits (Rev. Proc. 2012-35).</p> <p>Provides a limited extension of the SCP correction period and the VCP 150-day correction period for plan sponsors who are taking action to locate lost participants.</p>
6.03	Employer eligibility failure	Minor changes to improve clarity.
6.04(2)(c)	Defined benefit plans – spousal consent	Adds a sentence to take into account the §436 requirements if a single employer defined benefit plan is under restriction at the time of correction.
6.05(1), 6.05(2), 6.05(3)(a), 6.05(3)(c)	Determination letter application-not required	<p>Revised to clarify the situations when a determination letter application need not be submitted with a VCP submission. This includes:</p> <ul style="list-style-type: none"> • Cases where the plan document failures are limited to late good faith amendments, late interim or late optional law changes • Demographic failures • Plan document failures corrected with IRS pre-approved plan documents • Off-cycle taxpayers who are adopting plan amendments to fix an operational failure. However, a determination letter application will have to be submitted during the next on-cycle year.
6.05(3)(a)	Interim and good faith amendments	Clarifies the terms “good faith amendments,” “interim amendments” and “optional law changes.”
6.05(3)(a) & 6.05(3)(b)	Issued compliance	Revising section 6.05(3)(a) and adding a new section 6.05(3)(b) to improve clarity. It

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(new)	statement	specifies the matters covered by an issued compliance statement in resolving certain late amender failures described in section 6.05(3)(a).
6.05(3)(c) (new) (formerly section 6.05(3)(b))	Determination letter application - not required	Specifies that the submission of a determination letter application is not required and may not be submitted to correct a demographic failure. A sentence was added to clarify that a compliance statement or closing agreement is limited to specific failures and years described within such documents and does not provide reliance for any other year.
6.05(3)(d) (new)	Determination letter application- not required	Clarifies that a new determination letter application isn't required and must not be submitted with a VCP submission for a failure to adopt amendments required under the terms of a favorable determination letter.
6.05(5) (new)	Determination letter application not required – preapproved plans	Addresses corrective amendments to pre-approved plans and provides limited circumstances that would prevent the plan sponsor from losing reliance on the plan's opinion or advisory letter.
6.06(3)	Overpayments – defined benefit plans	Modified to address the correction of overpayments from defined benefit plans.
6.06(4) (new)	Overpayments – defined contribution plans, including 403(b)	Clarifies that a corrective contribution isn't necessary if the overpayment was related solely to a premature distribution of the participant's vested benefit that was determined in accordance with plan terms. Repayments of premature distributions by the affected participants or beneficiaries must be reallocated to the participant's account.
6.07	Plan loan failures	Clarifies that the correction principles in that section also apply to Audit CAP.
6.09	Excise tax and other taxes	Edited for clarity

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9.03	Correcting by plan amendment	Clarifies when a determination application must be submitted if required by section 6.05.
6.10 (new)	Correction principles - 403(b) plans	Added correction principles applicable to 403(b) plans, including the failure to timely adopt a written 403(b) plan.
10.07(1), (10)	VCP Forms 8950 and 8951	Revised to indicate that completed Forms 8950 and Form 8951 must be included with all VCP submissions. A VCP submission that does not include these forms will be considered seriously deficient and may be returned to the plan sponsor.
10.07(8)	Issuance of compliance statement	Revised to: <ul style="list-style-type: none"> • Improve clarity • Explain how the new model compliance statement in Appendix C Part 1 will be issued and applicable restrictions • Explain what happens if a VCP submission is materially modified after being submitted to the IRS.
10.08	Compliance statement	Reorganized to improve clarity and to work with the new Appendix C Part I VCP Submission Model Compliance Statement. <ul style="list-style-type: none"> • Addresses the failure to timely adopt a 403(b) plan. • Clarifies that the reliance provided by a compliance statement is limited to the specific failures and years specified and does not provide reliance for any other failure or year.
10.10	New Penalty of Perjury statement-anonymous submissions	Clarifies that if a VCP Anonymous Submission is made by an individual representing the plan sponsor, that individual must satisfy the power of attorney requirements and must provide an appropriate statement to that effect under penalty of perjury.
10.11(1)	Group submissions	Clarifies that the fee for master and prototype or volume submitter plans is based on the number of basic plan documents, not adoption agreements.
10.12(2)	Multiemployer and	Clarifies that if a qualification failure does not

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	multiple employer plans	apply to all participating employers in a multiemployer or multiple employer plan, then the plan administrator may choose to have the compliance fee (in section 12) or sanction (in section 14) calculated separately for each employer based on the participants attributable to that employer, rather than basing it on the participants of the entire plan. Previously this was based upon plan assets.
11.01	Mandatory use of Forms 8950 & 8951 New Appendix C	Completely revised to: <ul style="list-style-type: none"> • Require that Forms 8950 and 8951 be included with all VCP submissions • Make conforming changes consistent with this requirement • Consolidate Appendices D and F plus former Appendix F Schedules into a new two-part Appendix C
11.02	Use of Appendix C Part II Schedules	Revised to discuss the use of the Appendix C Part II Schedules: <ul style="list-style-type: none"> • Can be used for your VCP submission for certain failures and correction methods • Multiple Schedules may be included in a single VCP submission • A Schedule may be used only if it applies to the applicant's situation without modification • Detailed descriptions of each Schedule
11.03	VCP submission requirements	Completely revised to reflect the use of Form 8950 and to refer to the new two-part Appendix C. Many of the previously listed items in this section have been moved to the Form 8950 application and its procedural requirements checklist.
11.04(1) (new)	Required documents	Revised to require the inclusion of completed Forms 8950 and 8951.

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11.04(3) (formerly 11.04(2) under Rev. Proc. 2008-50)	Additional information	Requires the plan sponsor to include an attachment or cover letter that identifies the page and section of the document that fixes the qualification failures specified in the VCP submission if a restated plan document is being submitted as evidence of correction.
11.05	Copy of compliance fee check	Requires that a photocopy of the check for the VCP compliance fee be included with the submission.
11.08	Penalty of Perjury statements	<ul style="list-style-type: none"> • Indicates that a plan sponsor must sign the penalty of perjury statement on the Form 8950 as part of a VCP submission. A separate penalty of perjury statement must be submitted if new or modified facts are presented or if there is a change to the VCP submission. • Clarifies that if a VCP Anonymous Submission is made by an individual representing the plan sponsor, that individual must satisfy the power of attorney requirements and must provide an appropriate statement to that effect under penalty of perjury.
11.09 (formerly 11.10 under Rev. Proc. 2008-50)	Procedural requirements checklist	Eliminates the requirement to submit an Appendix C Checklist and refers to the Procedural Requirements Checklist on Form 8950.
11.10 (formerly 11.11 under Rev. Proc. 2008-50)	Orphan Plans (formerly "Designations")	<ul style="list-style-type: none"> • Deletes unnecessary items that are addressed on Form 8950 • A cover letter to the IRS should indicate if the submission concerns an Orphan Plan and include information that establishes that the VCP submission is being made by an Eligible Person as defined in section 5.03.
11.11 (formerly 11.12)	Acknowledgment letter	Replaces references to Appendix E with Appendix D
11.12 (formerly 11.13 under Rev. Proc.)	Mailing address for VCP submissions	Revised to provide new mailing addresses for all VCP submissions made under this revenue

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2008-50))		procedure. VCP submissions will no longer be mailed to a Washington, DC address. They will be mailed to the IRS Service Center in Covington, KY.
11.14 (formerly 11.15 under Rev. Proc. 2008-50)	Assembling the VCP submission	<ul style="list-style-type: none"> • Requires the inclusion of Forms 8950 and 8951 • Remove duplicative items captured by Form 8950 • Clarifies that attachments and other necessary documents cannot be shared between a VCP submission and a related determination letter application
12.01	VCP Fees and Notice of Electronic Fund Transfer	Adds that a completed Form 8951 must accompany all VCP submissions along with the initial compliance fee. It also provides notice that compliance fee checks may be converted into an electronic fund transfer.
12.02(5) (new)	Temporary VCP compliance fee reduction for 403(b) plans whose written plan was not adopted timely	Provides for a 50% fee reduction for a VCP submission that is limited to a failure to adopt a 403(b) plan timely in accordance with Notice 2009-3 if the VCP submission is mailed to the IRS by December 31, 2013.
12.03(3) (new)	VCP compliance fee	Provides that the VCP compliance fee will be limited to \$500 if: <ul style="list-style-type: none"> • The sole failure of the submission is the failure to adopt an amendment (on which the favorable determination letter is conditioned) within the applicable remedial amendment period, and • The required amendment was or is adopted within three months of the expiration of the remedial amendment period for adopting the amendment.
12.04 (new)	VCP compliance fee amount - multiple reduced fees	Provides that the fee for a VCP submission with multiple failures, each of which is subject to a reduced fee, is the lesser of: <ol style="list-style-type: none"> 1. the sum of the reduced fees, or 2. the general fee determined under the

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		chart in section 12.02(1).
12.05 (formerly section 12.04 under Rev. Proc. 2008-50)	Group submissions	Clarifies that the compliance fee for a group submission for preapproved plans is based on the number of basic plan documents submitted and the number of employers who have adopted each basic plan.
12.08 (formerly section 12.07 under Rev. Proc. 2008-50	Number of plan participants for compliance fee purposes	Clarifies how to determine the number of plan participants if a Form 5500 series return is not required to be filed with regard to a qualified plan or 403(b) plan.
14.04(1) & (2)	Audit CAP sanction	Updates the fee schedule and acronyms for non-amenders discovered during the determination letter application process not related to a VCP submission.
14.04(3) (new)	Audit CAP sanction	Limits the sanction imposed if a failure to timely adopt good faith amendments, interim amendments or amendments required to implement optional law changes (described in section 6.05(3)(a)) is the sole failure found by the IRS during the determination letter application process. The fee will be 40% of the applicable fee for “Employer’s 2 nd Remedial Amendment Cycle” on the chart in section 14.04(1).
14.04(4) (new)	Audit CAP sanctions	Limits the sanction imposed if the sole failure discovered by the IRS during the determination letter application process consists of a failure to timely adopt an amendment (on which a favorable determination letter was conditioned) within the applicable remedial amendment period. The sanction is \$1,000, regardless of the number of plan participants, if the required amendment was adopted within three months of the expiration of the remedial amendment period for adopting such amendment.
16	Effective date	Generally effective April 1, 2013. Plan sponsors may elect to apply the provisions

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		of this revenue procedure on or after December 31, 2012. Plan Sponsors that choose this option must include required forms with their VCP submissions and must use the new mailing addresses. For 403(b) plans, the definitions under Rev. Proc. 2008-50 apply to failures that occurred in taxable years beginning before January 1, 2009.
Appendix A.01	General rule	Clarified to say that Appendix A and B corrections are reasonable and acceptable. Any correction method used that is not described in Appendix A or B would need to satisfy the correction principles of section 6.02 and other applicable rules set forth in this revenue procedure.
Appendix A.03	QNECs	In order to apply the safe harbor correction method used to correct a failed ADP, ACP, or multiple use tests, any amounts used to fund QNEC contributions must satisfy the definition of QNEC in Reg. §1.401(k)-6.
Appendix A.05	QNECs	In some cases, a matching contribution owed to a participant may be made by a corrective employer matching contribution instead of a QNEC. The corrective employer matching contribution would, unlike a QNEC, be subject to the plan's vesting schedule applicable to employer matching contributions. See also the examples in Appendix B.
Appendix A.05(2)(d)	Safe harbor 401(k) – excluded employees	Provides an additional safe harbor correction method for the improper exclusion of employees from safe harbor 401(k) plans designed to comply with §401(k)(12) or 401(k)(13). Generally, missed deferrals are deemed to equal 3% of compensation; however, it may be a higher amount if matching contributions are provided.
Appendix A.05(6) (new)	403(b) plan – excluded employees	Provides safe harbor correction methods for the improper exclusion of employees from making elective deferrals to a 403(b) plan because of a failure to comply with the

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		universal availability requirement of §403(b)(12)(A)(ii). The missed deferral is deemed equal to the greater of: 3% of compensation, or the maximum deferral percentage for which the plan sponsor provides a matching contribution rate that is at least as favorable as 100% of the elective deferral made by the employee.
Appendix A.05(7) (new)	SIMPLE IRA plan – excluded employees	Provides safe harbor correction methods for the improper exclusion of employees from a SIMPLE IRA plan. The missed deferral is deemed to be 3% of compensation.
Appendix A.06	Defined benefit plan – corrective contributions	Under the safe harbor, to correct a failure to timely pay a required minimum distribution in a defined benefit plan that is subject to a restriction under §436 at the time of correction, the plan sponsor must make a special corrective contribution to the plan as part of the correction.
Appendix A.07(2)	Spousal consent	Under the safe harbor, payment of a lump sum to a spouse to correct a failure to obtain spousal consent before making distributions to a participant may be unavailable if the plan is subject to a restriction on accelerated benefit distributions under §436(d) at the time of correction. Such a payment would only be available if the plan sponsor (or other party) makes a special corrective payment to the plan.
Appendix B	Corrective matching contributions	Examples were modified to provide that, in some cases, a matching contribution owed to a participant may be made by a corrective employer matching contribution instead of a QNEC. The corrective employer matching contribution would, unlike a QNEC, be subject to the plan's vesting schedule applicable to employer matching contributions.
Appendix B, Section 2.07(3)	Defined benefit plan – early inclusion of	Clarifies that corrective plan amendments to resolve the early inclusion of otherwise eligible employees in a defined benefit plan must

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	employees	consider the rules of §436 if the plan is subject to a restriction on increases in liability for benefits under §436(c) at time of correction.
Appendix C (Based upon Former Appendices D and F and related Appendix F Schedules in Rev. Proc. 2008-50)	New Appendix C	Revises Appendix C to consist of two parts: <ul style="list-style-type: none"> • Part I: A Model VCP Submission Compliance Statement; • Part II: Various Schedules (formerly Appendix F Schedules) containing standardized failure descriptions and correction methods for use with VCP submissions. None of the formatting and wording in these Appendix C documents may be modified by a VCP applicant or representative.
Appendix C	New model compliance statement and schedules	<ul style="list-style-type: none"> • Model compliance statement and various schedules are divided into “Sections” rather than “Parts” • New Section IV will need to contain details and information regarding the specific methodology that will be used to locate affected former participants, including lost participants. • Adds enforcement language pertaining to 403(b) plans where the written plan was not timely adopted. Allows taxpayers to use the extended remedial amendment period set forth in Announcement 2009-89. • Clarifies that reliance on a compliance statement is limited to the specific failures and years described within such documents. It does not provide reliance for any other year.
Appendix C Part II Schedule 1 (formerly Appendix F, Schedule 1 under Rev. Proc. 2008-50)	Late interim amendments	<ul style="list-style-type: none"> • Reformatted • Gives instructions on when to use Schedule 1 and how to complete it
Appendix C Part II Schedule 2, (formerly Appendix F, Schedule	Late amendments	Updated to include failures to timely amend for the 2004, 2008, 2009, 2010, 2011 and 2012 cumulative lists. Also includes:

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2 under Rev. Proc. 2008-50)		<ul style="list-style-type: none"> • Failure to timely adopt an amendment required by a favorable determination letter • Failure to adopt pre-approved defined benefit plans by April 30, 2012 • Failure to timely adopt a written §403(b) plan
Appendix C Part II, Schedules 3, 4, & 9 (formerly Appendix F, Schedules 3, 4, & 9)	Lost participants	<ul style="list-style-type: none"> • Correction methods for failures affecting lost participants have been revised • Applicants will provide information on methods to be used to find missing or lost plan beneficiaries • Use as an attachment to Section IV of the Appendix C Part I Model VCP Submission Compliance Statement or any issued compliance statement
Appendix D (Formerly Appendix E under Rev. Proc. 2008-50)	Acknowledgement letter	A new formatted Acknowledgement Letter can be found in Appendix D.