

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

§ 401(a), 403(a) plan

- eligibility for EPCRS & its various programs--- 1.01, 4.01, 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.08, 4.10, 4.11, 4.12, 4.13
- defined as qualified plan--- 5.01

§ 403(b) plan - see also “Correction”, and “Excess Amount”, and “Failure” and, “Favorable Letter”

- availability of correction programs--- 2.03, 4.01, 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.08, 4.11, 4.12, 4.13
- correction principles--- 5.02(3), 6.03, 6.06, 6.10 & other applicable sections
- definitions--- 5.02
- discounted VCP compliance fee if certain conditions are met--- 12.02(5)
- eligibility for EPCRS--- 1.01, 2.01
- effect of EPCRS--- 3.01
- IRS approved correction methodology--- Appendix A, Appendix B
- model VCP submission documents--- Appendix C Part I model compliance statement and Appendix C Part II, Schedules 2, 5, 6, & 8
- required statement for VCP submissions--- 11.03(11)
- summary of modifications applicable to 403(b) plans for failures occurring in 2009 and later years---2.03

§ 408(k) plan - see “SEP” as well as “Correction”, and “Excess Amount”, and “Failure” and, “Favorable Letter

§ 408(p) plan - see “SIMPLE IRA” as well as “Correction”, and “Excess Amount”, and “Failure” and, “Favorable Letter

§ 457(b) plans - see also “Eligible deferred compensation plan”

- Limited acceptance of submissions on a provisional basis outside of EPCRS-- -4.09

Abandoned plans - see “Orphan Plans”

Abusive Tax Avoidance Transactions

- effect on programs--- 4.13
- possible examination ---10.04

ACP (Average Contribution Percentage) test failures - see “Correction: §401(m)(2)” failures

ADP (Actual Deferral Contribution Percentage) test failures - see “Correction: §401(k)(3)” failures”

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

Administrative procedures - see also “Practices and procedures” and “Procedures”

- compliance statement conditioned upon---10.08(1) & 10.08(3)
- verification of required revisions to ---10.07(11)

Amendment - see “Correction”, by plan amendment”

Anonymous submission under VCP

- compliance Fee:
 - determination of amount---see “Compliance Fee for VCP Submissions”
 - form of payment---11.05
 - payment of---10.01, 10.10, 11.05
 - role of transferred Assets in determining amount---12.08
 - refund, partial---10.07(7)
 - timing of payment---10.10, 11.05, 11.06
- defined--- 10.10
- effect of anonymous submission on examination---10.10(2)
- eligibility--- See VCP
- failure to reach resolution---10.07(7)
- special statement required by submitter---10.10(1) & 11.08(2)
- submission requirements---10.10, 11.01,11.03, 11.04, 11.14 and 12
- timing of submission of certain documents
 - power of attorney---10.10(1)
 - penalty of perjury statement---10.10
 - determination letter application---10.10

Appeal process for VCP submissions - see “Conference Right”

Application forms - see “VCP Application forms”

Audit CAP- see also “Examination”

- correction of failures--- 6, 13.01
- closing agreement:
 - effect of--- 3.01, 6.13, 13.05
 - may be conditioned on revision of administrative procedures--- 13.03
 - possible need to obtain favorable determination letter before issuance of ---13.03
- effect of abusive tax avoidance transaction on availability of--- 4.13(1)(c)

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

- egregious failures and availability of--- 4.11
- eligibility--- 3.01
- failure to reach resolution---13.04
- internal revenue manual cite---13.06
- overview--- 1.03
- plan loan failures
 - applicability of audit CAP to---2.03, 6.07, 13.01, 14.01, 14.02
- purpose---1.01
- sanction:
 - determination of sanction amount--- 14.01, 14.02, 14.03, 14.04
 - estimation of maximum payment amount (“MPA”) for 401(a) plans-5.01(5)
 - estimation of MPA for 403(b) plans--- 5.02(4)
 - factors considered in determining sanction amount--- 14.02
 - fee/sanction for certain non-amenders identified by the IRS while processing determination letter applications--- 10.06(3), 14.04
 - form of payment--- 13.02
 - role of transferred assets in determining sanction amount--- 14.03
 - sanctions, if failure(s) are found by IRS during review of determination letter application--- 10.06(2), 10.06(3)
 - timing of payment--- 13.02

Audit Closing Agreement Program - see “Audit CAP”

Case processing - see specific entries relating to relevant EPCRS program

Changes made to EPCRS--- 2.02, 2.03, 2.04

Closing agreement - See “Audit CAP”

Comments, submission of

- address for sending comments--- 2.05(1)
- automatic enrollment for 401(k) plans--- 2.05(2)
- designated Roth contributions--- 2.05(3)
- failure to timely provide a safe harbor 401(k) plan notice--- 2.05(2)

Compliance fee for VCP submissions

- determination of compliance fee amount:
 - general fee amount--- 12.02(1)

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

- discounts--- 12.02(2), 12.02(3), 12.02(5)
- group submissions--- 12.05
- modification of an issued compliance statement--- 10.07(10)
- multiemployer and multiple employer plans--- 10.12, 12.02
- multiple failures--- 12.04
- non-amender failures--- 12.03
- orphan plans--- 12.02(4), 11.14
- SEP/SIMPLE IRA Plans--- 12.06
- special fee for egregious or intentional failures--- 12.07
- form of payment plus photocopy of check for VCP fee---11.05
- notice of electronic fund transfer--- 12.01
- payment of --- 10.01, 10.07(8), 10.11(3)(c)
- plan assets cannot be used (directly or indirectly) to pay for compliance fee--- 1.03, 10.01
- refund of--- 10.07(2), 10.07(7), 10.10(1), 10.11(2)
- role of transferred assets in determining amount--- 12.08
- timing of payment--- 11.05, 11.06

Compliance statement

- contents, conditions, limitations, and delegated authority--- 4.05(1), 6.05(3), 10.08
- effect on examination of the Plan by IRS--- 10.09
- effect on other law, including Title 1 of ERISA--- 6.13
- issuance of--- 10.07(8)
- modification of--- 10.07(10)
- verification of--- 10.07(11)

Conference Right --- 10.07(6)

Confidentiality under EPCRS -- 6.12

Contribution limits

- § 401(a)(17) - see “Correction: § 401(a)(17) failures”
- § 401(k)(3) - see “Correction”: § 401(k)(3) failures”
- § 401(m)(2) - see “Correction: §§ 401(m)(2), 401(m)(9) failures”
- § 401(m)(9), pre-2002 plan years - see “Correction: “§§ 401(m)(2), 401(m)(9) failures”

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

- § 402(g) - see “Correction: § 402(g) failures”
- § 415 - see “Correction: § 415 failures”

Correction

- § 72(p) failures involving participant loans--- 6.07
- § 401(a)(4) failures --- 6.02(2)(c)
- § 401(a)(9) failures --- Appendix A (section .06)
 - Model VCP submission documents--Appendix C Part I model compliance statement and Appendix C Part II-Schedule 8
 - waiver of § 4974 excise tax --- 6.09(2)
- § 401(a)(17) failures --- Appendix B (sections 2.06 and 2.07(1))
 - Model VCP submission documents--Appendix C, Part I model compliance statement and Appendix C Part II- Schedule 9
- § 401(k)(3) failures --- Appendix A (section .03), Appendix B (section 2.01)
 - waiver of § 4979 excise tax --- 6.09(4)
- § 401(m)(2), and pre-2002 §401(m) (9) failures --- Appendix A (section .03), Appendix B (section 2.01)
 - waiver of § 4979 excise tax --- 6.09(4)
- § 402(g) failures --- 6.06 , Appendix A (section .04)
- § 403(b)(12)(A)(ii) failures--- Appendix A (section .05(6))
- § 410(b) failures--- 6.02(2)(c)
- § 411 failures --- Appendix B (section 2.03)
- § 415 failures --- 4.04, 6.06, Appendix A (section .08), Appendix B (section 2.04)
- § 416 failures --- Appendix A (section .02)
- § 436 failures--- 2.03, 6.02(4)(e)
- by additional employer contributions --- 6.02(2)(b), 6.02(4), 6.10(4)(a)
 - waiver of § 4972 excise tax--- 6.09(3)
- by corrective allocations --- 6.02(4), 6.02(5)(b)
- by corrective distributions --- 6.02(4), 6.02(5)(b)
- by plan amendment --- 4.05, 6.02(4), 6.05, 10.05, 10.08, Appendix B (section 2.07)
- consistency requirements --- 6.02(3)
- designated Roth contributions --- Appendix B (section 1.03)

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

- earnings adjustments --- 5.04, 6.02(5)(a), Appendix B Section 3)
- employer eligibility failure --- 6.03, 6.10,
 - 401(k) and 403(b) Model VCP submission documents---Appendix C Part I model compliance statement and Appendix C Part II Schedule 6
 - SEP/SARSEP Model VCP submission documents---Appendix C Part I model compliance statement and Appendix C Part II Schedule 3
 - SIMPLE IRA---Model VCP submission documents---Appendix C Part I model compliance statement and Appendix C Part II Schedule 4
- excess amounts:
 - defined --- 5.01(3)(a) for 401(a) and 403(a) plans
 - defined --- 5.02(3) for 403(b) plans
 - IRS approved correction method --- Appendix A (sections .03, .04 .08), Appendix B (sections 2.04, 2.05)
 - special rules relating to --- 6.06(1)
 - treatment of small --- 6.02(5)(e)
 - under SEPs and SIMPLE IRAs --- 6.11(5)
- excess allocations:
 - defined --- 5.01(3)(b)
 - reduction of Account Balance correction method --- 6.06(2)
- exclusion of eligible employees
 - catch-up contributions-elective deferrals, after tax employee contributions & matching contributions--- Appendix A (section .05(4))
 - defined contribution & defined benefit plans that do not include elective deferrals, matching contributions or after tax employee contributions--- Appendix A (section .05(1))
 - designated Roth contributions--- Appendix A (section .05(3))
 - elective deferrals, matching contributions and after employee contributions--- 6.02(7), Appendix A (section .05(2)), Appendix B (section 2.02(1))
 - profit Sharing Plans- discretionary employer contributions---Appendix A (section .05(1)), Appendix B (Section 2.02(2))
 - SEP/SARSEP Plan--- 6.11, Appendix C Part II, Schedule 3
 - SIMPLE IRA Plan--- 6.11 Appendix A (section .05(7)), Appendix C Part II Schedule 4
 - universal availability requirement-403(b) plans--- Appendix A (section .05(6))

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

- failure to implement an employee election--- Appendix A (section .05(5))
- failures in 403(b) plans--- 6.10
 - failure to adopt a written plan--- Appendix C Part II, Schedule 2
 - orphan contracts (or other assets)--- Appendix A (section .09(2)(a))
 - failures relating to information sharing agreements--- Appendix A (section .09(2)(b))
- failures in SEPs --- 6.11, Appendix C Part II, Schedule 3
- failures in SIMPLE IRAs --- 6.11, Appendix C Part II, Schedule 4
- hardship distribution failures --- Appendix B (section 2.07(2)), Appendix C Part II, Schedule 9
- inclusion of ineligible employees --- Appendix B (section 2.07(3))
- locating lost participants/spouses/beneficiaries --- 6.02(5)(d)
- not permitted if remedial amendment period has not expired --- 6.08
- on audit--- See “Audit CAP”, “Examination” and “Under Examination”
- operational failures under SCP:
 - insignificant--- 8
 - significant--- 9
- orphan plan, abandoned, including 403(b) plans --- Appendix (section A.09)
- over contributions to SEPS--- 6.11(5)
- over contributions to SIMPLE IRAs--- 6.11(5)
- overpayments (see also “Excess Amount”)
 - correction methodology principles-defined benefit Plans--- 6.06(3)
 - defined for EPCRS purposes---- 5.01, 5.02
 - IRS approved methodology--- Appendix B (sections 2.04 and 2.05)
 - correction methodology principles-defined contribution Plans, including §403(b) plans--- 6.06(4)
 - limited tax relief --- 6.03(4), 6.09(5), 6.09(6)
 - recovery of small amounts--- 6.02(5)(c)
 - return of overpayment correction method--- (Appendix B section 2.04)
 - reporting and notification of corrective distributions and overpayments-- - 6.02(9), 6.06
- participant consent--- 6.04, Appendix A (section .07)
- principles under EPCRS

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

- § 403(b) plans--- 6.10
- corrective allocations and corrective distributions--- 6.02(4)
- funding- corrective allocations and QNEC contributions-- 6.02(4)(c)
- failure to satisfy § 436--- 6.02(4)(e)(i)
- special rules for defined benefit plans that are restricted under § 436 at the time of correction--- 6.02(4)(e)(ii) & 6.02(4)(e)(iii)
- excise taxes--- 6.09
- failure to obtain spousal consent--- 6.04
- general requirements--- 6.01, 6.02
- ineligible employer failure--- 6.03
- loan failures associated with § 72(p)--- 6.02(6), 6.07
- orphan plans--- 6.02(2)(e)(ii), 6.02(5)(f)
- required determination letter application --- 6.05
- SEPS and SIMPLE IRA plans--- 6.11
- special exceptions to full correction--- 6.02(5)
- special rules relating to excess amounts and overpayments--- 6.06
- spousal consent--- 6.04, Appendix A section .07
- terminated plans, availability of correction for--- 4.07
- timing of under VCP---10.07(9)
- universal availability in 403(b) plans--- See “Correction: Exclusion of eligible employee”.
- verification of --- 10.07(11)
- voluntary and timely--- 1.02

Defect - see “Failure”

Determination letter

- applications related to VCP submissions, where to file --- 10.05
- applications not related to VCP submissions --- 10.06
- as part of definition of “favorable letter” --- 5.01(4)
- changes made to requirement under EPCRS --- 2.04, 6.05
- requirement under EPCRS --- 4.06, 6.05, 9.03, 10.06, 11.04(3)
- requirement relating to anonymous submissions --- 10.10
- when review of a determination letter application causes plan to be considered to be “Under Examination” --- 5.09(3)

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

Disclosure under EPCRS--- 6.12

Diversion or misuse of plan assets--- 4.12

Earnings

- adjustments to corrective contributions/distributions through date of correction--- 6.02(4)(a), 6.02(4)(f)
- defined for EPCRS purposes--- 5.04
- IRS approved methods of determining---- Appendix B Section 3
- special rule for corrective distributions from defined benefit plans--- 6.02(4)(d)

Effective Date

- generally--- 16
- Optional earlier date--- 2.02, 16
- 403(b) plans, failures occurring in 2009 and later years--- 2.03, 5.02, 6.10,16
- 403(b) failures occurring prior to 2009--- 2.03, 5.02(2)(e), 16, and Rev. Proc. 2008-50

Egregious failure - see “Failure”: egregious”

Eligible deferred compensation plan--- see “§ 457(b)”

Eligible organization - see “Group Submission under VCP”

Employee Plans Compliance Resolution System - see “EPCRS”

Employer - see “Plan Sponsor”

EPCRS

- availability of (or lack thereof) --- 1.03, 4, 8, 9 and 10
- defined --- 1.01
- effect of abusive tax avoidance transaction on availability of programs under - -- 4.13
- general principles --- 1.02
- programs:
- Audit Closing Agreement Program --- see “Audit CAP”
- Self-Correction Program --- see “SCP”
- Voluntary Correction Program --- see “VCP”

Error - see “Failure”

Examination - see also “Under Examination”:

- correction of insignificant failures upon --- 8.01
- effect of anonymous VCP submission on --- 10.10(2)

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

- effect of compliance statement on --- 10.09
- effect of pending VCP request on --- 10.03, 10.04
- effect of Group Submission on --- 10.11(3)(d)
- effect on correction period under SCP --- 9.02(3)
- effect on eligibility for SCP --- 4.02
- effect on eligibility for VCP --- 4.02
- effect on eligibility for Group Submission --- 10.11(3)(d)
- referral of VCP submission to --- 4.13, 10.06(2), 10.07(4), 10.07(5), 10.07(7), 10.07(8), 10.07(11)
- subsequent verification of failures' correction does not constitute an --- 10.07(11)
- VCP submission requirement that neither plan nor Plan Sponsor is Under Examination --- 4.02

Excess amount - see also "Correction Excess Amounts" and "Overpayment":

- in general:
 - as factor under Audit CAP --- 14.02
 - relation to "Overpayment" --- 5.01(3)
 - treatment of small --- 6.02(5)(e)
- 403(b) plans:
 - correction of --- 6.06(1) & (2)
 - defined --- 5.02(3)
- qualified plans:
 - correction of --- 6.06(1) & (2)
 - defined --- 5.01(3)
- SEPs:
 - additional compliance fee if Excess Amounts are retained--- 12.06(2)
 - correction of Excess Amounts --- 6.11(5)
 - correction of failure to satisfy deferral percentage test --- 6.11(3), SARSEPs only
- SIMPLE IRA plans:
 - additional compliance fee if Excess Amounts are retained--- 12.06(2)
 - correction of Excess Amounts --- 6.11(5)

Excise Taxes--- 6.09

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

Failure - see also "Correction":

- § 403(b) plan failures (for failures occurring in 2009 and later years)--- 2.03, 5.02
- § 403(b) plan failures for failures occurring in 2008 and earlier years---2.03, 16 and Revenue Procedure 2008-50 Section 5.02
- additional failures discovered after submission of VCP request---10.07(5)
- demographic:
 - defined, for § 403(b) plans in regard to failures occurring in 2009 and later years---- 5.02(2)(c)
 - defined, for qualified plans--- 5.01(2)(c)
 - determination letter application –not allowed to be submitted to the IRS--- 6.05,
- egregious--- 4.11, 12.07
- employer eligibility:
 - applicability to SEP, SARSEP and SIMPLE IRA plans--- 4.11(1)
 - correction principles--- 6.03, 6.10
 - defined, for § 403(b)--- 5.02(2)(d)
 - defined, for qualified plans--- 5.01(2)(d)
 - ineligible for Self Correction Program (SCP)--- 4.06
 - model VCP documents---Appendix C Part I model compliance statement and Appendix C Part II, Schedules 3, 4, & 6
- need to identify--- 10.02, 10.08(1), 11.03(11)
- operational:
 - defined, for § 403(b) plans in regard to failures occurring in 2009 and later years--- 2.03, 5.02(2)(b)
 - defined, for § 403(b) plans in regard to failures occurring in 2008 and earlier years--- 2.03, 5.02(2)(e), 16 and Rev. Proc. 2008-50 Section 5.02(2)(a)(i)-(xii)
 - defined, for qualified plans--- 5.01(2)(b)
 - significant vs. insignificant--- 8.02
- plan document :
 - correction principles--- 2.03, 4.05, 6.05, 6.10
 - defined for § 403(b) plans in regard to failures occurring in 2009 and later years--- 2.03, 5.02(2)(a)
 - defined, for qualified plans--- 5.01(2)(a), 6.05

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

- ineligible for SCP--- 4.01(2), 4.05(1), 6.10
- model VCP submission documents---Appendix C Part I Model VCP Submission Compliance Statement and Appendix C Part II, Schedule 1 and Schedule 2 (includes late adoption of written 403(b) plan)
- no plan document failure prior to 2009 for § 403(b) plans--- 2.03, 16, and Rev. Proc. 2008-50 Section 5.02.
- reduced VCP compliance fees --- 12.02, 12.03, 12.04
- required submission of a determination letter application--- 6.05, 11.04(2)
- sanction pursuant to Audit CAP--- 14.02
- sanctions/fees pursuant to unrelated determination letter application--- 14.04
- plan loan (did not comply with § 72(p) requirements):
 - correction principles--- 6.07
 - defined to include participant loans that did not comply with the requirements of § 72(p) either in form or operation--- 4.01(2), 4.01(3)
 - discounted VCP compliance fee in limited circumstances--- 12.02(3)
 - ineligible for SCP--- 4.01(2), 4.01(3), 6.07, 13.01
 - model VCP submission documents --- Appendix C Part I Model VCP Submission Compliance Statement and Appendix C Part II, Schedule 5
 - possible income tax relief available under VCP and Audit CAP, if certain conditions are met--- 6.07, 13.01
 - special reporting of deemed distribution under VCP and Audit CAP--- 6.07, 13.01
- plan loan (operational issue where participant loans were made in operation, complied with § 72(p) requirements but plan document lacked loan provisions)
 - limited SCP availability---4.05, Appendix B section 2.07
 - model VCP submission documents used to--- Appendix C Part I Model VCP Submission Compliance Statement and Appendix C Part II, Schedule 9
- qualification, defined--- 5.01(2)
- treatment if found by IRS during review of determination letter application--- 5.09(3), 10.06(2), 10.06(3)

Favorable letter:

- as eligibility requirement for SCP, significant operational failures affecting qualified plans, 403(b) plans--- 4.03

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

- as eligibility requirement for SCP, insignificant failures affecting SEP/SIMPLE IRA plans--- 4.03
- defined --- qualified plans--- 5.01(4)
- defined - § 403(b) plans--- 4.03, 6.10(2)

Fee - 1.02 see also “Compliance Fee for VCP Submissions”

Forms 8950 and 8951 - see “VCP application forms”

Form failure - see “Failure: plan document”

Group submission under VCP:

- compliance fee - see “Compliance Fee for VCP Submission”
- described---10.11
- effect of examination on eligibility --- 10.11(3)(d)
- eligible Organization, defined --- 10.11(2)
- eligible Organization receives unsigned compliance statement --- 10.11(3)(c)
- notice requirements --- 10.11(3)(b)
- procedures --- 10.11(3)(a); see also specific entries under VCP
- special rules --- 10.11

Income tax---

- tax consequences of failures, including Overpayments---6.06(3), 6.06(4), 6.09(1)
- waiver of income tax in limited situations under VCP or Audit CAP with certain deemed distributions associated with “Plan Loan failures” if certain conditions are met.---Section 6.07.
- waiver (or partial waiver) of additional income tax imposed by § 72(t) in specific, limited situations under VCP that involve Overpayments if certain conditions are met--- 6.09(6).

IRS Letter Forwarding Program--- no longer available--- 6.02(5)(d)

John Doe request - see “Anonymous Submission under VCP”

Late amender - see “Failure: plan document”

Lost participants - see “Correction”, “locating lost participants/spouses/beneficiaries”

Mailing address, VCP submissions and special 457(b) submissions---11.12

Maximum payment amount - see “Audit CAP”, “Sanction”

Mergers and acquisitions - see “Transferred Assets”

Mistake - see “Failure”

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

Model VCP submission documents - see “Voluntary Correction Program”, “use of model VCP submission documents”

Multiple use test failures (pre-2002 years) - see “Correction”, “§§ 401(m)(2), 401(m)(9) failures”

Non-amender - see “Failure”, “Plan Document”

Orphan plan

- correction principles and methodology--- 6.02(2)(e)(ii), 6.02(5)(f), Appendix A (section .09)
- defined--- 5.03(1)
- eligible Party in terms of who may submit a VCP submission--- 5.03(2)
- possible waiver of VCP compliance fee upon request--- 12.02(4), 11.03(13), 11.14
- required designation and submission of information to establish that the applicant is an “eligible person” defined in section 5.03 --- 11.10

Overpayment, including premature distributions -- see also “Excess Amounts”

- applicability to 403(b) plans--- 5.02(3)
- correction principles applicable to defined benefit plans--- 6.06(3)
- correction principles applicable to defined contribution plans--- 6.06(4)
- defined for 403(b) plans--- 5.02(4)
- defined for Qualified Plans--- 5.01
- required written notification to affected participants--- 6.06(3) & 6.06(4)
- possible waiver of excise tax imposed by §4973 - VCP only--- 6.09

Participant loans - see also “Failures: plan loans”

Penalty of Perjury Statement Requirement---

- initially found on Form 8950 --- 11.08(1)
- new statement required due to changes in facts or VCP submission--- 11.08(1)
- special requirement for anonymous submissions--- 11.08(2)

Plan - see also § “403(b) Plan”, “Qualified Plan”, “SEP”, “SIMPLE IRA plan”, and “Terminated Plan”

- resolution of “Failures” discovered upon examination - see “Audi CAP”
- submission of “Failures” under the Voluntary Correction Program - see “VCP”, “Group Submission under VCP”, and/or “Anonymous Submission under VCP”

Plan qualification failure - see “Failures”

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

Plan sponsor

- § 401(a) & 403(a) plan--- 5.01(6)
- § 403(b) plan--- 5.02(5)

Power of Attorney---

- requirements for VCP submissions--- 11.07
- required statement to be included with anonymous VCP submissions--- 10.10, 11.08

Practices and procedures:

- as eligibility requirement for Self-correction Program (SCP)--- 1.03, 4.04
- defined--- 4.04

Premature distributions----See “Overpayments”

Procedures - see also “Administrative Procedures”, and “Practices and procedures” and “VCP”

Qualified Non-elective contributions (QNECs)

- approved correction methods involving--- Appendix A (section .03), Appendix B (section 2.02)
- employer contributions used to fund QNEC corrective contributions must comply with Income Tax Regulation 1.401(k)-6--- 6.02(4)(c), Appendix A (sections .03 and 05) and Appendix B (sections 2.01 and 2.02)
- may amend plan to provide for--- 4.05

Qualified Plan--- 5.01, see also “§ 401(a)”, §403(a) Plan”

Required Minimum Distributions - see “Correction”, “§ 401(a)(9) failures”

Reliance--- 1.02, 3.04, 10.08, 10.09, Appendix A(section .01, Appendix B(section .01)

Revenue Procedure 2007-44, references to--- 5.06, 10.08(2)

Revenue Procedure 2008-50

- applicable to §403(b) failures arising in 2008 and earlier plan years--- 2.03, 16
- pre-2009 §403(b) failures are defined in Section 5.02 of Rev. Proc. 2008-50 Section 5.02--- 2.03, 5.02(2)(e), 16

Sample VCP submission documents - see “Voluntary Correction Program: use of model VCP submission documents”

Sanction - see “Audit CAP”, “Sanction”

SCP (Self Correction Program):

- correction by retroactive plan amendment --- 4.05(2), 9.03, Appendix B (section 2.07)

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

- defined --- 1.03
- effect of abusive tax avoidance transaction on eligibility under--- 4.13
- effect of examination on eligibility--- 4.02, 8.01, 9.02(3)
- eligibility requirements --- 4.01(1), 4.03, 4.04, 7, 8.01 and 9
- effect of and reliance on --- 3.01
- Insignificant operational failures:
 - factors used to determine whether an operational failure is insignificant--- 8.02
 - impact of multiple failures--- 8.03
 - sample examples--- 8.04
- limited Availability for SEPs, only if the failure is insignificant--- 7
- not available to correct:
 - diversion or misuse of plan assets--- 4.12
 - employer Eligibility failure--- 4.06
 - egregious failures--- 4.11
 - orphan plans--- 4.08
 - plan Document or demographic Failures--- 4.05
 - significant operational failures affecting SEPS & SIMPLE IRA plans--- 7
 - terminated plan--- 4.07
- practices and procedures --- 1.01, 1.03, 4.04
 - special exception for certain §415 failures--- 4.04
- purpose --- 1.01
- significant operational failures:
 - correction period for significant operational failures --- 9.02
 - role of Transferred Assets in extending correction period --- 9.02(2)
 - sample examples--- 9.05
 - substantial completion of correction --- 9.04
- submission of determination letter application for corrective amendment--- 4.05 and 9.03

SEP (Simplified Employee Pension, including salary reduction SEP also known as SARSEP)

- calculation of earnings for correction purposes--- 6.11

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

- compliance fee for VCP submission--- 12.06
- correction principles--- 6.11
- defined--- 5.07
- eligibility for EPCRS programs:
 - SCP--- 4.01, 4.03, 4.04, 7
 - VCP--- 4.01 and see “VCP”
 - audit CAP--- 4.01 and see “Audit CAP”
- effect of EPCRS--- 3.01
- excess amounts:
 - correction of--- 6.11(5)
 - defined--- 6.11(5)
 - retention of excess amounts--- 6.11(5)(b)
- favorable Letter for purposes of being eligible for SCP--- 4.03
- model VCP submission documents--- Appendix C Part I Model VCP Submission Compliance Statement and Appendix C Part II, Schedule 3
- resolution of failures under the Voluntary Correction Program - see “VCP”
- SARSEP:
 - correction of failure to satisfy deferral percentage test--- 6.11(3)
- underpayment of contributions to a SEP or SARSEP--- 6.11(4)

SIMPLE IRA plans:

- calculation of earnings for correction purposes--- 6.11
- compliance fee for VCP submission--- 12.06
- correction principles--- 6.11
- defined--- 5.08
- eligibility for EPCRS programs:
 - SCP--- 4.01, 4.03, 4.04, 7
 - VCP--- 4.01 and see “VCP”
 - audit CAP--- 4.01 and see “Audit CAP”
- effect of EPCRS--- 3.01
- excess amounts:
 - correction of--- 6.11(5)
 - defined--- 6.11(5)

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

- retention of excess amounts--- 6.11(5)(b)
- favorable Letter for purposes of being eligible for SCP--- 4.03
- model VCP submission documents--- Appendix C Part I Model VCP Submission Compliance Statement and Appendix C Part II, Schedule 4
- resolution of failures under the Voluntary Correction Program--- see “VCP”
- underpayment of contributions to a SIMPLE IRA plan--- 6.11(4)

Tax-sheltered annuities - see “§ 403(b) plan”

Terminated plan - see also “Orphan Plan”

- availability of correction programs, including §403(b) plans--- 4.07
- orphan plans---5.03, 6.02(2)(e)(ii) and Appendix A section .09

Transferred assets

- defined--- 5.01(7)
- effect on amount of Audit CAP sanction---- 14.03
- role of transferred assets in determining VCP compliance fee--- 12.08

Unenrolled return preparer

- cannot represent or discuss matters with IRS pertaining to VCP submissions, including Anonymous submissions with IRS--- 10.10, 11.07
- may receive copies of confidential correspondence if form 8821 is included with VCP submission--- 11.07

Under examination - see also “Examination”

- defined--- 5.09
- effect on eligibility for SCP--- 4.02, 8.01, 9.02(3)
- effect on eligibility for VCP--- 4.02

VCP Application Forms

- Forms 8950 and 8951 defined--- 2.02
- mandated for all VCP submissions made under this revenue procedure--- 2.02, 11.01, 11.03, 11.04, 11.14, 16
- procedural requirements checklist for form 8950--- 11.09

Voluntary Correction Program (“VCP”) - see also “Anonymous Submissions under VCP” and “Compliance fee for VCP submissions”

- application procedures
 - acknowledgement letter --- 11.11, Appendix D
 - application forms--- 2.02, 2.04, 10.07(1), 10.07(10), 10.10, 11.01, 11.04, 11.09, 11.14

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

- assembly --- 11.14
- mailing address --- 11.12
- maintaining copies of --- 11.13
- model VCP submission documents--- Appendix C Part I, Model VCP Submission Compliance Statement and Appendix C Part II Schedules 1 through 9
- procedures, in general --- 11.01, 11.03
- procedural requirements checklist for Form 8950 --- 11.09
- compliance fee, required--- 1.03, 10.01, 11.05 and 12
- copy of compliance fee check required--- 11.05(1)
- correction of failures in a terminated plan --- 4.07
- defined --- 1.03
- determination letter, related to failure(s) being resolved under VCP --- 4.05(1), 4.10, 5.01(4), 5.06, 6.05,16.06, 9.03, 10.05, 10.06, 10.10, 11.04(3)
- eligibility
 - abusive tax avoidance transaction, effect on eligibility --- 4.13
 - diversion or misuse of plan assets, not eligible--- 4.12
 - examination, effect on eligibility --- 4.02
 - requirements, in general --- 4.01(2)
- general submission requirements for VCP submissions
 - completed Forms 8950 and 8951--- 2.02, 11.01, 11.04
 - detailed description of the failures, including an explanation of how and why the failures arose--- 11.03(1) and 11.03(2)
 - detailed description of the correction methodology used to resolve the various failures. Must include narrative that explains how Earnings will be determined--- 11.03(3) and 11.03(4)
 - sample computations, where applicable--- 11.03(5)
 - narrative describing how former employees or beneficiaries will be located--- 11.03(6), Section IV of Appendix C Part I model VCP compliance statement, and Appendix C Part II Schedules 3, 4, and 9.
 - narrative describing changes in administrative procedures--- 11.03(7)
 - additional narrative if requesting relief from certain excise or certain income tax---11.03(8) and 11.03(9).
 - required statement if the VCP submission involves a §403(b) plan--- 11.03(11)

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

- required statement if the VCP submission failure involves transferred assets--- 11.03(10)
- VCP group submissions--- 10,11 and 11.03(12)
- orphan plan-- narrative requesting relief and supporting rationale for such relief plus evidence that the applicant is an eligible party--- 11.03(13), 11.10
- miscellaneous items required by the Procedural Requirements Checklist for Form 8950--- 11.09
- multiemployer and multiple employer plans:
 - determination of compliance fee--- 10.12 and 12
 - VCP submission must be made by plan administrator (rather than any contributing or adopting employer)--- 10.12
- penalty of perjury statement:
 - must be signed by plan sponsor--- Form 8950 & applicable Instructions, 11.08
 - required item--- 11.08
 - special statement to be submitted with Anonymous VCP submissions-- -10.10, 11.08(2)
- processing of request:
 - additional failures discovered after submission of request--- 10.07(5)
 - conference right--- 10.07(6)
 - eligibility of submission, discretion of IRS to determine --- 4.01(5), 10.07(2)
 - failure to reach resolution --- 10.07(7)
 - issuance of compliance statement --- 10.07(8)
 - modification of compliance statement – 10.07(10)
 - request for additional information --- 10.07(4)
 - review --- 10.07(3)
 - screening --- 10.07(1)
 - timing of correction --- 10.07(9)
 - verification of correction --- 10.07(11)
- required documents:
 - completed Forms 8950 and 8951--- 2.02, 11.01, 11.04
 - compliance fee check plus a photocopy of such check--- 11.05
 - copy of plan document--- 11.04(2)

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

- determination letter application, if applicable, related to failures being resolved under VCP--- 6.05, 11.04(3), 11.14
- letter explaining location of corrective provisions in a restated plan document being used for correction--- 11.04(3)
- notice that compliance fee check may be converted to an electronic fund transfer--- 11.05(2)
- orphan plans- required designation and information to establish that the applicant is an “eligible person” as defined in section 5.03----- 11.10
- use of model VCP submission documents
 - **Appendix C Part 1** model VCP submission compliance statement and Part II schedules
 - cannot be submitted under letterhead of plan sponsor or authorized representative--- 11.01(4), 11.02, Appendix C instructions
 - enforcement Section to be completed only by IRS--- 11.01(4)
 - instructions regarding use--- 11.01, 11.02 and Appendix C instructions
 - may not be modified by taxpayers----- 11.01(3), 11.02 and Appendix C instructions
 - **Appendix C Part II schedules:**
 - **Schedule 1** (late adoption of certain interim amendments, good faith amendments or amendments associated with the implementation of optional tax law changes)
 - instructions--- Appendix C Part II, Schedule 1
 - may only be used if the corrective amendment was adopted before the expiration of the plan’s remedial amendment cycle for that amendment--- 11.02(3)(a), Appendix F, Schedule 1 instructions
 - **Schedule 2** (Failure to timely adopt amendments to comply with required legislative or regulatory changes that cannot be reported on Schedule 1 and Failure to adopt a 403(b) plan timely—11.02(3)(b)
 - **Schedule 3** (for SEP or SARSEP plans)--- 11.02(3)(c)
 - employer eligibility failure, SARSEP only---Appendix C Part II, Schedule 3, Part IA
 - failure to satisfy deferral percentage test (SARSEP only)- -- Appendix C Part II, Schedule 3, Part IB

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

- failure to make required employer contributions--- Appendix C Part II, Schedule 3, Part 1C
- failure to provide eligible employees with the opportunity to make elective deferrals, SARSEP only--- Appendix C Part II, Schedule 3, Part 1D
- excess Amounts contributed--- Appendix C Part II, Schedule 3, Part 1E
- **Schedule 4** (for SIMPLE IRA plans)--- 11.02(3)(d)
 - employer eligibility failure--- Appendix C Part II, Schedule 4, Part 1A
 - failure to make required employer contributions--- Appendix C Part II, Schedule 4, Part 1B.
 - failure to provide eligible employees with the opportunity to make elective deferrals--- Appendix C Part II, Schedule 4, Part 1C.
 - excess Amounts contributed--- Appendix C Part II, Schedule 4, Part 1D
- **Schedule 5** (for qualified plans and §403(b) plans) with plan loan failures that did not comply with § 72(p) rules)--- 11.02(3)(e)
 - loan Amounts exceeded the limit under § 72(p)(2)(A)--- Appendix C Part II, Schedule 5, Part 1A
 - loan terms did not satisfy the limits on the duration of the loan under § 72(p)(2)(B)--- Appendix C Part II, Schedule 5, Part 1B
 - loan terms did not satisfy § 72(p)(2)(C) relating to the frequency and amortization of payments--- Appendix C Part II, Schedule 5, Part 1C
 - defaulted Loans-where loan terms satisfied § 72(p)(2) requirements, but payments were not made in accordance with the terms of the loan---Appendix C Part II, Schedule 5, Part 1D.
- **Schedule 6** (for Employer Eligibility failures that involve § 403(b) plans and 401(k) plans--- 11.02(3)(f), Appendix C Part II, Schedule 6, Part 1
- **Schedule 7**---Failure to Distribute Elective Deferrals in excess of the § 402(g) limit in a 401(k) plan---11.02(3)(g), Appendix C Part II, Schedule 7, Part I

TOPICAL INDEX -- REVENUE PROCEDURE 2013-12

- **Schedule 8**--- Failure to Pay Required Minimum Distributions under § 401(a)(9)--- 11.02(3)(h), Appendix C Part II, Schedule 8, Part I.
- **Schedule 9**--- 11.02(3)(i), Correction by plan amendment (in accordance with Appendix B)
 - § 401(a)(17) failure in a defined contribution plan- 4.05, Appendix C Part II, Schedule 9, Part IA, and Appendix B section 2.07
 - hardship distribution failure--- 4.05, Appendix C Part II, Schedule 9, Part 1B and Appendix B section 2.07
 - plan loan failure (where participant loans were made in operation and satisfied the requirements of § 72(p), but no participant loans were allowed under the Plan's written terms.--- 4.05, Appendix C Part II, Schedule 9 Part 1C, and Appendix B section 2.07
 - early inclusion of otherwise eligible employee failure--- 4.05, 6.02(4)(e)(ii), Appendix C Part II, Schedule 9 Part 1D, Appendix B section 2.07