

# New EPCRS: Revised VCP Application Procedure and More

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- Stephen W. Forbes, JD, LLM



# New EPCRS: Revised VCP Application Procedure and More

- **Facilitator:**  
Chuck Gouge
- **Question Board Moderator**  
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**New EPCRS:  
Revised VCP Application Procedure  
and More**

# Changes to EPCRS



# EPCRS Modifications

- New EPCRS procedure (Rev. Proc. 2018-52) modifies and supersedes previous EPCRS procedure (Rev. Proc. 2016-51)
  - The primary purpose of the new EPCRS is to set for the new VCP submission procedures
  - Beginning April 1, 2019, Plan Sponsors must use the [www.pay.gov](http://www.pay.gov) website when filing a VCP submission and paying applicable user fees





## Miscellaneous Changes

- Revising EPCRS to clarify that the provisions of SCP for significant operational failures are available for a 403(b) Plan if the 403(b) Plan satisfies the conditions for being treated as having a favorable letter
- In the case of a 403(b) plan, the plan sponsor generally will be treated as having a favorable letter if either:
  - The employer is an eligible plan sponsor and, on or before December 31, 2009 (or the date the 403(b) plan was established, if later), the employer has adopted a written 403(b) plan intended to satisfy Code §403(b) and the regulations effective as of January 1, 2009, or
  - The employer failed to adopt a written 403(b) plan timely and corrects the failure in accordance with EPCRS §6.10(3).

# Miscellaneous Changes

Applicants of submissions for 457 plans must use the [www.pay.gov](http://www.pay.gov) website to file.

the IRS Letter Forwarding Program is no longer used as a means to search for participants and beneficiaries

VCP user fees are included in annual revenue procedures issued by the IRS (Rev. Proc. 2019-4, and its annual successors)



## Other Changes

The sanction under Audit CAP may be paid using the payment methods available on the [www.pay.gov](http://www.pay.gov) website

The procedural rules for Audit CAP are provided in Internal Revenue Manual (“IRM”) 4.71.3.3, EPCRS Closing Agreements, and IRM 7.11.8, EP Determinations Closing Agreement Program

The IRS clarifies that, in certain cases, the it reserves the right to not issue a compliance statement and to set forth the circumstances under which a user fee may or may not be refunded.

## Miscellaneous Changes

- New EPCRS clarifies that, in certain cases, the IRS reserves the right to not issue a compliance statement and to set forth the circumstances under which a user fee may or may not be refunded
- Eligibility of submission:
  - If, at any stage of the review process, the IRS determines that a VCP submission is seriously deficient or that issuing a compliance statement with respect to the VCP submission would be inappropriate or impracticable, the IRS reserves the right to not issue a compliance statement.
  - If no substantive processing of the case has occurred, the IRS will refund the user fee submitted with the request. Otherwise, the user fee will not be refunded.

## Compliance Statement

- Previously, if a practitioner wanted to modify, supplement or add to a VCP submission, it would wait until the IRS specialist contacted them and then propose changes to the submission
  - Now, if a practitioner waits, he/she may be too late
- Under the revised procedure, if the IRS determines that a submission is complete and agrees with the proposed correction method, a compliance statement may be issued without the IRS contacting the Plan Sponsor (or its authorized representative)

# New VCP Submission Procedures



# Online VCP Submission

- Beginning April 1, 2019, all VCP submissions must be filed using the [www.pay.gov](http://www.pay.gov) website.
- On the [www.pay.gov](http://www.pay.gov) website, applicants (either an employer or an authorized representative [Form 2848]) will file a VCP submission and pay applicable user fees online
- From January 1, 2019, through March 31, 2019, an applicant may file a VCP submission with the IRS either by using the [www.pay.gov](http://www.pay.gov) website or by filing a paper VCP submission



# VCP provides procedures for correction of all Qualification Failures

1. Operational,
  2. Plan Document (i.e., the plan document fails to include required language),
  3. Demographic (i.e., a coverage, nondiscrimination or minimum participation failure that is not an operational failure), and
  4. Employer Eligibility (e.g., an adoption of a 401(k) plan by an employer that is not eligible to establish a 401(k) plan).
- VCP also provides procedures for the correction of participant loans that did not comply with the requirements of Code §72(p)(2)
  - The IRS may extend EPCRS to other arrangements (e.g., 457 Plans)



## VCP Submission

- Under VCP, the employer must file an online application with the IRS, disclosing the plan failure(s) that the employer wishes the IRS to consider
- Upon reaching an agreement, the IRS will issue a compliance statement and the employer must complete the required correction within 150 days.
- The correction of an employer's failure to adopt timely interim amendments or amendments for optional legal changes, must be made by the date of submission (i.e., the application should include the executed amendments)
- The employer may submit the application anonymously, disclosing its identity only when the applicant reaches an agreement with the IRS.

## Correction Methods

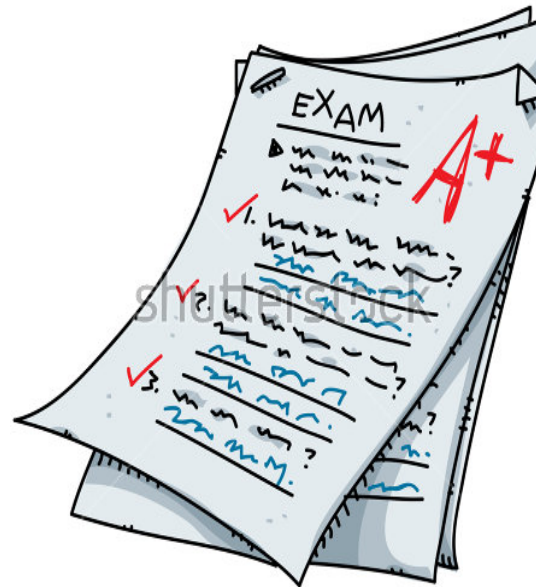
- EPCRS provides pre-approved methods for correcting many different types of failures, including descriptions of different methods for calculating earnings
  - EPCRS, Appendices A and B
  - Safe Harbor Correction Methods
- EPCRS correction methods are not the only correction methods
- Practitioner may be able to negotiate a correction method which is less expensive than the pre-approved methodology set forth in EPCRS
- Practitioner is well-advised to pattern its correction method after one of EPCRS's prescribed corrections

## Recommended Correction Methods

- A practitioner should never leave it to the IRS to identify the correction method
  - If you don't like their proposed correction method, they are unlikely to accept an alternative correction method
- Practitioner should propose correction method
  - Have a rationale for your proposed correction methods
  - Little risk in being aggressive in your recommended correction method
  - Practitioners are often surprised at what the IRS will approve – one of the advantages of VCP

## Availability of VCP

- If the plan or the employer is under IRS examination
  - VCP is not available
  - SCP is only available to correct a plan failure if the failure is an insignificant operational failure



# Under Examination

- Under examination means:
  - a plan that is under an Employee Plans examination (that is, an examination of a Form 5500 series or other Employee Plans examination);
  - a Plan Sponsor that is under an Exempt Organizations examination (that is, an examination of a Form 990 series or other Exempt Organizations examination); or
  - a plan that is under investigation by the Criminal Investigation Division of the IRS.
- An Employee Plans examination also includes:
  - any plan for which the employer, or an authorized representative, has received verbal or written notification from Employee Plans of an impending Employee Plans examination, or of an impending referral for an Employee Plans examination.
- Under examination also includes any plan that has been under an Employee Plans examination and is in appeals or in litigation for issues raised in an Employee Plans examination

## No Concurrent IRS Examination

- Except in unusual circumstances, if an employer properly files a VCP submission, the IRS will not examine the plan while the submission is pending
- If the IRS contacts the employer regarding an examination, the employer should inform the IRS that it has a VCP submission pending
- Once informed, the IRS will delay or cancel the examination.
- However, if the plan is involved in a group VCP submission, the IRS is not precluded from initiating an examination on any plan which is part of the group submission, even while the submission is pending

## VCP Submission Steps

- In order to file a VCP submission, the practitioner must complete the following steps:
  - The plan sponsor files a submission on [www.pay.gov](http://www.pay.gov);
  - Pays the applicable user fee set forth in Rev. Proc. 2019-4 (and its annual successors);
  - Implements corrective actions; and
  - Satisfies any other conditions set forth in the compliance statement.
- The employer may file its own VCP submission or it may designate and authorized representative to file on its behalf

## Model Forms

- Employers may submit Form 14568 (Model VCP Compliance Statement) and attach separate narrative documents that describe the qualification failures, correction methods, and other required documents
- Forms 14568-A through 14568-I (Schedules 1 through 9 to Form 14568) provide descriptions of common qualification failures and standardized correction methods that an employer may submit in lieu of the separate narrative documents
- Even if the employer does not use Form 14568 in its VCP submission, the employer may include Schedules 1-9, as applicable, to satisfy the EPCRS requirements relating to the description and correction of identified failures and related changes in administrative procedures



# Model Forms

<b>14568-A</b>	<b>Model VCP Compliance Statement – Schedule 1: Interim Nonamender Failures</b>
<b>14568-B</b>	<b>Model VCP Compliance Statement – Schedule 2: Other Nonamender Failures and Failure to Adopt a 403(b) Plan Timely</b>
<b>14568-C</b>	<b>Model VCP Compliance Statement – Schedule 3: SEPs and SARSEPs</b>
<b>14568-D</b>	<b>Model VCP Compliance Statement – Schedule 4: SIMPLE IRAs</b>
<b>14568-E</b>	<b>Model VCP Compliance Statement – Schedule 5: Plan Loan Failures (Qualified Plans and 403(b) Plans)</b>
<b>14568-F</b>	<b>Model VCP Compliance Statement – Schedule 6: Employer Eligibility Failure (401(k) and 403(b) Plans Only)</b>
<b>14568-G</b>	<b>Model VCP Compliance Statement – Schedule 7: Failure to Distribute Elective Deferrals in Excess of 402(g) Limit</b>
<b>14568-H</b>	<b>Model VCP Compliance Statement – Schedule 8: Failure to Pay Required Minimum Distribution Timely</b>
<b>14568-I</b>	<b>Model VCP Compliance Statement – Schedule 9: Limited Safe Harbor Correction by Plan Amendment</b>

# Online Submission Steps

## 1. Read the Instructions to Form 8950

- Have most recent Form 5500 available

## 2. PDF File

- The applicant must convert all applicable items (next slide) required into PDF documents and combine them into a single PDF file which follows the recommended ordering of documents
- If the combined PDF file exceeds 15 MB, the applicant must remove some documents and must fax those documents to the IRS

## 3. Create a pay.gov Account/Complete Form 8950

- The applicant must create a pay.gov account on the [www.pay.gov](http://www.pay.gov) website. Using the pay.gov account, the applicant must complete and sign Form 8950

## Submission Documents (nonamender failure)

- PDF the following documents:
  - Form 14568, Model VCP Compliance Statement
  - Form 14568-B, Schedule 2, Nonamender Failures
  - Signed copy of PPA document (or adoption agreement)
  - Signed copy of pre-PPA plan document (or adoption agreement)
  - Form 2848, Power of Attorney or Form 8821, Tax Information Authorization

## Online Submission Steps (cont.)

### 4. Upload and Attach PDF File

After completing and signing the Form 8950, the applicant must upload a single PDF document that contains copies of all submission documents. The applicant will fax documents in excess of 15MB limit

### 5. Pay the Applicable User Fee

- The employer submits the applicable user fee using the payment methods available (ACH or Debit/Credit Card) on the [www.pay.gov](http://www.pay.gov) website

### 6. Payment Confirmation

- Once the applicant files the VCP submission, the [www.pay.gov](http://www.pay.gov) website will generate a payment confirmation notice. The [pay.gov](http://pay.gov) Tracking ID on the payment confirmation notice will serve as the IRS control number for the VCP submission. If the website does not generate the payment confirmation notice, then the VCP submission process was not successful and the applicant should contact IRS customer account services at (877) 829-5500

## Online Submission Steps (cont.)

### 7. Fax Instructions

- If an applicant's VCP submission did not include all of the documents because of the 15 MB attachment limitation, the applicant must fax these documents to the IRS using fax number (855) 203-6996. The applicant must include on the fax coversheet the EIN, applicant name, plan name, and Pay.gov Tracking ID (the IRS control number).

### 8. Subsequent Changes or Revisions

- If an applicant needs to revise or amend a VCP submission (or any of its attachments) filed with the IRS before the IRS has assigned the submission to a representative, the applicant should not file a new submission. Instead, the applicant should call the VCP Status Inquiry Line at (626) 927-2011 (not a toll-free number).

# Form 8950 (pay.gov)

## Application for Voluntary Correction Program

- ✓ Before You Begin
- 2 Complete Agency Form**
- 3 Enter Payment Info
- 4 Review & Submit
- 5 Confirmation

Form <b>8950</b> (Rev. January 2019) Department of the Treasury Internal Revenue Service	<b>Application for Voluntary Correction Program (VCP)</b> Under the Employee Plans Compliance Resolution System (EPCRS) Go to <a href="http://www.irs.gov/form8950">www.irs.gov/form8950</a> for instructions and the latest information.	OMB No. 1545-1673
Review the Procedural Requirements Checklist before making this VCP submission to the IRS.		
<b>1a</b> Name of the plan sponsor (employer if single-employer plan) Forbes Retirement Plan Consulting		
<b>1b</b> Address of plan sponsor (if a P.O. box, see instructions) 2309 Hawken Drive	<b>1c</b> City or town Castle Rock	<b>1d</b> State CO
<b>1e</b> ZIP code 80109		
<b>1f</b> Country name United States	<b>1g</b> Foreign province/county	<b>1h</b> Foreign postal code
<b>1i</b> Employer Identification Number	<b>1j</b> Telephone number	<b>1k</b> Fax number
		<b>1l</b> NAICS Business Code ?

# Form 8950 (cont.)

1/23/2019

Pay.gov - Application for Voluntary Correction Program

- VCP anonymous submission
- VCP group submission
- Non-VCP 457(b) submission (see instructions)

**4a** Name of plan

Forbes 401(k) Plan Rectangular Snip

**4b** Enter 3-digit plan number  
(see instructions)

001

**4c** Enter the dollar value of the  
plan's assets (see instructions)

\$3,200,000.00

**4d** Enter number of participants  
(see instructions)

10

**5** Select the type of plan

401(k) ▼

**6a** Is this a terminating Orphan Plan and you are requesting a waiver of the VCP user fee? See instructions

Yes  No

**6b** The user fee amount being submitted

\$3,000.00

Continue

Save

PDF Preview

# Form 14568

Form <b>14568</b> (September 2017)	Department of the Treasury - Internal Revenue Service <b>Model VCP Compliance Statement</b>	OMB Number 1545-1673
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Include the plan name, Applicant's EIN and plan number on each page of the compliance statement, including attachments

**Section I - Identifying Information**

1. Applicant's name  
Forbes Retirement Plan Consulting

2. Applicant's EIN (do not use SSN)  
87-0000000

3. Plan number  
001

4. Plan name

**Section II - Applicant's Description of Failures**

Attach additional pages, as needed. Label the attachment "Section II. Applicant's Description of Failures." List and number each failure separately. If using the Form 14568 Schedules, specify the Schedules that are included and attach them to this compliance statement.

14568-E

**Section III - Applicant's Description of the Proposed Method of Correction**

Attach additional pages, as needed. Label the attachment "Section III. Applicant's Description of the Proposed Method of Correction." Describe the correction method for each failure listed in Section II. If using the Form 14568 Schedules, specify the Schedules that are included and attach them to this compliance statement.

14568-E

**Section IV - Applicant's Proposed Procedures to Locate and Notify Former Employees or Beneficiaries**

Attach additional pages, as needed. Label the attachment "Section IV. Applicant's Proposed Procedures to Locate and Notify Former Employees or Beneficiaries." Describe the methods that will be used to locate and notify former employees and beneficiaries, or provide an affirmative statement that no former employees or beneficiaries were affected by each failure listed in Section II or will be affected by the correction methods described in Section III.

All employees affected by the failures are still employed with the employer.

**Section V - Applicant's Proposed Revision to Administrative Procedures**

Attach additional pages, as needed. Label the attachment "Section V. Applicant's Proposed Revision to Administrative Procedures." Include an explanation of how and why the failures arose and a description of the measures implemented (or will be implemented) to ensure that the same failures do not occur in the future. If using the Form 14568 Schedules, specify the Schedules that are included and attach them to this compliance statement.

We will have regular review of loan repayments by the TPA. Also, requiring better education by payroll administrators.

**Section VI - Requests Related to Excise Taxes, Additional Tax and Tax Reporting**

The Applicant requests that the Internal Revenue Service (IRS) not pursue the following taxes under the Internal Revenue Code (IRC) (attach supporting rationale)

Excise tax under IRC Section 4972 with respect to failures number \_\_\_\_\_

Excise tax under IRC Section 4973 with respect to failures number \_\_\_\_\_

Excise tax under IRC Section 4974 with respect to failures number \_\_\_\_\_

Excise tax under IRC Section 4979 with respect to failures number \_\_\_\_\_

Imposition of additional tax under IRC Section 72(t) with respect to failures number   3



# Form 14568-E

<b>Form 14568-E</b> (September 2017)	Department of the Treasury - Internal Revenue Service <b>Model VCP Compliance Statement - Schedule 5: Plan          Loan Failures (Qualified Plans and 403(b) Plans)</b>	OMB Number 1545-1873
Include the plan name, Applicant's EIN and plan number on each page of the compliance statement, including attachments		
<b>Plan name</b> Forbes 401(k) Plan		
<b>EIN</b> <span style="font-size: small;">(Required)</span> Rectangular Snp 87-0000000		<b>Plan number</b> 001
<b>Section I - Identification of Failure</b> The plan identified above did not comply with the requirements of Section 72(p)(2) of the Internal Revenue Code (IRC). <i>(Note: The conditions of IRC Section 72(p)(2) must be satisfied for a participant loan to be exempt from being treated as a distribution to the participant under IRC Section 72(p)(1).) The failure occurred for the following reason(s) (check applicable boxes and provide the information requested)</i>		
<input type="checkbox"/> <b>A. The loan(s) exceeded the limit under IRC Section 72(p)(2)(A)</b>		
<b>Plan Year</b>	<b>Number of Participants Affected</b>	<b>Total Number of Loans Issued That Violated IRC Section 72(p)(2)(A)</b>
<input type="checkbox"/> <b>B. Loan terms did not satisfy the limits on the duration of the loan under IRC Section 72(p)(2)(B)</b>		
<b>Plan Year</b>	<b>Number of Participants Affected</b>	<b>Total Number of Loans Issued That Violated IRC Section 72(p)(2)(B)</b>
<input checked="" type="checkbox"/> <b>C. Loan terms did not satisfy IRC Section 72(p)(2)(C) relating to the frequency and amortization of payments</b>		
<b>Plan Year</b>	<b>Number of Participants Affected</b>	<b>Total Number of Loans Issued That Violated IRC Section 72(p)(2)(C)</b>
2017	3	3

# Form 14568-E

Plan name Forbes 401(k) Plan		
EIN 87-0000000	Plan number 001	
<input type="checkbox"/> <b>D. Defaulted loan(s) (where the loan terms satisfied the requirements of IRC Section 72(p)(2), but default(s) occurred because loan payments were not made in accordance with the terms of the loan)</b>		
Plan Year	Number of Participants Affected	Total Number of Loans in Default

**Section II - Eligibility for Use of Form 14568-E**

**A.**     Yes     No    Is any affected participant either a key employee (as defined in IRC Section 416(l)(1)) or an owner-employee (as defined in IRC Section 401(c)(3))?  
If "Yes," **proceed to Section II B.**  
If "No," **skip Section II B and proceed to Section II C.**

**B.**     Yes     No    Is the purpose of this request limited to permitting the plan sponsor to report the loan as a deemed distribution in the year of correction instead of the year of the failure?  
If "Yes," **complete Section III and then proceed directly to Section IV D.** (Sections IV A, B and C do not apply.)  
If "No," **STOP-do NOT use this Form 14568-E.** Any request for relief should be made by filing a detailed written attachment to Form 14568, Model VCP Compliance Statement, describing the relief requested and the reasons why such relief should be granted.

**C.**     Yes     No    Will correction be completed before the maximum period for repayment of the loan (pursuant to IRC Section 72(p)(2)(B)) has expired? (Note: The maximum period is determined from the original date of the loan. Generally, this period is five years from the original date of the loan, except for home loans as described in IRC Section 72(p)(2)(B)(ii).) The original date of the loan is considered to be the date the participant received the proceeds from the loan.  
If "Yes," and the plan sponsor wants relief from reporting the loan as a deemed distribution, **complete Section III and then answer applicable questions in Sections IV A through IV C.**  
If "No," **complete Section III and then proceed to Section IV D.**

**Section III - Explanation of How and Why the Plan Loan Failures Occurred**

We changed payroll providers and the new company failed to withhold loan repayments for three of the participants. After the close of the plan year, the TPA reviewed the loan repayments and discovered the failures.

# Form 14568-E

Page 4

Plan name Forbes 401(k) Plan	
EIN 87-0000000	Plan number 001

**B. Correction for loans with terms that: (i) provided for a repayment period that exceeded the period permitted under IRC Section 72(p)(2)(B) and/or (ii) provided for payments that did not provide for substantially level amortization with payments not less frequently than quarterly, as provided under IRC Section 72(p)(2)(C): (check the box that applies)**

- 1. The loan balance will be reamortized with payments made on a substantially level basis (per IRC Section 72(p)(2)(C)), made at least quarterly.
- 2. The reamortized loan balance will be paid over a remaining period that does not extend beyond five years from the date of the original loan. If original loan was a home loan described in IRC Section 72(p)(2)(B)(ii) the reamortized loan balance will be paid over the remaining period of the original loan (per IRC Section 72(p)(2)(B)).

**C. Correction for defaulted loans with terms that complied with the requirements of IRC Sections 72(p)(2)(A), (B) and (C): (check the box that applies)**

- 1. A lump sum repayment will be made to the plan in an amount equal to the additional repayments that the affected participant would have made to the plan if there had been no failure to repay the plan, plus interest accrued on the missed repayments.
- 2. The outstanding balance of the loan, including accrued interest, will be reamortized over a remaining period that does not extend beyond five years from the date of the original loan. If the original loan was a home loan described in IRC Section 72(p)(2)(B)(ii) the reamortized loan balance will be paid over the remaining period of the original loan.
- 3. The Applicant will use a combination of the methods described in #1 and #2 above, as follows:

**Determination of Interest Accrued on Missed Repayments (check the box that applies)**

- Plan loan rate 5% (insert rate)
- Rate of return of investments under plan      (insert rate)

**Note:** This option may only be used if the rate of investment return under the plan equals or exceeds the plan loan rate.

The interest rate for missed payments was determined as follows:

# Form 14568-E

Plan name Forbes 401(k) Plan	
EIN 87-0000000	Plan number 001

**D. Correction for Deemed Distributions (check if applicable)**

- The plan sponsor is not eligible to or will not correct in accordance with Parts IV A through IV C of this compliance statement. The plan sponsor proposes that the loans be reported as deemed distributions (using Form 1099-R) for the year of correction instead of the year of the failure. The plan sponsor shall pay any applicable income tax withholding amount that was required to be paid in connection with the failure. (See Income Tax Regulations Section 1.72(p)-1, Q&A-15.)

**Section V - Change in Administrative Procedures**

Include a description of the measures that have been (or will be) implemented to ensure that the same failures will not recur.

We are now having the TPA regularly review loan repayments to make certain loan repayments are being withheld. We also have asked the payroll provider to provided education on loan rules for administrators.

**Section VI - Request for Relief**

- Yes No**  
  The plan sponsor requests relief from reporting all participant loans as deemed distributions.
- Yes No**  
  The plan sponsor requests that the plan be permitted to report all participant loans as deemed distributions in the year of correction instead of the year of the failure.
- Yes No**  
  The plan sponsor requests that for one or more of the participant loans described in this compliance statement that it be permitted to report the participant loans(s) as deemed distributions in the year of correction instead of the year of the failure. For other affected participant loan(s), the plan sponsor requests relief from reporting them as deemed distributions. Details relating to this request are as follows

# PDF File Submission Contents

- The PDF file that the applicant uploads to the [www.pay.gov](http://www.pay.gov) website must include the following information:

## 1. Identification of Failures

- A complete description of the failures, the years in which the failures occurred, including closed years (years for which the statute of limitations has expired), and the number of employees affected by each failure

## 2. Explanation

- An explanation of how and why the failures arose, including a description of the administrative procedures applicable to the failures in effect at the time the failures occurred

# PDF File Contents

## 3. Proposed Method of Correction

- A detailed description of the method for correcting the failures that the employer has implemented or proposes to implement. The applicant must describe each step of the correction method in narrative form. The description must include specific information needed to support the proposed correction method. This information should include the number of employees affected, the expected cost of correction, the years involved, and the calculations or assumptions the applicant used to determine the amounts needed for correction. The applicant may approximate the number of employees if it cannot determine the exact number at the time of the submission.

## 4. Earnings or Actuarial Adjustments

- A description of the methodology that the applicant will use to calculate earnings or actuarial adjustments on corrective contributions or distributions

## PDF File Content (cont.)

### 5. Computations

- Specific calculations for each affected employee or a representative sample of affected employees. The sample calculations must be sufficient to demonstrate each aspect of the correction method proposed.

### 6. Former Employees or Beneficiaries

- The method(s) that the employer will use to locate and notify former employees and beneficiaries

### 7. Change in Administrative Procedures

- A description of the measures the employer will or have been implemented to ensure that the same failures will not recur

## PDF File Content (cont.)

### 8. Plan Document

- A copy of the entire plan document or the relevant portions of the plan document. For submissions limited to Plan Document Failures for which an applicant has adopted a Pre-approved Plan that uses an adoption agreement format, the IRS needs only a completed copy of the signed and dated adoption agreement

### 9. Request for Excise Tax Relief (Code §§4972, 4973, 4974, or 4979) or Additional Tax Relief Under Code §72(t)

- If, as part of the VCP submission, the applicant wants excise tax or additional tax relief, the applicant must make a specific request for that relief in the submission, along with explanations, where applicable, supporting such request.



## PDF File Content (cont.)

### 10. Loan Failures and Income Tax Reporting Relief

- If the applicant wants relief from reporting a corrected participant loan as a deemed distribution or wants to report the loan as a deemed distribution in the year of correction instead of the year in which the deemed distribution occurred, the applicant must include a specific request for such relief

### 11. Transferred Assets

- If a VCP submission includes a failure that relates to Transferred Assets and the failure occurred prior to the transfer, the applicant must include a description of the transaction (including the dates of the employer change and the plan transfer).

### 12. 403(b) Plans

- In the case of a 403(b) Plan VCP submission, the applicant includes a statement that it has contacted all other entities (e.g., annuity provider) involved with the plan and has been assured of cooperation in implementing the applicable correction. The VCP submission also must contain a statement as to the type of employer (e.g. a tax-exempt organization) that is filing the VCP submission.

## PDF File Content (cont.)

### 13. Group Submissions

- In the case of a group submission, the applicant must include a copy of the relevant portions of the plan document(s).

### 14. Orphan Plans

- If the plan is an orphan plan, the applicant includes information that establishes that it is an eligible party. In addition, the applicant should indicate whether it is requesting relief from full correction or from the user fee and the support for such relief.

### 15. Plan Sponsor Authorization

- If the Plan Sponsor (employer) is authorizing an individual to represent it before the IRS, sign and file a VCP submission on its behalf, or inspect and receive confidential information, the submission must include a Form 2848, or Form 8821, Tax Information Authorization, as applicable.

# Penalty of Perjury

- If the Plan Sponsor is authorizing an individual to sign and file the VCP submission (including any subsequent material modifications), on its behalf, the submission must include the following declaration:
  - "Under penalties of perjury, I declare that I have examined this submission, including accompanying documents, and, to the best of my knowledge and belief, the facts presented in support of this submission are true, correct, and complete."
- The Plan Sponsor (not the Plan Sponsor's representative) must sign the declaration
  - This requirement does not apply to Anonymous Submissions



# Power of Attorney Requirements

- To appear before (or communicate with) the IRS in connection with a VCP submission, the Plan Sponsor's authorized representative must include a Form 2848.
  - The IRS will not accept a Form 2848 that designates a representative who is not qualified to sign Part II of the form (e.g., an unenrolled return preparer)
  - However, a Plan Sponsor may authorize an individual, such as an unenrolled return preparer, to inspect or receive confidential information using Form 8821.
  - The applicant must include Form 2848 and Form 8821, as applicable, in the PDF file uploaded to the [www.pay.gov](http://www.pay.gov) website.
- A Plan Sponsor may designate an authorized representative to file a VCP submission with the IRS using the [www.pay.gov](http://www.pay.gov) website.
  - If the Plan Sponsor is authorizing an individual to sign and submit a VCP submission on its behalf, the Plan Sponsor must specifically indicate the scope of such authorization on the Form 2848.
  - In order to properly authorize such individual, the Plan Sponsor should check the box in line 5a for "Other acts authorized" on Form 2848 and include as a description "signing and filing of the Form 8950 and accompanying documents as part of a VCP submission."
  - This option is not available for individuals listed on a Form 8821.

# Acknowledgement of Filing

- For submissions filed on the [www.pay.gov](http://www.pay.gov) website, the IRS will not mail an acknowledgement letter to an applicant or its authorized representative that has filed a VCP submission
  - However, when an applicant files a VCP submission through the [www.pay.gov](http://www.pay.gov) website, the website generates a “Payment Confirmation–Application for Voluntary Correction Program” when the VCP submission is successfully filed.
  - The Pay.gov Tracking ID on this receipt serves as the IRS control number for the filed VCP submission and the applicant should consider receipt an official acknowledgement.
- Plan Sponsors and their authorized representatives should maintain copies of all correspondence submitted to the IRS with respect to their VCP submission

# Assembling the Submission

- The IRS will be able to process a VCP submission more quickly if the documents in the PDF file uploaded on the [www.pay.gov](http://www.pay.gov) website, are included in the following order:
  1. Plan Sponsor's Penalty of Perjury Statement.
  2. Power of Attorney (Form 2848) or Tax Information Authorization (Form 8821).
  3. Applicable cover letter
  4. Narrative information



## The following narrative information:

- Description of the failures (if the failures relate to Transferred Assets, include a description of the related employer transaction).
- An explanation of how and why the failures occurred. This information may be provided using an applicable schedule in the Form 14568-A through 14568-I series.
- Description of the method for correcting failures, including earnings calculation methodology (if applicable). This information may be provided using an applicable schedule in the Form 14568-A through 14568-I series, including required enclosures.
- Description of the method(s) used to locate or notify former employees or beneficiaries affected by the failures or corrections. If no former employees or beneficiaries are affected by the failures or corrections, then affirmatively state that fact when addressing this issue. This description may be provided using an applicable schedule in the Form 14568-A through 14568-I series.

## Narrative Information

- Description of the administrative procedures that the employer has or will implement to ensure that the failures do not recur. This description may be provided using an applicable schedule in the Form 14568-A through 14568-I series.
- Whether a request is being made in order for participant loans corrected under this revenue procedure to not be treated as deemed distributions under Code §72(p) and the supporting rationale for such request. Alternatively, whether a request is being made for participant loans corrected under this revenue procedure to be treated as deemed distributions under Code §72(p) in the year of correction. In either case, this request may be provided using an applicable schedule in the Form 14568-A through 14568-I series, including required enclosures.
- Whether relief is being requested from imposition of the excise taxes under Code §§ 4972, 4973, 4974, or 4979, or the 10% additional income tax under Code §72(t), and the supporting rationale for such relief. This request for relief may be provided using an applicable schedule in the Form 14568-A through 14568-I series, including required enclosures.
- If the plan is an Orphan Plan, the supporting rationale relating to a request for relief from the user fee.



## Submission Order

5. If the VCP submission includes either Form 14568, Model Compliance Statement and/or any schedule (Forms 14568-A through 14568-I), any required information and enclosures, and any related schedules.
6. Supporting computations relating to correction, including computations for earnings (if applicable).
7. Relevant plan document language, or plan document (if applicable).
8. Copy of opinion, advisory, or determination letter (if applicable).
9. Any other items that may be relevant to the VCP submission.

## VCP User Fees

Plans with asset of:	
\$500,000 or less	\$1,500
Over \$500,000 to \$10,000,000	\$3,000
Over \$10,000,000	\$3,500

- The employer determines the user fee for a VCP submission based on end of year net assets of a plan as reported on the most recently filed Form 5500.
- For plans not required to file a Form 5500, the amount of net assets for purposes of the user fee will be the amount of net assets as of the last day of the most recently completed plan year preceding the date of the VCP submission.

# Anonymous Submission

- The employer may use the Anonymous Submission procedure to file a VCP submission for a Qualified Plan, 403(b) Plan, SEP, or SIMPLE IRA Plan without initially identifying the applicable plan, the Plan Sponsor, or the Eligible Organization.
- When filing the VCP submission, the employer's authorized representative redacts from the submission identifying Information identifying for the plan or the employer.
- An individual that files an Anonymous Submission on behalf of an employer must satisfy the power of attorney requirements.

# THANK YOU

A stylized blue wave graphic that starts under the 'T' and 'H' of 'THANK', curves under the 'Y' of 'YOU', and ends in a small swirl on the right side.

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