

# IRS UPDATES THE EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM (EPCRS)

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Practices & Industries

Employee Benefits

The IRS recently updated the Employee Plans Compliance Resolution System (“EPCRS”), which sets out guidance for plan sponsors of certain retirement plans, such as 401(k) and 403(b) plans, to correct errors that could otherwise result in loss of tax-favored status. The EPCRS consists of three programs: (1) the Self-Correction Program (“SCP”), which allows plan sponsors to correct certain failures without contacting the IRS or paying a fee; (2) the Voluntary Compliance Program (“VCP”), which allows plan sponsors to receive IRS approval for a proposed correction of a plan failure with payment of a fee; and (3) the Audit Closing Agreement Program (“Audit Cap”), which allows plans under audit to be corrected with payment of a sanction.

Plan sponsors may begin to use the updated EPCRS guidance on January 1, 2017. The guidance, published in Revenue Procedure 2016-51, modifies and replaces the guidance contained in Revenue Procedures 2013-12, 2015-27, and 2015-28. While the new revenue procedure incorporates many provisions from the prior revenue procedures, it also makes several changes. Some of the significant changes include:

- **Determination letters:**
  - Plan sponsors may no longer submit determination letter applications as part of the VCP or SCP process.
  - An individually-designed plan that has a favorable determination letter no longer needs to have a “current” Favorable Letter when using SCP to correct significant Operational Failures.
- **VCP fees:** Fees for VCP submissions will now be user fees that will be published in the IRS’ annual Employee Plans user fees revenue procedure (Note: for 2016 fees, consult Rev. Proc. 2016-8 and 2013-12).
- **Clarification regarding compliance statements:** The new guidance clarifies that a compliance statement issued by the IRS in response to a VCP submission involving correction of a Plan Document Failure or Operational Failure with a plan amendment, relates only to the correction, and is not a determination that the plan or amendment meet qualification requirements in form.
- **Fee refunds for Anonymous Submissions:** If the IRS and a VCP applicant making an Anonymous Submission cannot reach an agreement regarding a

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correction, the IRS will no longer refund any portion of the user fee. The previous guidance to be replaced provides that the IRS would refund 50% of the user fee in such cases.

- **Timing of correction for Interim Amendment and Nonamender Failures:** The guidance clarifies that corrections of Interim Amendment and Nonamender Failure must be made before making a VCP submission. All other corrective plan amendments necessitated by a VCP submission must be adopted no later than 150 days after the compliance statement date.
- **Audit CAP sanctions:** Sanctions for failures found on examination will now be based on a review of the facts and circumstances, but will generally not be less than what a VCP fee would be. The previous guidance that will be replaced provides that the sanction would be a negotiated percentage of the Maximum Payment Amount.