

IRS Voluntary Correction Program

The Voluntary Correction Program (VCP) is available to correct a retirement plan's more serious failures — specifically plan document failures — as well as certain demographic and operational failures that cannot be corrected under the Self-Correction Program (SCP).

With Revenue Procedure 2013-12, the IRS has streamlined the application procedure and improved the filing process for submitting corrections under VCP.* VCP is not available if a plan sponsor has been notified by the IRS that the plan is subject to an audit or if the plan is already being audited.

Document failures

One of the most common qualification failures that can be resolved under VCP is a failure to timely restate or amend a plan document for legal and regulatory changes. This is known as a nonamender failure. The IRS has a six-year remedial amendment (restatement) cycle for preapproved plan documents (prototype and volume submitter plans) and a five-year restatement cycle for custom designed plans. The categories of required changes include:

Preapproved document restatement. Restatement involves adopting a new plan document in accordance with the IRS's remedial amendment period. For preapproved plans (prototype and volume submitter plans), the most recent restatement incorporated changes made by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). The deadline to restate an EGTRRA preapproved defined contribution plan was April 30, 2010. (The deadline for an EGTRRA preapproved defined benefit plan was April 30, 2012.)

The next restatement cycle for preapproved plans is known as the Pension Protection Act of 2006 restatement. The cycle is expected to begin in 2014 and end sometime in 2016 for defined contribution plans. The IRS will announce the exact dates in early 2014. Defined benefit plans are about two years later.

Individually designed document restatement. Individually designed plans (custom designed plans) also need to be restated on a regular basis. These plans are on a five-year restatement cycle. The last digit of the employer's EIN (Employer Identification Number) determines the plan's restatement year. (EINs with a last digit of 3 or 8 are being restated in 2013.) Defined contribution and defined benefit plans are on the same cycle.

Interim amendment. This type of amendment is required by legal or regulatory changes that impact the plan document. Recent interim amendments include changes required by the Pension Protection Act of 2006 (PPA); the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act); and the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA). Generally, interim amendments must

be made by the *later* of the last day of the plan year or the due date of the sponsoring employer's tax return for the tax year the change became effective. Sometimes a new law or regulation requires that an amendment be completed by the end of a specific plan year or by a certain date.

Discretionary amendment. Employer-level changes, such as amending a plan to allow in-plan Roth conversions or participant loans or adding a hardship withdrawal provision, require discretionary amendments. Generally, discretionary amendments must be made by the end of the plan year in which the amendment becomes effective.

If a restatement or an amendment is not made in a timely fashion, the plan is out of compliance with the Internal Revenue Code. To bring it back into compliance, the plan must be submitted to the IRS under VCP along with the applicable fee. Keep in mind that if a plan is not in compliance and it is audited, the resulting fee under the Audit Closing Agreement Program (Audit CAP) will be substantially higher than the VCP fee.

Standard VCP Fees

Number of Plan Participants	Fee
20 or fewer	\$750
21-50	\$1,000
51-100	\$2,500
101-500	\$5,000
501-1,000	\$8,000
1,001-5,000	\$15,000
5,001-10,000	\$20,000
More than 10,000	\$25,000

Standard fees

When plan sponsors file under VCP, they are required to pay a fee based on the number of participants in the plan (as reported on the plan's most recently filed annual Form 5500). The IRS provides exceptions to the standard fees for correcting certain mistakes. When one of the following is the sole plan failure, the correction qualifies for the corresponding reduced fee:

- Interim or discretionary amendment failures submitted during the plan's current remedial amendment period: \$375
- Nonamender failure submitted within one year of a remedial amendment period deadline: 50% of the standard fee
- Certain plan loan failures affecting no more than 25% of the participants: 50% of the standard fee
- Required minimum distribution (RMD) operational failure under Section 401(a)(9) affecting 50 or fewer participants: \$500
- 403(b) plan failure to timely adopt a written plan document prior to December 31, 2009: 50% of the standard fee if the VCP submission is made prior to December 31, 2013

* Revenue Procedure 2013-12 requires all VCP submissions to include completed Forms 8950 and 8951.