



# Instructions for Form 8950

## (Rev. August 2012)

### Application for Voluntary Correction Program (VCP) Submission under the Employee Plans Compliance Resolution System (EPCRS)

Section references are to the Internal Revenue Code (IRC) unless otherwise noted.

#### Confidentiality and Disclosure

Form 8950 and the accompanying Voluntary Correction Program (VCP) submission are not open to public inspection or disclosure.

The use of VCP relates directly to the enforcement of the IRC qualification requirements, the information received or generated by the Internal Revenue Service (IRS) under VCP is subject to the confidentiality requirements of section 6103 and is not a written determination within the meaning of section 6110. See Revenue Procedure (Rev. Proc.) 20XX-XX, section 6.12.

#### Disclosure Request by Taxpayer

The Tax Reform Act of 1976 permits a taxpayer to request the IRS to disclose the taxpayer's return and/or return information with any person(s) the taxpayer designates in a written request. Use Form 2848, Power of Attorney and Declaration of Representative, for this purpose. Alternatively, if you wish an individual to simply receive copies of confidential correspondence from the IRS in regard to the VCP submission you may use Form 8821, Tax Information Authorization, for this purpose. However, an individual listed on Form 8821 cannot represent a taxpayer if questions or issues arise during the processing of a VCP submission.

## General Instructions

#### Purpose of Form

Form 8950 must be filed along with a VCP submission in order to request written approval from the IRS for correction of a qualified plan, 403(a) plan, 403(b) plan, SEP, SARSEP or SIMPLE IRA that has failed to comply with the applicable requirements of the IRC. VCP is part of EPCRS, currently stated in Rev. Proc. 20XX-XX, 20XX-XX, available at the IRS website [www.irs.gov](http://www.irs.gov).

VCP submissions include this application form, Form 8951, Compliance

Fee for Employee Plans Voluntary Correction Program Submission, and all of the other required items stated in Rev. Proc. 20XX-XX, section 11.

#### Types of Retirement Plans Eligible for VCP

VCP is open to certain tax deferred retirement plans established under sections 401(a), 403(a), 403(b), 408(k), or 408(p). The IRS may also consider submissions that involve section 457(b) plans. Generally, 457(b) submissions are limited to eligible governmental plans sponsored by a governmental entity defined in section 457(e), (see Rev. Proc. 20XX-XX, section 4.09). VCP is also available to correct qualification failures, and section 403(a) and 403(b) failures even if the plan trust or contract is no longer in existence. See Rev. Proc. 20XX-XX, section 4.07.

#### Eligibility Requirements for the Use of VCP and this Application Form

This application form and the VCP submission must be mailed to the IRS prior to the time the plan or plan sponsor (for example, the employer) is under **examination**, as defined in Rev. Proc. 20XX-XX, section 5.09.

For purposes of VCP, you will be considered to be under examination if any of the following situations apply.

- The subject plan is currently under examination of either a Form 5500 series return or other examination conducted by the IRS's office of Employee Plans.
- The plan sponsor is under any type of examination conducted by the IRS's office of Exempt Organizations.
- If either the plan sponsor or any of its representatives have received verbal or written notification from IRS's office of Employee Plans of an impending examination or of any impending referral for such examination, or if the plan is in Appeals or in litigation for any issues raised in such examination.
- The subject plan is currently under investigation by the Criminal Investigation Division of the IRS.
- Certain other situations specified in Rev. Proc. 20XX-XX, section 5.09.

VCP may not be used to correct failures relating to the diversion or misuse

of plan assets. In addition, VCP may not be available if the employer/plan sponsor has engaged in abusive tax avoidance transactions. See Rev. Proc. 20XX-XX, sections 4.12 and 4.13. Finally, in particular cases, the IRS may decline to make VCP available in the interest of sound tax administration. See Rev. Proc. 20XX-XX, section 4.01(5).

#### Who May File

This form and accompanying VCP submission may only be filed by:

- An employer or plan sponsor, including a sole proprietor, partnership, or corporation. Generally, estates and/or beneficiaries may not file this form or make a submission under VCP. However, there may be an exception if the plan is an orphan plan and the submission is being made by an eligible person. See Rev. Proc. 20XX-XX, section 5.03.
- For multiple employer or multiemployer plans, the plan administrator (rather than any contributing or adopting employer) must request consideration of the plan under VCP. The request must be for the plan, rather than a portion of the plan affecting any particular employer.
- For group VCP submissions, the eligible organization, as defined in Rev. Proc. 20XX-XX, section 10.11, may file this form and VCP submission if the applicable conditions for group submission have been met.
- For anonymous VCP submissions, this form and VCP submission may be filed by a representative. However, this individual must be designated as a power of attorney by the employer (or in the case of a multiple employer or multi-employer plan, the plan administrator) and must be willing to submit a signed Form 2848 if identifying information is ultimately submitted to the IRS.
- If the retirement plan is an orphan plan as defined in Rev. Proc. 20XX-XX, section 5.03(1), this form and accompanying VCP submission may be submitted by an authorized eligible party as defined in Rev. Proc. 20XX-XX, section 5.03(2).

#### Orphan Plans

For VCP, **orphan plan** means any qualified retirement plan to which an eligible party (defined below) has determined that the plan sponsor (a) no longer exists, (b) cannot be located, or (c) is unable to maintain the plan. However,

an orphan plan is not a plan which is subject to Title I of the Employee Retirement Income Security Act of 1974 (ERISA) that is terminated pursuant to Department of Labor Regulations 2578.1 governing the termination of abandoned individual account plans.

An **eligible party** is defined as follows:

- A court appointed representative with specific authority to terminate the plan and dispose of the plan's assets;
- In the case of an orphan plan under investigation by the Department of Labor, a person or entity who the Department of Labor determined has accepted responsibility for terminating the plan and distributing the plan's assets; or
- In the case of a qualified plan to which Title I of ERISA has never applied, a surviving spouse who is the sole beneficiary of a plan that provided benefits to a participant who was (i) the sole owner of the business that sponsored the plan and (ii) the only participant in the plan.

## Anonymous VCP Submissions

Taxpayers have the option of submitting their VCP submissions on an anonymous basis. This application and all applicable VCP submission documents may be submitted on a redacted basis. However, if the IRS and the taxpayer agree on the correction methodology that would resolve the qualification failure that was the subject of the VCP submission, the identity of the plan sponsor and the plan must be disclosed to the IRS along with a signed Form 2848 and applicable penalty of perjury statements. See Rev. Proc. 20XX-XX, section 10.10. Where the form requests identifying information on an anonymous submission, note it on the form and attach a short explanation.

An anonymous VCP submission and this application will not be processed unless the applicable representative includes a signed statement indicating that the submitter has been hired by the employer/plan sponsor, is able to legally represent the plan sponsor/employer, and is willing to submit a signed Form 2848 if identifying information is ultimately submitted to the IRS. See Rev. Proc. 20XX-XX, sections 10.10, 11.07, and 11.08. Sample wording in regard to this statement is as follows. "Under penalties of perjury, I declare that I am an authorized representative of the plan sponsor who complies with the power of attorney requirements described in Rev. Proc. 2011-XX, section 11.08. I will submit an executed copy of Form 2848 upon the disclosure of the identity of the plan sponsor to the IRS."

This must be a signed and dated statement that includes the

representative's title and their printed name.

## Group Submissions

For failures affecting a large number of individual plans, an eligible organization may make a group submission. The failures in the submission must result from a systemic error involving the eligible organization that affects at least 20 plans and that results in at least 20 plans implementing correction.

An **eligible organization** is defined as one of the following:

- A sponsor (as defined in Rev. Proc. 2005-16, section 4.07 and Rev. Proc. 2011-49, section 4.07) of a master and prototype plan;
- A volume submitter practitioner (as defined in Rev. Proc. 2005-16, section 13.04 and Rev. Proc. 2011-49, section 13.05);
- An insurance company or other entity that has issued annuity contracts or provides services for assets for 403(b) plans; or
- An entity that provides its clients with administrative services for qualified plans, 403(b) Plans, SEPs, or SIMPLE IRAs.

Special rules and procedures that are applicable to group submissions can be found in Rev. Proc. 20XX-XX, section 10.11.

## Where to File

Send form 8950 and the related VCP submission to:

Internal Revenue Service  
P.O. Box 12192  
Covington, KY 41012-0192

VCP submissions shipped by express mail or a delivery service should be sent to:

201 West Rivercenter Blvd.  
Attn: Extracting Stop 312  
Covington, KY 41011

## How to Complete the Application

The VCP application, related determination letter application, if applicable, and related VCP submission, are screened to ensure they are complete. In most situations, the application must be signed by the employer/plan sponsor. Incomplete applications may be returned to the applicant. It is important that an appropriate response be entered for each line (unless instructed otherwise). In completing the application, pay careful attention to the following.

- N/A (not applicable) is accepted as a response only if an N/A block is provided.
- A representative of the employer or VCP applicant may not sign this application form.

- If a number is requested, a number must be entered.
- If a line, provides a choice of boxes to check, check only one box unless instructed otherwise.
- If a line provides a box to check, written responses are not acceptable unless instructed otherwise and submitted as an attachment to this application.

## What to File

With the exception of anonymous VCP submissions, all applications must contain an original signature. All applications must be accompanied by the following items:

- The appropriate compliance fee, if applicable and Form 8951. Submit a separate check for each application. Make checks payable to "United States Treasury". In addition, include a photocopy of your check with your application.
- All descriptions, information, documents sample computations, if applicable, attachments and representations required by Rev. Proc. 20XX-XX, section 11, must accompany this application. In order to assist VCP applicants, the IRS encourages the use of model documents included in Rev. Proc. 20XX-XX, Appendix C, including its supporting schedules and Appendix D are available in electronic format at [www.irs.gov](http://www.irs.gov). For assistance in determining which additional documents and attachments are needed in order to have a complete VCP submission refer to the Procedural Requirements Checklist beginning on page four of Form 8950.

## Specific Instructions

**Lines 1a-f.** Enter the name, address and telephone number of the current plan sponsor/employer. A plan sponsor means:

1. In the case of a plan that covers the employees of one employer, the employer.
2. In the case of a plan maintained by two or more unrelated employers (for example, a multiple employer plan or multiemployer plan) the association, committee, joint board of trustees or other similar group of representatives who established or maintain the plan.
3. In the case of a plan sponsored by two or more entities required to be combined under sections 414(b), (c), or (m), one of the entities who has adopted the plan.
4. In the case of a plan that covers the employees and/or partner(s) of a partnership, the partnership.
5. In the case of an orphan plan, the name of the eligible party. Include a copy of the court order or other evidence with the VCP submission that documents that

the VCP applicant is an eligible party as required by Rev. Proc. 20XX-XX.

**6.** For Anonymous VCP Submissions, enter "Anonymous" and include the specific name of the plan sponsor's representative as well as the unique identifying label or number they have assigned to this specific anonymous submission as required by Rev. Proc. 20XX-XX, section 10.10. Enter this information on line 1a. The identifying number or label should be unique to the submission and should not be used for any other anonymous VCP submission that has been, or will be made to the IRS. Lines 1b, 1c, 1e, 1f, 1h and 1i can be left blank. For line 1d, include the abbreviation of the state where the plan sponsor is located. For line 1g, see the specific instructions for that line.

For those employers that are required to file a Form 5500 series return, the name of the VCP applicant/plan sponsor should be the same name that was or will be used when Forms 5500, 5500 SE, or 5500 EZ are filed for the plan.

**Address.** Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address, show the box number instead of the street address. The address should be the address of the VCP applicant/employer/plan sponsor.

**Line 1g.** Enter the 9-digit employer identification number (EIN) assigned to the plan sponsor/employer. For those employers who are required to file a Form 5500 series return for the plan, the EIN should be the same EIN that was or will be used when the Form 5500 series return is filed. Do not use a social security number or EIN of the trust.

If the VCP applicant does not have an EIN, the applicant may apply for an EIN by going to the IRS website at [www.irs.gov](http://www.irs.gov). You may also apply for an EIN by calling 1-800-829-4933 (hours of operation are Monday - Friday, 7:00 a.m. to 10:00 p.m. local time), or you can fax or mail Form SS-4, Application for Employer Identification Number, to the IRS.

If this is an anonymous VCP submission, enter the EIN of the power of attorney's employer (for example, law firm, accounting firm, actuarial firm, etc.).

**Line 2a.** List an individual authorized to represent or receive information about the applicant as shown on Form 2848 or Form 8821. You may list up to three individuals on Form 2848; however, enter only the primary representative's name on this line. Include the individual's firm, if applicable. Include a current mailing address.

If there is no representative, enter the name and contact information of an appropriate employee of the applicant/

employer who can be contacted if additional information is needed.

**Line 2h.** Note that the IRS may contact an authorized representative by email, but it will not use any information that might identify the applicant (for example, name or EIN) in such emails. Any emails will refer only to the 9-digit control number that has been assigned to the submission and that will be provided to the representative if an Appendix D acknowledgment letter was properly completed and included with the related VCP submission. So, it is important to note this control number.

**Line 3.** Check only one box.

**Line 4a.** Enter the full name of the plan, as shown on Form 5500 or other related documents. For example, the XYZ company profit sharing plan. If this is an anonymous submission leave this line blank.

**Line 4b.** Enter the three digit number, beginning with "001" and continuing in numerical order for each plan that has been adopted by the employer/plan sponsor. The number you assign to a plan must not be changed or used for any other plan. If a Form 5500 series return is filed for the plan, the plan number listed on this form should be the same number that was or will be used when such form is filed for the plan. If your plan is a SEP or SIMPLE, leave this line blank.

For anonymous VCP submissions, enter "401" for the first anonymous VCP submission made with this form. For subsequent anonymous VCP submissions made by the specific power of attorney listed on line 1a, the plan number to be entered on each application form will be the next number following 401 (for example, 402, 403, 404, etc.) resulting in unique plan numbers for each subsequent anonymous submission. The number you assign to a specific anonymous VCP submission must not be changed or used for any other anonymous submission made by the specific power of attorney.

**Line 4c.** Enter the month the plan year ends. Plan year means the calendar, policy or fiscal year on which the records of the plan are kept. If this is an anonymous submission leave this line blank.

**Line 4d.** Enter the total end of year asset information as shown on the most recently filed Form 5500 series return as of the date the VCP submission is sent to the IRS. If your plan is not required to file a Form 5500 series return, enter the amount of assets to the extent that information is available to the applicant.

**Line 4e.** Enter the number of plan participants. For Form 5500 filers, this is the number shown on line 7(f) of the most recently filed Form 5500 series return.

Plans that are not required to file a Form 5500 series return should enter the number of participants as of the last day of the most recently ended plan year. Plans that have been terminated should enter the number of participants on the Form 5500 series return filed for the year prior to the year of termination.

**Line 5.** Enter the appropriate number from the choices associated with this line.

For this purpose section 414(d) plans are section 401(a) governmental plans sponsored by a governmental entity as defined in section 414(d).

If your plan type is not listed among the various available choices, enter 99 and attach a detailed description of your plan. It is expected that plan type 99 would be applicable in very rare circumstances.

**Line 6.** If "Yes" is chosen, check the boxes indicating which Appendix C Part II Schedules are being submitted with the VCP submission.

**Line 7a.** For purposes of the determination letter requirement, section 401(a) qualification failures are limited to plan document failures, and operational failures that involve a failure to follow the written terms of the plan document. VCP submissions that involve 403(b) plans, SEPs, and SIMPLE plans may skip all questions on line 7 and leave it blank. If this is an anonymous VCP submission leave this line blank. However, a determination letter application may need to be submitted to the IRS upon disclosure of the applicant's identity.

**Line 7b.** Rev. Proc. 20XX-XX, section 6.05, generally requires a determination letter application to be submitted with this VCP submission if a section 401(a) plan document or operational failure is being corrected by a retroactive plan amendment. However, no determination letter application is required to be submitted with a VCP submission in the following situations.

- The failures in the VCP submission are limited to late interim amendments or amendments required to implement optional changes associated with a change in tax law.
- The failures in the submission are being corrected through the adoption of amendments that are IRS model amendments or by the adoption of an IRS pre-approved prototype or volume submitter plan on which the plan sponsor has reliance.
- For off-cycle taxpayers (as of the date of the VCP submission) who are correcting operational failures by retroactive plan amendment. To determine whether a plan is on-cycle or off-cycle, see Rev. Proc. 2007-44 (or its successor). Generally, a plan's cycle is determined by reference to the EIN of the plan sponsor if

it is an individually designed document. If the plan document, at the time of the failure, is a pre-approved document, a different method is used to determine its cycle.

If 7b is checked "No", include an attachment that explains why a determination letter application was not submitted with this VCP application and related VCP submission. The attachment should refer to this question and include the applicant's name, plan number, and EIN.

**Line 7c.** If 7a was "Yes" enter the plan's determination letter cycle as requested. If an attachment needs to be included, it should reference this line number and contain the requested information along with the applicant's name, plan number and EIN. To determine whether a plan is on-cycle or off-cycle, refer to the instructions for line 7b.

**Line 8.** If "Yes", attach a written explanation that provides details of the transaction(s). Include the applicant's name, plan number, and EIN.

**Lines 9 and 10.** For each question, check only one box.

**Line 11.** At the time this VCP submission is submitted to the IRS, is there a pending unrelated determination letter application regarding the Plan? If yes, check the "yes" box and include an attachment that indicates when the determination application was submitted to the IRS along with the case number that has been assigned, if known. If there is no pending determination letter application then check the "no" box.

**Line 12.** This question should be answered "Yes" if a past determination letter application for the plan was withdrawn by the employer/plan sponsor or their representative or was closed as incomplete due to a failure to respond to a request for additional information **and** this VCP submission includes qualification failures that were identified during the application process or would have been discovered by the IRS had the application

not been withdrawn or closed as incomplete. Attach an explanation that explains the situation and include the applicant's name, plan number, and EIN at the top of this attachment.

Consider the following example: A determination letter application was submitted to the IRS for the XYZ 401(k) plan by Plan Sponsor X. During the review process, the IRS requested additional information in order to determine whether the plan had been amended timely for interim amendments and/or past tax law changes. Instead of responding, the determination letter application is withdrawn by Plan Sponsor X. A few days or weeks or months later, Plan Sponsor X submits a VCP submission to the IRS indicating the plan document was not timely updated for various specified tax law changes. When completing Form 8950, we would expect Plan Sponsor X to check "Yes" to question 12 and include a written attachment that explains why the determination letter application was withdrawn.

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**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. Sections 72, 401, 403, 408, 409, 457, 4972, 4973, 4974, and 4979 and their regulations authorize us to ask for this information. You are not required to apply for this correction program; however, if you do, you are required to give us the information requested on this form. We need it to determine whether your correction proposals meet the legal requirements applicable to qualified retirement plans. Section 6109 and its regulations require you to provide your identifying number. Failure to provide the information requested on this form could delay or prevent processing of your application; providing fraudulent information could subject you to penalties.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB

control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by section 6103. However, we may give the information to the Department of Justice for civil and criminal litigation, and to other Federal agencies, as provided by law. We may give it to cities, states, the District of Columbia, and U.S. commonwealths or possessions to administer their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce nontax criminal laws, and to federal law enforcement and intelligence agencies to combat terrorism.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

<b>Learning about the law or the form</b> . . . . .	XX hr., XX min.
<b>Preparing the form</b> . . . . .	XX hr., XX min.
<b>Copying, assembling, and sending the form to the IRS</b> . . . . .	XX min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to:

Internal Revenue Service  
 Tax Products Coordinating  
 Committee  
 SE:W:CAR:MP:T:M:S  
 1111 Constitution Ave. NW, IR-6526  
 Washington, DC 20224

Do not send Form 8950 to this address. Instead, see *Where To File* on page 2.