

## **SUPPORTING STATEMENT**

### **Employee Plans Compliance Resolution System**

*(EPCRS UPDATE OF REV. PROC. 2013-12, REV. PROC. 2015-27 and REV. PROC. 2015-28, including Forms 8950, 8951, 14568, 14568-A through I)*  
OMB No. 1545-1673

#### **1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

This revenue procedure modifies and supersedes Rev. Proc. 2013-12, 2013-4 I.R.B. 313, the prior consolidated statement of the correction programs under EPCRS. This revenue procedure incorporates certain modifications set forth in Rev. Proc. 2015-27, 2015-16 I.R.B. 914, and Rev. Proc. 2015-28, 2015-16 I.R.B. 920, two prior revenue procedures modifying Rev. Proc. 2013-12. In addition, this revenue procedure incorporates modifications to Rev. Proc. 2013-12 from Rev. Proc. 2016-8, 2016-1 I.R.B. 243. For a description of modifications incorporated in this revenue procedure from Rev. Proc. 2015-27, Rev. Proc. 2015-28, and Rev. Proc. 2016-8, see section 2 of the revenue procedure.

Effective January 1, 2017, the staggered 5-year remedial amendment cycles for individually designed plans will be eliminated and the scope of the determination letter program for individually designed plans will be limited to initial plan qualification, qualification upon plan termination, and certain other circumstances. For further information, see Rev. Proc. 2016-37, 2016-29 I.R.B. 136. As a result, EPCRS is being modified to accommodate the changes in the determination letter program. For a description of the modifications, see section 2.

Form 8950, "Application for Voluntary Correction Program (VCP)," must be filed as part of a VCP submission in order to request written approval from the IRS for correction of a qualified plan, 403(b) plan, SEP, SARSEP or SIMPLE IRA that has failed to comply with the applicable requirements of the Internal Revenue Code. A VCP submission includes Form 8950, Form 8951, "Compliance Fee for Application for Voluntary Correction Program (VCP)," and all other requirement items stated in revenue procedures.

Form 8951, "Compliance Fee for Application for Voluntary Correction Program (VCP)," is used to determine and submit the applicable compliance fee for the VCP submission.

Appendix C: Model VCP Submissions Documents Instructions. Section 11.02 of the revenue procedure has been revised to provide that applicants may use model VCP submission documents only by submitting Form 14568 and Forms 14568-A through 14568-I. As the model VCP submission documents are now published on forms, Appendix C model VCP submission documents are removed. A link to the IRS website is provided in section 11.02(4) for the most current versions of Form 14568 and Forms 14568-A through 14568-I.

Appendix D: Model VCP Submission Compliance Statement. The Acknowledgement Letter previously provided in Appendix D is now Letter 5265. Therefore, Appendix D has been removed. Section 11.14(6) has been modified to reflect that the Acknowledgement Letter previously provided in Appendix D is now Letter 5265.

Revenue Procedure 2016-XX updates the comprehensive system of correction programs for sponsors of retirement plans that are intended to satisfy the requirements of § 401(a), 403(a), 403(b), 408(k), or 408(p) of the Internal Revenue Code, but that have not met these requirements for a period of time. This system (<http://www.irs.gov/Retirement-Plans/EPCRS-Overview>), the Employee Plans Compliance Resolution System (EPCRS), permits Plan Sponsors to correct these failures and thereby continue to provide their employees with retirement benefits on a tax-favored basis. The components of EPCRS are:

- o Self-Correction Program (SCP) – permits a plan sponsor to correct certain plan failures without contacting the IRS or paying any fee.
- o Voluntary Correction Program (VCP) – permits a plan sponsor to, any time before audit, pay a fee and receive IRS approval for correction of plan failures.
- o Audit Closing Agreement Program (Audit CAP) – permits a plan sponsor to pay a sanction and correct a plan failure while the plan is under audit.

2. **USE OF DATA**

This information will be used to issue closing agreements and compliance statements to allow individual plans to continue to maintain their tax favored status. As a result, favorable tax treatment of the benefits of the eligible employees are retained.

3. **USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

4. **EFFORTS TO IDENTIFY DUPLICATION**

We have attempted to eliminate duplication within the agency wherever possible.

5. **METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

The EPCRS has made it easier for retirement plans to stay within complex rules and to reduce barriers that discourage some businesses, particularly small businesses, from adopting such employee benefits. The IRS has streamlined its system of voluntary correction programs designed to help retirement plan sponsors and administrators retain

the favorable tax status of their plans, including simplifying the fee structure for voluntary submissions. This system has made it easier for employee retirement plans to come into compliance with the law and to protect the retirement benefits of participating employees.

**6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**

The consequences are that, because EPCRS no longer requires (or permits) obtaining determination letters for plan failures corrected through plan amendments, the paperwork required to be filed with the IRS under EPCRS will be reduced.

**7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)**

There are no special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

**8. CONSULTATION WITH INDIVIDUALS OUTSIDE THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS**

Rev. Proc. 2008-50 (2008-35 I.R.B. 468), modified and superseded Rev. Proc. 2006-27, 2006-1 C.B. 945 (as modified by Rev. Proc. 2007-49, 2007-30 I.R.B. 141), which was the prior consolidated statement of the correction programs under EPCRS.

Rev. Proc. 2013-12 (2013-4 I.R.B. 313) modified and superseded Rev. Proc. 2008-50. This revenue procedure updated the comprehensive system of correction programs for sponsors of retirement plans that were intended to satisfy the requirements of § 401(a), 403(a), 403(b), 408(k), or 408(p) of the Internal Revenue Code (the “Code”), but that had not met the requirements for a period of time.

The Service issued Rev. Proc. 2015-27 to improve and update EPCRS (<http://www.irs.gov/Retirement-Plans/New-Rev-Proc-Updates-EPCRS>), by making limited modifications and clarifications to Rev. Proc. 2013-12. The modifications to Rev. Proc. 2013-12 reflected in Rev. Proc. 2015-27 included miscellaneous changes made to improve EPCRS, such as reducing VCP compliance fees relating to failures to meet the requirements of § 72(p) with respect to participant loans, and clarifying that for certain Overpayments, as defined in sections 5.01(3)(c) and 5.02(4) of Rev. Proc. 2013-12, a plan may use correction methods other than the correction methods set forth in section 6.06(3) and 6.06(4) of Rev. Proc. 2013-12. Rev. Proc. 2015-27 also requested public comments on recoupment of Overpayments.

The Service also issued Rev. Proc. 2015-28 with the following modifications to Rev. Proc. 2013-12:

- New safe harbor EPCRS correction methods relating to automatic contribution

features (including automatic enrollment and automatic escalation of elective deferrals) in plans described in § 401(k) and § 403(b); and

- Special safe harbor correction methods established for plans (including those with automatic contribution features) that have failures that are of limited duration involving elective deferrals.

Rev. Proc. 2015-28 also requested public comments.

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding the Revenue Procedures and Forms 8950, 8951, 14568, and Forms 14568-A thru 14568-I.

**9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

No payment or gift has been provided to any respondents.

**10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Submissions for closing agreements and compliance statements under this revenue procedure are considered tax returns and tax return information, which are confidential as required by 26 U.S.C. §6103. In general, certain matters relating to taxability and deductibility are disclosable under 26 U.S.C. §6110.

**11. JUSTIFICATION OF SENSITIVE QUESTIONS**

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the “Business Master File (BMF)” system and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS 24.046-Customer Account Data Engine Business Master File. The Internal Revenue Service PIAs can be found at <http://www.irs.gov/uac/Privacy-Impact-Assessments-PIA>.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

**12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

	# Respondents	# Responses Per Respondent	Annual Responses	Hours Per Response	Annual Burden
Rev. Proc. 2015-27	4,300	1	4,300	20.03	86,148

which include Forms 14568 & 14568-A thru I					
Rev. Proc. 2015-28	1,075	1	1,075	5.25	5,643
Form 8950	1,250	4	5,000	9.81	49,050
Form 8951	1,250	4	5,000	10.02	50,100
			15,375		190,941

Revenue Procedure 2016-XX has no burden related to the revenue procedure, however the purpose of this revenue procedure is to clarify the procedures already approved under this collection.

**13. ESTIMATED TOTAL ANNUAL COST BURDEN TO TAXPAYERS**

The likely respondents are individuals, state or local governments, businesses or other for-profit institutions, nonprofit institutions, and small businesses or organizations. There are no estimated start-up cost burden's related to the collections under this approval number. Estimates of capital or start-up cost and costs of operation, maintenance, and purchase of services to provide information are not available at this time.

**14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT**

There is no estimated annualized cost to the federal government.

**15. REASONS FOR CHANGE IN BURDEN**

The collection of information in revenue procedure 2016-XX is in sections 4.05, 6.02(5) (d), 6.09(5), 6.09(6), 10.01, 10.02, 10.05-.07, 10.09-10.11, 11.01-11.05, 11.07-11.14, 13.01, sections .05(8)(c) and .05(9)(c) of Appendix A, and sections 2.01-2.07 of Appendix B. This information is required to enable the Commissioner, Tax Exempt and Government Entities Division of the IRS to consider the issuance of various types of closing agreements and compliance statements. This information will be used to issue closing agreements and compliance statements to allow individual plans to continue to maintain their tax favored status. As a result, favorable tax treatment of the benefits of the eligible employees is retained. The likely respondents are individuals, state or local governments, businesses or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

Rev. Proc. 2013-12 is being modified to accommodate the changes in the IRS determination letter program and to incorporate previous changes made by Rev. Proc. 2015-27, Rev. Proc. 2015-28, and Rev. Proc. 2016-8. There is no change in the paperwork burden.

**16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION**

There are no plans for tabulation, statistical analysis and publication.

**17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE**

We believe that displaying the OMB expiration date is inappropriate because it would cause confusion by leading taxpayers to believe that the revenue procedure sunsets as of the expiration date. Taxpayers may not be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT**

There are no exceptions to the certification statement.

**Note:** The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential as required by 26 U.S.C. §6103.