



Instructions for Form 8950

(January 2013)

Application for Voluntary Correction Program (VCP) Under the Employee Plans Compliance Resolution System (EPCRS)

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

IRS.gov

For the latest information about Form 8950 and its instructions, search "About Form 8950" on IRS.gov or go directly to www.irs.gov/form8950.

Confidentiality and Disclosure

The Voluntary Correction Program (VCP) submission, including Form 8950, is 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 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.) 2013-12, section 6.12.

Disclosure Request by Taxpayer

The Tax Reform Act of 1976 permits a taxpayer to request the IRS to disclose and discuss 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, and/or Form 8821, Tax Information Authorization, for this purpose.

General Instructions

Purpose of Form

Form 8950 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 IRC. VCP is part of the Employee Plans Compliance Resolution System (EPCRS), currently set forth in Rev. Proc. 2013-12, 2013-4 I.R.B., which is available at www.irs.gov/Retirement-Plans/Correcting-Plan-Errors.

A VCP submission includes Form 8950, Form 8951, Compliance Fee for Application for Voluntary Correction Program (VCP) Under the Employee

Plans Compliance Resolution System (EPCRS), and all of the other required items stated in Rev. Proc. 2013-12, section 11.

Types of Retirement Plans Eligible for Corrections

VCP is open to certain tax-favored retirement plans established under sections 401(a), 403(a), 403(b), 408(k), or 408(p). Under limited circumstances, the IRS may also consider submissions outside of EPCRS that involve section 457(b) plans on a provisional basis. Generally, such submissions are for section 457(b) plans sponsored by a governmental entity defined in section 414(d). See Rev. Proc. 2013-12, section 4.09, for details and limitations.

Eligibility Requirements for the Use of VCP

VCP is open to eligible retirement plans (see *Types of Retirement Plans Eligible for Corrections* above) that incurred any one of the following qualification failures: (a) Plan Document Failure; (b) Operational Failure; (c) Demographic Failure; or (d) Employer Eligibility Failure. VCP is also available for plan loans that did not comply with the requirements of section 72(p)(2). See Rev. Proc. 2013-12, sections 4.01, 5.01, 5.02, 6.07 and 6.11, for additional details. VCP is also available to terminated plans regardless of whether all plan assets have been distributed.

Correction under VCP is not available if the plan or plan sponsor is under examination. The Form 8950 and the VCP submission must be mailed to the IRS prior to the time the plan or plan sponsor is **under examination**, as defined in Rev. Proc. 2013-12, section 5.09. For purposes of VCP, a plan or plan sponsor will be considered to be **under examination** if any of the following situations apply:

- The plan sponsor is under any type of examination conducted by IRS Employee Plans, including examination of a Form 5500 series return;
- The plan sponsor is under any type of examination conducted by IRS Exempt Organizations;
- The plan sponsor or a representative has received verbal or written notification from IRS Employee Plans or Exempt Organizations of an impending

examination or of any impending referral for such examination;

- The subject plan is currently under investigation by the Criminal Investigation Division of the IRS; or
- Certain other situations specified in Rev. Proc. 2013-12, section 5.09.

VCP is not available to correct failures relating to the diversion or misuse of plan assets. VCP may not be available if the plan sponsor has engaged in abusive tax avoidance transactions. See Rev. Proc. 2013-12, sections 4.12 and 4.13. In particular cases, the IRS may decline to make VCP available in the interest of sound tax administration. See Rev. Proc. 2013-12, section 4.01(5).

Who May File

Form 8950 and accompanying VCP submission may only be filed by the following parties:

- In general, an employer or plan sponsor, including a sole proprietor, partnership, or corporation. Generally, estates and/or beneficiaries may not file a submission under VCP.
- For multiple employer or multiemployer plans, the plan administrator (rather than any contributing or adopting employer). The VCP submission must be for the plan, rather than a portion of the plan affecting any particular employer.
- For group submissions, an eligible organization as defined in Rev. Proc. 2013-12, section 10.11, if the applicable conditions for group submissions have been met.
- Anonymous submissions must be filed by an authorized representative. However, the representative must be designated on a power of attorney by the employer (or in the case of a multiple employer or multiemployer plan, the plan administrator) and must be willing to submit a signed Form 2848, if identifying information is ultimately submitted to the IRS. See *Anonymous Submissions* below.
- For orphan plans, an authorized eligible party. See *Orphan Plans* below.

Orphan Plans

For VCP, **orphan plan** means any tax-favored retirement plan for 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, a

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

An **eligible party** for an orphan plan is defined as one of the following:

- 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 DOL, a person or entity determined by the DOL to have 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.

The applicant must include a written letter indicating that the submission concerns an orphan plan, and must provide documentation that establishes that they are an eligible party. See Rev. Proc. 2013-12, sections 5.03 and 11.10.

Anonymous Submissions

Taxpayers have the option of submitting a VCP submission on an anonymous basis. Form 8950 and all applicable VCP submission documents may be submitted on a redacted basis. However, once the IRS and the applicant agree on the correction methodology that would resolve the qualification failure that is 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. 2013-12, section 10.10.

An anonymous submission and Form 8950 will not be processed unless the representative includes a signed statement indicating that the representative has been authorized by the plan sponsor, is able to legally represent the plan sponsor, and is willing to submit a signed Form 2848 if identifying information is ultimately submitted to the IRS. See Rev. Proc. 2013-12, sections 10.10, 11.07, and 11.08. Attach the following signed statement to Form 8950:

"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. 2013-12, section 11.07. I will submit an executed 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 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 follows:

- A sponsor (as defined in Rev. Proc. 2005-16, section 4.07, or 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, or Rev. Proc. 2011-49, section 13.05);
- An insurance company or other entity that has issued annuity contracts or provides services relating to assets for 403(b) plans; or
- An entity that provides its clients with administrative services relating to qualified plans, 403(b) plans, SEPs, SARSEPs, or SIMPLE IRAs.

For special rules and procedures that are applicable to group submissions, see Rev. Proc. 2013-12, section 10.11.

Where to File

Send Form 8950, Form 8951 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:

Internal Revenue Service
201 West Rivercenter Blvd
Attn: Extracting Stop 312
Covington, KY 41011

How to Complete the Application

Form 8950, and any related determination letter application are screened to ensure completeness. An incomplete application may be returned to the applicant. It is important that an appropriate response be entered for each line (unless instructed otherwise). In completing Form 8950, pay careful attention to the following:

- N/A (not applicable) is accepted as a response only if an N/A block is provided;
- If a number is requested, enter the appropriate number;

- If a line provides a choice of boxes to check, check only one box unless instructed otherwise; and
- If a line provides a box to check, written responses and attachments are not acceptable unless instructed otherwise.

What to File

Form 8950 must be accompanied by the following items:

- The applicable compliance fee and Form 8951. Submit a separate check and Form 8951 for each Form 8950. Make checks payable to "United States Treasury." In addition, include a photocopy of your check with your VCP submission;
- All descriptions, information, documents, sample computations (if applicable), attachments, and representations required by Rev. Proc. 2013-12, section 11. In order to assist VCP applicants, the IRS encourages the use of the Model VCP Submission Compliance Statement included in Rev. Proc. 2013-12, Appendix C, including its supporting schedules. Appendix C and Appendix D (Acknowledgement Letter) are available in electronic format at www.irs.gov/Retirement-Plans/Correcting-Plan-Errors. Attachments and written explanations that are included with the submission should include the full name of the plan, employer identification number (EIN), and plan number. For assistance in determining what documents and attachments are needed in order to have a complete VCP submission, refer to the *Procedural Requirements Checklist* at the end of Form 8950.

Who Must Sign

Form 8950 must be signed by:

- The employer (including a sole proprietor or partnership) maintaining a single-employer plan;
- The plan administrator of a multiple employer plan or a multiemployer plan;
- The eligible organization filing a group submission; or
- The eligible person who is filing a VCP submission on behalf of an orphan plan.

An original signature is required.

An anonymous submission should not be signed. Instead, the authorized representative should attach a signed perjury statement. See *Anonymous Submissions*, above.

Note: Form 8950 may not be signed by an authorized representative designated on Form 2848, Power of Attorney and Declaration of Representative.

Specific Instructions

Lines 1a-h. Enter the name, address and telephone number of the plan sponsor.

The plan sponsor information used on this Form 8950 must be the same plan sponsor information that is being reported on the related Form 8951. The plan information entered should be the same information used on the applicable filed Form 5500, Annual Return/Report of Employee Benefit Plan; Form 5500-EZ, Annual Return/Report of One-Participant (Owners and Their Spouses) Retirement Plan; or Form 5500-SF, Short Form Annual Return/Report of Small Employee Benefit Plan.

The plan sponsor is:

1. For a plan maintained by a single employer, the employer;
2. For a plan maintained by two or more unrelated employers (a multiple employer plan or multiemployer plan), enter the name of the plan administrator as if it was the plan sponsor (see Regulations section 1.414(g)-1). Items 1b-1k should be completed as if the plan administrator were the plan sponsor;
3. For a plan sponsored by two or more entities required to be combined under sections 414(b), (c), or (m), one of the members participating in the plan;
4. For a plan that covers the employees and/or partners of a partnership, the partnership;
5. For an orphan plan, the name of the eligible party. Include a court order or other evidence documenting that the VCP applicant is an eligible party. See Rev. Proc. 2013-12, section 11.10;
6. For an anonymous submission, enter "Anonymous" and include the specific name of the plan sponsor's authorized representative as well as the unique identifying number the representative has assigned to the specific submission, as required by Rev. Proc. 2013-12, section 10.10. Enter this information on line 1a. The identifying number should not be used for any other anonymous submission. Lines 1b, 1c, 1e, 1f, 1g, 1h, 1j and 1k can be left blank. For line 1d, include the abbreviation of the state where the plan sponsor is located; and
7. For a group submission, enter the name of the eligible organization. Enter this information on line 1a. Items 1b-1k should be completed as if the eligible organization were the plan sponsor.

Address. Enter the address of the plan sponsor. If applicable, include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to that address, show the box number instead of the street address.

Foreign Address. If the plan sponsor has a foreign address, complete lines 1f, 1g, and 1h. Do not abbreviate the country name. Follow the country's practice for

entering the postal code and the name of the province, county, or state.

Line 1i. Enter the nine-digit EIN assigned to the applicant. For those applicants required to file a Form 5500 series return, the EIN should be the same EIN that is used when the Form 5500 series return is filed. Also, the EIN used on this Form 8950 must be the same EIN that is being reported on the attached Form 8951.

If this is an anonymous submission, enter the EIN of the authorized representative's employer.

Do not use a social security number or trust EIN.

An applicant must have an EIN. If you do not have an EIN, you may apply for one online. Go to the IRS website at www.irs.gov/businesses/small and click on the "Employer ID Numbers (EINs)" link. Alternatively, an applicant can apply for an EIN by calling 1-800-829-4933 or by mailing or faxing a completed Form SS-4, Application for Employer Identification Number, to the IRS.

Line 2a. List a person who may be contacted if additional information is needed. If you have appointed an authorized representative, check the box, do not complete any line 2 items and include Form 2848 with your submission. If you have listed an individual from a submitted Form 8821 as the contact person, note that an individual listed only on Form 8821 cannot be contacted if questions or issues arise during the processing of a VCP submission.

Line 3. Check the box that best describes the type of submission that is being mailed to the IRS. Most submissions will be regular VCP submissions. VCP group submissions, anonymous submissions, or non-VCP submissions involving 457(b) plans should be identified by checking the appropriate box. Do not check more than one box.

Line 4a. Enter the full name of the plan, as shown on Form 5500 or other documents. For example, you can enter the XYZ Company Profit-Sharing Plan. If this is an anonymous submission, leave this line blank.

Line 4b. Enter the plan's three-digit plan number. Typically, three-digit plan numbers begin with "001" and continue in numerical order for each plan that has been adopted by the plan sponsor. The number you assign to a plan must not be changed or used for any other plan. For those plan sponsors required to file a Form 5500 series return, the plan number entered on Form 8950 should be the same as the plan number that was or will be used when the Form 5500 series return is filed. The plan number used on this Form 8950 must be the same plan number that

is being reported on the related Form 8951. If your plan is a SEP, SARSEP, or SIMPLE IRA, leave this line blank.

For anonymous submissions, enter "401" for the first anonymous submission made by the authorized representative using Form 8950. For subsequent anonymous submissions made by the authorized representative, the plan number to be entered on each Form 8950 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 assigned to a specific anonymous submission must not be changed or used for any other anonymous submission made by the authorized representative.

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 dollar value of the retirement plan's assets. For Form 5500 series filers, this information comes from the most recently filed return for the plan determined as of the date the Form 8950 is mailed to the IRS. Filers of the 2010 and 2011 Form 5500 can find this information on Schedule H or I. Filers of Form 5500-SF, look to line 7. For Form 5500-EZ filers, look to line 6. For plans that are exempt from filing a Form 5500 series return, enter the total dollar value of the retirement plan assets as of the last day of the most recently completed plan year.

For a group submission, the eligible organization is to provide a good faith estimate of the value of the retirement plan assets that are associated with the individual retirement plans that are part of the group submission.

Line 4e. Enter the total number of plan participants. For Form 5500 series filers, this information is on the most recently filed return for the plan determined as of the date the Form 8950 is mailed to the IRS. Filers of the 2010 and 2011 Form 5500 can find this information on line 6(f). For filers of Form 5500-SF and Form 5500-EZ, look to line 5(b).

For applicants that are exempt from filing a Form 5500 series return, enter the number of plan participants determined as of the last day of the most recently ended plan year. However, if this information is not available at the time the VCP submission is being mailed to the IRS, it is acceptable to use the most recently ended prior plan year for which information on the number of plan participants is available. The exception does not apply if the VCP submission is mailed to the IRS more than seven months after the close of the most recently ended plan year preceding the

date of the VCP submission. See Rev. Proc. 2013-12, section 12.08.

Plans that have terminated and filed a final form 5500 series return should enter the number of participants on the return filed for the year prior to the year all assets were distributed.

For group submissions, the eligible organization must provide a good faith estimate of the number of plan participants associated with the individual retirement plans that are part of the group submission.

The number of participants reported on this Form 8950 must be the same number that is being reported on the related Form 8951.

Line 5. Review all possible choices before selecting an answer. Enter the type of plan that is the subject of this VCP submission by selecting the appropriate number from the choices associated with this line.

For this purpose, governmental section 414(d) plans are section 401(a) 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 used 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. See Rev. Proc. 2013-12, Appendix C, for descriptions of the Schedules.

Line 7a. VCP submissions that involve 403(b) plans, SEPs, and SIMPLE plans may skip all questions on line 7. Anonymous submissions may also skip all questions on line 7. However, a determination letter application may need to be submitted to the IRS upon disclosure of the applicant’s identity.

Line 7b. Rev. Proc. 2013-12, section 6.05, generally requires that a determination letter application be included with a VCP submission if a section 401(a) plan document or operational failure (not a demographic 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 failure is limited to late interim amendments or amendments required to implement optional changes associated with a change in tax law;
- The failure is being corrected by adopting IRS model amendments or an IRS pre-approved prototype or volume submitter plan on which the plan sponsor has reliance;

• For off-cycle plans (as of the date of the VCP submission), the failure is an operational failure that is being corrected 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 the plan’s cycle.

If 7b is checked “No,” include an attachment that explains why a determination letter application was not submitted with Form 8950 and related VCP submission. The attachment should refer to line 7b and include the applicant’s name, plan number, and EIN.

Line 7c. If 7a is checked Yes, enter the plan’s remedial amendment cycle. For individually designed plans, plan sponsors would pick one of the five cycles from Cycle A through Cycle E. For plans that are under the six-year cycle associated with pre-approved documents, enter either “pre-approved defined contribution plan” or “pre-approved defined benefit plan,” as applicable. To determine a plan’s cycle, refer to the instructions for line 7b and Rev. Proc. 2007-44.

Line 8. If Yes, attach a written explanation that provides details of the transaction(s). See Rev. Proc. 2013-12, section 4.13(2). Include the applicant’s name, plan number, and EIN at the top of the attachment.

Line 10. See *Eligibility Requirements for the Use of VCP*, earlier, and Rev. Proc. 2013-12, section 4.02.

Line 11. If “Yes,” include an attachment that indicates when the determination letter application was submitted to the IRS, along with the case number that has been assigned, if known. Include the applicant’s name, plan number, and EIN at the top of the attachment.

Line 12. This question should be answered “Yes,” if:

- A past determination letter application was withdrawn by the plan sponsor; or
- A past determination letter application was closed as incomplete due to a failure to respond to a question and the 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.

If line 12 was checked “Yes,” attach an explanation. Include the applicant’s name, plan number, and EIN at the top of the attachment.

Consider the following example: Plan Sponsor X submits a determination letter

application to the IRS. During the review process, additional information is solicited in order to determine whether the plan had been timely amended for past tax law changes. The determination letter application is withdrawn by Plan Sponsor X. Two 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, Plan Sponsor X should answer “Yes” to question 12 and include a written attachment that explains why the determination letter application was withdrawn.

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:

Recordkeeping 5 hrs. , 15 min.
**Learning about the law or
the form** 2 hrs. , 10 min.
Preparing the form 2 hrs. , 21 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:I
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

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