

SECTION 1. PURPOSE

The Employee Plans Compliance Resolution System ("EPCRS") sets forth a 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 ("Code"), but that have failed to meet those requirements for a period of time. The components of EPCRS are the Self-Correction Program ("SCP"), the Voluntary Correction Program ("VCP"), and the Audit Closing Agreement Program ("Audit CAP"). EPCRS permits plan sponsors to correct failures and thereby continue to provide employees with retirement benefits on a tax-favored basis. The most recent restatement of EPCRS is set forth in Rev. Proc. 2013-12, 2013-4 I.R.B. 313. The modifications to Rev. Proc. 2013-12 reflected in this revenue procedure include 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 sections 6.06(3) and 6.06(4) of Rev. Proc. 2013-12. This revenue procedure also requests comments on recoupment of Overpayments.

SECTION 2. BACKGROUND

.01 The Internal Revenue Service (Service) is issuing this revenue procedure to improve and update EPCRS by making limited modifications and clarifications to Rev. Proc. 2013-12. These modifications to EPCRS are described in Section 3, and revisions to Rev. Proc. 2013-12 implementing these modifications are set forth in Section 4.

.02 Section 2.05 of Rev. Proc. 2013-12 provides that it is expected that the EPCRS revenue procedure will continue to be updated, in whole or in part, from time to time. It is anticipated that updates will provide further improvements to EPCRS based on comments that are currently being evaluated and on additional comments that may be received.

.03 The Treasury Department and the Service continue to invite further comments on how to improve EPCRS. For information about how to submit comments, see section 7 of this revenue procedure.

SECTION 3. DESCRIPTION OF MODIFICATIONS TO EPCRS

.01 Effect on programs. This revenue procedure modifies, but does not supersede, Rev. Proc. 2013-12.

.02 Clarification to the correction rules on Overpayment failures. (1) Reasonable and appropriate correction. Section 6.02(2) of Rev. Proc. 2013-12 provides that any correction of a failure should be reasonable and appropriate for the failure. Correction rules for dealing with Overpayments are described in sections 6.06(3) and 6.06(4) of Rev. Proc. 2013-12. Under these correction rules, the employer is to take reasonable steps to have the Overpayment returned to the plan. The Service has been informed that some plans have demanded recoupment of large amounts from plan participants and beneficiaries on account of plan administration errors made over lengthy periods of time, and that plan participants and beneficiaries, particularly those who are older individuals, may have financial difficulty meeting some corrective actions that have been sought by plan administrators, including the return of Overpayments with substantial accumulated interest.

(2) Flexibility in correction of Overpayment failures. Some plans may be interpreting the correction rules in Rev. Proc. 2013-12 as requiring a demand for recoupment from plan participants and beneficiaries in all cases. However, depending on the facts and circumstances, correcting an Overpayment under EPCRS may not need to include requesting that an Overpayment be returned to the plan by plan participants and beneficiaries.

(3) Description of modifications to clarify that there is flexibility in correcting Overpayment failures. Sections 6.06(3) and 6.06(4) of Rev. Proc. 2013-12 are modified to clarify that there is flexibility in correcting an Overpayment under EPCRS. For example, depending on the nature of the Overpayment failure (such as an Overpayment failure resulting from a benefit calculation error), an appropriate correction method may include using rules similar to the correction methods of sections 6.06(3) and 6.06(4) in Rev. Proc. 2013-12 but having the employer or another person contribute the amount of the Overpayment (with appropriate interest) to the plan in lieu of seeking recoupment from plan participants and beneficiaries. Another example of an appropriate correction method includes a Plan Sponsor adopting a retroactive amendment to conform the plan document to the plan's operations in accordance with section 4.05 of Rev. Proc. 2013-12. Any correction method used must be consistent with the correction principles in section 6.02 and any applicable rules under EPCRS. The modifications are in sections 4.06 and 4.07 of this revenue procedure.

(4) Comments relating to recoupment of Overpayments. The Service intends to make further revisions to Rev. Proc. 2013-12 regarding the correction of Overpayments and seeks comments on this issue. For information about how to submit comments, see section 7 of this revenue procedure. Comments relating to recoupment of Overpayments will be shared with the Department of Labor. Comments are requested on--

(a) whether, and under what circumstances and conditions, correction should require employer make-whole contributions rather than recouping prior Overpayments from participants and beneficiaries;

(b) whether guidance should be provided on Overpayments relating to benefit calculation errors and whether the correction method should follow rules similar to the rules on the recoupment of overpayments issued by the Pension Benefits Guaranty Corporation in 29 C.F.R. § 4022.82;

(c) whether additional guidance is needed regarding the calculation of interest on Overpayments for benefit calculation errors; and

(d) whether any other changes or additional guidance is needed relating to the recoupment of Overpayments, including guidance on any unusual circumstances in which full corrective payments to a plan should not be required for Overpayments.

.03 Description of other modifications. The other modifications to Rev. Proc. 2013-12 consist of the following revisions:

- Revising section 4.04 of Rev. Proc. 2013-12 to extend SCP eligibility so that repeated corrections of excess annual additions will not prevent certain plans from satisfying the SCP requirement to have established practices and procedures as long as the plan corrects excess annual additions through the return of elective deferrals to affected employees within 9½ months after the end of the plan's limitation year. See section 4.01 of this revenue procedure.
- Revising section 6.02(5)(d) of Rev. Proc. 2013-12 to delete a reference to the Social Security letter forwarding program because the Social Security Administration has announced that the program is no longer available as a method for locating lost plan participants who are owed additional retirement benefits. See section 4.04 of this revenue procedure.
- Revising sections 6.05(1), 6.05(2), and 6.05(3)(c) of Rev. Proc. 2013-12 to clarify that, if corrective plan amendments are used to correct Qualification Failures as defined in section 5.01(2), the requirement to submit a determination letter application to the Service does not apply to certain amendments made to prototype or volume submitter plans. Section 6.05(1) is also revised to provide that a determination letter application is not required to be submitted if more than 12 months have passed since distribution of substantially all plan assets as part of the plan's termination. See section 4.05 of this revenue procedure.
- Revising section 10.07(9) of Rev. Proc. 2013-12 to extend the correction period for adopting certain corrective plan amendments in situations in which a determination letter application is required to be submitted concurrently with the VCP submission. See sections 4.08 of this revenue procedure.

- Revising sections 11.01 and 11.02 of Rev. Proc. 2013-12 to require that applicants electing to use model VCP submission documents submit such documents by completing the Form 14568 series. As the model VCP submission documents are now published on forms, Appendix C model VCP submission documents are no longer part of Rev. Proc. 2013-12. See section 4.09 of this revenue procedure.
- Revising section 11.11 of Rev. Proc. 2013-12 to provide that applicants wishing to obtain an acknowledgement of receipt of a VCP submission must use IRS Letter 5265, *Form 8950 Application for Voluntary Correction Program Acknowledgment Letter*. See section 4.11 of this revenue procedure.
- Revising section 12.02(2) of Rev. Proc. 2013-12 to expand the availability of a reduced compliance fee for submissions under VCP that involve the failure to satisfy the minimum distribution requirements. See section 4.12 of this revenue procedure.
- Revising section 12.02(3) of Rev. Proc. 2013-12 to modify the method for determining compliance fees for submissions under VCP relating solely to participant loans that do not satisfy the requirements of § 72(p). This change is being made to provide an improved method for determining compliance fees for large plans that have a relatively small number of loans that do not satisfy the requirements of § 72(p). See section 4.13 of this revenue procedure.
- Removing Appendices C and D in light of other modifications made in this revenue procedure. See section 4.17 of this revenue procedure.
- Revising sections 4.11, 5.01(3)(c), 11.10, 12.06(2), Appendix A .08, and Appendix B, section 2.07(2)(b), Example 26, of Rev. Proc. 2013-12 to reflect appropriate citations or cross references. See sections 4.02, 4.03, 4.10, 4.14, 4.15, and 4.16 of this revenue procedure.

SECTION 4. MODIFICATIONS TO REV. PROC. 2013-12

.01 Section 4.04 of Rev. Proc. 2013-12 is revised to provide for an extended period of time to correct excess annual additions through the return of elective deferrals to affected employees by changing the reference “two and a half months” to “9½ months.” As revised, section 4.04 reads as follows:

4.04 Established practices and procedures. In order to be eligible for SCP, the Plan Sponsor or administrator of a plan must have established practices and procedures (formal or informal) reasonably designed to promote and facilitate overall compliance with applicable

Code requirements. For example, the plan administrator of a Qualified Plan that may be top-heavy under § 416 may include in its plan operating manual a specific annual step to determine whether the plan is top-heavy and, if so, to ensure that the minimum contribution requirements of the top-heavy rules are satisfied. A plan document alone does not constitute evidence of established procedures. In order for a Plan Sponsor or administrator to use SCP, these established procedures must have been in place and routinely followed, and an Operational Failure must have occurred through an oversight or mistake in applying them. SCP may also be used in situations where the Operational Failure occurred because the procedures that were in place, while reasonable, were not sufficient to prevent the occurrence of the failure. A plan that provides for elective deferrals and nonelective employer contributions that are not matching contributions is not treated as failing to have established practices and procedures to prevent the occurrence of a § 415(c) violation in the case of a plan under which excess annual additions under § 415(c) are regularly corrected by return of elective deferrals to the affected employee within 9½ months after the end of the plan's limitation year. The correction, however, should not violate another applicable Code requirement. In the case of a failure that relates to Transferred Assets or to a plan assumed in connection with a corporate merger, acquisition, or other similar employer transaction between the Plan Sponsor and the sponsor of the transferor plan or the prior Plan Sponsor of an assumed plan, the plan is considered to have established practices and procedures for the Transferred Assets if such practices and procedures are in effect for the Transferred Assets by the end of the first plan year that begins after the corporate merger, acquisition, or other similar transaction. (See section 6.10(2) for special rules regarding established practices and procedures for 403(b) Plans.)

.02 Section 4.11 of Rev. Proc. 2013-12 is revised by deleting all references to section 12.06 and replacing them with references to section 12.07, clarifying language regarding a defined contribution plan "to which" a contribution is made, and, to be consistent with other references to the Internal Revenue Service in Rev. Proc. 2013-12, replacing "IRS" with the term "Service." As revised, section 4.11 reads as follows:

.11 Egregious failures. SCP is not available to correct Operational Failures that are egregious. Egregious failures include: (a) a plan that has consistently and improperly covered only highly compensated employees; (b) a plan that provides more favorable

benefits for an owner of the employer based on a purported collective bargaining agreement where there has in fact been no good faith bargaining between bona fide employee representatives and the employer (see Notice 2003-24, 2003-1 C.B. 853, with respect to welfare benefit funds); or (c) a defined contribution plan to which a contribution is made on behalf of a highly compensated employee that is several times greater than the dollar limit set forth in § 415(c). VCP is available to correct egregious failures. However, egregious failures are subject to the VCP fees described in section 12.07 and, for purposes of section 12.07, an egregious failure would include any case in which the Service concludes that the parties controlling the plan recognized that the action taken would constitute a failure and the failure either involves a substantial number of participants or beneficiaries or involves participants who are predominantly highly compensated employees. Audit CAP also is available to correct egregious failures.

.03 Section 5.01(3)(c) of Rev. Proc. 2013-12 is revised by modifying the last sentence to clarify that the corrections for overpayments from defined benefit plans and defined contribution plans are described in sections 6.06(3) and 6.06(4) of Rev. Proc. 2013-12, respectively. As revised, section 5.01(3)(c) reads as follows:

(c) Overpayment. The term "Overpayment" means a Qualification Failure due to a payment being made to a participant or beneficiary that exceeds the amount payable to the participant or beneficiary under the terms of the plan or that exceeds a limitation provided in the Code or regulations. Overpayments include both payments from a defined benefit plan and payments from a defined contribution plan (either not made from the participant's or beneficiary's account under the plan or not permitted to be paid under the Code, the regulations, or the terms of the plan). However, an Overpayment does not include a payment that is made pursuant to a correction method provided under this revenue procedure for a different Qualification Failure. Overpayments must be corrected in accordance with section 6.06(3) for defined benefit plans and section 6.06(4) for defined contribution plans and 403(b) Plans.

.04 Section 6.02(5)(d) of Rev. Proc. 2013-12 is revised by deleting the reference to the Social Security letter forwarding program. As revised, section 6.02(5)(d)(i) reads as follows:

(d) Locating lost participants. (i) Reasonable actions must be taken to find all current and former participants and beneficiaries to whom additional benefits are due, but who have not been located after a mailing to the last

known address. In general, such actions include, but are not limited to, a mailing to the individual's last known address using certified mail and, if that is unsuccessful, an additional search method, such as the use of a commercial locator service, a credit reporting agency, or Internet search tools. Depending on the facts and circumstances, the use of more than one of these additional search methods may be appropriate. A plan will not be considered to have failed to correct a failure due to the inability to locate an individual if reasonable actions to locate the individual have been undertaken in accordance with this paragraph, provided that, if the individual is later located, the additional benefits are provided to the individual at that time.

.05 Sections 6.05(1), 6.05(2), and 6.05(3)(c) of Rev. Proc. 2013-12 are clarified to state that the requirement to submit a determination letter application to the IRS does not apply to corrective amendments made to pre-approved plans on which the adopting employer has reliance if such amendments are part of an adopted prototype or volume submitter plan on which the adopting employer continues to have reliance after the adoption of the corrective amendments and in cases in which more than 12 months have passed since the distribution of substantially all the plan assets following a plan termination.

(a) As revised, sections 6.05(1) and 6.05(2) of Rev. Proc. 2013-12 read as follows:

.05 Submission of a determination letter application. (1) In general. This section 6.05 sets forth the situations in which a determination letter application is required to be submitted as part of the correction of a Qualification Failure if the correction includes a plan amendment. If a determination letter application is required under this section 6.05, then, unless otherwise specified in this revenue procedure, the provisions of Rev. Proc. 2007-44 will apply. Thus, for example, in the case of an ongoing individually designed plan, a determination letter application will be reviewed with respect to all items included in the Cumulative List (as defined in Rev. Proc. 2007-44) that would apply to the remedial amendment cycle during which the determination letter is filed. Notwithstanding any other part of this section 6.05, a determination letter application is not required and may not be submitted with the VCP submission if (a) the correction by plan amendment is achieved through (i) the adoption of an amendment that is designated as a model amendment by the Service, (ii) the adoption of a prototype or volume submitter plan with an opinion or advisory letter as provided in Rev. Proc. 2015-6, 2015-1 I.R.B. 194, on which the Plan Sponsor has reliance (or is treated as having reliance pursuant to section 6.05(5) below), or (iii) the adoption of an amendment to a previously adopted

prototype or volume submitter plan with an opinion or advisory letter as provided in Rev. Proc. 2015-6, on which the Plan Sponsor has reliance (or is treated as having reliance pursuant to section 6.05(5) below) after the adoption of such amendment, (b) the failure corrected is a Demographic Failure, or (c) more than 12 months have elapsed since the date of distribution of substantially all plan assets in connection with the termination of the plan.

(2) Determination letter application required. (a) VCP and Audit CAP. (i) Operational failure corrected by plan amendment during on-cycle year. Except as provided in section 6.05(1), to correct an Operational Failure that includes a plan amendment (in a case in which the Plan Sponsor submits the failure under VCP or corrects the failure under Audit CAP during an on-cycle year or in connection with a plan termination), a determination letter application is required for individually designed plans. An “on-cycle year” means the last 12 months of the plan’s remedial amendment cycle set forth in Rev. Proc. 2007-44.

(ii) Nonamender failure. Except as provided in section 6.05(1) and (3)(a), a determination letter application is required for individually designed plans in order to correct a nonamender failure under VCP or Audit CAP, whether or not the plan is submitted under VCP or corrected under Audit CAP during an on-cycle year. For this purpose, the term “nonamender failure” means a failure to amend the plan to correct a disqualifying provision described in § 1.401(b)-1(b) within the applicable remedial amendment period. In general, a disqualifying provision includes a provision in the plan document that violates a qualification requirement of the Code or the absence of a provision that causes the plan to fail to satisfy a qualification requirement of the Code. A disqualifying provision also includes any provision designated by the Commissioner as a disqualifying provision under § 1.401(b)-1(b)(3).

(b) SCP. Except as provided in section 6.05(1), in the case of any correction of an Operational Failure through plan amendment under SCP that is permitted under section 4.05(2) of this revenue procedure, a Plan Sponsor must submit a determination letter application for the plan, including the corrective plan amendment, during the plan’s next on-cycle year if individually designed, or earlier, if in connection with the plan’s termination. The determination letter application should be mailed to the address provided in the instructions for the applicable

Form 5300 or 5310. As part of the determination letter submission, the cover letter must identify the amendment as a corrective amendment under SCP. In addition, the Plan Sponsor must include in the cover letter to the application: (1) a statement that neither the plan nor the Plan Sponsor has been a party to an abusive tax avoidance transaction (as defined in section 4.13(2) of this revenue procedure); or (2) a brief identification of any abusive tax avoidance transaction to which the plan or the Plan Sponsor has been a party.

(b) As revised, section 6.05(3)(c) of Rev. Proc. 2013-12 reads as follows:

(c) Operational Failures corrected through plan amendment under VCP and Audit CAP during an off-cycle year. If, during an off-cycle year, a Plan Sponsor submits an Operational Failure under VCP or corrects such a failure under Audit CAP, then a determination letter application is not required and may not be submitted with the VCP submission or as part of the correction of the failure under Audit CAP. If the plan amendment is accepted as a proper correction for an Operational Failure, the compliance statement under VCP or closing agreement issued under Audit CAP constitutes a determination on the effect of the plan amendment on the qualification of the plan. The reliance provided by a compliance statement or closing agreement is limited to the specific failures and years specified and does not provide reliance for any other failure or year. Except as provided in section 6.05(1), with respect to correction of an Operational Failure through plan amendment, the compliance statement issued under VCP or closing agreement issued under Audit CAP is subject to the condition that the amendment be submitted as part of a determination letter submission during the plan's next on-cycle year, or, if earlier, in connection with the plan's termination, and that a favorable determination letter be issued with respect to the plan. Generally this determination letter application requirement is limited to individually designed plans. The determination letter application should be mailed to the address listed in the instructions of the applicable Form 5300, or 5310 and should include a copy of the related compliance statement or closing agreement. A Plan Sponsor that corrects an Operational Failure through a plan amendment under Audit CAP during an off-cycle year should also include a copy of the closing agreement when submitting a determination letter application during the plan's next on-cycle year, or if earlier, in connection with the plan's termination.

.06 Section 6.06(3) of Rev. Proc. 2013-12 is revised to clarify that there is flexibility in correcting an Overpayment in a defined benefit plan as long as the correction method is consistent with the correction principles in section 6.02 and any other applicable rules under EPCRS. As revised, section 6.06(3) reads as follows:

(3) Correction of Overpayment (defined benefit plans). An Overpayment from a defined benefit plan is corrected in accordance with rules similar to the Return of Overpayment and Adjustment of Future Payments correction methods described in section 2.04(1) of Appendix B or any other appropriate correction method. Depending on the nature of the Overpayment failure, an appropriate correction method may include using rules similar to the correction method described in section 2.04(1) of Appendix B but having the employer or another person contribute the amount of the Overpayment (with appropriate interest) to the plan in lieu of seeking recoupment from plan participants and beneficiaries. Another example of an appropriate correction method includes a Plan Sponsor adopting a retroactive amendment to conform the plan document to the plan's operations (subject to the requirements of section 4.05). Any other correction method used must satisfy the correction principles of section 6.02 and any other applicable rules in this revenue procedure.

.07 Section 6.06(4)(f) of Rev. Proc. 2013-12 is added to clarify that there is flexibility in correcting an Overpayment in a defined contribution plan as long as the correction method is consistent with the correction principles in section 6.02 and any other applicable rules under EPCRS. As added, section 6.06(4)(f) reads as follows:

(f) Other correction methods. Other appropriate correction methods may be used to correct Overpayment failures from a defined contribution plan. Depending on the nature of the Overpayment failure, an appropriate correction method may include using rules similar to the correction method in section 6.06(4)(a) but having the employer or another person contribute the amount of the Overpayment (with appropriate interest) to the plan in lieu of seeking recoupment from plan participants and beneficiaries. Another example of an appropriate correction method includes a Plan Sponsor adopting a retroactive amendment to conform the plan document to the plan's operations (subject to the requirements of section 4.05). Any other correction method used must satisfy the correction principles of section 6.02 and any other applicable rules of this revenue procedure.

.08 Section 10.07(9) of Rev. Proc. 2013-12 is revised to extend the period to adopt certain corrective plan amendments and eliminate a cross-reference. Section 10.07(9) is also reorganized for clarity. As revised, section 10.07(9) reads as follows:

(9) Timing of correction. (a) In general. The Plan Sponsor must implement the specific corrections and administrative changes set forth in the compliance statement within 150 days of the date of the compliance statement. Any request for an extension of this time period must be made in writing prior to the expiration of the correction period and must be approved by the Service.

(b) Good faith, interim, or optional law change amendments. Correction of the failure to adopt timely good faith amendments, interim amendments, or amendments relating to the implementation of optional law changes, as described in section 6.05(3)(a), must be made by the date of the submission. Thus, the submission should include the executed amendments that would correct this failure.

(c) Other plan amendments. Except as provided in section 10.07(9)(b), if a determination letter application is required to be filed with a VCP submission as described in section 6.05, the corrective plan amendment must be adopted by the later of 150 days after the date of the compliance statement or 91 days after a favorable determination letter is issued. However, for a governmental plan (within the meaning of § 414(d)), the corrective amendment must be adopted by the later of 150 days after the date of the compliance statement or the 91st day after the close of the first legislative session that begins more than 120 days after a favorable determination letter is issued.

.09 Revising sections 11.01 and 11.02 of Rev. Proc. 2013-12 to require that Plan Sponsors that choose to use Model VCP Submission Documents must submit such documents by completing Form 14568, *Appendix C Part I, Model VCP Submission Compliance Statement* (and, if applicable, Form(s) 14568-A through 14568-I). As revised, sections 11.01 and 11.02 read as follows:

.01 General rules. (1) A VCP submission must satisfy the requirements of this section 11.

(2) A VCP submission must include completed Forms 8950 and 8951.

(3) A VCP submission must include a description of the failures, a description of the proposed methods of correction, and other procedural

items set forth in this section 11. Appendix C to Rev. Proc. 2013-12 provided assistance to applicants in satisfying these requirements. In 2014, the Appendix C Model Compliance Statement and related Schedules were published by the Service as official IRS forms. The submission of a Model Compliance Statement and Schedules remains optional. However, if an applicant wishes to submit a Model Compliance Statement, Form 14568, *Appendix C Part I, Model VCP Submission Compliance Statement*, and, if appropriate, one or more schedules, Forms 14568-A through 14568-I, must be used. Appendix C model documents were deleted pursuant to Rev. Proc. 2015-27, which will appear in I.R.B. 2015-16, and those documents may not be submitted as Model Compliance Statements. To avoid confusion, Form 14568 and Forms 14568-A through 14568-I will be revised to remove references to “Appendix C”. In the meantime, applicants may use the current versions of Form 14568 and Forms 14568-A through 14568-I that are available on the IRS website (www.irs.gov). The Service also reserves the right to modify the Form 14568 series to improve usability, reflect changes in law, or create additional Schedules by adding new forms to the Form 14568 series.

.02 Use of Schedules (Forms 14568-A through 14568-I). (1) Schedules 1 through 9 provide descriptions of common qualification failures and standardized correction methods which may be submitted in lieu of individually drafted descriptions. For applicants that do not choose to use the Model Compliance Statement, the Schedules can be used to satisfy certain requirements of this revenue procedure.

(2) Multiple Schedules may be included in a single VCP submission.

(3) A Schedule may be used only if its printed content applies without modification to the applicant’s situation.

(4) The following failures are described in the Schedules:

(a) Form 14568-A, Schedule 1 - Interim and Certain Discretionary Nonamender Failures. If the Plan Sponsor failed to adopt timely good faith amendments, interim amendments, or amendments required to reflect the changed operation of the plan on account of the Plan Sponsor’s decision to implement optional law changes (see section 6.05(3)(a) of this revenue procedure for a description of each of these amendments), the Plan Sponsor may submit Form 14568-A, which may

be used only if the corrective amendment was adopted before the expiration of the plan's extended remedial amendment period (as determined under Rev. Proc. 2007-44) for that amendment.

(b) Form 14568-B, Schedule 2 - Nonamender Failures (other than those to which Schedule 1 applies) and Failure to Adopt a 403(b) Plan Timely. If the Plan Sponsor failed to adopt timely amendments to comply with required legislative or regulatory changes (other than as described in section 11.02(4)(a)) or failed to adopt a written 403(b) Plan timely in accordance with the final regulations under § 403(b) and Notice 2009-3, the Plan Sponsor may submit Form 14568-B.

(c) Form 14568-C, Schedule 3 - SEPs and SARSEPs. If the Plan is a SEP or a SARSEP and experienced one or more of the failures shown on Schedule 3 and the Plan Sponsor proposes to correct such failure(s) by using the method(s) provided on such schedule, the Plan Sponsor may submit Form 14568-C.

(d) Form 14568-D, Schedule 4 - SIMPLE IRAs. If the Plan is a SIMPLE IRA and experienced one or more of the failures shown on Schedule 4 and the Plan Sponsor proposes to correct such failure(s) by using the method(s) provided on such schedule, the Plan Sponsor may submit Form 14568-D.

(e) Form 14568-E, Schedule 5 - Plan Loan Failures (Qualified Plans and 403(b) Plans). If the Plan Sponsor failed to administer loans in accordance with the provisions of § 72(p)(2), the failure solely relates to employees who are neither key employees (as defined in § 416(i)(1)) nor self-employed individuals (as defined in § 401(c)(1)(B)), and the Plan Sponsor proposes to correct such failure(s) by using the method(s) provided on Schedule 5, the Plan Sponsor may submit Form 14568-E.

(f) Form 14568-F, Schedule 6 - Employer Eligibility Failure (§ 401(k) and 403(b) Plans only). If the Plan Sponsor failed to satisfy the criteria for an employer to sponsor either a § 401(k) plan or a 403(b) Plan and proposes to correct such failure by using the method provided on Schedule 6, the Plan Sponsor may submit Form 14568-F.

(g) Form 14568-G, Schedule 7 - Failure to Distribute Elective Deferrals in Excess of the § 402(g) Limit. If the plan failed to distribute

elective deferrals made in excess of the § 402(g) limit and the Plan Sponsor proposes to correct such failure using the method described in Appendix A, section .04, the Plan Sponsor may submit Form 14568-G.

(h) Form 14568-H, Schedule 8 - Failure to Pay Required Minimum Distributions Timely under § 401(a)(9). If the plan failed to make required minimum distributions pursuant to § 401(a)(9) and proposes to correct such failure using the method described in Appendix A, section .06, the Plan Sponsor may submit Form 14568-H.

(i) Form 14568-I, Schedule 9 - Correction by Plan Amendment (in accordance with Appendix B). The Plan Sponsor may submit Form 14568-I if a proposed correction to one or more of the failures described in Schedule 9 is being made.

.10 Section 11.10 of Rev. Proc. 2013-12 is revised to replace “Eligible Person” with “Eligible Party.” As revised, section 11.10 reads as follows:

.10 Orphan Plan. The VCP submission should indicate, if appropriate, that it concerns an Orphan Plan and should include information that establishes that the applicant is an Eligible Party as defined in section 5.03(2).

.11 Section 11.11 of Rev. Proc. 2013-12 is revised to provide that applicants that wish to obtain an acknowledgement of receipt of a VCP submission must use IRS Letter 5265. As revised, section 11.11 reads as follows:

.11 Acknowledgement letter. The Service will acknowledge receipt of a VCP submission (or non-VCP submission for a § 457(b) plan, as permitted by section 4.09) only if the Plan Sponsor or the Plan Sponsor’s representative completes IRS Letter 5265, *Form 8950 Application for Voluntary Correction Program Acknowledgement Letter*, and includes it in the submission. A separate IRS Letter 5265 should be included for each plan submitted.

.12 Section 12.02(2) of Rev. Proc. 2013-12 is revised to expand the availability of a reduced compliance fee for submissions under VCP involving the failure to satisfy the minimum distribution requirements. As revised, section 12.02(2) reads as follows:

(2) If (a) a VCP submission involves a failure to satisfy the minimum distribution requirements of § 401(a)(9), (b) such failure is the only failure described in the submission, and (c) the failure would result in the imposition of the excise tax under § 4974, the compliance fee is

\$500 if 150 or fewer participants are affected and \$1,500 if 151 to 300 participants are affected. If the number of affected participants is greater than 300, the general fee under section 12.02 applies.

.13 Section 12.02(3) of Rev. Proc. 2013-12 is revised to modify the method for determining compliance fees for submissions under VCP relating solely to participant loans that do not satisfy the requirements of § 72(p). As revised, section 12.02(3) reads as follows:

(3) If (a) a VCP submission involves a loan failure corrected in accordance with section 6.07, (b) the failure does not affect more than 25% of the Plan Sponsor's participants in any year in which the failure occurred, and (c) the failure is the only failure described in the submission, the compliance fee will be:

Number of Participants with Loan Failures	Compliance Fee
13 or fewer	\$ 300
14 to 50	\$ 600
51 to 100	\$1,000
101 to 150	\$ 2,000
Over 150	\$ 3,000

.14 Section 12.06(2) of Rev. Proc. 2013-12 is revised to replace a reference to section 6.10(1) with a reference to section 6.11(1). As revised, section 12.06(2) reads as follows:

(2) In any case in which a SEP or SIMPLE IRA Plan correction is not similar to a correction for a similar Qualification Failure (as provided under section 6.11(1)), the Service may impose an additional fee. If the failure involves an Excess Amount under a SEP or a SIMPLE IRA Plan and the Plan Sponsor retains the Excess Amount in the SEP or SIMPLE IRA Plan, a fee equal to at least 10% of the Excess Amount with no adjustment for Earnings will be imposed. This is in addition to the SEP or SIMPLE IRA Plan compliance fee set forth in section 12.06(1).

.15 Appendix A .08 of Rev. Proc. 2013-12 is revised by replacing the reference to section 6.06(3) of Rev. Proc. 2013-12 in the last sentence with a reference to section 6.06(4). As revised, Appendix A .08 reads as follows:

.08 Failure to satisfy the § 415 limits in a defined contribution plan. For limitation years beginning before January 1, 2009, the

permitted correction for failure to limit annual additions (other than elective deferrals and after-tax employee contributions) allocated to participants in a defined contribution plan as required in § 415 (even if the excess did not result from the allocation of forfeitures or from a reasonable error in estimating compensation) is to place the excess annual additions into an unallocated account, similar to the suspense account described in § 1.415-6(b)(6)(iii) (as it appeared in the April 1, 2007 edition of 26 CFR part 1) prior to amendments made by the final regulations under § 415, to be used as an employer contribution, other than elective deferrals, in the succeeding year(s). While such amounts remain in the unallocated account, the Plan Sponsor is not permitted to make additional contributions to the plan. The permitted correction for failure to limit annual additions that are elective deferrals or after-tax employee contributions (even if the excess did not result from a reasonable error in determining compensation, the amount of elective deferrals or after-tax employee contributions that could be made with respect to an individual under the § 415 limits) is to distribute the elective deferrals or after-tax employee contributions using a method similar to that described under § 1.415-6(b)(6)(iv) (as it appeared in the April 1, 2007 edition of 26 CFR part 1) prior to amendments made by the final regulations under § 415. Elective deferrals and after-tax employee contributions that are matched may be returned to the employee, provided that the matching contributions relating to such contributions are forfeited (which will also reduce excess annual additions for the affected individuals). The forfeited matching contributions are to be placed into an unallocated account to be used as an employer contribution, other than elective deferrals, in succeeding periods. For limitation years beginning on or after January 1, 2009, the failure to limit annual additions allocated to participants in a defined contribution plan as required in § 415 is corrected in accordance with section 6.06(2) and (4) of this revenue procedure.

.16 In Appendix B, section 2.07(2)(b) of Rev. Proc. 2013-12, the correction for Example 26 is modified by replacing the first reference to 2005 in the last sentence with 2007. As revised, the correction reads as follows:

Correction:

Employer K corrects the failure under VCP by adopting a plan amendment in 2007, effective January 1, 2005, to provide a hardship distribution option that satisfies the rules applicable to hardship distributions in § 1.401(k)-1(d). The amendment provides that the

hardship distribution option is available to all employees. Thus, the amendment satisfies § 401(a), and the plan as amended in 2007 would have satisfied § 401(a) (including § 1.401(a)(4)-4 and the requirements applicable to hardship distributions under § 401(k)) if the amendment had been adopted in 2005.

.17 Appendices C and D of Rev. Proc. 2013-12 are removed.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2013-12 is modified by this revenue procedure.

SECTION 6. EFFECTIVE DATE

This revenue procedure is generally effective July 1, 2015. However, Plan Sponsors are permitted, at their option, to apply the provisions of this revenue procedure on or after March 27, 2015.

SECTION 7. PUBLIC COMMENTS

The Treasury Department and the Service invite comments on this revenue procedure. Send submissions to CC:PA:LPD:PR, (Rev. Proc. 2015-27), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044. Comments may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: Internal Revenue Service, CC:PA:LPD:PR, (Rev. Proc. 2015-27), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington DC. Alternatively, comments may be submitted via the Internet at notice.comments@irs.counsel.treas.gov (Rev. Proc. 2015-27). For the request for comments in section 3.02(4) of this revenue procedure, please submit written comments by July 20, 2015. All comments will be available for public inspection.

SECTION 8. PAPERWORK REDUCTION ACT

The collection of information contained in Rev. Proc. 2013-12 has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1673. The modifications made in this revenue procedure to Rev. Proc. 2013-12 do not impose any additional paperwork burden.

SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Kathleen Herrmann of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure, contact Kathleen Herrmann or Vernon Carter at (202) 317-6799 (not a toll-free number).