

**MEMO# 13092**

January 26, 2001

## **IRS REVISES VOLUNTARY CORRECTION PROGRAM AND ESTABLISHES "GROUP" SUBMISSION PROGRAM**

[13092] January 26, 2001 TO: PENSION MEMBERS No. 5-01 PENSION OPERATIONS ADVISORY COMMITTEE No. 9-01 AD HOC COMMITTEE ON IRS GROUP CORRECTION PROGRAM RE: IRS REVISES VOLUNTARY CORRECTION PROGRAM AND ESTABLISHES "GROUP" SUBMISSION PROGRAM The Internal Revenue Service recently issued Revenue Procedure 2001-17, which updates the Employee Plans Compliance Resolution System (EPCRS), the comprehensive system of correction programs for retirement plans under Code sections 401(a), 403(a) and 403(b).<sup>1</sup> The guidance reflects the reorganization and renaming of existing programs, as well as the establishment of new programs, including the Voluntary Correction of Group Failures program (VCGroup). The VCGroup program enables third-party administrators and sponsors of master and prototype plans to correct failures affecting a number of plans.<sup>2</sup> The revenue procedure also allows anonymous plan sponsor submissions and the correction of failures involving SEPs. The revenue procedure provides that EPCRS will continue to be updated on a periodic basis, including further improvements based on comments previously received. Additionally, the IRS and the Treasury Department invite further comments on EPCRS, including the operation of the VCGroup procedure and appropriate correction procedures for failures arising under SIMPLE IRAs.<sup>3</sup>

<sup>1</sup> Revenue Procedure 2001-17 modifies and supersedes Revenue Procedure 2000-16, which updated and consolidated previously issued guidance on EPCRS. See Institute Memorandum to Pension Members No. 8-00, dated January 28, 2000. Revenue Procedure 2001-17 also modifies user fee guidance provided in Revenue Procedure 2001-8. See Institute Memorandum to Pension Committee No. 2-01, dated January 9, 2001.

<sup>2</sup> As previously indicated, the Institute met with IRS officials regarding the development of a group correction program and submitted a comment letter expressing concerns and recommendations with respect to the contemplated program. See Institute Memorandum to Pension Committee No. 86-00, Pension Operations Advisory Committee No. 83-00 and Ad Hoc Committee on IRS Group Correction Program, dated November 14, 2000.

<sup>3</sup> The revenue procedure states that submissions relating to SIMPLE IRAs are currently being accepted by the IRS on a provisional basis outside of EPCRS.

<sup>2</sup> Reorganization of Program Under the new revenue procedure, EPCRS is organized into three components: the Self-Correction Program (SCP), the Voluntary Correction with IRS Approval program (VCP) and the Correction on Audit program (Audit CAP). SCP. APRSC is renamed SCP. Under SCP, a plan sponsor that has established compliance practices and procedures may, at any time, correct insignificant operational failures without paying a fee or sanction. In addition, in the case of a qualified plan with a favorable determination letter or in the case of a 403(b) plan, the plan sponsor generally may correct significant operational failures without payment of a

fee or sanction. VCP. Prior programs that allowed voluntary correction with IRS approval — previously VCR, SVP, Walk-In CAP and TVC — are now components of VCP. The Voluntary Correction of Operational Failures program (VCO) replaces VCR, the Voluntary Correction of Operational Failures Standardized program (VCS) replaces SVP, and for 403(b) failures, the Voluntary Correction of Tax-sheltered Annuity Failures program (VCT) replaces TVC. Additionally, the new programs for group submissions (VCGroup), anonymous plan sponsor submissions, and SEP failures (VCSEPs) are established as part of VCP. Audit CAP. Audit CAP remains similar to its prior form. If a failure (other than a failure corrected through SCP or VCP) is identified on audit, the plan sponsor may correct the failure and pay a sanction.

**Program Modifications** In addition to the structural changes above, the new revenue procedure makes a number of modifications to the various EPCRS programs. Specifically, the revenue procedure:

- extends the duration of the self-correction period under SCP for significant operational failures where the plan sponsor accepts a transfer of plan assets or effects a plan merger in connection with a corporate transaction;
- facilitates correction under SCP, VCP and Audit CAP of previous qualification failures by plan sponsors that accept transfers of plan assets or effect plan mergers in connection with corporate transactions;
- permits correction through retroactive amendment for cases in which employees are inappropriately permitted to begin participation before they are eligible under the plan;
- permits correction through retroactive amendment under SCP or VCO for certain failures relating to hardship withdrawals and the provision of benefits based on compensation in excess of the section 401(a)(17) limit;
- permits correction for employers that were not eligible to sponsor 401(k) plans at the time they adopted the plans;
- 3• clarifies that the ability to self-correct “insignificant” failures continues to be available under SCP during a plan examination, whether the failure is identified by the employer or the IRS;
- clarifies the reporting requirements applicable to corrections involving the distribution of excess amounts;
- clarifies how fees are calculated with respect to multiemployer and multiple employer plans;
- clarifies that a failure not disclosed by the plan sponsor but discovered by the IRS during the processing of a determination letter submission is subject to the sanction structure of Audit CAP; and
- updates the definition of “Favorable Letter” to take into account “GUST.”

**VCGroup Program** VCGroup Eligibility. To be eligible under VCGroup, the following requirements must be met: (1) the applicant must be an “Eligible Organization,”<sup>4</sup> (2) the submission must address “a failure resulting from a systemic error involving the Eligible Organization that affects at least 20 plans,”<sup>5</sup> and (3) the failures must be either (a) all “Operational Failures” and the Eligible Organization is an entity providing administrative services or an annuity/403(b) provider or (b) all “Plan Document Failures” and the Eligible Organization is a sponsor of a master or prototype plan. An Eligible Organization that submits a VCGroup application may not submit an application under VCO, VCS, VCT, or the Anonymous Submission procedure. Notably, however, an Eligible Organization may discuss a possible submission with the IRS on an anonymous basis prior to filing a VCGroup submission.

**VCGroup Procedure.** A VCGroup submission is generally subject to the same requirements as a VCP submission, except that an Eligible Organization, rather than the plan sponsor, is responsible for performing VCP’s procedural obligations. Thus, a VCGroup applicant would file a submission with IRS containing detailed information including a description of the failures affecting the plans, when and why they occurred, the proposed method for correction, and relevant portions of the plan document(s). Assuming that an Eligible Organization’s submission satisfies program conditions, the IRS would issue an unsigned compliance statement regarding the proposed correction to the Eligible Organization.

<sup>4</sup> The term “Eligible Organization” is defined as (1) a sponsor of a master or prototype plan that either (a) receives an opinion letter that considers the provisions of GUST or (b) has received an opinion letter that considers the Tax Relief Act of 1986 and has been submitted for a GUST opinion letter by

December 31, 2000; (2) an insurance company or other entity that has issued annuity contracts or provides services with respect to assets for 403(b) plans; or (3) an entity that provides its clients with administrative services with respect to qualified plans or 403(b) plans. 5 If at any time before the IRS issues an “unsigned compliance statement” the number of plans that have the same failure falls below 20, the Eligible Organization must notify the IRS that it is no longer eligible for VCGroup (and the compliance fee will be retained). 4 If the Eligible Organization agrees with the compliance statement’s terms, it must sign and return the statement to the IRS within 120 days, along with the following items: • the tax identification numbers for the plan sponsors “to whom the compliance statement may be applicable”; • the plans by name, plan number, type of plan, number of plan participants, and trust’s tax identification number, if applicable; • a power of attorney (which may be a limited power of attorney) from each of the plan sponsors authorizing the Eligible Organization or its representative to act on the plan sponsor’s behalf with respect to the items in the compliance statement; • a copy of the most recently filed Form 5500 for each plan; and • any additional compliance fee (see fee discussion below). To be covered by the compliance statement, plans must be corrected within 240 days of the date of the signed statement, unless a longer period is agreed to by the IRS. Furthermore, until the items listed above are provided to the IRS, a VCGroup submission “does not preclude or impede an examination” of the plan sponsor or its plans. VCGroup Fees. The initial fee is \$10,000. An additional fee also is assessed based on the number of plans corrected in excess of 20. Specifically, in the case of a submission with certain specified corrections and/or failures provided in Appendix A or B of the revenue procedure, the additional fee is equal to the product of the number of plans in excess of 20 times \$125, up to a maximum of \$40,000. In any other case, the additional fee is equal to the product of the number of plans in excess of 20 times \$250, up to a maximum of \$90,000. The initial fee for a VCGroup filing (as well as for filings under VCO, VCS, the Anonymous Submission Procedure and VCSEP), must be included with the initial submission, rather than at the time the compliance statement is signed by the plan sponsor and returned to the IRS. However, the additional fee (based on the number of plans exceeding 20) is due at the time the compliance statement is signed. Effective Date Revenue Procedure 2001-17 is generally effective May 1, 2001. However, plan sponsors and Eligible Organizations may at their option apply the revenue procedure on or after January 19, 2001. Thomas T. Kim Assistant Counsel Attachment Note: Not all recipients receive the attachment. To obtain a copy of the attachment to which this memo refers, please call the ICI Library at (202) 326-8304 and request the attachment for memo 13092. ICI Members may retrieve this memo and its attachment from ICINet (<http://members.ici.org>). 5 Attachment (in .pdf format)