

# One Minute Memo<sup>®</sup>



## IRS Updates Qualified Plan Correction Guidance

On December 31, 2012, the IRS published Revenue Procedure 2013-12, which updates the Employee Plans Compliance Resolution System ("EPCRS"). EPCRS is the IRS correction program that allows employers and other organizations that sponsor retirement plans to correct compliance failures that may adversely affect the tax-qualified status of a plan.

Key changes to the program include the following:

- **403(b) plans.** The updated procedures permit sponsors of 403(b) plans to correct failures in the same (or similar) manner as the failure could be corrected for qualified plans, including through retroactive plan amendments where appropriate. The Rev. Proc. provides a 50% reduction in the EPCRS filing fee for failure to timely adopt a written 403(b) plan document if (a) the VCP submission is made by December 31, 2013, and (b) the failure to timely adopt the written plan document is the only failure in the submission.
- **Failing to adopt an amendment required for a determination letter.** The updated procedures provide a reduced filing fee of \$500 for "nonamender" failures where: (a) the sole failure is the failure to timely adopt an amendment (upon which a favorable determination letter is conditioned) within the applicable remedial amendment period, and (b) the required amendment is adopted within three months of the expiration of the remedial amendment period for adopting the proposed amendment, as provided in the plan's most recent determination letter.
- **No 401(k) discrimination correction from forfeitures.** The updated procedures clarify that qualified nonelective contributions ("QNECs") for correcting discrimination failures (such as ADP and ACP) generally may not come from forfeiture accounts. Instead, the plan sponsor must make a separate contribution to the plan.
- **Corrections during the determination letter process.** The updated procedures revise the fee schedule for nonamender failures discovered during the determination letter application process that were not separately disclosed by the plan sponsor and include reduced fees in certain such cases. For example, if the sole failure consists of a failure to adopt good faith amendments, interim amendments, or amendments required to implement optional law changes by their applicable deadline - but before the expiration of the plan's remedial amendment period - then the fee is 40% of the otherwise applicable fee. In addition, if the sole failure consists of a failure to timely adopt an amendment (upon which a favorable determination letter was conditioned) within the applicable remedial amendment period, the fee is \$1,000 regardless of the number of plan participants, provided the required amendment is adopted within three months of the expiration of the remedial amendment period for adopting the amendment.
- **Correction for Section 436 funding based restrictions.** The updated procedures now provide correction methods for failing to satisfy the various provisions related to benefit restrictions for underfunded single employer defined benefit plans under Internal Revenue Code Section 436.
- **Revised Submission Process.** The updated procedures revise the schedules, forms and IRS mailing addresses for making a submission pursuant to EPCRS to streamline the process.

The IRS also requested comments on other issues for future updates of EPCRS, including the correction methods for a failure to implement an automatic enrollment feature, a failure to provide safe harbor notices, and certain failures related to designated Roth contributions.

The new guidance is effective April 1, 2013, but plan sponsors have the option of applying the updated procedures now.

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