

IRS Goes Green: Electronic VCP Submission Process for Retirement Plans Becomes Mandatory April 1, 2019

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In the constantly evolving legal framework surrounding employee benefit plans, maintaining a retirement plan's qualified status can be a daunting task for plan administrators and plan sponsors. The Internal Revenue Service ("IRS") acknowledges this reality through its Employee Plans Compliance Resolution System ("EPCRS"). Indeed, this correction program permits retirement plan sponsors to correct certain failures to satisfy Internal Revenue Code ("Code") requirements and continue providing retirement benefits to their employees on a tax-favored basis. Under EPCRS, there are three avenues to correct mistakes: (1) the self-correction program; (2) the voluntary correction program ("VCP"); and (3) the audit closing agreement program. The IRS recently significantly altered the process for VCP submissions. Specifically, effective April 1, 2019, all VCP submissions must be made electronically.

The VCP is generally available for retirement plans that have self-identified certain compliance failures and are not currently being audited by the IRS. Historically, paper VCP applications were mailed to the IRS. However, paper VCP submissions mailed on or after April 1, 2019 will no longer be accepted by the IRS. Instead, an electronic process, which was made optional during a January 1, 2019 to March 31, 2019 transition period, must be used to complete any new VCP submissions. The electronic process requires:

- The establishment of a pay.gov account;
- Completion of Form 8950, *Application for Voluntary Correction Program*, directly on the pay.gov website;
- An upload and attachment of all other submission documents (such as model forms, explanations, and plan documents) in a single PDF file, not exceeding 15 MB; and
- Payment of the applicable user fee on the pay.gov website.

If any required documents cannot be uploaded due to the file size limitation, the applicant must fax the remaining documents to the IRS at (855) 203-6996. The www.pay.gov receipt serves as confirmation of the VCP submission.

Retirement plans should be diligently monitored by plan sponsors and plan administrators to ensure ongoing legal and operational compliance. However, compliance issues can develop even with meticulous administration. Plan sponsors and administrators should notify legal counsel immediately upon discovery of a plan compliance or potential compliance failure in order to determine the best approach for correcting such failure and maintaining their plan's tax-favored status. For further guidance regarding the VCP program changes or more information on EPCRS, please contact your Miller Canfield attorney.