

SUMMARY OF CHANGES TO EPCRS
ENACTED BY REV. PROC. 2002-47, IRB 2002-29
(Effective July 22, 2002)

REV. PROC. 2001-17	REV. PROC. 2002-47
<p>Sections 4.01 and 4.02(1) provided that Qualified Plans, 403(b) Plans, and Simplified Employee Pensions (“SEPs”) which satisfied specified eligibility requirements could resolve certain failures through the Employee Plans Compliance Resolution System (“EPCRS”). In addition, section 4.02(2) provided that the Internal Revenue Service (“Service”) could decide to extend EPCRS to other arrangements.</p>	<p>Section 2.02(2) was revised to permit sponsors of § 457(b) plans to submit requests outside of the EPCRS.</p>
<p>Section 4.05 provided that, to be eligible for the Self-Correction Program (“SCP”):</p> <ol style="list-style-type: none"> 1. The Plan Sponsor or administrator of a plan must have established practices and procedures which were reasonably designed to promote and facilitate overall compliance with applicable Code requirements; 2. These established procedures must have been in place and routinely followed; and 3. An Operational Failure must have occurred through an oversight or mistake in applying them, because of an inadequacy in the procedures, or because the failure related to Transferred Assets and did not occur after the end of the second plan year that began after the corporate merger, acquisition, or other similar transaction. 	<p>Section 4.05 was revised to clarify the third part of the SCP eligibility rules with respect to the established practices and procedures 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 .</p>

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Section 5.01(2)(d) defined the term Employer Eligibility Failure, for Qualified Plans, as “the adoption of a cash or deferred arrangement . . . intended to satisfy the requirements of § 401(k) of the Internal Revenue Code for one or more years between 1987 and 1996 (inclusive) by an employer that was a tax-exempt organization prohibited from adopting a § 401(k) plan during that period.”	Section 5.01(2)(d) was revised to expand the definition of Employer Eligibility Failure to include the adoption of a plan intended to satisfy a § 401(k) or § 408(k) plan by any ineligible employer .
Section 5.01(4) defined the term Favorable Letter, for Qualified Plans, as “a current favorable determination letter for an individually designed plan (including a volume submitter plan), a current favorable opinion letter for a Plan Sponsor that has adopted a master or prototype plan, or a current favorable notification letter for a Plan Sponsor that has adopted a regional prototype plan.” In addition, this definition provided that an ongoing qualified plan was generally considered to have a current Favorable Letter if the determination letter, opinion letter, or notification letter considered the Tax Reform Act of 1986 (“TRA ‘86”). A terminated plan was generally considered to have a current Favorable Letter if it was terminated prior to the end of the GUST ¹ remedial amendment period and the plan was amended to reflect the provisions of GUST.	Section 5.01(4) was revised to expand the definition of Favorable Letter to take into account the GUST ¹ remedial amendment period.

¹ “GUST” is an acronym for the Uruguay Round Agreements Act (“GATT”), the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”), the Small Business Job Protection Act of 1996 (“SBJPA”), the Taxpayer Relief Act of 1997 (“TRA ‘97”), the Internal Revenue Service Restructuring and Reform Act of 1998 (“RRA ‘98”), and the Community Renewal Tax Relief Act of 2000 (“CRA”).

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Section 5.01(8) defined the term Transferred Assets, for Qualified Plans, as plan assets that were received, in connection with a corporate merger, acquisition, or other similar employer transaction, by the plan in a transfer (including a merger or consolidation of plan assets) under § 414(l) of the Internal Revenue Code from a plan sponsored by an employer that was not a member of the same controlled group as the Plan Sponsor.	Section 5.01(8) was revised to clarify the definition of Transferred Assets to provide that the sponsor of the transferor plan could not have been a member of the same controlled group as the Plan Sponsor prior to the corporate merger, acquisition, or other similar employer transaction.
Section 5.02(3) defined the term Excess Amount, for 403(b) Plans, as “any contributions or allocations that are in excess of the limits under § 415 or § 403(b)(2)(the exclusion allowance limit) for the year.”	Section 5.02(3) was revised to delete the reference to the maximum exclusion allowance under § 403(b)(2)(A)(ii) of the Internal Revenue Code, since § 403(b)(2) was repealed by the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”), effective January 1, 2002.
Section 6.02(3) provides for a consistency requirement for corrections made under the Employee Plans Compliance Resolution System (“EPCRS”) as “Generally, where more than one correction method is available to correct a type of Operational Failure for a plan year (or where there are alternative ways to apply a correction method), the correction method (or one of the alternative ways to apply the correction method) should be applied consistently in correcting all Operational Failures of that type for that plan year. Similarly, earnings adjustment methods generally should be applied consistently with respect to corrective contributions or allocations for a particular type of Operational Failure for a plan year.”	Section 6.02(3) was revised to clarify that the consistency requirement for corrections made under EPCRS applies on a plan by plan basis for VCGroup requests.

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<p>Section 6.02(5) defined special exceptions to full correction under the Employee Plans Compliance Resolution System (“EPCRS”). In particular, section 6.02(5)(b) provided that a Plan Sponsor was not required to make a corrective distribution totaling \$20 or less if the reasonable direct costs of processing and delivering the distribution to the participant or beneficiary would exceed the amount of the distribution.</p>	<p>Section 6.02(5)(b) was revised to increase the de minimis amount for corrective distributions from \$20 to \$50.</p>
<p>Section 6.02(5) defined special exceptions to full correction under the Employee Plans Compliance Resolution System (“EPCRS”).</p>	<p>Section 6.02(5) was revised to include a new de minimis rule for correcting certain Overpayments under the Voluntary Correction Program (“VCP”). Generally, for a submission under VCP, if the total amount of an Overpayment made to a participant or beneficiary is \$100 or less, the Plan Sponsor is not required to seek the return of the Overpayment from the participant or beneficiary.</p>
<p>Section 6.05(2) provided specific instructions regarding the correction of Excess Amounts in 403(b) Plans through distribution.</p>	<p>Section 6.05(2)(a) was revised to update the rules regarding the distribution of Excess Amounts by deleting the references to the maximum exclusion allowance under § 403(b)(2)(A)(ii) of the Internal Revenue Code, since § 403(b)(2) was repealed by the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”), effective January 1, 2002.</p>
<p>Section 9.02(2) provided a special rule under which the correction period under the Self-Correction Program (“SCP”) could be extended for Operational Failures that relate only to Transferred Assets. Under this special rule, the SCP correction period did “not end until the last day of the first plan year that begins after the corporate merger, acquisition, or other similar employer transaction between the Plan Sponsor and the sponsor of the transferor plan.”</p>	<p>Section 9.02(2) was revised to extend the special rules relating to the extension of the SCP correction period to Plan Sponsors who assume the sponsorship of plans acquired in corporate mergers/acquisitions.</p>

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Section 10 provided specific instructions regarding the processing of requests submitted under the Voluntary Correction Program (“VCP”) and/or any of its special procedures.	Section 10 was revised to clarify that the correction of Qualification Failures in terminated plans may be made under the VCP.
Sections 10.05 and 11.04(3) explained the special rule requiring the Plan Sponsor to submit a determination letter application with respect to a plan amendment (“other than adoption of an amendment designated by the Service as a model amendment or a standardized or prototype plan”) that would be used to correct one or more Plan Document Failures or Operational Failures, as permitted under section 4.06.	Section 10.05, renumbered as section 10.06, and section 11.04(3) were revised to add a requirement that the user fee for a determination letter application and the fee for a VCP submission which requires an upfront fee, for example, a VCO or VCS submission, be submitted on separate certified or cashier’s checks made payable to the U.S. Treasury.
Section 10.12 explained the special rules relating to the Anonymous Submission Procedure. In particular, section 10.12(1) provided that requests under the Voluntary Correction Program (“VCP”), relating to Qualified Plans and 403(b) Plans, could be submitted without initially identifying the plan or the Plan Sponsor. (NOTE: For certain purposes (e.g., correction principles and submission requirements), SEPs are treated similarly to Qualified Plans.)	Section 10.12(1), renumbered as section 10.13(1), was revised to clarify that requests submitted under the Voluntary Correction of Group Failures (“ VCGroup ”) and/or the Voluntary Correction of SEP Failures (“ VCSEP ”) are now eligible to take advantage of the Anonymous Submission Procedure . (Section 10.14(4), renumbered as section 10.15(4), was also revised accordingly.)
Section 10.12(1) also provided, in pertinent part: “Only failures other than those addressed in Appendix A and Appendix B may be submitted under this procedure. A plan is not eligible for the Anonymous Submission Procedure with respect to a failure that was submitted under the Anonymous Submission Procedure within the preceding two years.”	Section 10.12(1), renumbered as section 10.13(1), was revised to: 1. Provide that all Operational Failures , including those described in Appendix A and/or B, may be submitted under the Anonymous Submission Procedure ; and 2. Eliminate the two-year submission restriction . (Section 11.03(4), which also related to the two-year submission restriction, was also deleted.)

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As mentioned above, section 10.12 explained the special rules relating to the Anonymous Submission Procedure.	Section 10.12(1), renumbered as section 10.13(1), was revised to include two new items to the special rules relating to the Anonymous Submission Procedure : 1. A new requirement that each request submitted under the Anonymous Submission Procedure must identify the state in which the Plan Sponsor resides (in order to expedite the assignment of the submission, preferably to a VC Agent in the same geographic area); and 2. Clarification as to the items (Form 2848 and certifications under penalty of perjury) that may be excluded from an initial request submitted under the Anonymous Submission Procedure.
Section 10.12(3) provided, “Unless otherwise extended, the Anonymous Submission Procedure will not apply to applications submitted after December 31, 2002.”	Section 10.12(3), renumbered as section 10.13(3), was revised to indefinitely extend the Anonymous Submission Procedure’s sunset date .
Section 10.14(1) explained the general rules that apply to requests submitted under the Voluntary Correction of Group Failures (“VCGroup”).	Section 10.14(1), renumbered as section 10.15(1), was revised to permit Eligible Organizations to submit both Operational Failures and Plan Document Failures in a single request under VCGroup .
Section 10.14(2) defined the term Eligible Organization for requests submitted under the Voluntary Correction of Group Failures (“VCGroup”).	Section 10.14(2), renumbered as section 10.15(2), was revised to clarify that the VC Group procedure is applicable only if the submission includes a failure resulting from a systemic error involving the Eligible Organization that affects at least 20 plans and that results in at least 20 plans implementing correction.
Section 10.14(3)(b) provided, in pertinent part, that the Eligible Organization must submit a copy of the most recently filed Form 5500-series return filed by each of the affected Plan Sponsors.	Section 10.14(3)(b), renumbered as section 10.15(3)(b), was revised to clarify that the Eligible Organization submitting the VCGroup request will not need to submit Form 5500-series returns for affected Plan Sponsors, provided that they certify that such Plan Sponsors timely filed the required Form 5500-series returns .

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Section 11.03(1) provided, "In the case of a VCO submission, a statement (if applicable) that the plan is currently being considered in a determination letter application. If the request for a determination letter is made while a request for consideration under VCO is pending, the Plan Sponsor must update the VCO request to add this information."	Section 11 was revised to make the requirement previously contained in section 11.03 (1) (i.e., the Plan Sponsor's statement regarding pending determination letter applications) applicable to all requests submitted under the Voluntary Correction Program ("VCP").
Section 11.05 explained the date on which a Compliance Fee is generally due with respect to a request submitted under the Voluntary Correction Program ("VCP"). Specifically, section 11.05 provided, "Except as provided in section 11.06, the VCP fee under section 12 is due at the time the compliance statement is signed by the Plan Sponsor and returned to the Service."	Section 11.05 was revised to add a requirement that all fees must be submitted by certified or cashier's check made payable to the U.S. Treasury." (Sections 12.01(1) and 13.02 were also revised.)

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<p>Section 11.12 specified the mailing address for requests submitted under the various subprocedures of the Voluntary Correction Program (“VCP”). Specifically, requests submitted under the Voluntary Correction of Operational Failures (“VCO”), the Voluntary Correction of Operational Failures Standardized (“VCS”), the Voluntary Correction of Group Failures (“VCGroup”), and the Voluntary Correction of SEP Failures (“VCSEP”) were to be submitted to the Washington DC office. All other VCP requests were to be submitted to the Voluntary Correction Coordinator designated for the Plan Sponsor’s geographic area.</p>	<p>Section 11.12 was revised to reflect the new centralized submission point for all requests under the Voluntary Correction Program (“VCP”). All VCP submissions should be mailed to:</p> <p style="padding-left: 40px;">Internal Revenue Service Attention: T:EP:RA:VC P.O. Box 27063 McPherson Station Washington, D.C. 20038</p>
<p>Section 12.01(3) defined the Compliance Fees that applied to plans for which the sole failure was a failure to timely amend the plan document to comply with applicable tax and pension law requirements. Separate fee determinations were specified for four different categories of nonamenders. Specifically, section 12.01(3)(a) defined the compliance fee for plans that were not timely amended to comply with the requirements of the Unemployment Compensation Amendments of 1993 (“UCA”) or Omnibus Budget Reconciliation Act of 1993 (“OBRA ’93”).</p>	<p>Section 12.01(3)(a) was revised to define the compliance fee for GUST¹ non-amenders under VCP to be the halfway point between the minimum amount and the presumptive amount of the applicable fee range.</p>

¹ “GUST” is an acronym for the Uruguay Round Agreements Act (“GATT”), the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”), the Small Business Job Protection Act of 1996 (“SBJPA”), the Taxpayer Relief Act of 1997 (“TRA ’97”), the Internal Revenue Service Restructuring and Reform Act of 1998 (“RRA ’98”), and the Community Renewal Tax Relief Act of 2000 (“CRA”).

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<p>Section 12.05 explained special rules concerning the determination of the Compliance Fee for a request submitted under the Voluntary Correction of Tax-sheltered Annuity Failures ("VCT"). Section 12.05(3) described an additional fee that may be imposed with respect to VCT requests. Specifically, section 12.05(3) provided, "Subject to section 12.05(6), the compliance fee for Excess Amounts that are corrected pursuant to section 6.05(2)(b) is equal to the sum of (a) the applicable fee described in section 12.05(2), plus (b) two percent of the Excess Amounts, adjusted for earnings through the date of the VCT application, contributed or allocated in the calendar year of the VCT application and in the three calendar years prior thereto. If there is a failure to satisfy both the § 403(b)(2) and § 415 limits with respect to a single employee for a year, the fee will take into account only the larger Excess Amount."</p>	<p>Section 12.05(3) was revised to increase the fee applicable if Excess Amounts are retained in the plan from two percent (2%) to ten percent (10%) of the applicable Excess Amounts, adjusted for earnings through the date of the VCT application .</p>
<p>Section 12.07 explained special rules concerning the determination of the Compliance Fee for a request submitted under the Voluntary Correction of SEP Failures ("VCSEP"). Section 12.07(2) described an additional fee that may be imposed with respect to VCSEP requests. Specifically, section 12.07(2) provided, "In any case in which a SEP correction is not similar to a correction for a similar Qualification Failure (as provided under section 6.08(1)), the Service may impose an additional fee."</p>	<p>Section 12.07(2) was revised to clarify that the fee that may be imposed under VCSEP if the failure involves an overcontribution to a SEP that is not the result of a failure to satisfy a statutory limit on contributions to a SEP and the Plan Sponsor retains the overcontribution in the SEP to be equal to at least ten percent of the overcontribution excluding earnings. This is in addition to the VCSEP compliance fee.</p>

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<p>Section 12.08 explained the rules for establishing the amount of assets and the number of plan participants for purposes of determining the Compliance Fee for requests submitted under the Voluntary Correction Program (“VCP”). The third sentence related to situations involving Transferred Assets, and it provided, “If the submission involves a plan with Transferred Assets and the Service determines that none of the failures in the submission occurred after the end of the second plan year that begins after the corporate merger, acquisition or other similar employer transaction, the Plan Sponsor may calculate the amount of plan assets and number of plan participants based on the Form 5500 information that would have been filed by the Plan Sponsor for the plan year that includes the employer transaction if the Transferred Assets were maintained as a separate plan.”</p>	<p>Section 12.08 was revised to clarify the timing of an occurrence of a failure related to Transferred Assets to provide that the special fee applies if no new incidents of the failure occurred after the end of the second plan year that begins after the corporate merger, acquisition, or other similar employer transaction. (Section 14.03 was also revised to include a similar statement with respect to the determination of the monetary sanction under the Audit Closing Agreement Program.)</p>
<p>Section 14.02 defined the factors that were considered when determining the amount of the monetary sanction for failures being resolved under the Audit Closing Agreement Program (“Audit CAP”). Specifically, factor (1) of section 14.02 read, “(1) the steps taken by the Plan Sponsor to ensure that the plan either had no failures or corrected them through SCP or VCP, including the extent to which correction had progressed before the examination was initiated,”</p>	<p>Section 14.02 was revised to clarify the factors considered under the Audit Closing Agreement Program (“Audit CAP”) for determining the amount of the monetary sanction. The factors specifically refer to steps taken by a Plan Sponsor to prevent the occurrence of failures and highlight the importance of correction, even outside an EPCRS program.</p>
<p>The section titled “Drafting Information” provided, in pertinent part: “For further information concerning this revenue procedure, please contact Employee Plans taxpayer assistance telephone service between 1:30 and 3:30 p.m., Eastern Time, Monday through Thursday at (202) 283-9516/9517. (These telephone numbers are not toll-free numbers.)”</p>	<p>The “Drafting Information” section was revised to change the telephone number for inquiries regarding EPCRS and/or Revenue Procedure 2002-47 to the Employee Plans’ taxpayer assistance telephone service at 1-877-829-5500 between 8:30 a.m. and 6:30 p.m., Eastern Time, Monday through Friday (a toll-free number).</p>
<p>Section .06 of Appendix A described a permissible correction method for the “Failure to timely pay the minimum distribution required under § 401(a)(9).”</p>	<p>Section .06 of Appendix A was revised to incorporate the provisions of the final regulations issued for Internal Revenue Code section 401(a)(9).</p>

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Section 2.01(1)(b)(i) of Appendix B described the general rules applicable to the use of the One-to-One Correction Method when resolving failures of the average deferral percentage (“ADP”), average contribution percentage (“ACP”), and/or multiple use tests.	Section 2.01(1)(b)(i) of Appendix B was revised to clarify that a Plan Sponsor may not restructure its plan into component plans or use permissive disaggregation if the One-to-One Correction Method is being used to correct ADP, ACP, and/or multiple use tests.
Section 2.07(3) of Appendix B describes the general rules applicable to the use of the Plan Amendment Method (i.e., retroactive amendments) when resolving failures related to the inclusion of ineligible employees. Specifically, the last sentence of section 2.07(3) of Appendix B read, “This paragraph does not apply unless (i) the amendment satisfies § 401(a) at the time it is adopted, (ii) the amendment would have satisfied § 401(a) had the amendment been adopted at the earlier time when it is effective, and (iii) the employees affected by the amendment are predominantly nonhighly compensated employees.”	Section 2.07(3) of Appendix B was revised to clarify that a retroactive amendment adopted to correct the inclusion of ineligible employees may cover only those employees mistakenly included, provided that § 401(a)(4) of the Internal Revenue Code is satisfied.
Appendix C provided a checklist for Plan Sponsors who were preparing to submit a request under the Voluntary Correction Program (“VCP”). The purpose of the checklist was to ensure that the resulting VCP request was complete and in order. Each question within the checklist pertained to a different submission requirement. The majority of questions related to VCP as a whole and/or to the general procedures of VCP (“VC General”); however, some of the questions related specifically to VCP subprocedures, such as the Voluntary Correction of Operational Failures (“VCO”), the Voluntary Correction of Operational Failures Standardized (“VCS”), the Voluntary Correction of Tax-sheltered Annuity Failures (“VCT”), the Voluntary Correction of Group Failures (“VCGroup”), and/or the Voluntary Correction of SEP Failures (“VCSEP”).	Appendix C was revised to add questions relating to Transferred Assets (item 10), waiver of the excise tax under § 4974 of the Code (item 18), whether a determination letter application is pending with respect to the plan (items (19) and (20)), and the initial fee for VCGroup submissions (item (26)).