

BENEFIT NEWS BRIEFS

Common Mistakes in VCP Submissions

The IRS recently posted an article on its Employee Plans website concerning Common Mistakes in Voluntary Correction Program (VCP) Submissions. The IRS' *Correcting Plan Errors* webpage has information on how to complete your VCP submission. See <http://www.irs.gov/retirement/article/0,,id=96907,00.html>. The information is listed below in checklist format for ease of use.

General Information and Fees

- Compliance fee was not included or the incorrect fee was paid.
- Applicant used its Social Security Number instead of its Employer Identification Number.
- Plan assets and participant count information was not provided.
- Applicant did not include the plan name, EIN and plan number as a header on each page of the Appendix D or F.
- Applicant modified the Appendices or Schedules or did not include every page of the Schedules.
- The Title "Appendix D Submission" or "Appendix F Submission" was missing.
- Items that were not applicable were deleted.
- Applicant mailed a related determination letter application to Cincinnati instead of mailing both submissions to Washington, DC.
- Applicant enclosed a single check for the VCP submission and for the determination letter application user fee. Separate checks must be remitted for each submission.
- Applicant did not submit a valid Power of Attorney form (Form 2848) to authorize the IRS to discuss the application with the sponsor's representative. Form 2848 must be signed by an officer of the plan sponsor.

- The submission did not state a plan qualification failure under Code Section 401(a). The IRS will not review your submission to identify the plan failure.

Representations, Administrative Procedures and Excise Tax Waivers

- The Applicant's Representations page (Penalty of Perjury Statement) was signed by the legal representative (POA) instead of by an officer of the plan sponsor.
- Applicant did not check either box to state whether or not the plan sponsor or plan engaged in an Abusive Tax Avoidance Transaction.
- Applicant modified the Enforcement Resolution section (to be completed by the IRS Only).
- Applicant did not include proposed changes to administrative procedures or the proposed changes did not address how they would prevent the failure from recurring.
- Excise tax waiver check boxes were selected although not applicable.
- If a waiver of an excise tax was requested, the Applicant did not specify the excise tax and submit justification for the waiver.

Mistakes Relating to Late Amendment Failures

- Applicant did not specify the specific EGTRRA, PPA or HEART provision that was not timely adopted.
- The Applicant did not specify the plan section that includes the amendment not timely adopted.
- The late amendment was not identified using the appropriate Schedule 1 or 2.
- Failure to timely adopt an initial plan document was identified on a Schedule 1 instead of on a Schedule 2.
- Applicant did not check the boxes correctly.
- Applicant checked all boxes (i.e. all cumulative lists).
 - Applicant selected check boxes on Schedule for provisions that do not apply to its type of plan.
 - Example: A 401(k) plan should not select provisions that apply to a defined benefit plan.

* * *

LEGAL DISCLAIMER: Information contained in this publication is not legal advice, and should not be construed as legal advice. If you need legal advice upon which you can rely, you should seek a legal opinion from your attorney.