



Flashpoint: New EPCRS Procedure: Electronic Submission of VCP and Not a Whole Lot More

On September 28, 2018, the IRS issued Revenue Procedure 2018-52, the latest version of the Employee Plans Compliance Resolution System ("EPCRS"), the IRS's comprehensive procedures for correcting retirement plan errors. Using this procedure, retirement plan sponsors may fix mistakes in their qualified plans, 403(b) plans, 403(a) retirement annuities, SEPs, and SIMPLEs. Although they are not eligible for EPCRS, government-sponsored 457(b) programs are permitted provisionally to submit certain errors in a manner similar to EPCRS.

Practitioners who have been hoping that this version of EPCRS would permit problem participant loans to be self-corrected and better identify what constitutes an "insignificant" error will be disappointed. While acknowledging that these issues are outstanding, the new EPCRS does not address them. The *raison d'être* for the new procedure is to outline that, beginning in 2019, VCP submissions will be made electronically.

Permissible in January, Mandatory in April

The electronic submission of VCP applications will be made through the www.pay.gov website. An account will need to be created for the plan sponsor. Once that is done, the Form 8950 will be completed and signed online. The VCP submission will then be uploaded as .PDF, and the user fee will be submitted via the website. The website will then provide a payment confirmation notice, which will contain a Tracking ID. That notice will constitute a confirmation of receipt by the IRS (no separately mailed confirmation will be sent), and the Tracking ID will serve as the IRS control number for the submission. So, there will be no more Acknowledgement Letter 5265.

The full submission will consist of a new Penalty of Perjury statement, Form 2848, Form 14568 (and its little cousins A – I), any narrative, and all attachments. It must be uploaded in one .PDF document. However, this .PDF may be only 15 MB or smaller. If the submission requires more than 15 MB, the practitioner will file as much as it can via the .PDF upload and then must submit the balance via fax to 855.203.6996. To ensure that the faxed material and the .PDF can be mated, the fax must contain the Tracking ID/control number, the EIN, applicant name, and plan name. Someone at the IRS will then match up the faxed documents with the 15 MB .PDF that was sent electronically and provide them both to the assigned reviewer. (You may insert a cynical sigh here, if you would like.)

This new procedure may be used any time after January 1, 2019, but becomes mandatory as of April 1, 2019. Hard copy submissions with a postmark after March 31, 2019, will be rejected.

In 2017, the IRS added a Penalty of Perjury statement to Form 8950. That will now become a separate form, since Form 8950 will be electronic under the new submission. The Plan Sponsor must sign the statement, and it will be part of the .PDF package.

Modifications to the submission will be done differently from the initial submission. A practitioner seeking to augment a filing will need to call what is currently the VCP information line to discuss how the additional or revised documents may be sent. Furthermore, the new EPCRS makes it clear that the IRS may approve a VCP submission summarily, without any contact with the person who made the submission. This means that it may not be prudent to try to bypass the “modification” process with the intent of sending the new items directly to the reviewer once the case is assigned. Approval of the filing may occur without any contact, and any modifications would need to be submitted as a brand new filing (with a brand new user fee).

Other Minor Changes

The new procedure is updated to reflect the new preapproved plan verbiage (e.g., “preapproved plan,” rather than “prototype” or “volume submitter”), to clarify why the now defunct IRS Letter Forwarding Program is no longer available as a means for searching for participants, and to remind us that the user fees are updated each year in the IRS’s annual revenue procedure.

FBLC’s Thoughts About the Changes

While we are very pleased that the IRS is embracing the electronic age, we are concerned that the limit on .PDF size, coupled with the need to fax any additional documents, will complicate the process. That said, we should note that the IRS now has faxes going directly to computer files, so even that part of the process should be electronic. With the size of the IRS, the popularity of the VCP program, and the vagaries of faxing, we worry that the most complex VCPs will suffer the most calamities in the filing process. However, we remain optimistic that this will end up being a huge efficiency that will help the submissions be processed more easily and quickly.

We are pleased that the IRS acknowledged the outstanding issues that need resolution, and continue to be hopeful that the IRS will rethink its user fees before the 2019 update comes out after the first of the year.

Nonetheless, our insecurities about what may happen to user fees in 2019, as well as our concerns about being the first guinea pigs for the electronic submission procedure, make us want to submit as many of our pending submissions before year end (and certainly before March 31, 2019) as possible. We recommend you do the same.

As always, if you have questions about the new procedure, about EPCRS, or about retirement plans, please give us a call. We are, of course, [your ERISA solution](#).



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