



What You Will Need

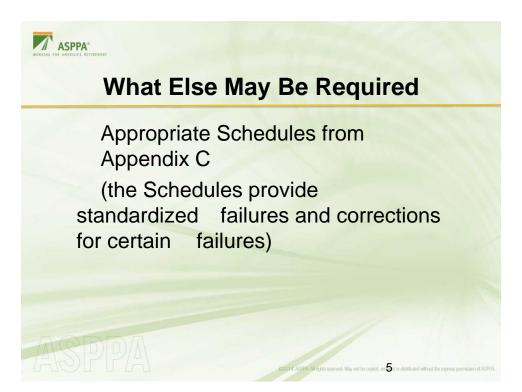
- 1. Form 8950--Application
- 2. Form 8951—Fee Submission Form
- Appendix C-Part I (Model Compliance Statement)
- 4. 2848 or 8821, as appropriate
- 5. Plan or Relevant Plan Pages
- Opinion, Advisory or Determination Letter

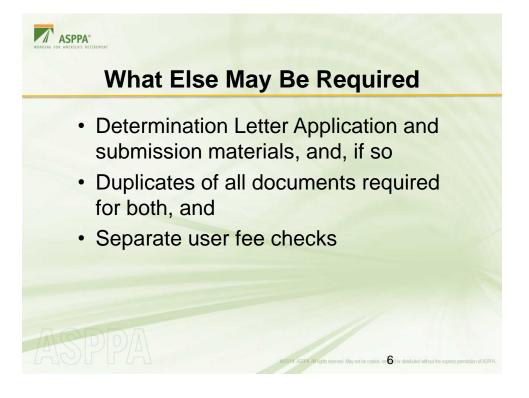


Not Required But Include

Appendix D—Acknowledgement of Receipt

(written acknowledgement that the submission has been received)







8950—The Application

- Applicant and plan information
- Penalty of perjury
- Abusive tax Avoidance;
- Type of submission
- DL statement



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8950—The Application

- Page 1 ask for info about applicant
- Page 2 ask for info about the submission such as type of plan and submission
- Page 3 ask processing info such as whether any Appendix C schedules are attached, DL applicants as well abusive tax avoidance declaration

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8950—The Application

- Final Pages include a Procedural Checklist
- · Not required to be submitted
- However, very useful in preparing the submission and ensuring completeness

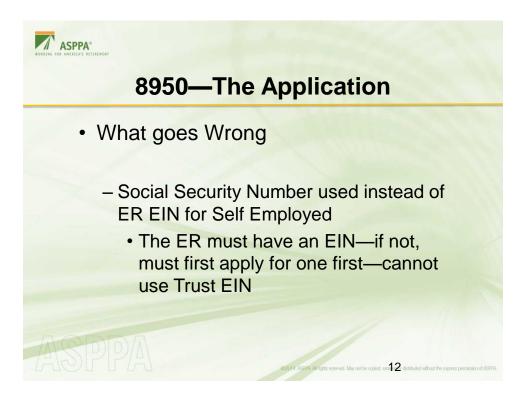


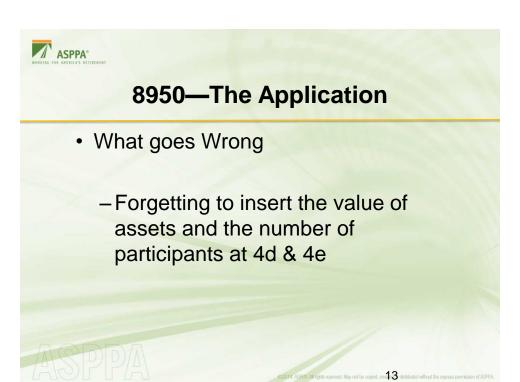
8950—The Application

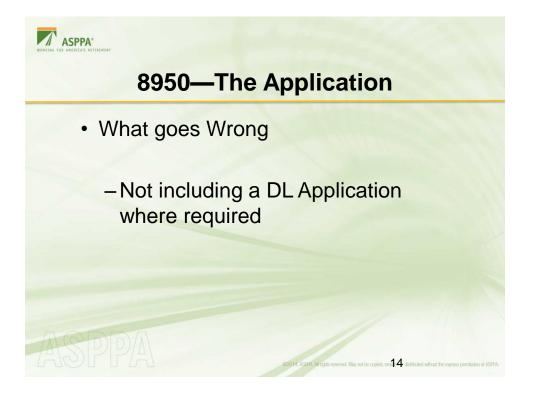
- What goes Wrong
 - -8950 signed by someone other than ER
 - Remember—includes a Penalty of Perjury, Abusive Tax Avoidance, and Examination Statement that can only be signed by ER

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8950—The Application

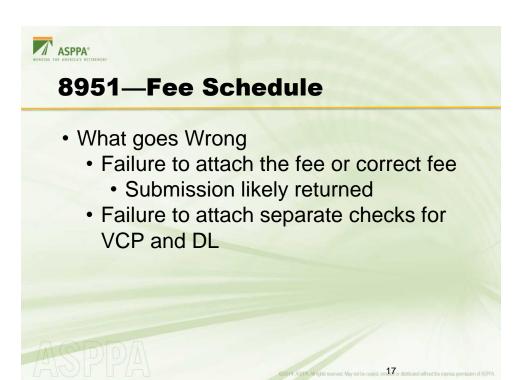
- What goes Wrong
 - DL Application Generally required if correction includes a Plan Amendment
 - Where required, the general rules of Rev. Proc. 2007-44 apply to determine applicable Cumulative List

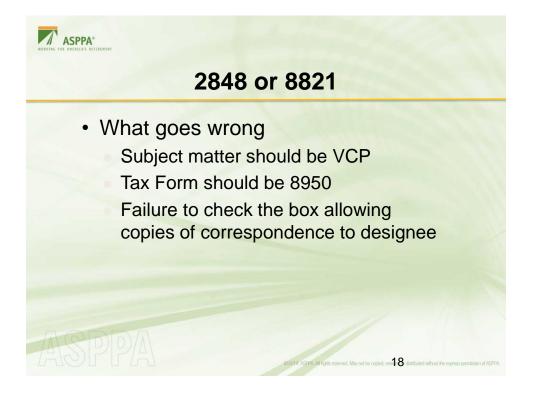


8950—The Application

- DL Application not needed if:
 - Interim, Good Faith or Optional only & corrected prior to first on-cycle;
 - Demographic failures;
 - Amended by IRS Model or preapproved;
 - 4. Operational failure fixed off-cycle, or
 - Adopting only amendment required under terms of prior DL

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Appendix C—Part I

- Model Compliance Statement
 - Technically not mandated but should generally be used—agents will look for it
 - Can be used with or without Schedules (i.e., model failures and corrections)
 - Whether with or without Schedules, must specify how affected missing participants will be located

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Appendix C—Part I

- Model Compliance Statement
 - EIN, Plan Name & Plan Number must be header on each page
 - Nothing may be modified, changed or deleted on Forms or Schedules including IRS Enforcement Page

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Appendix C—Part I

- If Schedules not Used
 - Must include Plan Name, EIN and Plan Number as header on each page
 - Must describe actual qualification failure
 - Proposed Revision to Plan's Administrative Procedures

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Appendix C—Part I

- Model Compliance Statement
 - Note, if submitting anonymously, instead include your assigned id# on each page
 - Specify state where located in 8950
 - Representative's statement, and
 - Don't pay using employer check if "John Doe"

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Appendix C—Part I

- Unique identifying # for John Doe submission should still be something you can still use to identify the client internally.
- This could be done through a chart, key or numbers and letters unique to the client.



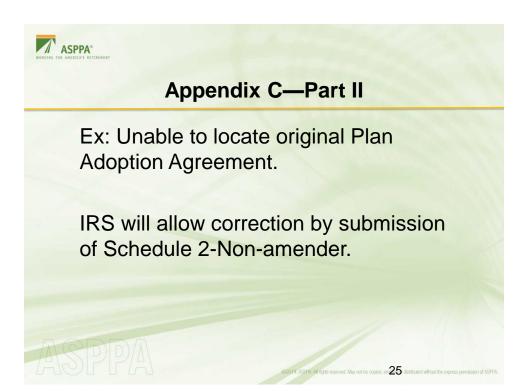
Appendix C—Part II

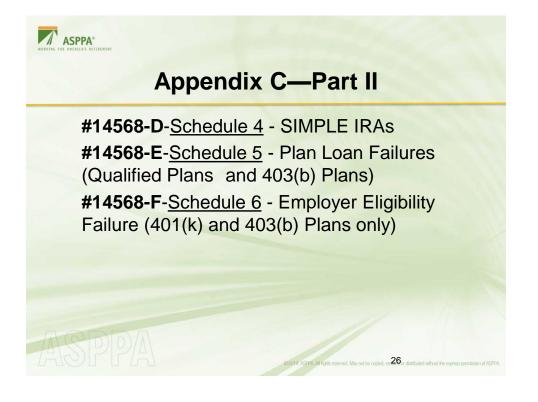
#14568-A-Schedule 1- Interim and Certain Discretionary Nonamender Failures

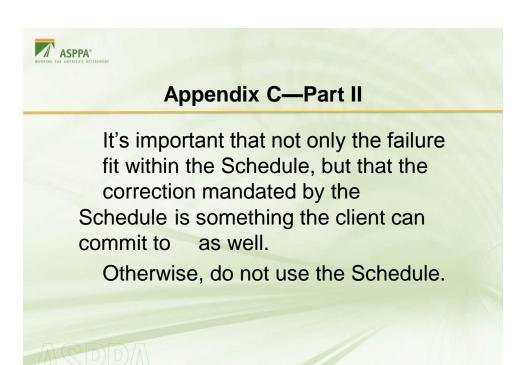
#14568-B-Schedule 2 - Nonamender Failures (other than those to which Schedule 1 applies) and Failure to Adopt a 403(b) Plan Timely

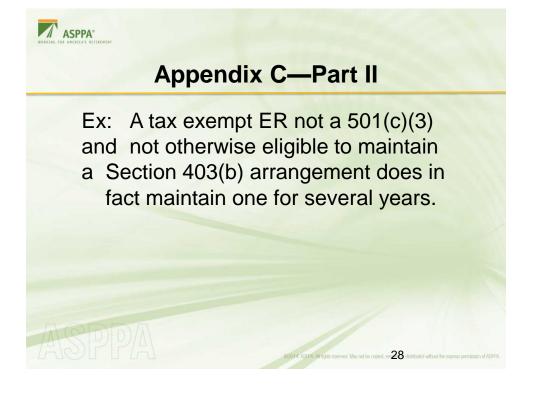
#14568-C-Schedule 3-SEPs and SARSEPs

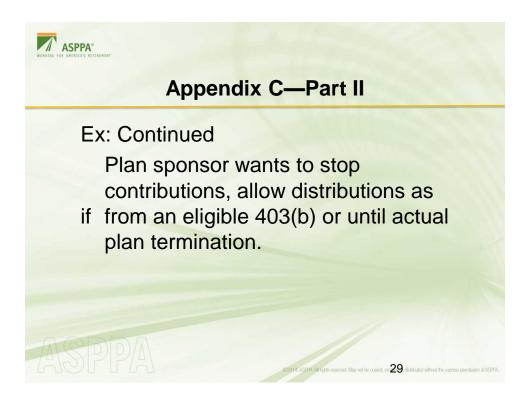
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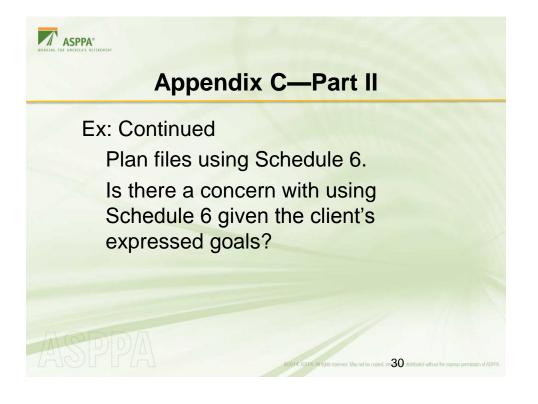


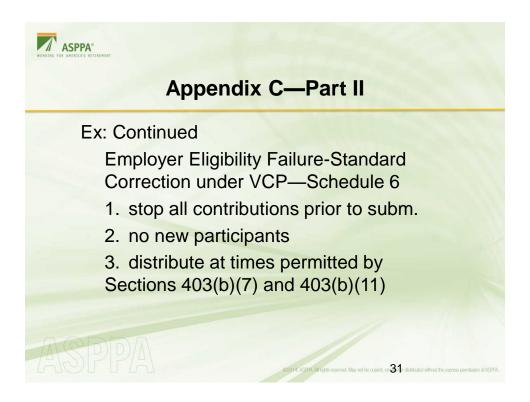


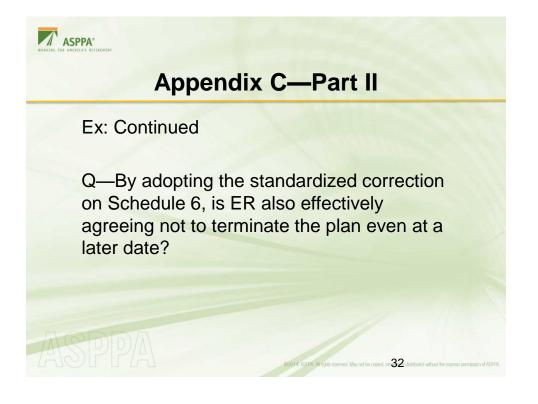


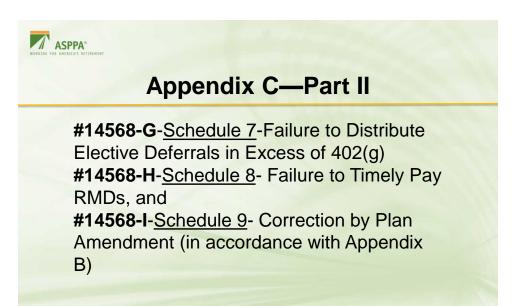














Coordination Between 8950 and Appendix C—Part II

- 8950, Question 6 ask if all failures are to be corrected on Appendix C-Part II schedules, and if yes, check schedules.
- Guidance for Schedules say Schedules can be used even if Appendix C—Part I not used

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Coordination Between 8950 and Appendix C—Part II

- What if, not all failures are to be corrected using Schedules?
- Informally, IRS officials responded that Q 6 of 8950 should be viewed as a Pre-Screening Checklist but not a restriction on use of Schedules.



Coordination Between 8950 and Appendix C—Part II

Example: VCP submission with 3 failures, 1 will be corrected using Schedule 1, the second using Schedule 5 and the 3rd outside of any Schedule.

On 8950, answer "no", do not check any Schedule but attach appropriate Schedules as part of submission package.

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Appendix C—Part II

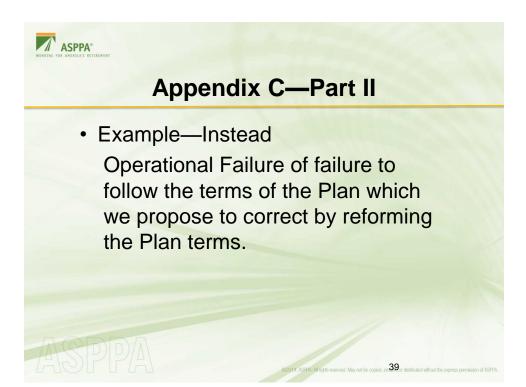
- Remember you must identify an actual Qualification Failure
 - Must be identified as such
 - Must be Acknowledged as a Qualification Failure without equivocation
 - Cannot expect IRS to identify, and
 - Cannot be hypothetical

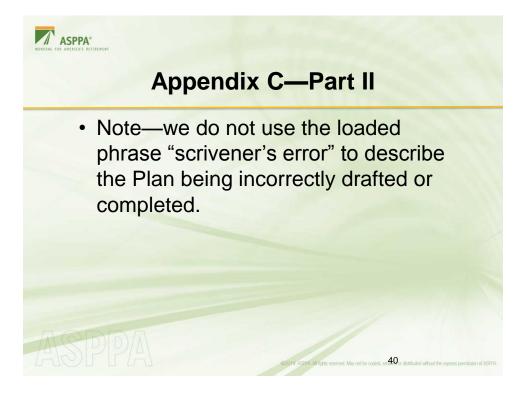
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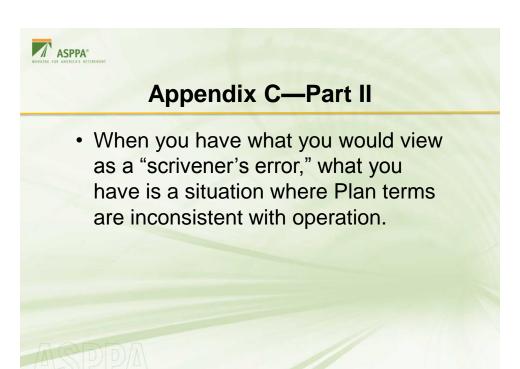


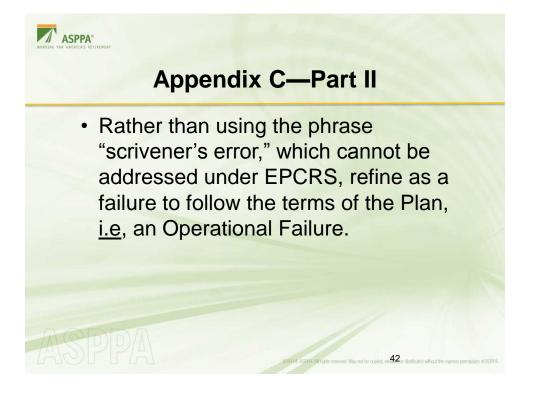
Appendix C—Part II

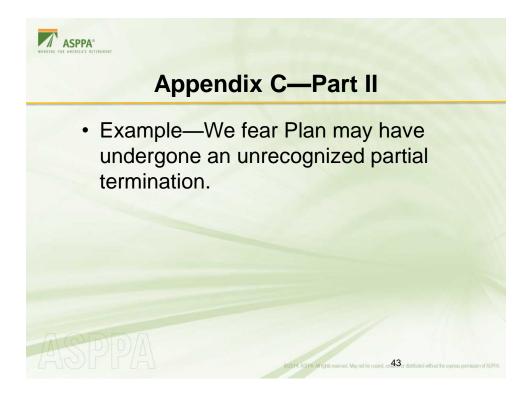
 Example—Submission says "Plan document excludes Union but Union members participate. We believe this is not right or does the IRS view this as a failure?"

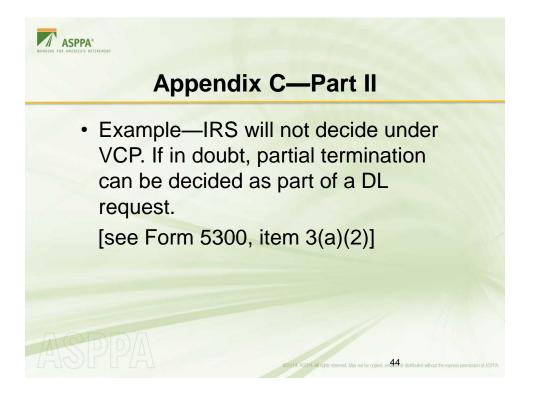


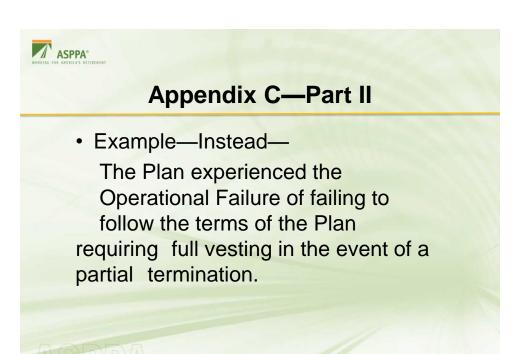


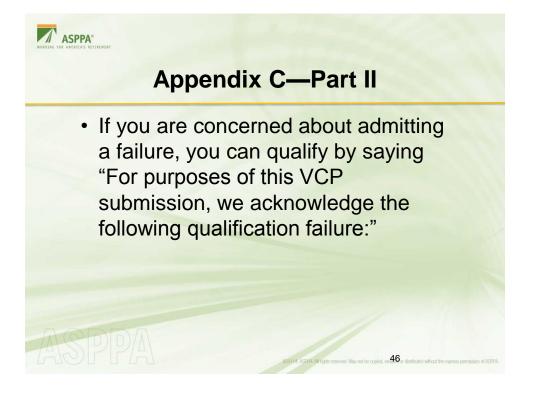


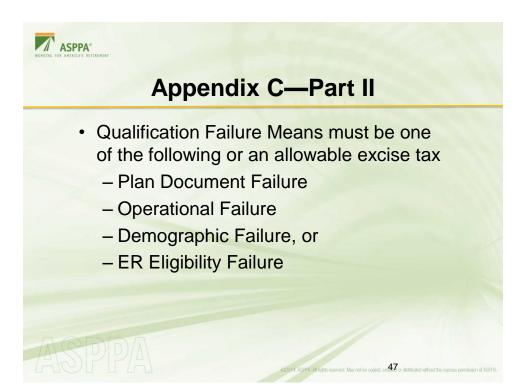


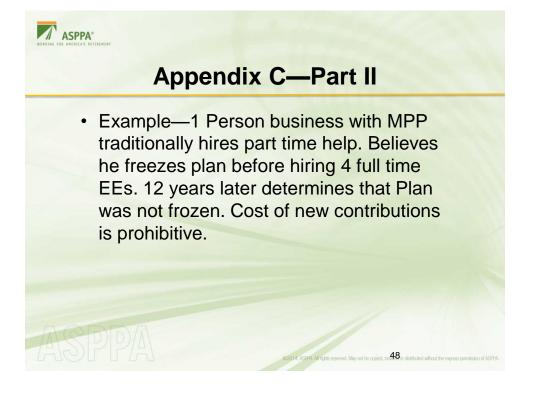


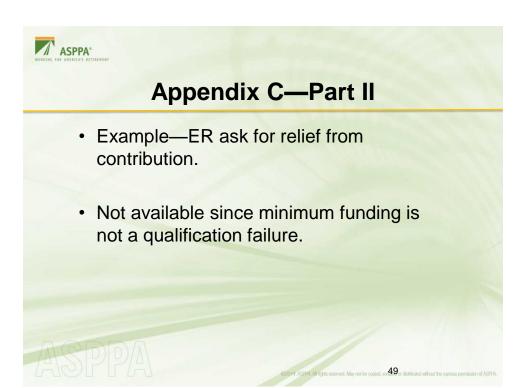


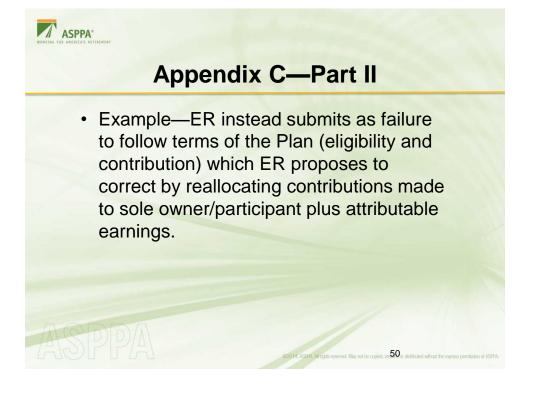














Filing John Doe

- Can be used at any time (assuming not under audit)
- May best be used where you are unsure that the IRS will accept Plan's proposed correction and Plan Sponsor may not accept most likely IRS proposed correction

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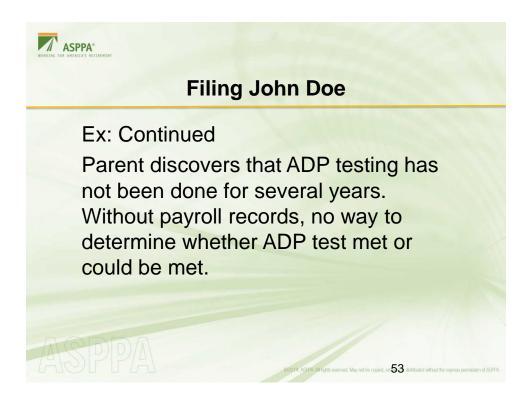


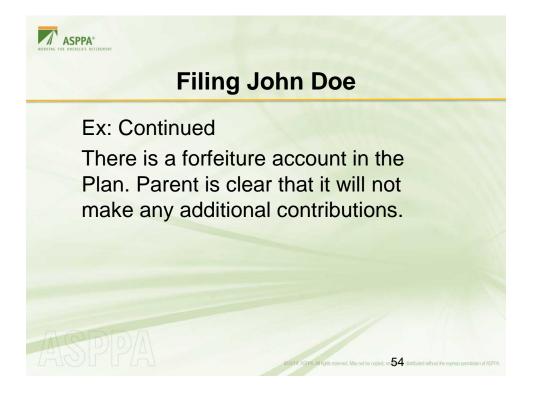
Filing John Doe

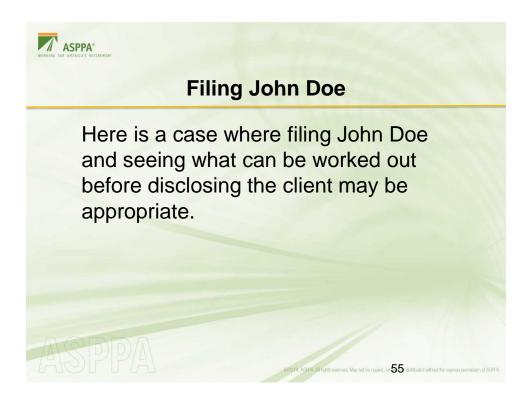
Ex: Subsidiary that had been maintaining its own 401(k) plan goes out of business due to financial difficulties. Much of the financial records have been destroyed.

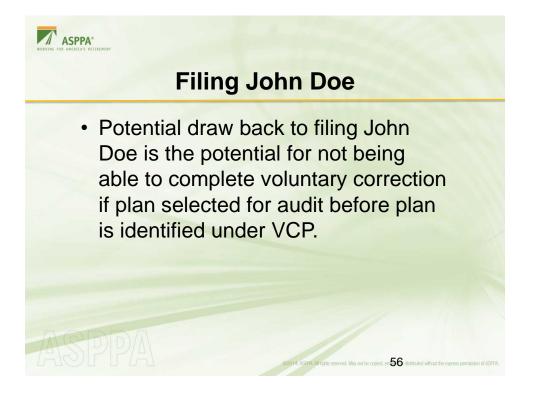
Parent company tries to clean out in the face of no wage or other records.

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Things You Can Do to Simplify and Streamline Process

- Use the Procedural Checklist found on last page of 8950;
- Make sure you enclose Form 8951 and attach the correct user fee; (plus copy)
- If you are required to file a DL, you must include separate checks;
- Use the IRS suggested order for your submission



IRS Suggested Order

- 8951 with VCP user fee, plus copy of check;
- 2. Signed Form 8950;
- 3. 2848 or 8821 as appropriate;
- Narrative Information (most not needed if only Schedules used)

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IRS Suggested Order--Narrative

- Description of Failures--# if more than one
- Explanation of how and why failure occurred
- Method for correcting, including calculations and earnings; (you can show all or sample);
- Methods to locate affected missing participants (can no longer use IRS or SS Letter forwarding programs)—if none affected—so state—required for all



IRS Suggested Order--Narrative

- Administrative procedures that will be used to ensure that failures do not recur
 - this might include: (1) we are changing advisors; (2) client agrees to consult existing advisors before taking any further actions involving the plan, or (3) client is terminating the plan.

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IRS Suggested Order--Narrative

- Whether submission includes loan correction or delay of loan income inclusion
 - Remember, relief from reporting as a deemed distribution is only available if specifically requested in the submission
- Whether relief is requested from taxes under §§ 4972, 4973, 4974, 4979 or 72(t), and the supporting rationale, and

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IRS Suggested Order--Narrative

 In the case of an Orphan Plan, whether relief from the user fee is requested, and, if so, the supporting rationale.



IRS Suggested Order Continued

- 5. Appendix C, Schedules, if applicable, and related information
- 6. Appendix D (Acknowledgement Letter);
- 7. Latest Opinion, Advisory or DL;
- Relevant Plan document language or plan document (if restated, provide a roadmap to the relevant provisions)



IRS Suggested Order

- Any other items relevant to the submission
 - this might include, for example, SPD that supports proposed correction
- DL submission documents, if applicable, including duplicates of relevant documents included in VCP submission

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- Make sure that your submission is complete
 - # each failure and coordinate to the applicable # for the proposed correction
 - each described failure should have a supporting Plan provision attached and referenced in description



Things you can do to Simplify and Streamline your Submission

Example—Operational Failure #1—Failure to follow the terms of the plan governing eligibility. The Plan provides that each EE will enter the Plan after 90 days of employment. [see Section 3.5 of Plan (page 14) attached as Exhibit A]



Example—Plan Document Failure #2—The Plan was not timely amended to comply with Section 104(a) of the HEART Act requiring vesting where death occurs while performing military service. Correction made by adopting the attached HEART compliant restatement [see Section 14.9 of Plan (page 48) attached as Exhibit B]



Things you can do to Simplify and Streamline your Submission

 Note, if Plan Document failure corrected by restated plan document, you must specify where in the document the failure is corrected.



- Its not sufficient to simply say Plan was not amended for PPA, HEART and/or WRERA. Instead must list specific provisions.
- Not sufficient to describe missing amendments as "including" as IRS interprets as including other items not specified.



Things you can do to Simplify and Streamline your Submission

- Specific provisions missed must be listed
- The IRS does have available, but not currently published, a PPA/HEART attachment which can be used for listing specific PPA/HEART/WRERA amendments missed.

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 Check for completeness especially if changes occur after negotiating with the agent



Things you can do to Simplify and Streamline your Submission

 Example—Agent requests changes to Narratives. When resubmitted, 1 of the 3 failures was inadvertently omitted. Compliance Statement issued for only 2 failures. Advisor then required to get superseding Compliance Statement issued.

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- Don't Sweat the Small Stuff
- Sometimes the assigned agent will have a particular way of doing something or require something you do not believe is required under the guidance. You must decide if its material or not or whether it really has any impact.

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Things you can do to Simplify and Streamline your Submission

 Example—Advisor submits for correction certain 403(b) failures. Agent request that certain boxes be completed although Advisor does not believe it's required for a 403(b) submission.

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Example Continued

Advisor determines that completion makes no material difference.

Completes the items and receives a Compliance Statement soon after.



Things you can do to Simplify and Streamline your Submission

- Special Concerns for Late Amendment Issues
 - Applicants must determine whether to submit Schedule 1 for Late Interim amenders or Schedule 2 for Nonamenders

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- Clarification of "Interim Amendment Failure" versus Non-amender
 - adopted Interim, Optional or Good Faith Amendment <u>after deadline</u>
 - but <u>before</u> end of extended remedial amendment period for that amendment

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Things you can do to Simplify and Streamline your Submission

- Remember-"Interim Amendment" failure status means:
 - 1. reduced fee—if sole failure, and
 - filing on Appendix C, Schedule 1



Ex: The ABC 401(k) plan was not timely amended for all HEART changes by December 31, 2010. However, the amendment was adopted before 2016 when the plan's RAP for that change expires.

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Things you can do to Simplify and Streamline your Submission

Ex: Continued

The Plan can be submitted for correction using Schedule 1, the interim amender failure schedule.



Ex: Continued

If, however, the Plan had failed to timely adopt an amendment for which the RAP had expired for review, the failure would be a non-amender failure submitted on Schedule 2.

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Things you can do to Simplify and Streamline your Submission

Example—Plan's remedial amendment cycle expired 01/31/12. Two interim amendments have been missed. One should have been adopted in 2010 and the other in 2013. Failures discovered in 2014.

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Example—Plan must file as a nonamender for the 2010 amendment and as an interim amendment failure for the 2013 amendment.



Things you can do to Simplify and Streamline your Submission

If interim amendment adopted after the end of the cycle during which it was required to be adopted, the failure is reported on Schedule 2 as a failure to comply with the Cumulative List used to review in that cycle.



- Be Responsive
 - Once an agent is assigned, respond promptly when requested—they appreciate getting items off their desk as well
- Don't be afraid to regroup
 - If you discover that your submission contains errors, don't be afraid to ask to make changes



Things you can do to Simplify and Streamline your Submission

If you are requesting an excise tax waiver

(4972, 4973, 4974, 4979 or section 72(t)), make sure that you have included detailed explanations supporting the request.

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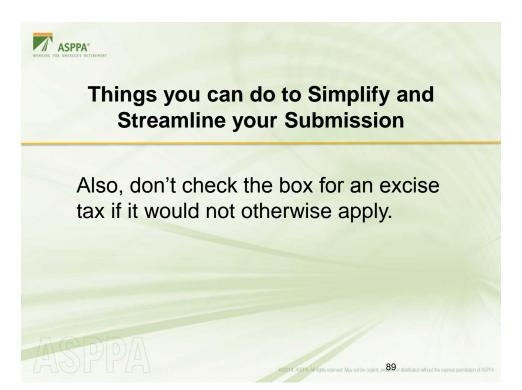


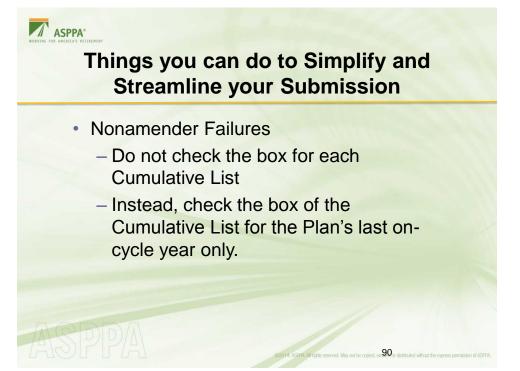
Example-Mother, age 75, works for son who is sole owner of corporation. Mother failed to begin taking required minimum distribution. Plan request waiver of the excise tax.



Things you can do to Simplify and Streamline your Submission

Example-Plan explains that while Mother has been taking RMDs from IRAs, neither son, Mother nor outside advisors were aware that attribution rules made mother a more than 5% owner for purposes of RMDs and request a waiver of the excise tax.







- What if you cannot find a signed Initial Plan Document?
 - Can be submitted as a non-amender failure using Schedule 2.



EP Voluntary Closing Agreements

- When available
 - at the discretion of the IRS
 - Not under audit
 - Not available for EPCRS correction—e.g., prohibited transactions

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EP Voluntary Closing Agreements

- Not available
 - -457(b) issues—should be resolved in accordance with EPCRS
 - -457(f) issues
 - -Abusive tax avoidance



EP Voluntary Closing Agreements

- May be initially submitted anonymously
- Assign unique identifying number
- · Must be an authorized individual
- Submit detailed letter
- Penalty of perjury statement

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EP Voluntary Closing Agreements

- Sanction determined after submission
- In general sanction would include:
 - taxes
 - interest and
 - possible relief from penalties