



## HOW TO COMPLETE A VCP APPLICATION

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## Learning Objectives

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1. Complete a VCP application for basic errors
2. Develop strategies to successfully interact with the IRS on the application
3. Learn and apply best practices when completing and working on submissions

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## What You Will Need

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

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## Not Required But Include

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Appendix D—Acknowledgement of Receipt  
(written acknowledgement that the submission has been received)

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## What Else May Be Required

Appropriate Schedules from  
Appendix C  
(the Schedules provide  
standardized failures and corrections  
for certain failures)

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## What Else May Be Required

- Determination Letter Application and submission materials, and, if so
- Duplicates of all documents required for both, and
- Separate user fee checks

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## 8950—The Application

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

**8950** Application for Voluntary Collection Program (VCP)

Use this form to apply for the VCP. You must file this form with your 2013 tax return. See instructions for more information.

Section: Be checked! Prerequisite Requirements: Check all boxes relating to VCP submission to the IRS.

Is there an plan sponsor (employer or single employer plan)?

If Address of plan sponsor (if a 731 box, see instructions)  No. City or town  St. State  Zip code

If Foreign country name  If Foreign jurisdiction  If Foreign postal code

If Employer identification number  If Taxpayer number  If Plan number

Do I have to contact Finance Information to be added? (see instructions)

If a Plan or Allowance is attached, check box and do not complete lines 2a through 2c:

Name

If Address  No. City or town  St. State  Zip code

If Taxpayer number  If Plan number

If more space is needed for any line items, attach additional sheets of the same size as this form, identify each additional sheet with the plan sponsor's name and EIN and identify the corresponding line item.

Under penalties of perjury, I declare that I have examined this VCP submission, including Form 8950 and all accompanying documents, and to the best of my knowledge and belief, they are true and correct in all material respects and the information is true, correct, and complete.

Signature  Date

This application must generally be signed by the owner or an authorized employee of the plan sponsor. For exceptions, see instructions under Who Must Sign.

Sign as plan owner  Sign as plan employee

Do I have a Preparer Identification and Address, see separate instructions. (see instructions)  Form 8950 (2013)

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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

## 8950—The Application

- Trustee or Administrator can only sign if multiemployer, multiple or sometimes governmental plan

## 8950—The Application

- What goes Wrong
  - Social Security Number used instead of ER EIN for Self Employed
    - The ER must have an EIN—if not, must first apply for one first—cannot use Trust EIN

## 8950—The Application

- What goes Wrong
  - Forgetting to insert the value of assets and the number of participants at 4d & 4e

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## 8950—The Application

- What goes Wrong
  - Not including a DL Application where required

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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:
  1. Interim, Good Faith or Optional only & corrected prior to first on-cycle;
  2. Demographic failures;
  3. Amended by IRS Model or pre-approved;
  4. Operational failure fixed off-cycle, or
  5. Adopting only amendment required under terms of prior DL



## 8951—Fee Schedule

- What goes Wrong
  - Failure to attach the fee or correct fee
    - Submission likely returned
  - Failure to attach separate checks for VCP and DL

## 2848 or 8821

- What goes wrong
  - Subject matter should be VCP
  - Tax Form should be 8950
  - Failure to check the box allowing copies of correspondence to designee

## 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

## 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



## 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



## Appendix C—Part II

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Ex: Unable to locate original Plan Adoption Agreement.

IRS will allow correction by submission of Schedule 2-Non-amender.

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## Appendix C—Part II

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**#14568-D-Schedule 4** - SIMPLE IRAs

**#14568-E-Schedule 5** - Plan Loan Failures  
(Qualified Plans and 403(b) Plans)

**#14568-F-Schedule 6** - Employer Eligibility  
Failure (401(k) and 403(b) Plans only)

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## Appendix C—Part II

It's important that not only the failure fit within the Schedule, but that the correction mandated by the Schedule is something the client can commit to as well.

Otherwise, do not use the Schedule.

## Appendix C—Part II

Ex: A tax exempt ER not a 501(c)(3) and not otherwise eligible to maintain a Section 403(b) arrangement does in fact maintain one for several years.



## Appendix C—Part II

Ex: Continued

Plan sponsor wants to stop contributions, allow distributions as if from an eligible 403(b) or until actual plan termination.

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## Appendix C—Part II

Ex: Continued

Plan files using Schedule 6.  
Is there a concern with using Schedule 6 given the client's expressed goals?

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## Appendix C—Part II

Ex: Continued

Employer Eligibility Failure-Standard  
Correction under VCP—Schedule 6

1. stop all contributions prior to subm.
2. no new participants
3. distribute at times permitted by  
Sections 403(b)(7) and 403(b)(11)

## Appendix C—Part II

Ex: Continued

Q—By adopting the standardized correction  
on Schedule 6, is ER also effectively  
agreeing not to terminate the plan even at a  
later date?





## Appendix C—Part II

- #14568-G-Schedule 7-Failure to Distribute Elective Deferrals in Excess of 402(g)**
- #14568-H-Schedule 8- Failure to Timely Pay RMDs, and**
- #14568-I-Schedule 9- Correction by Plan Amendment (in accordance with Appendix B)**

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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.

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## 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 3<sup>rd</sup> 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?”

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## Appendix C—Part II

- Example—Instead  
Operational Failure of failure to follow the terms of the Plan which we propose to correct by reforming the Plan terms.

## Appendix C—Part II

- Note—we do not use the loaded phrase “scrivener’s error” to describe the Plan being incorrectly drafted or completed.

## Appendix C—Part II

- When you have what you would view as a “scrivener’s error,” what you have is a situation where Plan terms are inconsistent with operation.

## Appendix C—Part II

- Rather than using the phrase “scrivener’s error,” which cannot be addressed under EPCRS, refine as a failure to follow the terms of the Plan, i.e., an Operational Failure.

## Appendix C—Part II

- Example—We fear Plan may have undergone an unrecognized partial termination.

## Appendix C—Part II

- Example—IRS will not decide under VCP. If in doubt, partial termination can be decided as part of a DL request.  
[see Form 5300, item 3(a)(2)]

## Appendix C—Part II

- Example—Instead—  
The Plan experienced the Operational Failure of failing to follow the terms of the Plan requiring full vesting in the event of a partial termination.

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## Appendix C—Part II

- If you are concerned about admitting a failure, you can qualify by saying “For purposes of this VCP submission, we acknowledge the following qualification failure:”

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## Appendix C—Part II

- Qualification Failure Means must be one of the following or an allowable excise tax
  - Plan Document Failure
  - Operational Failure
  - Demographic Failure, or
  - ER Eligibility Failure

## Appendix C—Part II

- Example—1 Person business with MPP traditionally hires part time help. Believes he freezes plan before hiring 4 full time EEs. 12 years later determines that Plan was not frozen. Cost of new contributions is prohibitive.



## Appendix C—Part II

- Example—ER ask for relief from contribution.
- Not available since minimum funding is not a qualification failure.

## Appendix C—Part II

- Example—ER instead submits as failure to follow terms of the Plan (eligibility and contribution) which ER proposes to correct by reallocating contributions made to sole owner/participant plus attributable earnings.



## 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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## Filing John Doe

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Ex: Continued

Parent discovers that ADP testing has not been done for several years. Without payroll records, no way to determine whether ADP test met or could be met.

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## Filing John Doe

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Ex: Continued

There is a forfeiture account in the Plan. Parent is clear that it will not make any additional contributions.

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## Filing John Doe

Here is a case where filing John Doe and seeing what can be worked out before disclosing the client may be appropriate.

## Filing John Doe

- Potential draw back to filing John Doe is the potential for not being able to complete voluntary correction if plan selected for audit before plan is identified under VCP.



## 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

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## IRS Suggested Order

1. 8951 with VCP user fee, plus copy of check;
2. Signed Form 8950;
3. 2848 or 8821 as appropriate;
4. 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**

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## 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.

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## IRS Suggested Order Continued

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

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## IRS Suggested Order

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

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## Things you can do to Simplify and Streamline your Submission

- 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

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## 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]

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## Things you can do to Simplify and Streamline your Submission

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]

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## 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.

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## Things you can do to Simplify and Streamline your Submission

- 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.

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## 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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## Things you can do to Simplify and Streamline your Submission

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

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## 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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## Things you can do to Simplify and Streamline your Submission

- 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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## Things you can do to Simplify and Streamline your Submission

- Example Continued
  - Advisor determines that completion makes no material difference.
  - Completes the items and receives a Compliance Statement soon after.

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## 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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## Things you can do to Simplify and Streamline your Submission

- Clarification of “Interim Amendment Failure” versus Non-amender
  1. adopted Interim, Optional or Good Faith Amendment after deadline
  2. but before 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
  2. filing on Appendix C, Schedule 1

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## Things you can do to Simplify and Streamline your Submission

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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

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Ex: Continued

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

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## Things you can do to Simplify and Streamline your Submission

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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## Things you can do to Simplify and Streamline your Submission

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

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## Things you can do to Simplify and Streamline your Submission

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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.

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## Things you can do to Simplify and Streamline your Submission

- 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

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## 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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## Things you can do to Simplify and Streamline your Submission

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.

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## 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.

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## Things you can do to Simplify and Streamline your Submission

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Also, don't check the box for an excise tax if it would not otherwise apply.

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## Things you can do to Simplify and Streamline your Submission

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- Nonamender Failures
  - Do not check the box for each Cumulative List
  - Instead, check the box of the Cumulative List for the Plan's last on-cycle year only.

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## Things you can do to Simplify and Streamline your Submission

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

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## 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

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## 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

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

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