

December 11, 2018

Mr. David W. Horton
Acting Commissioner
Tax Exempt and Government Entities
Internal Revenue Service
999 North Capitol Street, NE
Washington, DC 20002

RE: Expansion of Self Correction Program under the Employee Plans Compliance Resolution System

The American Retirement Association (“ARA”) is writing in response to Revenue Procedure 2018-52 regarding future enhancement of the Employee Plans Compliance Resolution System (“EPCRS”). ARA thanks the Internal Revenue Service (“IRS” or “Service”) and the Treasury Department for the opportunity to provide input on these very important matters.

The ARA is a national organization of more than 20,000 members who provide consulting and administrative services to American workers, savers and sponsors of retirement plans and IRAs. ARA members are a diverse group of retirement plan professionals of all disciplines including financial advisers, consultants, administrators, actuaries, accountants, and attorneys. The ARA is the coordinating entity for its five underlying affiliate organizations, the American Society of Pension Professionals and Actuaries (“ASPPA”), the National Association of Plan Advisors (“NAPA”), the National Tax-deferred Savings Association (“NTSA”), Plan Sponsor Council of America (“PSCA”), and the ASPPA College of Pension Actuaries (“ACOPA”). ARA members are diverse but united in a common dedication to America’s private retirement system.

ARA thanks the Service for its continued commitment to maintaining a broad correction program for qualified plans through EPCRS. As noted in our letter dated April 4, 2018 (the “April 2018 Letter”), ARA strongly believes that expanding the self-correction program (“SCP”) under EPCRS is essential to ensure business owners, particularly small business owners, are not deterred from sponsoring retirement plans by the ever increasing complexities of the Internal Revenue Code and the increased user fees for EPCRS’s voluntary compliance program.

ARA recommends that the Service:

- Provide additional examples of “significant” and “insignificant” failures, and
- Permit the self-correction of certain loan failures, as described in our April 2018 letter.

We believe that each of the suggestions:

- Will encourage voluntary correction of plan errors in a manner consistent with EPCRS principles and without unduly increasing the risk of improper corrections;

- Will reduce the burdens on both the Service and the plan sponsor related to the correction of common retirement plan errors;
- Will resolve significant issues relevant to many retirement plan sponsors and practitioners (not just a small group);
- Will promote sound tax administration by helping plan sponsors and practitioners to maintain retirement plans in compliance with tax code qualification rules; and
- Will be easily understood and applied by plan sponsors and practitioners.

Discussion

As previously discussed in our April 2018 Letter, ARA members report that it is often unclear whether an error is significant or insignificant under EPRCS. This often causes sponsors to feel a need to file under VCP. ARA believes clarification of what is significant would reduce the need for precautionary VCP submissions, reduce the burden on both plan sponsors and the Service, and promote sound voluntary corrections through SCP.

ARA recommends, the Service provide the following additional examples of significant and insignificant failures under SCP (Section 8.04 of Rev. Proc. 2018-52) to clarify when an error is insignificant for this purpose:

- **New Example 3.01:** The facts are the same as in Example 1, except that the annual additions of 7 of the 50 employees whose benefits were limited by § 415(c) nevertheless exceeded the maximum limitations under § 415(c) during the 2005 limitation year, and the amount of the excesses ranged from \$15,000 to \$25,000 (and totaled \$150,000). Under these facts, taking into account the number of participants affected by the failure relative to the total number of participants who could have been affected by the failure for the 2005 limitation year (and the monetary amount of the failure relative to the total employer contribution), the failure is insignificant. Accordingly, the § 415(c) failure in Plan A that occurred in 2005 is eligible for correction under this section 8 as an insignificant failure.
- **New Example 3.02:** The facts are the same as in Example 3, except the amount of the excesses ranged from \$1,000 to \$3,500 (and totaled \$50,000). Under these facts, taking into account the number of participants affected by the failure relative to the total number of participants who could have been affected by the failure for the 2005 limitation year (and the monetary amount of the failure relative to the total employer contribution), the failure is insignificant. Accordingly, the § 415(c) failure in Plan A that occurred in 2005 is eligible for correction under this section 8 as an insignificant failure.
- **New Example 4.01:** Employer J maintains Plan C, a profit sharing plan with a 401(k) feature established in 2000. The plan document satisfies the requirements of § 401(a). The formula under the plan provides for employee deferrals and match based on an employee's W-2 wages. Out of the plan's 325 participants, 48 receive quarterly commission checks. Quarterly commission checks are less than 15% of each employee's total compensation. Due to an incorrect payroll code the employer did not include the quarterly checks in calculating deferrals and match for all 48 of the participants who received commissions, resulting in missed deferral opportunity and match for those participants' accounts. Under these facts, although the number of participants affected by the failure relative to the number of participants that could have been affected is significant, the number of participants affected compared to the total participants in the plan is insignificant, and the failure is due to minor coding error. Thus, the failure occurring

in 2005 is insignificant and therefore eligible for correction under this section 8.

- New Example 6: Employer J maintains Plan C, a profit sharing plan with a 401(k) feature established in 2000. The plan document satisfies the requirements of § 401(a). The formula under the plan provides for employee deferrals and match based on an employee's W-2 wages. Out of the plan's 5 participants, only 1 individual receives a car allowance. The car allowance is less than 10% of such employee's total compensation. Due to an incorrect payroll code the employer did not include the car allowance in calculating deferrals and match, resulting in missed deferral opportunity and match for those participants' accounts. The error is found in 2008 and is immediately corrected. Under these facts, although the number of participants affected by the failure relative to the number of participants that could have been affected is significant, the number of participants affected compared to the total participants in the plan is treated as insignificant because the small size of the plan is taken into account in determining significance. In addition, because the failure is due to minor coding error and the error was corrected quickly after discovery, the length of error does not prevent this from being insignificant. Thus, the failure occurring in 2000-2008 is insignificant and therefore eligible for correction under this section 8.

ARA remains very interested in ways that SCP may be improved, including the many recommendations we previously made in our April 2018 Letter. We welcome the opportunity to continue the dialogue. Please contact Craig Hoffman, ARA General Counsel, at (703) 516-9300 (ext. 128) or at CHoffman@USARetirement.org if you have any questions or need anything further. Thank you for your time and consideration.

Sincerely,

/s/

Brian H. Graff, Esq., APM
Executive Director/CEO
American Retirement Assoc.

/s/

Scott Hayes
President
American Retirement Association

/s/

Steve Dimitriou
President-Elect
American Retirement Association

/s/

Marty Pippins, Director, ACOPA

/s/

Craig P. Hoffman, Esq., APM General Counsel
American Retirement Assoc.

/s/

Elizabeth T. Dold, Esq., Co-Chair ASPPA Gov't Affairs Committee

/s/

Frank Porter, APA, OKA, QPA, Co-Chair ASPPA Gov't Affairs Committee

cc:

Ms. Victoria A. Judson
Division Counsel/ Associate Chief Counsel
Tax Exempt and Government Entities
Internal Revenue Service

Stephen B. Tackney
Deputy Associate Chief Counsel
Tax Exempt and Government Entities
Internal Revenue Service

Mr. Rob Choi
Acting Deputy Commissioner
Employee Plans
Internal Revenue Service

Ms. Cathy L. Jones
Acting Director
Employee Plans
Internal Revenue Service

Mr. Louis J. Leslie
Senior Technical Advisor
Employees Plans
Internal Revenue Service

Mr. Kyle N. Brown
Division Counsel
Tax Exempt Government Entities
Internal Revenue Service

Ms. Carol Weiser
Acting Benefits Tax Counsel
Office of Tax Policy
U.S. Department of the Treasury

Mr. William Evans Attorney-Advisor
Office of Benefits Tax Counsel
U.S. Department of the Treasury