

## **Appendix C – VCP Checklist Instructions**

### **Purpose of Appendix C**

The Internal Revenue Service (“Service”) will be able to respond more quickly to a request under the Voluntary Correction Program (“VCP”) if the request is prepared accurately and completely. The checklist in Appendix C is designed to assist applicants and their representatives in preparing a VCP submission to ensure that it contains the information and documents required under [Revenue Procedure 2008-50, 2008-35 I.R.B. 464](#). Please ensure that the name of the plan, the plan number, and the applicant’s employer identification number (“EIN”) appear at the top left of each page of Appendix C and any attachments thereto.

### **When is an Appendix C Required to be Filed?**

Except as otherwise provided below, the checklist in Appendix C must be included with all VCP submissions. The Appendix C checklist must be completed, signed, and dated by the applicant or the applicant’s representative.

If you are submitting a streamlined application under VCP using Appendix F in accordance with [section 11.02 of Rev. Proc. 2008-50](#), Appendix C does not need to be completed. If you are submitting a VCP request using Appendix D in accordance with [section 11.01 of Rev. Proc. 2008-50](#), then Part I of Appendix C does not need to be completed.

### **Special Rules for Anonymous Submissions**

When preparing Appendix C in conjunction with the Anonymous Submission procedures under [section 10.10 of Rev. Proc. 2008-50](#), please complete all information unless such information would identify the plan or the applicant. Examples of items you should omit are the name of the applicant, the name of the plan, and the applicant’s EIN. You may wish to prepare a complete application including such information, then remove or redact any identifying information before submitting the application to the Service. If the Service and the plan’s authorized representative agree that the failures identified in the submission may be corrected under VCP using the methods described in the submission, the Service will request that you submit a non-redacted version of Appendix C.

### **Where to Mail Your VCP Submission**

Mail your VCP submission and accompanying determination letter application, if applicable, along with the VCP compliance fee and appropriate determination

letter user fee, if applicable (see instructions below under “Part II – Submission Requirements,” question 19), to the following address:

Internal Revenue Service  
Attention: SE:T:EP:RA:VC  
P.O. Box 27063  
Washington, DC 20038–7063

## Line Instructions for Appendix C

### Part I – Plan Information

Line 1 *Applicant’s Name*: If the Applicant is someone other than the current sponsor of the plan, please attach an explanation along with all identifying information (name, EIN, address, etc.) for the plan sponsor.

Line 5 *Applicant’s EIN*: Please make sure to enter the EIN of the applicant, not the EIN of the plan’s trust. Do not enter a Social Security Number. If the applicant does not have an EIN, the applicant should apply for an EIN using [the procedures found here](#).

Line 6 *Applicant’s Plan No.*: Enter the unique three-digit plan number used to identify this plan on Form 5500. Not required for SEPs or SIMPLEs.

Line 7 *Plan Name*: List the full name of the plan, as shown on Form 5500 or other related documents.

Line 8 *Type of Submission*: Check only one box.

Line 9 *Type of Plan*: Check only one box.

Line 11 *Number of participants in the plan as provided on the most recently filed Form 5500 series*: With respect to the Form 5500, this is the number shown on line 7(f) of the most recently filed Form 5500. Plans that are not required to file a Form 5500 series return should enter the number of participants as of the last day of the most recently ended plan year. Plans that have been terminated should enter the number of participants on the Form 5500 series return filed the year prior to the year of termination.

Line 12 *Assets in the plan as of the last day of the most recently ended plan year (round to nearest dollar)*: Please provide the total end of year asset information as shown on the most recently filed Form 5500 series return. Plans that are not required to file a Form 5500 series return should enter the amount of assets to the extent that information is available to the applicant.

Line 13 *Applicant’s Representative’s Name*: List an individual (not a corporate or firm name) authorized to represent or receive information about the applicant as

shown on [Form 2848](#) or [Form 8821](#). You may list up to three individuals on Form 2848; however, please enter only the primary representative's name on this line.

Line 18 *Representative's E-Mail Address (optional)*: Please note that we may initiate communications with an authorized representative via e-mail, but we will not use any information that might identify the applicant (e.g., name or EIN) in such electronic communications. Any e-mails will refer only to the nine-digit control number we have assigned to the submission and that will be provided to the representative if Appendix E ("Acknowledgment Letter") is properly completed and included with the submission. Therefore, it is important to make note of this control number.

## **Part II. Submission Requirements**

Question 19 *Where applicable, have you submitted an application for a determination letter and Form 8717 together with a check for the user fee made payable to the U.S. Treasury?*

Under certain circumstances, a determination letter application may be required to be submitted to the Service along with a VCP submission.

Nonamender failure - If the VCP submission contains failures relating only to required good faith plan amendments under the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16 (EGTRRA good faith amendments), (2) interim amendments described in [section 5.01 of Rev. Proc. 2007-44, 2007-28 I.R.B. 54](#), or (3) amendments required to reflect the changed operation of the plan on account of the plan sponsor's decision to implement optional law changes as described in [section 6.05\(3\) of Rev. Proc. 2008-50](#), and the end of the plan's applicable remedial amendment cycle under Rev. Proc. 2007-44 has not passed, a determination letter application should not be filed with the VCP submission. A plan's applicable remedial amendment cycle is the cycle during which falls the amendment's adoption deadline under § 401(b). For example, in the case of a Cycle D individually designed plan where the sole qualification failure is the failure to adopt an interim amendment listed in the 2008 Cumulative List of Changes in Plan Qualification set forth in [Notice 2008-108, 2008-50 I.R.B. 1275](#), so long as the VCP request is submitted by January 31, 2010, the end of the applicable cycle with respect to such interim amendment, no determination letter request should be filed along with the VCP submission. However, if such VCP request is submitted after January 31, 2010, a determination letter application would be required to be submitted along with the VCP request. Similarly, if the deadline for adopting an interim amendment falls within the plan's next cycle, so long as the applicant submits its VCP request by January 31, 2015, a determination letter application should not be submitted along with the VCP request. (Note that even if a determination letter application is not required to be submitted with a VCP request, if the plan is on-cycle, the plan sponsor should ensure that a determination letter application is filed with the [Cincinnati Submission Processing Center](#) by the end of the applicable cycle.)

For all nonamender failures other than those described in the preceding paragraph, a determination letter application is required to be submitted along with the VCP request and both items must be mailed to the address in Washington, D.C. (see *Where to Mail Your VCP Submission*, below). This is true whether the plan is on-cycle or off-cycle.

Correction by plan amendment of operational or demographic failures - Under certain circumstances, operational and demographic failures are permitted to be corrected through a retroactive plan amendment that either modifies plan provisions to reflect the way the plan was operated or corrects a nondiscrimination failure (see [Rev. Proc. 2008-50, section 4.05](#)). If the plan is off-cycle when such failure is submitted under VCP, the plan sponsor should not submit a determination letter application with its VCP submission. If the plan amendment is accepted as a proper correction for the failure, the compliance statement under VCP will constitute a determination on the effect of the plan amendment on the qualification of the plan; however, the compliance statement is subject to the condition that the amendment be submitted as part of a separate determination letter application to the [Cincinnati Submission Processing Center](#) during the plan's on-cycle year (or if earlier, in connection with the plan's termination), and that a favorable determination letter be issued with respect to the plan. If the plan is on-cycle when the operational or demographic failure is submitted under VCP, the plan sponsor should generally submit its determination letter application with the VCP submission. However, if the VCP submission is made early in the plan's cycle, and the plan sponsor wishes to submit its determination letter application at the end of the plan's cycle, the plan sponsor may make its VCP submission and request that the Service not require a determination letter application to be processed along with the VCP submission.

Exceptions - Notwithstanding the above, a determination letter application is not required if correction by plan amendment is achieved through the adoption of an amendment that is designated as a model amendment by the Service or through the adoption of a prototype or volume submitter plan with an opinion or advisory letter as provided in [Rev. Proc. 2009-6, 2009-1 I.R.B. 189](#), on which the plan sponsor has reliance.

In addition, in the case of a defined contribution plan that is a pre-approved plan (that is, a master and prototype (M&P) or volume submitter (VS) plan), the adoption of an amendment required to correct a failure under VCP will not require the submission of a determination letter with the VCP application and will not cause the plan to lose its status as an M&P or VS plan, provided that no other modification has been made to the plan that would cause the plan to lose its reliance on the opinion or advisory letter. The adopting employer will be allowed to remain within the six-year remedial amendment cycle provided in Rev. Proc. 2007-44. The issuance of the compliance statement with respect to the plan will constitute a determination on the effect of the corrective plan amendment on the qualification of the plan, and a subsequent filing of a determination letter request on such amendment will not be required until the expiration of the next six-year remedial amendment cycle (which currently is

January 31, 2017, as provided in [section 18.01 of Rev. Proc. 2007-44](#)). For further information see, [memo on Corrective Amendments to Pre-Approved Plans, dated March 11, 2009](#).

Applicable cumulative list - Pursuant to [Rev. Proc. 2008-50, section 6.05\(1\)](#), if a determination letter is required, then, unless otherwise specified, the provisions of [Rev. Proc. 2007-44](#) apply. Thus, for example, in the case of an ongoing individually designed plan, a determination letter application will be reviewed with respect to all items of the cumulative list (as defined in [Rev. Proc. 2007-44, section 4](#)) that would apply to the cycle during which the determination letter application is filed.

The following chart summarizes the requirement to submit a determination letter application under VCP:

<b>Type of Qualification Failure</b>	<b>Off-Cycle Sponsors</b>	<b>On-Cycle Sponsors</b>
Nonamender failures with respect to EGTRRA good faith, interim and optional amendments (for which the applicable remedial amendment period has not expired).	No determination letter (DL) application required. Corrective amendments to be included with subsequent on-cycle DL filing along with copy of the VCP compliance statement.	No DL application required. Corrective amendments to be included with on-cycle DL filing along with copy of the VCP compliance statement.
Nonamender failures other than EGTRRA good faith, interim and optional amendments.	DL application required. The DL application must be included with the VCP submission and mailed to Washington DC. Plan must comply with the cumulative list in effect on the date the application is mailed to the Service.	DL application required. The DL application must be included with the VCP submission and mailed to Washington DC. Plan must comply with the cumulative list in effect on the date the application is mailed to the Service.
Operational and demographic failures that are corrected via retroactive plan amendment.	No DL application required. Corrective amendments to be included with subsequent on-cycle DL filing to Cincinnati Submission Processing Center, along with copy of VCP compliance statement.	DL application required and must be included with the VCP submission mailed to the Washington DC address.

Question 21 *Have you included a check for the VCP compliance fee, and, if applicable, a separate check for the determination letter fee, each made payable to the U.S. Treasury?*

You must enclose full payment of the appropriate compliance fee by check made payable to “United States Treasury.” Submissions that do not include the full payment of the required fee may be returned. Please refer to the following tables to determine the appropriate fee:

<b>Standard Fees</b>	
Number of Participants	Fee
20 or fewer	\$750
21-50	\$1,000
51-100	\$2,500
101-500	\$5,000
501-1,000	\$8,000
1,001-5,000	\$15,000
5,001-10,000	\$20,000
more than 10,000	\$25,000

<b>Exceptions</b>	
Failure	Fee
Only EGTRRA Good Faith/interim/Optional Amendments (for which the applicable remedial amendment period has not expired)	\$375
Other Nonamender ONLY Failures Submitted Within One Year of Expiration of Remedial Amendment Period	50% of Standard Fee
Only § 72(p)(2) Loan Failures Where Fewer Than 25% of Participants Were Affected	50% of Standard Fee
Only § 401(a)(9) Operational Failures Affecting 50 or Fewer Participants	\$500
SEPs and SIMPLE-IRAs (See <a href="#">section 12.05(2) of Rev. Proc. 2008-50</a> for additional fees that may be required before issuance of the compliance statement.)	\$250
Orphan Plans (See <a href="#">section 12.02(4) of Rev. Proc. 2008-50.</a> )	Fee May Be Waived

Note: If the submission includes more than one type of failure, each of which would qualify for a reduced fee under the “Exceptions” table (above), the total required VCP is the lesser of the combined reduced fees, or the standard fee applicable to the plan based on the number of participants. For example, If a plan with 45 participants has both an EGTRRA good faith nonamender failure and a § 401(a)(9) operational failure, the total VCP fee would be \$875. However, if a plan with 15 participants has the same two failures, its fee would be \$750.