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No VCP Fee Relief in Updated Rev. Proc.; Some Fees Increased

The annual IRS update to its procedural rules and fees brings minor changes and no retreat on the higher VCP fees announced last year.

Background

Every January, IRS announces updates to procedural rules and fees for requests for letter rulings, opinion letters, determination letters, advisory letters, and requests for approval of a plan or operational error under the Employee Plans Compliance Resolution System (EPCRS) — including the Voluntary Correction Program (VCP).

For the 2018 update in [Revenue Procedure 2018-4](#) (see our [January 9, 2018 For Your Information](#) for details), IRS made significant changes to the fees charged for corrections made with a VCP filing. Unlike prior years, the 2018 VCP fee was determined by reference to net plan assets with no reduced fees for minimum distribution, participant loan, or plan amendment failures. The updated VCP fee schedule and associated IRS website information, effective January 2, 2018, was:

- Plan assets of \$0 to \$500,000: \$1,500
- Plan assets over \$500,000 to \$10,000,000: \$3,000
- Plan assets over \$10,000,000: \$3,500

The revised schedule drew some criticism from trade groups that advocated for a return to some of the reduced fees for common failures.

No fee relief in 2019 update

The updated procedure for 2019 in [Revenue Procedure 2019-04](#) does not budge on the VCP fees, meaning that the fees listed above remain in effect for 2019.

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Other fees

Retirement plans can be subject to fees for work performed by the Employee Plans Division or the Associate Chief Counsel office. Each has its own list of fees. Revenue Procedure 2019-1 sets out various fees for services handled by the Associate Chief Counsel office. Among the tasks assigned to this group are minimum funding waiver requests, requests to waive penalties for failure to provide timely 204(h) notices, and determinations about *de minimis* increases in liabilities while in bankruptcy or while certain funding restrictions are in play. The basic user fee for projects by this group is now \$30,000, up from \$28,300. Reduced fees may apply in the case of persons with gross income below \$1 million.

Fees for the Employee Plans Division listed in Revenue Procedure 2019-4 include the above-noted VCP fees as well as the general \$10,000 fee for letter rulings (including change in funding method and substitute mortality table requests), \$2,500 (unchanged) for determination letter applications on Form 5300, and \$3,000 effective July 1, 2019 (up from \$2,300) for plan termination submissions on Form 5310.

Mandatory electronic VCP filings

In separate guidance in October (see our [October 5, 2018 For Your Information](#)), IRS updated the EPCRS procedure and included a move to mandatory electronic filing for VCP submissions beginning April 1, 2019. The electronic option opened for submissions on January 1, 2019, though there is a transition period through March 31, 2019 during which plan sponsors may continue to make paper submissions. The current revenue procedure confirms this requirement and spells out the www.pay.gov versus paper options for other types of submissions.

Determination letters

The updated 2019 revenue procedure does not reveal what circumstances other than initial qualification and plan termination will be accepted for determination letter requests. A new “other circumstances” category that would use Form 5300 has been added to a table listing types of requests points to Section 11 of the procedure, but merely refers to “other circumstances as may be set forth in guidance published in the Internal Revenue Bulletin” without additional information. Plan sponsors will have to wait for an announcement on that issue.

In closing

Plan sponsors can minimize the risk of incurring some of these fees with careful attention to process and procedures even though IRS has not revived past discounts.

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