

SUPPORTING STATEMENT
(Revenue Procedure 2008-50)
(Previously RP 2006-27)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Sections 401(a), 403(a) and 403(b) of the Internal Revenue Code require the Secretary of the Treasury or his delegate to establish standards with respect to various forms of retirement plans ("plan") to ensure that the favorable tax treatment given to employer contributions to such plans and to the earnings on all contributions is met. If a plan meets the requirements of section 401 or section 403(a), a tax-exempt trust within the meaning of section 501(a) is created. In addition, section 403(b) provides for a retirement plan that may be established by an employer described in section 501(c)(3) that is exempt from tax under section 501(a) or by public schools.

Section 1.404(a)-1 et seq. of the Income Tax Regulations allows for the deduction of employer contributions if a plan is qualified under section 401(a), or 403(a). Similarly, section 403(b) permits the exclusion from income of certain amounts deferred to tax-sheltered annuity arrangements.

Rev. Proc. 98-22, 1998-1 C.B. 723, established the Employee Plans Compliance Resolution System ("EPCRS") to address operational failures, form failures, and demographic failures mainly in the context of qualified employee plans. EPCRS consolidated and expanded upon various Employee Plans administrative programs: the Administrative Policy Regarding Self-Correction, the Walk-in Closing Agreement Program, the Closing Agreement Program, the Voluntary Compliance Resolution Program, and the Standardized VCR Procedure. Rev. Proc. 99-13, 1999-1 C.B. 409, incorporated certain provisions of Rev. Proc. 98-22 and expanded upon it by extending various aspects of Rev. Proc. 98-22 to a different group of employers, i.e., those that maintain § 403(b) tax-sheltered annuity plans for their employees. Rev. Proc. 99-31, 1999-2 C.B. 280, set forth correction methods and examples for qualified plans that the Service has found acceptable. The EPCRS program was enhanced by Rev. Proc. 2000-16, 2000-1 C.B. 518, Rev. Proc. 2001-17, 2001-1 C.B. 589, Rev. Proc. 2002-47, 2002-2 C.B. 133, and Rev. Proc. 2003-44, 2003-1 C.B. 1051. Rev. Proc. 2006-27

modifies and supersedes the aforementioned revenue procedures with respect to qualified plans, tax-sheltered annuity plans, SEPs, and SIMPLE-IRAs under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Operating Division.

Section 1101 of S.1783, The Pension Security and Transparency Act of 2005, 109th Cong., 1st Sess. (2005), would codify parts of EPCRS. [As of June 9, 2006, this pending legislation was still in conference.] This is explained further at S.Rep.No. 174, 109th Cong., 1st Sess. 144 (2005), which was written as a result of the National Employee Savings and Trust Equity Guarantee Act of 2005.

Although not adopted by the conference committee to the Economic Growth and Tax Relief Reconciliation Act of 2001, H.R. Rep. No. 84, 107th Cong., 1st Sess. 286 (2001), when describing the House bill that is in conference states that the Service had expressed its intent that the EPCRS revenue procedure would be updated and improved periodically in light of experience and comments from those who use it. A somewhat similar statement can be found in the Description of the Senate Finance Committee Chairman's Mark of the "National Savings and Trust Guarantee Act," JCX-77-03, Joint Committee Print, 108th Cong., 1st Sess. 32 (Sept. 15, 2003), as well as in several other explanations by the Joint Committee on Taxation on proposed legislation. In addition, footnote 19 to the report of the conference committee of the Internal Revenue Service Restructuring and Reform Act of 1998, H.R. Rep. No. 599, 105th Cong., 2d Sess. 211 (1998), states that the organizational changes to the Service resulting from a change to section 7802(b) of the Code were not intended to "impede the implementation of certain self-correction programs and other activities" [described in the 1998 predecessor of Rev. Proc. 2003-44].

2. USE OF DATA

The data will be used by the Service to determine whether a correction and an administrative sanction, e.g., the issuance of a compliance statement, other than disqualification or loss of tax-exempt status of a retirement plan take place.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. **METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

This revenue procedure consolidates and expands upon various employee plans administrative programs. In its guidance, the revenue procedure seeks to assist small businesses in ascertaining if they meet the requirements of law and, if not, to make available various administrative programs. If utilized, the guidance contained in the revenue procedure should lessen the administrative costs associated with such plans to small businesses.

6. **CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**

Not applicable.

7. **SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)**

Consistent with the 21-day requirements of the Statement of Procedural Rules at 26 CFR 601.201, Rev. Proc. 2006-5, 2006-1 I.R.B. 174 (as well as its predecessors and its successors), and sections 10.07(4) and 10.07(6) of this revenue procedure set forth 21-day requirements with respect to voluntary compliance statements, etc.

8. **CONSULTATION WITH INDIVIDUALS OUTSIDE THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS**

Rev. Proc. 2008-50 which superseded Rev. Proc. 2006-27, was published in the **Internal Revenue Bulletin** on September 2, 2008 (2008-35 IRB 467).

Rev. Proc. 2006-27, which is an update of Rev. Proc. 2003-44, was published in the **Internal Revenue Bulletin** on May 30, 2006 (2006-22 IRB 945).

In response to the **Federal Register Notice** dated **March 12, 2009 (74 FR 10807)**, we received no comments during the comment period

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Submissions for closing agreements and compliance statements under this revenue procedure are considered tax returns and tax return information, which are confidential as required by 26 U.S.C. §6103. In general, certain matters relating to taxability and deductibility are disclosable under 26 U.S.C. §6110.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 4.05 describes certain amendments that can be made in the Employee Plans Compliance Resolution System. We estimate that 600 employers will make such amendments annually. The estimated burden per respondent is from 4 hour to 8 hours, with the average burden of 6 hours, for a total estimated burden of 3,600 hours annually.

Section 6.05 requires employers to notify employees in the instance of the correction of excess amounts or a failure to meet the limits on contributions under section 415. We estimate that 1,300 employers will take such action annually. The estimated burden per respondent is from 1 hour to 5 hours, with the average burden of 3 hours, for a total estimated burden of 3,900 hours annually.

Section 6.02(5)(d) requires employers to take reasonable actions to locate missing plan participants. We estimate that 110 employers will take such action annually. The estimated burden per respondent is from 1 hour to 3

hours, with the average burden of 2.009 hours, for a total estimated burden of 221 hours annually.

Sections 10.01-10.02 pertains to some general items, 10.10-10.12 address these items with respect to certain types of plans, and sections 2.01 thru 2.07 of Appendix B describe the method of correction of certain defects. We estimate that 1,500 employers will make such corrections annually. The estimated burden per respondent is from 4 hours to 8 hours, with the average burden of 6 hours, for a total estimated burden of 9,000 hours annually.

Sections 10.05-10.07 describe the processing of VCP cases and the procedures that will take place when the Service considers the request for a compliance statement to be inadequate. We estimate that 2,550 employers will make such submissions annually. The estimated burden per respondent is from 2 to 4 hours, with an average burden of 3 hours, for a total estimated burden of 7,650 hours annually.

Section 10.07(6) describes a conference of right in VCP cases. We estimate that 405 employers will seek such conferences annually. The estimated burden per respondent is from 4 to 8 hours, with an average burden of 6 hours, for a total estimated burden of 2,430 hours annually.

Section 10.07(8) describes the signed compliance statement that a plan sponsor must send to the Service before the issuance of the final compliance statement. We estimate that 2,550 employers will send such letters annually. The estimated burden per respondent is from 1 to 3 hours, with an average burden of 2 hours, for a total estimated burden of 5,100 hours annually.

Sections 11.02-11.04 describe the requirements to submit a request for a voluntary compliance statement. We estimate that 2,550 employers will make such submissions annually. The estimated burden per respondent is from 8 hours to 16 hours, with an average burden of 12 hours, for a total estimated burden of 30,600 hours annually.

Sections 11.06-11.08, section 11.10-11.12, section 11.14 and Appendix E describe additional administrative requirements, e.g., signature, power of attorney, penalties of perjury statements, markings on envelopes,

addressing envelopes for a compliance statement, acknowledgement letters, and assemblies of submissions. We estimate that 2,550 employers will make such submissions annually. The estimated burden per respondent is from 2 hour to 4 hours, with an average burden of 3 hours, for a total estimated burden of 7,650 hours annually.

Section 11.09 and Appendix C refer to and contain a checklist to ascertain whether their request for a compliance statement under VCP is complete. We estimate that 2,550 employers will make such submissions annually. The estimated burden per respondent is from 30 minutes to 1½ hours, with an average burden of 1 hour, for a total estimated burden of 2,550 hours annually.

Section 11.13 describes the maintenance of copies of all correspondence with the Service in the instance of a VCP submission. We estimate that 2,550 employers will make such submissions annually. The estimated burden per respondent is from 30 minutes to 1½ hours, with an average burden of 1 hour, for a total estimated burden of 2,550 hours annually.

Section 13.01 describes the audit requirements for the audit closing agreement program for 403(b) plans. Generally, the audit closing agreement program is available in the instance of an Operational Failure of a 403(b) plan. However, that section provides that the audit closing agreement program for 403(b) plans is not available for Operational Failures that relate to a misuse or diversion the assets of a 403(b) plan. We estimate that 19 employers will enter into closing agreements under the audit closing agreement program for 403(b) plans annually. The estimated burden per respondent is from 2 hours to 12 hours with an average burden of 9 hours for a total estimated burden of 171 hours annually.

Section 2.07(1) and section 2.07(2) of Appendix B describe certain plan amendments that employers may make under VCP and SCP. These amendments will be made either where an employer makes one or more contributions to a plan without considering the proper application of the compensation limits to all plan participants or where an employer makes a hardship distribution under the plan prior to the time a plan is amended to permit such a distribution. We estimate that 200 employers will make such plan amendments annually. The estimated burden per respondent is from 3

to 5 hours with an average burden of 4 hours, for a total estimated burden of 800 hours annually.

The total burden for this submission is 19,434 responses and 76,222 hours. Estimates of the annualized cost to respondents for the hour burdens shown above are not available at this time. These various burdens do not necessarily represent a net additional burden to taxpayers, since the closing agreement or compliance statement, if followed, will negate the need for the individual employees (taxpayers) of the employer to have to deal with the Service with respect to the items addressed in the closing agreement or compliance statement between the Service and his or her employer.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO TAXPAYERS

As suggested by OMB, our **Federal Register Notice** dated **March 12, 2009 (74 FR 10807)**, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it would cause confusion by leading taxpayers to believe that the revenue procedure sunsets as of the expiration date. Taxpayers may not be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential as required by 26 U.S.C. §6103.