

CHAPTER 14 SCP AND AUDIT CAP PROCEDURES

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**INTERNAL REVENUE SERVICE
TAX EXEMPT AND GOVERNMENT ENTITIES**

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I. INTRODUCTION

Since 1990, the Employee Plans (“EP”) segment of the Tax Exempt and Government Entities (“TE/GE”) Division of the Internal Revenue Service (“Service”) has instituted various correction programs as an alternative to disqualifying and/or revoking a retirement plan’s qualified status in situations where one or more events has jeopardized the qualified and/or the tax-exempt status of the plan. Through the years, these programs have evolved into the Employee Plans Compliance Resolution System (“EPCRS”). EPCRS is composed of the Voluntary Correction Program (“VCP”), the Audit Closing Agreement Program (“Audit CAP”), and the Self-Correction Program (“SCP”). This chapter will focus on the latter two - Audit CAP and SCP.

The purpose of this Chapter is to assist Specialists with identifying which program would be appropriate to apply in a certain situation and to set forth uniform procedures that can be used to ensure consistent treatment by each Area when applying the criteria and requirements of Audit CAP and SCP.

II. THE SELF-CORRECTION PROGRAM

SCP is available to correct an Operational Failure related to a Qualified Plan, a 403(b) plan, and, in certain circumstances, a Simplified Employee Pension (“SEP”) plan. There are two distinct facets of SCP. First, the sponsor of a retirement plan may take advantage of self-correcting an insignificant Operational Failure, even if the failure was discovered upon examination by the Service. Secondly, SCP may be available to correct a significant Operational Failure, provided certain requirements are met. If SCP applies, there is no monetary sanction imposed.

A. ELIGIBILITY REQUIREMENTS OF SCP

- 1) To be eligible for SCP, the plan sponsor or administrator of the plan must have established practices and procedures (formal or informal) in place to ensure the plan is operated in accordance with the applicable provisions of the Code. The mere existence of a plan document is not sufficient. The established practices and procedures are in addition to the plan document to satisfy this requirement. To apply SCP, the practices and procedures must have been routinely followed when administering the plan, and the Operational Failure must have resulted from:

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- a. An oversight or mistake in applying the established practices and procedures,
 - b. An inadequacy in the procedures, or
 - c. If the failure relates to Transferred Assets, the failure did not occur after the end of the second plan year that begins after a corporate merger, acquisition, or similar transaction.
- 2) For a significant Operational Failure, the plan must be subject to a Favorable Letter, and the correction must be completed within two years of the year of the failure (or, if earlier, substantially completed before the plan or plan sponsor is Under Examination).
 - 3) Correction of the Operational Failure cannot involve a plan amendment to conform the terms of the plan to the plan's operation unless it relates to:
 - 4) Code section 401(a)(17) failures,
 - 5) Hardship distribution failures, or
 - 6) Inclusion of Ineligible Employee Failures.

In every case, these failures are only eligible to be corrected by amendment under SCP if they are corrected in accordance with section 2.07 of Appendix B to Rev. Proc. 2001-17. In addition, unless the amendment is implemented through operation of a model amendment or standardized prototype plan, or, unless an employer is entitled to reliance on a favorable opinion or advisor letter pursuant to Notice 2001-77, a determination letter application must be filed with the Service.

- 7) Regarding a SEP, only an insignificant Operational Failure is eligible to be corrected under SCP.
- 8) The Operational Failure cannot be egregious or relate to the diversion or misuse of plan assets.

B. DEFINITIONS

- 1) Operational Failure - a Qualification Failure that arises solely from the failure to follow the terms of the plan. For a 403(b) plan, Operational Failure means a failure to satisfy the requirements of Code sections 403(b)(12), 403(b)(7), 403(b)(11), 403(b)(10), 401(a)(31), or any failure to satisfy the requirements under Code section 403(b) that result in the loss of section 403(b) status.
- 2) Qualification Failure - any failure that adversely affects the qualification of a plan.
- 3) Qualified Plan - a plan intended to satisfy the requirements of Code section 401(a) or 403(a).
- 4) Favorable Letter means:
 - a. For purposes of a Qualified Plan, a current favorable determination letter for an individually designed plan (including a volume submitter plan), a current favorable opinion letter for a plan that has adopted a master or prototype plan, or a current favorable notification letter for a plan that has adopted a regional prototype plan. A plan has a current favorable determination letter, opinion letter, or notification letter if any of the following is satisfied:

The favorable determination, opinion, or notification letter considers the provisions of the Tax Reform Act of 1986 ("TRA '86").

The plan is a governmental plan or non-electing church plan described in Rev. Proc. 99-23 and has a favorable determination, opinion, or notification letter that considers the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, the Deficit Reduction Act of 1984, and the Retirement Equity Act of 1984, and the Code section 401(b) remedial amendment period for TRA '86 has not yet expired.

The plan is initially adopted or effective after December 7, 1994, and the plan sponsor timely submits an application for a determination letter within the plan's remedial amendment period under Code section 401(b).

The plan is terminated prior to the expiration of the applicable GUST remedial amendment period under Code section 401(b) and the plan was amended to reflect the provisions of GUST.

- b. For purposes of a SEP:

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- i. A valid Model Form 5305-SEP or 5305A-SEP adopted by an employer in accordance with the instruction on the applicable form.
 - ii. A current favorable opinion letter for a plan sponsor that has adopted a prototype SEP which has been amended in accordance with the procedures set forth in Rev. Proc. 94-13 to take into account any applicable changes in the law since the issuance of the opinion letter.
 - iii. In the case of an individually designed SEP, a private letter ruling that has been issued for the SEP.
- 5) Transferred Assets - plan assets that were received in connection with a corporate merger, acquisition or other similar employer transaction, by the plan in a transfer (including a merger or consolidation of plan assets) under Code section 414(l) from a plan sponsored by an employer that was not a member of the same controlled group as the plan sponsor. If a transfer of plan assets related to the same employer is accomplished through several transfers, then the date of the transfer is the date of the first transfer.
- 6) Substantial completion of a significant Operational Failure has been achieved if one of the following is satisfied:
 - a. During the correction period, the plan sponsor is reasonably prompt in identifying the Operational failure, formulating a correction method, and initiating correction in a manner that demonstrates a commitment to completing correction as expeditiously as practicable. Also, within 90 days after the last day of the correction period, the plan sponsor completes correction of the Operational failure; or
 - b. During the correction period, correction is completed with respect to 85 percent of all participants affected by the Operational Failure, and the plan sponsor completes correction of the Operational Failure with respect to the remaining affected participants in a diligent manner.
- 7) Under Examination - a plan that is under an EP examination (an examination of a Form 5500 series or other EP examination), or a plan sponsor that is under an Exempt Organizations examination (an examination of a Form 990 series or other Exempt Organizations examination). A plan that is under EP examination includes any plan for which the plan sponsor, or a representative, has received verbal or written notification from EP of an impending EP examination, or of an impending referral for an EP examination, and also includes any plan that has been under an EP examination and is now in Appeals or in litigation for issues raised in an EP examination. An EP examination also includes where a plan sponsor has requested a determination letter for the termination of their plan by submitting a Form 5310 and the reviewing Specialist notifies the plan sponsor, or

representative of a possible Qualification Failure. A plan is also considered to be Under Examination if it is aggregated for purposes of satisfying the nondiscrimination requirements of Code section 401(a)(4), the minimum participation requirements of Code section 401(a)(26), the minimum coverage requirements of Code section 410(b), or the requirement of Code section 403(b)(12) with a plan(s) that is Under Examination. Furthermore, if a plan is aggregated with another plan for purposes of satisfying another qualification requirement, (such as Code section 415, 416, etc.) and that other plan is Under Examination, then the plan is considered to be Under Examination. A plan sponsor is under an Exempt Organizations examination if the plan sponsor, or a representative, has received verbal or written notification from Exempt Organizations of an impending Exempt Organizations examination, or of an impending referral for an Exempt Organizations examination, and also includes any plan that has been under an Exempt Organizations examination and is now in Appeals or in litigation for issues raised in an Exempt Organizations examination.

- 8) SCP correction period for significant Operational Failures - the correction period ends on the last day of the second plan year following the plan year for which the failure occurred. However, in the case of a failure to satisfy the requirements of Code sections 401(k)(3), 401(m)(2), or 401(m)(9), the correction period does not end until the last day of the second plan year following the plan year that includes the last day of the additional period for correction permitted under Code sections 401(k)(8) or 401(m)(6). If a 403(b) plan does not have a plan year, the plan year is deemed to be the calendar year for purposes of SCP. In the case of an Operational failure that relates only to Transferred Assets, the correction period does not end until the last day of the first plan year that begins after the corporate merger, acquisition, or other similar employer transaction between the plan sponsor and the sponsor of the transferor plan. In any event, the correction period ends on the first date the plan or plan sponsor is Under Examination for that plan year.
- 9) Significant vs. insignificant Operational Failures - This determination should be based upon the facts and circumstances surrounding the failure. Factors to be considered include (but are not limited to) the following:
 - a. Whether other failures occurred during the period being examined (for this purpose, a failure is not considered to have occurred more than once merely because more than one participant is affected by the failure);
 - b. The percentage of plan assets and contributions involved in the failure;
 - c. The number of years the failure occurred;

- d. The number of participants affected relative to the total number of participants in the plan;
- e. The number of participants affected as a result of the failure relative to the total number of participants who could have been affected by the failure;
- f. Whether correction was made within a reasonable time after discovery of the failure; and
- g. The reason for the failure (for example, data errors such as errors in the transcription of data, the transposition of numbers, or minor arithmetic errors).

This list is not exclusive. Based upon the facts and circumstances surrounding a case, other factors may be relevant. No single factor is determinative. Additionally, factors b), d), and e) should not be interpreted to exclude small businesses.

In the case of a plan with more than one Operational Failure in a single year, or Operational Failures that occur in more than one year, the Operational Failures are considered insignificant only if all of the Operational Failures are insignificant in the aggregate. Operational Failures that have been properly self-corrected under SCP prior to the plan coming under examination or under VCP are not taken into account for purposes of determining if Operational Failures are insignificant in the aggregate.

C. EXAMPLES

EXAMPLE 1:

An examination of a 401(k) plan for the plan year ending December 31, 1999, revealed that the plan was not amended timely for the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). In addition, the examination revealed that, of the twenty participants in the plan, Participant A's annual additions exceeded the Code section 415(c) limitations, and Participant B's employer matching contribution was not made in accordance with the provisions of the plan.

The Specialist determined Participant A was a nonhighly compensated employee. The review of the plan revealed the employer matching contribution was 100% of the first 6% of a participant's elective deferral. It was determined that during the 1999 plan year, the participant elected to change his deferral percentage from 10 to 15%. Additionally, prior to the end of the year, he made an employee after-tax contribution to the plan. The Specialist concluded, as a

result of the employee after-tax contribution, Participant A's annual additions exceeded the section 415 limitations by \$148.

The Specialist also determined Participant B was a nonhighly compensated employee. The Specialist discovered the failure to allocate the employer matching contribution in accordance with the plan's provision was a result of Participant B's receiving a manual pay check at the end of the year. Though his elective deferral was withheld and transmitted timely to the trust, this amount was not reflected when the employer matching contribution was determined.

After consulting with the Area Coordinator, the Specialist determined that although the Operational Failures were insignificant, the Plan Document Failure (i.e., the failure to timely amend the plan for OBRA '93) caused the plan to be ineligible for SCP. The Specialist subsequently closed the case under the Audit CAP procedures.

EXAMPLE 2:

During the examination of a 401(k) profit sharing plan, the Specialist noted that there was a problem with the vesting years of service on the valuation report. The valuation report did not list the participants' vested percentages. Instead the administration company used the vesting years of service to calculate the vested percentage after the participant had terminated service with the employer.

After the administration company was notified of the problems, a revised report was generated. In comparing the revised report with the original report, it was determined that there were discrepancies in the vested percentages of 77 out of 366 total participants. Of these affected participants, the vesting years of service for 46 participants decreased, while the vesting years of service for the remaining 31 participants increased. When asked why the problems existed, the administration company claimed the discrepancies were caused by the conversion of their valuation software that occurred around the end of the plan's fiscal year.

A review of the plan provisions revealed that the employer matching contribution was 100% vested at all times, and that the profit sharing portion was 20% vested after two years of service, with 20% of additional vesting for each year of service thereafter, becoming 100% vested after six years of service. The administration company stated that there were no discretionary profit sharing contributions to the plan for the last 5 plan years, including the year under examination. During the year under examination, the Specialist noted there were a total of 7 distributions to participants who had terminated service with the employer. The Specialist verified that there were no discrepancies related to these distributions. In addition, the administration company prepared revised participant statements

reflecting the corrected vested percentages and delivered them to the affected participants with an explanation for the adjustments.

After consulting with the Area Coordinator, the Specialist determined that the failure was insignificant, and the case was closed under the SCP procedures.

III. THE AUDIT CLOSING AGREEMENT PROGRAM

Audit CAP is administered by each EP Area within TE/GE Examinations and is available to correct failures discovered during examination or during a review of a determination letter submission if such failures have not been corrected in accordance with SCP or VCP. Eligible failures would include Operational Failures, Plan Document Failures, Demographic Failures, and Employer Eligibility Failures as they relate to Qualified Plans, 403(b) plans, and SEPs. (Note: Failures related to the diversion or misuse of plan assets are not eligible for resolution under EPCRS.) At the conclusion of the process, a monetary sanction is paid to the Service, and in turn, the Service issues a closing agreement providing specific reliance that the Plan will not be treated as failing to be qualified as a result of the identified failure(s).

A. AUDIT CAP REQUIREMENTS AND EFFECT

- 1) The plan sponsor corrects the failure in a manner that is agreed upon with the Service.
- 2) A party to the agreement pays a mutually agreed upon monetary sanction to the Service.
- 3) If the Service determines that the existing administrative procedures are inadequate for operating the plan in conformance with the applicable requirements of the Code, the closing agreement may be conditioned upon the implementation of stated procedures.
- 4) Depending upon the agreed correction for a Qualified Plan, the plan sponsor may be required to obtain a Favorable Letter and to pay the applicable user fee for obtaining the letter.
- 5) If the plan sponsor and the Service cannot agree on the correction method and the amount of the monetary sanction, a closing agreement will not be prepared, and the appropriate disqualification/revocation procedures will be applied.
- 6) The closing agreement constitutes an agreement between the plan sponsor and the Service that is binding with respect to the tax matters identified therein for the

periods specified in the agreement.

B. DETERMINING THE SANCTION

The sanction under Audit CAP is a negotiated percentage of the Maximum Payment Amount. For 403(b) plans and SEPs, the sanction is a negotiated percentage of the Total Sanction Amount. The sanction will not be excessive and will bear a reasonable relationship to the nature, extent, and severity of the failure(s) based upon the following factors:

- 1) The steps taken by the plan sponsor to ensure that the plan either had no failures or corrected them through SCP or VCP, including the extent to which correction had progressed before the examination was initiated;
- 2) The amount of the compliance fee the plan sponsor would have paid under the VCP General Procedure if the plan sponsor had decided to take advantage of that option;
- 3) The number and type of employees affected by the failure;
- 4) The number of non-highly compensated employees who would be adversely affected if the plan were not treated as a Qualified Plan or as satisfying the requirements of Code section 403(b) or 408(k);
- 5) Whether the failure is a failure to satisfy the requirements of Code sections 401(a)(4), 401(a)(26), or 410(b), either directly or through Code section 403(b)(12);
- 6) The period over which the failure occurred; and
- 7) The reason for the failure.

Factors relating only to Qualified Plans also include:

- 1) Whether the plan is the subject of a Favorable Letter;
- 2) Whether the plan has both Operational and other failures; and
- 3) The extent to which the plan has accepted Transferred Assets, and the extent to which failures relate to Transferred Assets and occurred before the transfer.

Additional factors relating only to 403(b) plans include:

- 1) Whether the plan has a combination of Operational, Demographic, or Employer Eligibility Failures;
- 2) The extent to which the failure relates to Excess Amounts; and
- 3) Whether the failure is solely an Employer Eligibility Failure.

C. DEFINITIONS

- 1) Plan Document Failure - a plan provision (or the absence of a plan provision) that, on its face, violates the requirements of Code section 401(a) or 403(a).
- 2) Demographic Failure(s) - defined as a failure to satisfy the requirements of Code section 401(a)(4), 401(a)(26), or 410(b) and is not an Operational Failure or Employer Eligibility Failure as they relate to a plan subject to 401(a) or 403(b). The correction of a Demographic Failure generally requires a corrective amendment to the plan adding more benefits or increasing existing benefits.
- 3) Employer Eligibility Failure:
 - a) For a Qualified Plan - the adoption of cash or deferred arrangement (as defined in the regulations under Code section 401(k)) intended to satisfy the requirements of Code section 401(k) for one or more years between 1987 and 1996 (inclusive) by an employer that was a tax-exempt organization prohibited from adopting a 401(k) plan during that period.
 - b) For a 403(b) plan, Employer Eligibility Failure means any of the following:
 - i. the adoption of a 403(b) plan by an employer that is not a tax-exempt organization described in Code section 501(c)(3) or a public educational organization described in Code section 170(b)(1)(A)(ii);
 - ii. a failure to satisfy the nontransferability requirement of Code section 401(g);
 - iii. a failure to establish or maintain a custodial account as described in Code section 403(b)(7); or
 - iv. a failure to purchase an annuity contract or a custodial account.

- 4) Maximum Payment Amount (“MPA”) - the potential tax liability of the trust, the plan sponsor, and the participants of the plan that the Service could collect upon the disqualification of the plan, and is the sum for the open taxable years of the:
 - a) Tax on the Trust (Form 1041),
 - b) Additional income tax resulting from the loss of employer deductions for plan contributions (and any interest or penalties applicable to the plan sponsor’s return), and
 - c) Additional income tax resulting from income inclusion for participants in the plan (Form 1040).
- 5) Total Sanction Amount – with respect to 403(b) plans, a monetary amount that is approximately equal to the income tax the Service could collect as a result of the failure.
- 6) Excess Amount:
 - a) For Qualified Plans, it is defined as the following:
 - i. An Overpayment, which is defined as a distribution to an employee or beneficiary that exceeds the employee’s or beneficiary’s benefit under the terms of the plan because of a failure to comply with plan terms that implement Code sections 401(a)(17), 401(m) (but only with respect to the forfeiture of non-vested matching contributions that are excess aggregate contributions), 411(a)(3)(G), or 415;
 - ii. An elective deferral or employee after-tax contribution returned to satisfy Code section 415;
 - iii. An elective deferral in excess of the limitation of Code section 402(g) that is distributed;
 - iv. An excess contribution or excess aggregate contribution that is distributed to satisfy Code section 401(k) or 401(m);
 - v. An amount contributed on behalf of an employee that is in excess of the employee’s benefit provided under a SEP;
 - vi. An excess contribution that is distributed to satisfy Code section 408(k)(6)(A)(iii);
 - vii. An elective deferral that is distributed to satisfy the limitation of Code section 401(a)(17);

- viii. Any similar amount that is required to be distributed in order to maintain plan qualification.
- b) For 403(b) plans - any contributions or allocations that are in excess of the limits under Code sections 415 or 403(b)(2) for the year.

Note: for other definitions related to Audit CAP, see section IIB.

IV. CORRECTION PRINCIPLES

Generally, a failure is not corrected unless full correction is made with respect to all participants and beneficiaries, and for all taxable years (whether or not the taxable year is closed). Correction should be accomplished taking into account the following principles:

- 1) The correction method should restore the plan to the position it would have been in had the failure not occurred, including restoration of benefits and rights that current and former participants and beneficiaries would have had if the failure had not occurred.
- 2) The correction should be reasonable and appropriate for the failure. Depending on the nature of the failure, there may be more than one reasonable and appropriate correction for the failure. The appropriate failure is determined taking into account the applicable facts and circumstances and the following principles:
 - a) The correction method should, to the extent possible, resemble one already provided for in the Code, regulations, or other guidance of general applicability.
 - b) The correction method for failures relating to nondiscrimination should provide benefits for non-highly compensated employees.
 - c) The correction method should keep plan assets in the plan, except to the extent the Code, regulations, or other guidance of general applicability provide for correction by distribution to participants or beneficiaries or return of assets to the employer or plan sponsor.
 - d) The correction method should not violate another applicable specific requirement of Code section 401(a) or 403(b).

- 3) Generally, where more than one correction method is available to correct a type of Operational Failure for a plan year (or where there are alternative ways to apply a correction method), the correction method should be applied consistently in correcting all Operational Failures of that type for that plan year.
- 4) The following principles apply where an appropriate correction method includes the use of corrective allocations or corrective distributions:
 - a) Corrective allocations under a defined contribution plan should be based on the terms of the plan and other applicable information at the time of the failure and should be adjusted for earnings (may include losses, but is not required) and forfeitures that would have been allocated to the participant's account if the failure had not occurred.
 - b) A corrective allocation to a participant's account because of a failure to make a required allocation in a prior limitation year will not be considered an annual addition with respect to the participant for the limitation year in which the correction is made but will be considered an annual addition for the limitation year to which the corrective allocation relates. However, the normal rules of Code section 404 regarding deductions apply.
 - c) Corrective allocations should come only from employer contributions (including forfeitures if the plan permits their use to reduce employer contributions).
 - d) In the case of a defined benefit plan, a corrective distribution for an individual should be increased to take into account the delayed payment, consistent with the plan's actuarial adjustment.
- 5) The mere fact that correction is inconvenient or burdensome is not enough to relieve a plan sponsor of the need to make full correction; however, full correction may not be required in certain situations because it is unreasonable or not feasible. Even in these situations, the correction method adopted must be one that does not have significant adverse effects on participants and beneficiaries or the plan and that does not discriminate significantly in favor of highly compensated employees. The exceptions described below specify those situations in which full correction is not required:
 - a) If it is not possible to make a precise calculation, or the probable difference between the approximate and the precise restoration of a participant's benefits is insignificant and the administrative cost of determining precise restoration would significantly exceed the probable difference, reasonable estimates may be used in calculating appropriate correction;

- b) If the total corrective distribution due a participant or beneficiary is \$20 or less, the plan sponsor is not required to make the corrective distribution if the reasonable direct costs of processing and delivering the distribution to the participant or beneficiary would exceed the amount of the distribution;
 - c) Reasonable actions must be taken to find all current and former participants and beneficiaries to whom additional benefits are due but who have not been located after a mailing to the last known address. In general, such actions include use of the Service's Letter Forwarding Program (see Rev. Proc. 94-22) or the Social Security Administration Reporting Service. A plan will not be considered to have failed to correct a failure due to the inability to locate an individual if either of these programs is used, provided that, if the individual is later located, the additional benefits must be provided to the individual at that time.
- 6) Any distributions from the plan should be properly reported.
- 7) In any case in which correction of a Qualified Plan failure includes correction of a Plan Document Failure or correction of an Operational Failure by plan amendment other than adoption of a model amendment or a standardized or prototype plan, the amendment must be submitted to the Service for approval under the appropriate application form to ensure that the amendment satisfies applicable qualification requirements.
- 8) A distribution of an Excess Amount is not eligible for the favorable tax treatment accorded to distributions from Qualified Plans (such as eligibility for rollover under Code section 402(c) or 403(b)(8) for a 403(b) plan). The distribution must be reported on Form 1099-R for the year of distribution with respect to each participant or beneficiary receiving such a distribution. Where an Excess Amount has been distributed, the plan sponsor must notify the recipient that (a) the Excess Amount was distributed and (b) the Excess Amount was not eligible for favorable tax treatment accorded to distributions from Qualified Plan (and, specifically, was not eligible for tax-free rollover). For a 403(b) plan, the Excess Amounts distributed are not treated as amounts previously excludable under Code section 403(b)(2)(A)(ii) for purposes of calculating the maximum exclusion allowance for the taxable year of the distribution and for subsequent taxable years.
- 9) Excess Amounts resulting from a Code section 415 failure in a 403(b) plan will be treated as corrected if they are adjusted for earnings, retained in the 403(b) plan, and used to reduce the affected participants' applicable Code section 415 limit for the year following the year of correction (or for the year of correction if the plan sponsor so chooses), and subsequent years, until the excess is eliminated. Excess Amounts (whether arising from a Code section 415 or 403(b)(2) failure) must also reduce the participants' exclusion allowances by being treated as

amounts previously excludable under Code section 403(b)(2)(A)(ii) beginning with the year following the year of correction (or the year of correction if the plan sponsor so chooses). If this correction method is used, it must generally be used for all participants who have Excess Amounts.

- 10) Generally, none of the correction programs are available to correct failures that can be corrected under the Code and the related regulations. For example, a Plan Document Failure that has a disqualifying provision for which the remedial amendment period under Code section 401(b) has not expired can be corrected by operation of the Code through a retroactive remedial amendment.
- 11) The correction programs are not available for events for which the Code provides tax consequences other than plan disqualification (such as the imposition of an excise tax or additional income tax). For example, funding deficiencies, prohibited transactions, and the failure to file the Form 5500 cannot be corrected under SCP, VCP, or Audit CAP. However, if the event is also an Operational Failure (for example, if the terms of the plan document relating to plan loans to participants were not followed and loans made under the plan did not satisfy Code section 72(p)(2)), the correction programs will be available to correct the Operational Failure, even though the excise or income taxes generally will still apply.

V. PROCEDURES

The following procedures apply to the EP Specialist, the Specialist's Manager, and the Area Coordinator whenever Audit CAP or SCP is used to resolve one or more failures discovered by the Service during an EP Examination of a plan or during the review of a plan's determination letter application.

Note: If the plan sponsor has filed a VCP submission, the plan cannot be examined until the VCP submission has been completed. In such cases, the Specialist's manager should contact the appropriate VC Group Manager regarding the status of the VCP submission and the possible disposition of the examination case.

A. FAILURES DISCOVERED DURING A DETERMINATION LETTER REVIEW

- 1) If a plan sponsor voluntarily identifies one or more Qualification Failure(s) during the determination letter process but no VCP request was submitted for such failure(s), the Specialist should give the plan sponsor the opportunity to file a VCP request in addition to the determination letter application. (Note: The plan sponsor's voluntary identification of the failure(s) must occur prior to the time that

the Specialist, as a result of his/her review of the plan's documents, questions the plan sponsor about the potential existence of the failure(s).) If the plan sponsor fails to file a VCP request, the failure(s) will be resolved by applying the appropriate procedures as described in paragraph 2 or 3 below.

- 2) If one or more Qualification Failure(s) is discovered by the Service during the review of a determination letter application that is not related to a pending VCP request and the Qualification Failure(s) does not warrant an examination (for example, a Plan Document Failure involving UCA '92 and OBRA '93), the Specialist, working with the Area Coordinator, will:
 - a) Follow the procedures set forth in the following Audit CAP section to resolve the failure. (Exception: If the failure is deemed to be minor, the monetary sanction shall be no higher than the presumptive amount that would apply if the plan sponsor had submitted a VCP General request).
 - b) Charge time spent on the determination letter application to the appropriate 301 Activity Code and time spent on the closing agreement to Activity Code 316.
 - c) Issue the determination letter simultaneously with the closing agreement.

- 3) If the Qualification Failure(s) warrants an examination, after the determination case has been developed to the extent possible and all of the failures have been documented, the Specialist's Manager should transfer the entire file to the Area office with examination jurisdiction. The Specialist's Group Manager should contact EP Classification to coordinate the assignment of the determination case and the selection of an open return for examination by the appropriate Area office. The examining Specialist should:
 - a) Follow the procedures set forth in the following Audit CAP section to resolve the failure(s).
 - b) Charge time spent on the examination and the resulting closing agreement to Special Project Code 800 (determination letter conversion).
 - c) Charge time spent on the review of the determination letter submission to the appropriate 301 Activity Code.
 - d) Issue the determination letter simultaneously with the closing agreement.

B. FAILURES DISCOVERED IN PLANS UNDER EXAMINATION

SELF-CORRECTION PROGRAM

- 1) Upon the discovery of a Qualification Failure(s), the Specialist should fully develop the facts surrounding the failure(s).
- 2) Once the facts have been developed, the Specialist will consult with his/her Manager before proposing SCP or Audit CAP. Consideration should be given as to whether the failure(s) is eligible for SCP before Audit CAP is considered. If the correction method(s) proposed is set forth in Appendix A or Appendix B of the EPCRS revenue procedure (currently, Rev. Proc. 2001-17), and the case is otherwise eligible for SCP, the manager may approve the case being closed under SCP without consulting the Area Coordinator. In all other cases, the manager and /or specialist will confer with the Area Coordinator before closing the case under SCP or proceeding with negotiations under Audit CAP. (It is, of course, permissible for a specialist or manager to contact the Area Coordinator to discuss any failure or correction method, whether or not listed in the appendices of the EPCRS rev. proc.). The Self-Correction Program Check Sheet in Exhibit 1 may be used by a specialist and/or manager to facilitate consultation with the Area Coordinator. This check sheet may also be used by a manager to determine eligibility under SCP where the Area Coordinator is not being consulted (i.e., where the correction method proposed is listed in Appendix A or Appendix B of Rev. Proc. 2001-17). The SCP check sheet is provided as a convenience and may be modified by each Area. In certain cases, after discussion with the specialist, and in order to achieve consistency, the Area Coordinator may determine that the case is inappropriate for SCP and may recommend that the Audit CAP procedures apply. If any of the failures identified is not eligible to be closed under SCP, the case will be discussed with the Area Coordinator and Audit CAP will be considered. If Audit CAP applies, the closing agreement will address each of the failures identified. If it is determined that the failure(s) is not eligible to be corrected under either of the correction programs, the Specialist will notate in his/her work papers the basis for this conclusion. If the case is not eligible for Audit CAP (e.g., the failure involves a misuse or diversion of assets), the Service will propose disqualification and the case will be processed as an unagreed case.
- 3) If it is determined that SCP is appropriate, the Specialist will present the correction method(s) to the plan sponsor and/or its representative. When closing the case, the Specialist should use Disposal Code 14. The Specialist will issue a closing letter containing a statement specifically indicating that the failure(s) was resolved under SCP.

AUDIT CLOSING AGREEMENT PROGRAM

- 1) If it is determined that SCP is not appropriate, the Specialist, after consulting with the manager and Area Coordinator, will offer the plan sponsor the option of entering into a closing agreement with the Service under Audit CAP. The Specialist should emphasize that if Audit CAP is proposed and the plan sponsor either declines to enter into a closing agreement or does not accept the terms of the closing agreement, the Service will propose disqualification of the plan and the case will be processed as an unagreed case. Whether or not the plan sponsor agrees to enter into a closing agreement, the Specialist should notate in his/her work papers and Case Chronology Record that a closing agreement was proposed by the Service. It should be noted that the protection of the Statute of Limitations is, at all times, the responsibility of the Specialist assigned to the case. At no time should a closing agreement be viewed as a means of protecting the Statute of Limitations in lieu of securing a Form 872.
- 2) The Specialist will conduct the negotiation of the terms of the agreement with the plan sponsor. If the plan sponsor desires to have its representative negotiate in its place, the Specialist must secure a Form 2848 authorizing the representative to act in behalf of the plan sponsor.
- 3) The specialist should discuss with the Area Coordinator issues relating to the failure(s), proposed correction method(s), and the monetary sanction amount as they arise during the process. In any case, final agreement with respect to the monetary sanction or an acceptable correction method (in the case of a proposed correction method that is not listed in Appendix A or Appendix B of Rev. Proc. 2001-17) should not be indicated to the plan sponsor until the specialist has conferred with the Area Coordinator. To determine the appropriate sanction, the Specialist will compute the Maximum Payment Amount ("MPA") and submit it along with copies of the Forms 5500 and any relevant work papers to the Area Coordinator for review. Exhibit 2 contains worksheets that may be used as an aid in determining the MPA. As an alternative, the specialist may request that the plan sponsor submit a detailed calculation of the MPA. The Audit CAP Check Sheet in Exhibit 3 may be used to make a sanction recommendation to the Area Coordinator. The Area Coordinator will respond to the sanction recommendation in a timely manner. For cases involving a potential MPA of \$1,000,000 or more, the Area Coordinator will consult with the Manager, EP Voluntary Compliance before negotiations with the plan sponsor and/or its representative are completed.

- 4) If an agreement cannot be reached, the Specialist will notate in his/her work papers the terms that were offered (e.g., identified failure(s), timing and method of correction(s), estimation of the MPA, and recommended sanction amount). The Specialist's Group Manager and the Area Coordinator should be notified of the impasse and provide assistance to the Specialist in reaching an agreement. If an agreement with the plan sponsor cannot be reached, the case will be processed on an unagreed basis.
- 5) If the Specialist does reach an agreement with the plan sponsor as to the terms of the closing agreement, the Specialist will prepare a draft of the closing agreement (see Exhibit 4) on a disk (or encrypted E-Mail) and submit it to the Area Coordinator. To avoid any delays in the processing of the closing agreement, the Specialist should submit the draft as soon as the terms have been agreed upon; it is not necessary for the Specialist to wait until correction of the failure(s) has been completed. The Area Coordinator will review the draft closing agreement and make any appropriate changes to the draft. Once the Specialist has verified that correction has been completed, the Specialist will notify the Area Coordinator. The Area Coordinator will finalize the closing agreement in a timely manner and return the approved version of the closing agreement to the Specialist for execution by the parties to the agreement.
- 6) The Specialist will present the closing agreement (a minimum of three copies) along with Letter CA-1 (Exhibit 5) and the instructions (Exhibit 6) to the plan sponsor and/or its representative. If the plan sponsor and/or its representative request a change in the language of the closing agreement, the Specialist will contact the Area Coordinator to discuss the proposed changes. After securing the agreement of the Area Coordinator, the Specialist will present the revised closing agreement along with Letter CA-2 (Exhibit 7) to the plan sponsor and/or its representative.
- 7) Once the Specialist receives the executed closing agreement (minimum three copies, with original signatures) along with the monetary sanction (in the form of a cashiers check or certified check made payable to the U.S. Treasury) from the plan sponsor, the Specialist will inspect the documents and the payment for errors. (Note: If the representative signs the closing agreement, there must be a valid Form 2848 specifically authorizing him/her to do so.) If the Specialist discovers any errors, the Specialist will return the documents and the monetary sanction with Letter CA-3 (Exhibit 8) via certified mail, return receipt requested. If there are no problems with the documents or the amount of the monetary sanction, the Specialist will send them along with a completed Document Transmittal (Form 3210, see Exhibit 9), Payment Posting Voucher (Form 3244-A, see Exhibit 10), Non-Master File Assessment Voucher (Form 5734, see Exhibit 11), and

cover memo (Exhibit 12) to the Area Coordinator via overnight delivery.

- 8) Upon receipt of the remittance package from the Specialist, the Area Coordinator will prepare Letter 1595 (Exhibit 13) and coordinate the execution of the closing agreement by the designated representative of the Service. Once the closing agreement has been countersigned, the Area Coordinator will send the Forms 3210, 3244-A, and 5734, a copy of the closing agreement (with original signatures), the monetary sanction, and the cover memo to the Ogden Submission Processing Center via overnight delivery. The Area Coordinator will send a copy of the closing agreement (with original signatures) to the plan sponsor. The Area Coordinator will then send a copy of the executed closing agreement, Form 3210, and the disk to the Specialist along with a memo notifying the Specialist the closing agreement has been approved, and the case may be closed. (Note: If there is a valid Form 2848, a copy of the closing agreement along with Letter 937 will be sent to the representative).
- 9) When preparing the examination for closing, the Specialist must include the following entries on the Form 5650, EP Examined Closing Record:
 - a) Item 13, Disposal Code 15.
 - b) Item 602, Tax – Enter the amount of the monetary sanction agreed to in the closing agreement.
 - c) Item 40, Special Project Code – Enter the appropriate special project code.
 - d) In the “Remarks” section – Enter the words “Do Not Assess”.

The Specialist will issue Letter 1204 (Exhibit 14) when closing the case. In addition, the Specialist will include a copy of the final closing agreement and the Form 3210 used to transmit the remittance in the case file prior to forwarding it to his/her Manager for closure.

C. EXAMPLES

EXAMPLE 3

In February, 2002, a Specialist was conducting an examination of a 401(k) plan for the plan year ending June 30, 2000. During the initial interview of the plan sponsor, the Specialist discovered the plan being audited had been merged with another plan when the plan sponsor acquired an unrelated entity during July of 1999. The Specialist determined the merger occurred on December 31, 1999, when the entire trust of the former plan was transferred to the trust of the plan Under Examination.

During the examination of the books and records, the Specialist noticed the elective deferrals and employer matching contributions of the participants in the former plan did not reconcile with what they should have received based upon their verified compensation. The Specialist discovered that, although the plan allowed for total compensation to be considered for the elective deferrals and the employer matching contribution, bonuses and overtime were being excluded in operation.

Upon returning to the office, the Specialist met with his Group Manager to discuss the Operational Failure and the surrounding facts he discovered during the initial interview with the plan sponsor. The Group Manager called the Area Coordinator to join in the discussion. It was determined that the failure was significant, and since no correction had begun, the failure was not eligible to be resolved under SCP. It was agreed that the failure should be resolved under Audit CAP, provided an agreement as to the terms of the closing agreement could be reached with the plan sponsor. The Specialist provided the MPA to the Area Coordinator, and, pursuant to the plans sponsor's request, considered only the assets from the former plan since the criteria of the special rules for Transferred Assets were met. In turn, the Area Coordinator and the Specialist discussed a range in which to negotiate an acceptable monetary sanction with the plan sponsor. The Specialist and Area Coordinator also discussed the correction methods as follows:

- 1) For each affected participant:
 - a) Regarding the elective deferrals, the plan sponsor makes a Qualified Nonelective Contribution (QNEC) to the plan in an amount that equals the participant's bonuses and overtime multiplied by the ADP of that employee's group (either highly compensated or non-highly compensated). The QNEC is also adjusted for earnings.

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- b) Regarding the employer matching contribution, the plan sponsor makes a QNEC to the plan in an amount that equals the participant's bonuses and overtime multiplied by the ACP of that employee's group. The QNEC is then adjusted for earnings.

Or

- 2) For each affected participant:
 - a) Regarding the elective deferrals, the plan sponsor makes a QNEC to the plan in an amount that equals the participant's bonuses and overtime multiplied by the percentage of Compensation specified in the participant's deferral election. The QNEC is also adjusted for earnings.
 - b) Regarding the employer matching contribution, the plan sponsor makes a corrective contribution to the level required under the plan's terms when bonuses and overtime are included in Compensation. The corrective distribution is then adjusted for earnings.

Based upon his discussions with the Area Coordinator, the Specialist contacted the plan sponsor regarding the Operational Failure that was discovered. The taxpayer was willing to resolve the failure under Audit CAP. The Specialist convinced the plan sponsor to correct the failure by using one of the correction methods proposed by the Specialist and to pay a monetary sanction within the range agreed to by the Area Coordinator.

VI. CLOSING AGREEMENTS OUTSIDE THE SCOPE OF AUDIT CAP

Under certain circumstances, EP will consider entering into a closing agreement with respect to failures that fall outside the scope of Audit CAP. In these instances, the closing agreement must be submitted to Manager, Voluntary Compliance (in Washington D.C.) for final review and signature. (Note that excise taxes should be resolved by securing the required Form(s) 5330 and should not be resolved as a part of a closing agreement.)

VII. CLOSING AGREEMENT FORMAT

The following elements are required to be included in the closing agreement (Exhibit 4):

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- 1) Identification of all persons/entities who will be parties to the closing agreement by name, address, and EIN, listing the plan sponsor first. (Note: The plan sponsor must be so listed for purposes of records control, whether or not the sponsor is required to pay the monetary sanction under the agreement).
- 2) Complete (but brief) recitation of the facts and any corrective action, including corrective contributions and/or distributions, taken with respect to the failures.
- 3) Statement as to the amount of the monetary sanction being paid to the U.S. Treasury.
- 4) Statement that the payment made to the government is not deductible, etc., for Federal tax purposes.
- 5) Statement of the tax treatment that the Service will accord the plan involved (i.e., if the plan is qualified, trust is exempt, etc.).
- 6) Statement that the agreement is limited to Internal Revenue Code matters and does not extend to other Federal law, including Title I of ERISA.
- 7) Statement at the end of the closing agreement as to its finality.
- 8) Finally, as a result of the IRS Restructuring and Reform Act of 1998, section 3468, the closing agreement should not contain any release by the taxpayer of any right of action against the Service or its employees for civil violations or any other action taken in connection with the federal internal revenue laws that may be available to the taxpayer.

VIII. EXHIBITS

EXHIBIT 1

SELF-CORRECTION PROCEDURE (SCP) CHECK SHEET

Name of Employer:

Name of Plan:

PLAN #:

EIN: -

TYPE OF FORM 5500: 5500EZ ____ 5500-C/R ____ 5500 ____

Agent's Name:

Agent's Telephone Number:

Fax Number:

Agent's Group Number: EP

Type of Plan:

(A) Defined Contribution Plan

PROFIT SHARING ____ STOCK BONUS ____ TARGET BENEFIT ____

Money Purchase ____ ESOP ____ Other ____

(B) Defined Benefit Plan:

Unit Benefit ____ Fixed Benefit ____ Cash Balance ____

(C) 403(b) Plan: Annuity ____ Custodial Account ____

(D) Church Plan ____

(E) Governmental Plan ____ (F) Multiple Employer Plan ____ (G)

Collective Bargained Plan:

Single Employer ____ Multiemployer Plan ____

PART I

1. Are the failures that occurred operational failures? Yes ____ No ____
If yes, please list the failures and the years they occurred.

If no, the case is not eligible for SCP. Please skip to Part III.

2. Are the failures egregious or do they relate to the diversion or misuse of assets?
Yes _____ No _____ If yes, the case is not eligible for SCP. Please skip to Part III.

3. Did the plan have administrative procedures (formal or informal) in place with respect to the operational failures? Yes _____ No _____
If no, the case is not eligible for SCP. Please skip to Part III.

4. Was the operational failure(s) due to:
(a) Oversight? Yes _____ No _____
(b) Mistake in applying procedures? Yes _____ No _____
(c) Inadequacy of procedures? Yes _____ No _____
(d) Other? Yes _____ No _____

If yes to any of the above, please provide a detailed explanation:

5. Was the correction completed or substantially completed by the last day of the correction period? (The correction period generally ends on the last day of the second plan year following the plan year for which the failure occurred, or the date the plan or plan sponsor is notified of a pending examination, if earlier.)
Yes _____ No _____ If no, please skip to Part II.

6. Has a favorable letter been issued to the plan? Yes ____ No ____
If no, please skip to Part II.

7. Was the failure corrected by a retroactive amendment?
Yes _____ No _____
If yes, was the retroactive amendment permissible under SCP? (see Appendix B of Rev. Proc. 2001-17) Yes _____ No _____. If no, the case is not eligible for SCP. Please skip to Part III.

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PART II

1. Please complete the following for each year in which a failure occurred. List each year separately.
 - (a) Total Assets _____
 - (b) Contributions made to the plan _____

2. Please complete the following for each failure:

	Failure 1	Failure 2	Failure 3	Failure 4
Percentage of plan assets and contributions involved in the failure				
Number of years the failure occurred				
Number of participants affected relative to the total number of participants in the plan				
Number of participants affected as a result of the failure relative to the number of participants who could have been affected by the failure				
Correction, if made, made within a reasonable time after discovery of the failure?				
Reason for the failure (e.g., data errors such as errors in the transcription of data, the transposition of numbers, or				

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minor arithmetic errors)				
Other				

PART III

Name of Employer: _____

Name of Plan: _____

Agent's Name and ID#: _____

Agent's Telephone #: _____

Agent's Fax Number: _____

Group Number: EP _____

Agent's Recommendation:

Eligible for SCP _____

Ineligible for SCP _____

Agent's Signature _____ Date: _____

Manager's Signature _____ Date: _____

Part IV To be completed by Area Coordinator

Eligible for SCP _____

Ineligible for SCP _____

Area Coordinator Signature _____ Date: _____

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EXHIBIT 2

**MAXIMUM PAYMENT AMOUNT UNDER CLOSING AGREEMENT
SUMMARY SHEET
(For all open years)**

Plan Sponsor _____

Form 1040 - Participant's Income Tax		
19	\$	_____
19	\$	_____
19	\$	_____
20	\$	_____
20	\$	_____
Totals		_____ = \$ _____

Form 1041 - Trust Income Tax		
19	\$	_____
19	\$	_____
19	\$	_____
20	\$	_____
20	\$	_____
Totals		_____ = \$ _____

Plan Sponsor's Income Tax Return Deductions for Employer Contributions Tax		
19	\$	_____
19	\$	_____
19	\$	_____
20	\$	_____
20	\$	_____
Totals		_____ = \$ _____

Maximum Payment Amount = \$ _____

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EXHIBIT 2 (cont.)

ESTIMATION OF MAXIMUM PAYMENT AMOUNT UNDER CLOSING AGREEMENT

Form 1040 – Participant's Income

Plan Sponsor _____ Plan Year Ended _____

(A) Total of all PPTs' vested amounts for Plan Year	= \$	_____
(B) Estimated 1040 tax rate	=	_____
(C) Form 1040 Tax Liability for Plan Year {(A) x (B)}	= \$	_____

Note: This form is intended to be used for smaller plans, for a defined contribution plan with many participants, insert the total employer contribution on line (A). For a defined benefit plan, the tax is computed based upon the participants additional benefit accrued for the year. If this is a defined benefit plan, contact the Area Coordinator for assistance.

EXHIBIT 2 (cont.)

MAXIMUM PAYMENT AMOUNT UNDER CLOSING AGREEMENT

Form 1041 – Trust Income

Plan Sponsor _____ Plan Year
Ended _____

Form 5500-series return filed by plan sponsor: 5500 5500-C
5500-R 5500-EZ

(A) Realized earnings on trust assets (data obtained from
5500-series return, line item _____) = \$

(B) Realized gains on sale of trust assets (data obtained
from 5500-series return, line item _____) = \$

(C) Other (realized) income on trust assets (data obtained
from 5500-series return, line item _____) = \$

(D) Total realized trust income {(A) + (B) + (C)} = \$

(E) Realized losses on sale of trust assets (data obtained
from 5500-series return, line item _____) = \$

(F) Total of realized trust expenses (data obtained from
5500-series return, line item _____) = \$

(G) Distributable net income for plan year* (data obtained
from _____) = \$

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(H) Total deductions from realized income $\{(E) + (F) + (G)\} = \$$

(I) Amount of taxable trust income $\{(D) - (H)\} = \$$

(J) Estimated tax rate = %

(K) Form 1041 Tax Liability for Plan Year $\{(I) \times (J)\} = \$$

*The term "distributable net income" means that portion of the annual trust income which is attributable to assets distributed from the trust during the plan year. In defined contribution plans, this Form 1041 deduction is limited to income which is both allocated and distributed within the same year. For a defined benefit plan, the entire amount distributed is allowed as a deduction against trust income.

EXHIBIT 2 (cont.)

ESTIMATION OF MAXIMUM PAYMENT AMOUNT UNDER CLOSING AGREEMENT

Form 1120 – Tax Liability

Plan Sponsor _____ Plan Year
Ended _____

(A) Employer contribution for Plan Year (data obtained from
5500-series return, line item _____) = \$

(B) Total of vested amounts for all participants = \$
(See Form 1040 Worksheet)

(C) Amount of disallowed deduction {(A) - (B)} = \$
(non-vested portion)

(D) Estimated tax rate = %

(E) Form 1120 Tax Liability for Plan Year {(C) x (D)} = \$

Note: If this is a defined contribution plan, and the entire employer contribution was entered on line (A) of the Form 1040 worksheet, or all of the participants are fully vested, do not complete this form. If this is a defined benefit plan, enter the entire employer contribution on lines (A) and (C), with a zero on line (B).

EXHIBIT 3

AUDIT CLOSING AGREEMENT PROGRAM (AUDIT CAP) CHECK SHEET

Name of Employer:

Name of Plan:

PLAN #: _____ EIN: _____

TYPE OF FORM 5500: 5500EZ _____ 5500-C/R _____ 5500 _____

Agent's Name: _____ Agent's Telephone Number: _____

Fax Number: _____ Agent's Group Number: EP _____

Type of Plan:

(A) Defined Contribution Plan

PROFIT SHARING _____ STOCK BONUS _____ TARGET BENEFIT _____

Money Purchase _____ ESOP _____ Other _____

(D) Defined Benefit Plan:

Unit Benefit _____ Fixed Benefit _____ Cash Balance _____

(E) 403(b) Plan: Annuity _____ Custodial Account _____

(D) Church Plan _____

(E) Governmental Plan _____ (F) Multiple Employer Plan _____ (G)

Collective Bargained Plan:

Single Employer _____ Multiemployer Plan _____

Agent's sanction recommendation: _____

Area Coordinator recommendation: _____

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Please list the failure(s) discovered and the years to which failure(s) relate:

Failure 1: _____
 Failure 2: _____
 Failure 3: _____
 Failure 4: _____

1) Please complete the following for each failure. If a factor is not applicable, enter "N/A":

Factors taken into account in determining sanction amount	Failure 1	Failure 2	Failure 3	Failure 4
Steps taken by plan sponsor to either ensure plan had no errors or to correct failure(s)				
Fee that would have been paid under VCP (approximately)				
Number and type of employees affected by the failure				
Number of NHCEs that would be affected if plan were treated as not satisfying Code				
Is failure a nondiscrimination failure?				
Period of failure				
Reason for failure				
Other factors				
For Qualified Plans only:				
Plan subject to Favorable Ltr.?				
Extent to which plan has accepted or failure relates to transferred assets				
For 403(b) Plans only:				
Extent to which failure relates to excess amounts				

EXHIBIT 4
CLOSING AGREEMENT ON FINAL DETERMINATION COVERING SPECIFIC MATTERS

Under section 7121 of the Internal Revenue Code (Code), the XYZ Company (XYZ), 555 Maple Drive, West Chestnut, New Jersey 33333, EIN 33-3333333, and the Commissioner of Internal Revenue make the following closing agreement:

WHEREAS, XYZ maintains the XYZ Profit Sharing Plan (Plan), a profit sharing plan intended to be a qualified plan under section 401(a) of the Code that provides for elective deferrals under section 401(k) of the Code and employer discretionary nonelective contributions; and

WHEREAS the Plan was effective and operates on a calendar year basis; and

WHEREAS, the; Plan received a favorable determination letter in 1993 from the Internal Revenue Service as to its qualified status; and

WHEREAS, the Plan is subject to the annual addition limitation for defined contribution plans under section 415(c) of the Code; and

WHEREAS, for the 1997 limitation year, one Plan participant had annual additions allocated to his account in excess of the dollar limitation of section 415(c)(1)(A) of the Code in the amount of \$1,531.43; and

WHEREAS, when the participant retired, as of January 1, 1999, he received a distribution of his account balance which did not include the excess annual addition amount; such excess amount is held under the Plan in an unallocated account; and

WHEREAS, the total amount held under the Plan in an unallocated account is \$1,750.60, comprising principal and earnings removed from the participant's nonelective contribution account and elective deferral account in the same proportion that these accounts received allocations for 1997; and

WHEREAS, earnings were calculated, using the participant's actual rates of return on his investments, for the period from December 31, 1997, to December 31, 1998; and

WHEREAS, since January 1999, the date the participant received his account balance, as reduced, the suspense account has not shared in the Plan's investment gains or losses; and

WHEREAS, to prevent the operational failure from recurring, XYZ has implemented administrative procedures to enable the Plan to comply with the section 415 limits; and

WHEREAS, upon receipt of this closing agreement, the Plan will distribute to the participant \$297.69, representing the excess annual additions attributable to the participant's elective deferral; and

WHEREAS, the participant will be notified that this amount is not eligible for rollover or other favorable tax treatment; and

WHEREAS, the remainder of the suspense account will be used to reduce employer contributions to the Plan.

NOW IT IS HEREBY DETERMINED AND AGREED as follows:

1. Contemporaneously with the execution of this closing agreement, XYZ will pay \$1,250 to the United States Treasury.
2. The Internal Revenue Service will treat the Plan as not losing its qualified status under section 415 of the Code on account of said section 415 failure.
3. XYZ will neither attempt to nor otherwise amortize, deduct, or recover any portion of the payment described in paragraph 1 from the Service or to receive any Federal tax benefit on account of such payment.
4. No portion of the payment described in paragraph 1 shall be considered as: (a) compensation to the said participant. Furthermore, said payment does not relieve said participant of the income tax liability resulting from a distribution actually received from the aforesaid .
5. This agreement constitutes a resolution under the Code of specific matters discussed herein. No inference shall be made with respect to whether this resolution satisfies other Federal law including Title I of the Employee Retirement Income Security Act of 1974.
6. This agreement is final and conclusive except:
 - (a) the matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of material fact;
 - (b) it is subject to the Code sections that expressly provide that effect be given to their provisions notwithstanding any other law or rule of law except Code section 7122; and
 - (c) if it relates to any taxable period ending after the date of this agreement, it is subject to any law enacted after the agreement date that applies to that taxable period.

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By signing, the above parties certify that they have read and agreed to the terms of this document.

XYZ

By: _____

Title: _____ Date Signed: _____

COMMISSIONER OF INTERNAL REVENUE

By: _____

Title: _____ Date Signed: _____

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EXHIBIT 5



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date:

Person to Contact:
Specialist's Name
Badge #
Telephone Number:

Plan Name:
Plan Number:

Employer Badge Number:

Year(s) Ending:

Refer Reply To:
Specialist's Address

Response Date:

Dear Sir or Madam:

We have enclosed a draft of the closing agreements for the plan identified above. If you have any comments or proposed changes, please submit them (in writing) to the person whose name and address are shown above by the above response date. If you do not have any comments or proposed changes to the closing agreements, please refer to the following paragraphs.

Three copies of each closing agreement are enclosed. Each party to the agreement must sign and date each copy of the closing agreements in accordance with the attached instructions.

The payment of the monetary sanction under this closing agreement must be in the form of a certified or cashier's check and must be made payable to the United States Treasury. In addition, the payment must be made contemporaneously with the execution of the closing agreement by the authorized representative of the Internal Revenue Service; therefore, the payment must be forwarded along with the three signed copies of the closing agreement.

Please submit the closing agreements and the cashier's check to the person whose name and address are shown above. If you have any questions, please contact the person whose name and telephone number are shown above.

Thank you for your cooperation.

Sincerely yours,

Employee Plans Specialist

Enclosures

Draft of closing agreements
Instructions for execution of closing agreement

EXHIBIT 6

INSTRUCTIONS FOR EXECUTION OF CLOSING AGREEMENT

Each closing agreement must be signed in triplicate. (All three copies must have original signatures.)

The original and the two copies of each closing agreement must be identical.

The name of the taxpayer must be stated accurately.

Each closing agreement may relate to one or more years, but it may only pertain to one plan. Therefore, if the Employer desires a closing agreement for more than one plan, separate closing agreements will be required/prepared.

If an attorney or agent signs a closing agreement for the taxpayer, the power of attorney (or a copy) authorizing that person to sign must be attached to the closing agreement. If a closing agreement is made for a year when a joint income tax return was filed by a husband and wife, it should be signed by or for both spouses. One spouse may sign as an agent for the other if the document (or a copy) specifically authorizing that spouse to sign is attached to the closing agreement.

If a fiduciary signs a closing agreement for a decedent or an estate, an attested copy of the letters testamentary or the court order authorizing the fiduciary to sign as well as a certificate of recent date that the authority remains in full force and effect must be attached to the closing agreement. If a trustee signs, a certified copy of the trust instrument or a certified copy of extracts from that instrument must be attached showing:

- 1.) the date of the instrument;
- 2.) that it is or is not of record in any court;
- 3.) the names of the beneficiaries;
- 4.) the appointment of the trustee, the authority granted, and any other information necessary to show that the authority extends to federal matters; and
- 5.) that the trust has not been terminated and that the trustee appointed is still acting. If a fiduciary is a party, Form 56, Notice Concerning Fiduciary Relationship, is required.

If the taxpayer is a corporation, the closing agreement must be dated and signed with the name of the corporation, the signature and title of an authorized officer or officers, or the signature of an authorized attorney or agent. It is not necessary that a copy of an enabling corporate resolution be attached. (Refer to 26 C.F.R. 601.504(b)(2)(ii) for information relating to dissolved corporations.)

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EXHIBIT 7



**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224**

Date:

Person to Contact:
Specialist's Name
Badge #
Telephone Number:

Plan Name:
Plan Number:

Employer Badge Number:

Year(s) Ending:

Refer Reply To:
Specialist's Address

Response Date:

Dear Sir or Madam:

We have prepared the final closing agreement for the plan identified above. Three copies of each closing agreement are enclosed. Each party to the agreement must sign and date each copy of the closing agreements in accordance with the attached instructions.

The payment of the monetary sanction under this closing agreement must be in the form of a certified or cashier's check and must be made payable to the United States Treasury. In addition, the payment must be made contemporaneously with the execution of the closing agreement by the authorized representative of the Internal Revenue Service; therefore, the payment must be forwarded along with the three signed copies of the closing agreement.

Please submit the closing agreements and the cashier's check to the person whose name and address are shown above. If you have any questions, please contact the person whose name and telephone number are shown above.

Thank you for your cooperation.

Sincerely yours,

Employee Plans Specialist

Enclosures

Draft of closing agreements
Instructions for execution of closing agreement

Employee Plans CPE Topics For 2002

EXHIBIT 8



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date:

Person to Contact:
Specialist's Name
Badge #
Telephone Number:

Plan Name:
Plan Number:

Employer Badge Number:

Year(s) Ending:

Refer Reply To:
Specialist's Address

Response Date:

Dear Sir or Madam:

We reviewed the corrective action, payment and closing agreement received. We noted and discussed error(s) which you have agreed to remedy.

We are returning the items for correction. We have included the payment and copies of the closing agreement.

Enclosed, are three copies of the closing agreement to be executed. All executed documents along with payment and remedy discussed should be sent to the Internal Revenue Service at the above address.

If you have any questions, please contact the person whose name and telephone number are shown above.

Thank you for your cooperation.

Sincerely yours,

Employee Plans Specialist

Enclosures:

Employee Plans CPE Topics For 2002

EXHIBIT 9

Document Transmittal	To (Show complete and correct address) INTERNAL REVENUE SERVICE Attn: Kyle Boster, MS 6059 SP:P:RC:P:D30 1160 W. 1200 S. Ogden, Utah 84201	Release date	Page _____ of _____
		Transmittal code (from Serial no. - to)	
		Numbered	Unnumbered

DOCUMENT IDENTIFICATION			Remarks				Shipment Information	
Quantity	Code or Type	Instructions: When transmitting reports please show the type of report and the period covered. For other items, show identifying information such as blocks, DLN, EIN, SSN, etc.	Ogden Submission Processing Center ALC Number 20-09-2900				Container No.	Rec'd √
		Cover Memorandum – Director Ogden Submission Processing Center						
		Closing Agreement for: ABC Company						
		Remittance						
		Name EIN Check# Amount Plan#						
1		ABC Company 12-1234567 1111 \$X,XX.XX 001						

From (Originator must supply complete address below) INTERNAL REVENUE SERVICE TE/GE:EP:AREA COORDINATOR	Releasing official (signature and title)
	Received and Verified (signature and title)
	Originator telephone number
	Date Acknowledged

Form 3210 (Rev. 7-90) Department of the Treasury
Internal Revenue Service

RECIPIENT'S COPY/ACKNOWLEDGMENT COPY/CASE FILE COPY/FORM 3210 BINDER COPY

Employee Plans CPE Topics For 2002

EXHIBIT 10

PAYMENT Posting Voucher - Examination (Not a taxpayer receipt)			D L N					
N U F	U L C	DLN	SSN/EIN:	Form number/ MFT:	Tax period:	Transaction/ Received date:		
		STATUS						
Taxpayer name, address, and ZIP CODE (Please print legibly or use typewriter)					List, in the column below, payments to be posted to the taxpayer's account. A maximum of two Credit transactions may be shown.			
REMARKS: CHECK ONE: <input type="checkbox"/> COMPLIANCE STATEMENT (SEE ATTACHED) <input type="checkbox"/> Form 906 CLOSING AGREEMENT (SEE ATTACHED) <input type="checkbox"/> Cash bond <input type="checkbox"/> Send 316(C)		List, in the column below, any debit amount to be assessed. A maximum of one Debit transaction may be shown.			Transaction Date			
					Amount	Code	Description	
		Transaction Date			\$	670	Ind.	Subsequent payment
		Amount	Code	Description		610	Remittance with return	
			170	ES penalty		620	Payment for Form 7004	
			180	FTD penalty		640	Advance payment On deficiency	
			360	Fee and collection cost		430	All other est. tax payments	
		Blank	570	Additional liability pending		660	Est. tax payments Form 706/1041-Es	
		\$	240	Other debit		680	Designated interest	
				Other debit			Other credit	
Prepared by (Name, unit symbol, and telephone number)				\$	Total payment			

Form 3244-A (Rev. 1-91)

Cat. No. 22220G

Part 1

Department of the Treasury

*U.S. GPO: 1998 - 441-182/80116 Internal Revenue Service

- 1) The EIN is self explanatory
- 2) The MFT is 28
- 3) The Tax period is the year and month for which the closing agreement is signed, in the format yyyymm
- 4) The Transaction Date is self explanatory
- 5) The Taxpayer's name and address is self explanatory
- 6) In the Remarks section, check the box for "Closing Agreement – See Attached"
- 7) In the left column of the Transaction Data, in the Amount box for the 240 Transaction Code, enter the amount of the sanction.
- 8) In the right column of the Transaction Data, in the Amount box for the 670 Transaction Code, enter the amount of the sanction.
- 9) Prepared by is self explanatory
- 10) In the Total Payment box, enter the amount of the sanction.

Employee Plans CPE Topics For 2002

EXHIBIT 11

Non-Master File Assessment Voucher				
1. Name and address			2. Document locator number (DLN)	
			3. Taxpayer identification number	
4. Type of tax	5. Form number	6. Period	7. MFT code	8. Abstract number
9. Tax		\$		
10. Penalty	I. R. Code Section or type of Penalty		Trans. code	Amount
11. Interest				
12. Total (Sum of Lines 9, 10 and 11)		\$		
13. Reason for assessment				
14. Signature of preparer			15. Date	

Form 5734 (Rev. 1-91)

Cat. No. 27725M

Department of the Treasury – Internal Revenue Service

016/49029 *U.S. Government Printing Office: 1991 – 517-

016/49029

Instructions for completing the Form 5734

- 1) Item 1 – Self Explanatory
- 2) Item 3 – Self Explanatory
- 3) Item 4 – Insert “Closing Agreement”
- 4) Item 5 – Insert “N/A”
- 5) Item 6 – Insert the period for which the closing agreement is signed, in the format yyyyymm
- 6) Item 7 – Insert “28”
- 7) Item 8 – Insert “139”
- 8) Item 10, Under the IRC Code section or type of Penalty – Insert “IRC 7121”
- 9) Item 10, Under Trans. Code – Insert “240”
- 10) Item 10, The Amount is self explanatory
- 11) Item 12, Self Explanatory, there is no interest associated with the sanction
- 12) Item 13, Insert “Closing Agreement – See Attached”
- 13) Item 14, Self Explanatory
- 14) Item 15, Self Explanatory

Employee Plans CPE Topics For 2002

EXHIBIT 12

INTERNAL REVENUE SERVICE

memorandum

date:

to: Director, Ogden Submission Processing Center
Attn: Chief, Receipt and Control Branch
Chief, Accounting Branch

from: Area Coordinator EP Closing Agreement Program
TE/GE Division, _____ Area

subject: Closing Agreement- ABC Company

Attached is a closing agreement executed in the _____ Area
on _____.

Name: ABC Company
Plan: Profit Sharing Plan #001
EIN: 12-3456789
Address: 123 A Street
Anywhere, CA 11111

The closing agreement should be routed to the Accounting Branch for assessment and credit. The assessment should be made as a Non-Master File assessment of excise tax, true tax class 4, abstract number 139. (Please refer to IRM 3(17)(243)5.2 for processing instructions.) There are to be no refunds of moneys under this closing agreement.

If you have any questions, please contact me at (123) 123-4567.

Employee Plans CPE Topics For 2002

EXHIBIT 13



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Person to Contact:
Telephone Number:

Year(s) :

Plan Number:

Plan Name:

Employee Badge Number(s) :

File Folder Number(s) :

Date:

Dear Sir or Madam:

We have approved and signed the closing agreement you submitted pertaining to the qualification of the plan identified above for the period(s) shown above. The enclosed copy of the agreement is for your records.

Thank you for your cooperation.

Sincerely yours,

Employee Plans Area Manager
TE/GE Division

Enclosure:
Copy of the closing agreement

Employee Plans CPE Topics For 2002

EXHIBIT 14



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Person to Contact:

Telephone Number:

()

Plan Year(s):

Plan Name:

Plan Number:

Form Number(s):

Employer Badge Number:

File Folder Number:

Date:

Dear Sir or Madam:

We are pleased to tell you that we have accepted as filed the return identified above. In conjunction with the examination, certain plan deficiencies were noted and corrected by entering into a closing agreement.

If you have any questions, please contact the person whose name and telephone number are shown above.

Thank you for your cooperation.

Sincerely yours,

Preston R. Butcher
Director Employee Plans Examination

CC:

TE/GE

Frequently Asked Questions
EP Voluntary Compliance Group
Stand-Up

EP VOLUNTARY COMPLIANCE PROGRAM TRANSITION KIT

- **THIS DOCUMENT IS INTENDED TO BE A QUICK REFERENCE GUIDE ON SOME OF THE MOST COMMON QUESTIONS RELATING TO THE EP EXAMINATION FUNCTIONS REGARDING THE STAND-UP OF THE VOLUNTARY COMPLIANCE GROUPS WITHIN EP RULINGS AND AGREEMENTS.**
- **AS VC TRANSITIONS TO ITS MODERNIZED VISION, NEW PROCESSES AND PROCEDURES WILL CONTINUE TO BE DEVELOPED.**
- **IF THIS GUIDE DOES NOT ANSWER YOUR QUESTION, PLEASE CONTACT YOUR EXAMINATION GROUP MANAGER OR ONE OF THE VOLUNTARY COMPLIANCE GROUP MANAGERS WHOSE NAMES AND PHONE NUMBERS ARE LISTED AT THE END OF THIS DOCUMENT.**

1-1
Overview

- Q.** How will the Voluntary Compliance function be organized?
- A.** There is a national EP Voluntary Compliance Manager located in the Washington POD. This position reports directly to the Director, EP Rulings and Agreements. The Voluntary Compliance Manager’s staff consists of three national program coordinators. In addition, there are four Voluntary Compliance groups:

Group	Areas Covered
7551	Northeast and Mid-Atlantic
7552	Great Lakes
7553	Gulf Coast
7554	Central Mountain and Pacific Coast

1-2
Voluntary Compliance Groups

- Q. *Who will be in the Voluntary Compliance groups?***
- A.** Each Voluntary Compliance group will consist of
- a group manager
 - a group secretary
 - one or more grade 13 Voluntary Compliance Coordinators
 - several grade 12 and 13 Voluntary Compliance Specialists

1-3
Staffing the Organization

- Q. *How will the Voluntary Compliance groups be staffed?***
- A.** All vacancies will be filled by competitive vacancy announcements. Initially, the grade 12 and 13 specialist positions will be open for lateral reassignment only.

1-4
Length of Assignment

- Q. *Will the positions in the Voluntary Compliance groups be rotational or permanent?***
- A.** The Voluntary Compliance Coordinator positions are permanent. The specialist positions are designated as 3-year rotational assignments, pursuant to the terms of the TE/GE Implementation Agreement.

2-1
Overview

Q. What type(s) of work will be managed under Voluntary Compliance?

- A. Generally, the various programs that comprise the Voluntary Correction Program (VCP), as described in Revenue Procedure 2001-17 (and its successors), will be handled by the Voluntary Compliance Manager and staff (including the Voluntary Compliance Groups). These programs include:
- VCP General Procedures
 - Voluntary Correction of Operational Failures (VCO)
 - Voluntary Correction of Tax-Sheltered Annuity Failures (VCT)
 - Voluntary Correction of Group Failures (VC Group)
 - Voluntary Correction of SEP Failures (VC SEP)
 - Voluntary Correction – Anonymous Submissions

2-2
Audit CAP

Q. What about the Audit Closing Agreement Program (Audit CAP)?

- A. While there will be coordination between the Audit CAP program and the Voluntary Correction Program, Audit CAP cases will be handled exclusively by EP Examination employees. There will be an Area Coordinator (grade 13) under each Area Manager; he or she will be responsible for coordinating the Audit CAP program within his or her Area.

2-3
Self-Correction Program (SCP)

Q. Where does the Self-Correction Program (SCP, formerly known as APRSC) fit in?

- A. The SCP applies to cases closed through EP Examination. The Area Coordinators (see Q&As 2-2 and 2-6) will be responsible for coordinating the SCP.

2-4
VC Program Coordinators

Q. What are the duties of the VC Program Coordinators?

- A. The Program Coordinators, who report directly to the Manager of Voluntary Compliance, are responsible for facilitating cross-program consistency in the application of the programs comprising the Employee Plans Compliance Resolution System. They will issue written guidelines and procedures on a national basis with respect to each program and will act as resources for the VC and Area Coordinators for purposes of determining appropriate correction methods and sanction amounts.

2-5

VC
Coordinators

Q. What are the duties of the VC Coordinators?

A. The VC Coordinators report directly to the VC Group Managers. They are responsible for facilitating case-level consistency in the application of the VC program, including the determination of appropriate correction methods, at the group level.

2-6

Area
Coordinators

Q. What are the duties of the Area Coordinators?

A. The Area Coordinators report directly to the Area Managers. They are responsible for facilitating case-level consistency in the application of the SCP and Audit CAP, including the determination of appropriate correction methods and sanction amounts, at the Area level.

2-7

Central
Coordination
Committee

Q. What is the Central Coordination Committee, and what is its purpose?

A. The Central Coordination Committee is composed of the Program, VC, and Area Coordinators, and representatives from EP Special and/or Mandatory Review. It reports to the Manager of Voluntary Compliance. Its purpose is to facilitate communication and consistency from program to program. The Committee will focus on the enhancement of the correction programs and improvements in their application. The Committee provides a forum in which issues from each group or Area are shared.

3-1

Timing

Q. When will the Voluntary Compliance groups stand up?

A. Staffing is expected to be finalized no later than February 28, 2002.

3-2

Existing Inventory

Q. If I am selected to be in one of the Voluntary Compliance groups, what happens to my current inventory?

A. The answer to this question depends on the type of cases comprising your current inventory:

Voluntary Compliance cases will remain in your inventory and be transferred to the Voluntary Compliance group.

Determination cases, including volume submitter lead documents, will remain in your inventory and be transferred to the Voluntary Compliance group.

Examination cases, other than CEP or EPTA cases, should also remain in your inventory if significant activity has occurred and the cases can be closed within thirty (30) days. Time applied to an examination case may be charged on your timesheet in the Voluntary Compliance group; however, the AIMS control and statute control should remain with your Examination manager and the cases should be closed through that group. For example, the Form 5650 (EP Examined Closing Record) should reflect the EP Examination group number. If you have a question as to whether a case should be transferred, consult your Examination Group Manager, who will coordinate with the Voluntary Compliance Group Manager.

Mandatory and Special Review cases will not be transferred to Voluntary Compliance and will remain in Review.

3-3

Existing Inventory

Q. If I am selected to be a Voluntary Compliance Coordinator, what happens to my current inventory?

A. The guidelines listed in Q&As 3-1 and 3-2 will also apply to you; however, given the special nature of your duties under Voluntary Compliance, they may be subject to negotiation on a case-by-case basis.

3-4
Existing
Inventory

Q. If I am currently working cases that will be under the jurisdiction of Voluntary Compliance, but I am not transferring to one of the Voluntary Compliance groups, can I continue to work on these cases?

A. This determination will be made on a case-by-case basis, and will depend on how close you are to completing the case. Generally, if you have completed all of the information gathering and have come to a preliminary agreement with the sponsor/representative regarding methods of correction and sanction/fee amount (i.e., if you have enough information to prepare a draft closing agreement or compliance statement), you should continue to work on the case until it is closed. Cases that do not meet these criteria should be discussed with your manager and should be considered for transfer to the Voluntary Compliance Group Manager for your Area for reassignment.

3-5
Existing
Inventory

Q. If I am not transferring to a Voluntary Compliance group, what procedures do I follow to process my remaining Voluntary Compliance cases?

A. You should contact the Voluntary Compliance Coordinator for the Area where you are located. For example, if your POD is in Ohio or Michigan, you would consult the Voluntary Compliance Coordinator in Group 7552, which covers the Great Lakes Area.

3-6
Other
Assignments

Q. If I am selected to be in one of the Voluntary Compliance groups and I have customer education, outreach, or other commitments (e.g., task forces, teaching assignments, etc.) scheduled in the future, will I be able to complete these assignments?

A. Generally, yes; however, if these assignments would require a substantial commitment of time, you should discuss them with your Voluntary Compliance group manager.

3-7
Equipment

Q. If I'm transferring to a Voluntary Compliance group, can I bring my notebook computer with me?

A. Generally, yes; but the final decision will be made by the Information Technology Services (ITS) staff where you are currently located.

3-8
Flexiplace

Q. Will employees in the Voluntary Compliance groups be allowed to work Flexiplace?

A. Generally, yes, as per the Flexiplace provisions in the current NORD agreement.

3-9
Workspace **Q. If I transfer to a Voluntary Compliance group, will I have to change desks?**

A. This will be determined on a case-by-case basis through local discussions among all affected parties.

3-10
Critical Job Elements **Q. Will my critical job elements (CJEs) change if I am selected for a Voluntary Compliance group position?**

A. Everyone assigned to the new groups will be evaluated under the new CJEs that were issued in the summer of 2001.

3-11
Departure Ratings **Q If I transfer to a Voluntary Compliance group, am I entitled to a departure rating?**

A. Yes.

3-12
Departure Ratings **Q If I receive a departure rating, which Critical Job Elements (CJEs) will I be rated under?**

A. In accordance with guidance issued by TE/GE Human Resources staff, if an employee is transferred to a VC group at a time when he or she has not been on the new critical elements for at least 60 days, the Examination Group Manager should prepare a departure rating using the employee's old critical elements. If this departure rating is prepared within 60 days of the end of the employee's performance period, it will become the employee's annual Summary Rating.

Voluntary Compliance Staff

Name	Title	POD	Phone No.	Fax No.
Joyce Kahn	Manager, Voluntary Compliance	Washington, DC	(202)283-9586	(202)283-9598
Marianne Davis	VC Program Coordinator	Laguna Niguel, CA	(949)389-4304	(949)389-5017
Maxine Terry	VC Program Coordinator	Washington, DC	(202)283-9644	(202)283-9598
Carlton Watkins	VC Program Coordinator	Washington, DC	(202)283-9612	(202)283-9598
Gwendolyn Prophet	Program Assistant	Washington, DC	(202)283-9587	(202)283-9598
Group Managers				
Janet Mak	Manager, Group 7551 (Northeast and Mid-Atlantic Areas)	Brooklyn, NY	(718)488-2383	(718)488-2405
Gary Mitchell	Manager, Group 7552 (Great Lakes Area)	Chicago, IL	(312)566-3839	(312)566-3941
Bill Bond	Manager, Group 7553 (Gulf Coast Area)	Dallas, TX	(214)767-3759	(214)767-6099
John Sechini	Manager, Group 7554 (Pacific Coast and Central Mountain Areas)	Monterey Park, CA	(323)869-3912	(323)869-3950

Mailing Addresses	
<p><i>Brooklyn POD:</i> Internal Revenue Service Room 503 625 Fulton St. 10 Metrotech Center Brooklyn, NY 11201</p>	<p><i>Laguna Niguel POD:</i> Internal Revenue Service Room 4308 24000 Avila Rd. Laguna Niguel, CA 92677</p>
<p><i>Chicago POD:</i> Internal Revenue Service MC 4916CHI 230 S. Dearborn Chicago, IL 60604</p>	<p><i>Monterey Park POD:</i> Internal Revenue Service T:EP:RA:VC:7554 2 Cupania Circle Monterey Park, CA 91755</p>
<p><i>Dallas POD:</i> Internal Revenue Service MC 4922DAL 1100 Commerce St. Dallas, TX 75242</p>	<p><i>Washington POD:</i> Internal Revenue Service T:EP:RA:VC:4J3 1111 Constitution Ave., NW Washington, DC 20224</p>