

## CHAPTER 5

# IRS AND DOL CORRECTION PROCEDURES

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### § 5.02 IRS CORRECTION PROGRAMS

#### [A] Background

*Page 5-7, replace the fourth sentence in the first full paragraph with the following:*

The IRS further consolidated the EPCRS programs in Revenue Procedure 2001-17,<sup>11</sup> Revenue Procedure 2006-27,<sup>12</sup> and, most recently, in Revenue Procedure 2008-50.<sup>12.1</sup>

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<sup>11</sup> 2001-7 I.R.B. 589 (Jan. 22, 2001).

<sup>12</sup> 2006-22 I.R.B. 945 (May 30, 2006).

<sup>12.1</sup> 2008-35 I.R.B. 464 (Sept. 2, 2008).

*Page 5-7, delete the second full paragraph and replace with the following:*

Revenue Procedure 2008-50 updates and expands the existing EPCRS by clarifying certain rules and providing additional examples and illustrations of certain correction methods.

#### [B] Current Programs

*Page 5-8, add at the end of subsection [B]:*

Revenue Procedure 2008-50 is effective January 1, 2009, but it may be used beginning September 1, 2008. Like the current EPCRS, the expanded program continues with the SCP for certain standard operational errors, which do not require submission to the IRS; the VCP, which does allow corrections of operational and document errors with submission to the IRS and a set fee; and the Audit CAP, which sets forth standards for correction and penalizing errors discovered at the IRS audit stage.

The significant changes made by the new revenue procedure include the following:

- The program’s ability to “self-correct” is expanded slightly. The SCP now can be used to correct certain plan errors even if the plan is under IRS examination. The period for correction has been expanded as well as the sample correction methods.
- The program’s correction methods now explain how to correct for failure to permit catch-up contributions (employer must contribute up to 50 percent of missed contribution opportunity for the year, plus 100 percent of any applicable match) and persons improperly excluded from making Roth contributions.
- Plan loan corrections are expanded. The compliance fee is reduced, and, if loan corrections are properly requested and documented, the plan sponsor may not have to report the failure on the Form 1099-R. Moreover, loan failures can be corrected even if the document does not explicitly provide for loan procedures.
- The IRS will waive the excise tax for excess contributions to an IRA if the IRA holder must withdraw a mistaken overpayment amount (plus earnings) from the IRA; the withdrawal must be reported as taxable income.
- The application procedures are streamlined, including enhanced use of standardized application forms and use of the DOL online calculator for certain calculations.
- The amount of a corrected distribution to a participant that need not be made is raised from \$50 to \$75 or less, assuming that the plan can show that the direct cost of processing and delivery is more than the amount of the distribution.