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Form **8951**

(Rev. August 2012)

Department of the Treasury
Internal Revenue Service**Compliance Fee for Application for Voluntary
Correction Program Submission Under the Employee
Plans Compliance Resolution System (EPCRS)**▶ For information about Form 8951 and its instructions, go to www.irs.gov/form8951.
▶ Attach to Form 8950.

OMB No. 1545-1673

For IRS Use Only

Amount paid
\$ _____

1 Name of plan sponsor (employer if single-employer plan)

2 Plan sponsor's employer identification number 3 Plan number 4 Plan name

5 Number of plan participants. See instructions to determine this number.

6 If you are submitting a check for an **additional** VCP compliance fee that has been requested by an IRS employee in Voluntary Compliance, check this box and provide the check amount \$ _____ and the VCP Case Number _____.**7 General Compliance Fee Schedule**

Number of Plan Participants	General Compliance Fee Amount
(a) 0-20	<input type="checkbox"/> \$750
(b) 21-50	<input type="checkbox"/> \$1,000
(c) 51-100	<input type="checkbox"/> \$2,500
(d) 101-500	<input type="checkbox"/> \$5,000
(e) 501-1,000	<input type="checkbox"/> \$8,000
(f) 1,001-5,000	<input type="checkbox"/> \$15,000
(g) 5,001-10,000	<input type="checkbox"/> \$20,000
(h) Over 10,000	<input type="checkbox"/> \$25,000

8 Exceptions to the General Compliance Fee Schedule. Check all boxes that apply:

If a VCP submission consists solely of one or more failures checked in 8(a) - (f) (and does not include any other failure), the compliance fee will be the lesser of: (1) the sum of the reduced fee amounts, or (2) the general compliance fee amount (see instructions). If any box in 8(g) - (j) is checked, pay only the corresponding reduced compliance fee amount.

Reduced Compliance Fee Eligibility	Reduced Compliance Fee Amount
(a) VCP submission relates to certain failures involving the late adoption of good faith amendments, interim amendments or amendments required to implement optional tax law changes, as described in Rev. Proc. 20XX-XX, section 6.05(3)(a). See Rev. Proc. 20XX-XX section 12.03(2) for additional details and limitations.	<input type="checkbox"/> \$375
(b) VCP submission relates to late non-amender failures described in Rev. Proc. 20XX-XX, section 6.05(2)(a)(ii), and the VCP submission is made within a 1-year period following the expiration of the plan's remedial amendment period for complying with such changes. See Rev. Proc. 20XX-XX, section 12.03(1).	<input type="checkbox"/> Applicable compliance fee amount from line 7 is reduced by 50%.
(c) VCP submission relates to a failure to comply with Internal Revenue Code (IRC) section 401(a)(9) minimum distribution rules affecting 50 or fewer plan participants. See Rev. Proc. 20XX-XX, section 12.02(2), for additional details and conditions.	<input type="checkbox"/> \$500
(d) VCP submission relates to a failure of participant loans to comply with IRC section 72(p)(2) rules, provided no more than 25% of plan participants are affected in any of the years in which the failure occurred. See Rev. Proc. 20XX-XX, section 12.03(3), for additional details and conditions.	<input type="checkbox"/> Applicable compliance fee amount from line 7 is reduced by 50%.

For Paperwork Reduction Act Notice, see instructions.

Cat. No. 37771W

Form **8951** (Rev. 8-2012)

Exceptions to the General Compliance Fee Schedule. Check all boxes that apply, continued

If a VCP submission consists solely of one or more failures checked in 8(a) - (f) (and does not include any other failure), the compliance fee will be the lesser of: (1) the sum of the reduced fee amounts, or (2) the general compliance fee amount (see instructions). If any box in 8(g) - (j) is checked, pay only the corresponding reduced compliance fee amount.

Reduced Compliance Fee Eligibility	Reduced Compliance Fee Amount
(e) VCP submission relates to a failure to timely adopt an amendment (upon which a favorable determination letter is conditioned) within the applicable remedial amendment period provided the required amendment adopted within three months of the expiration of the remedial amendment period for adopting the amendment. See Rev. Proc. 20XX-XX, sections 6.05(3)(d) and 12.03(3), for additional details and conditions.	<input type="checkbox"/> \$500
(f) VCP submission relates to a 403(b) plan, and the sole issue in the submission is the failure to timely adopt a written plan. The VCP submission must be mailed to the IRS by XXXXXXXX, 2013. See Rev. Proc. 20XX-XX, section 12.2(5).	<input type="checkbox"/> Applicable compliance fee amount from line 7 is reduced by 50%.
(g) VCP submission relates to a request for a minor modification of a previously issued compliance statement and the submission has been mailed within the correction period set forth in the compliance statement. See Rev. Proc. 20XX-XX, section 10.07(10).	<input type="checkbox"/> Applicable compliance fee amount is reduced to the lesser of: 50% of the original compliance fee or \$1,500.
(h) Plan is a SEP, SARSEP, or SIMPLE IRA. See Rev. Proc. 20XX-XX, section 12.06, for additional details and conditions.	<input type="checkbox"/> \$250
(i) Group submission from an eligible organization, as defined in Rev. Proc. 20XX-XX, section 10.11(2). See Rev. Proc. 20XX-XX, section 12.05, for additional details and conditions.	<input type="checkbox"/> Initial fee is \$10,000. There is an additional fee of \$250 times the number of plans in excess of 20 that will be part of the group submission. Total compliance fee is capped at \$50,000. The additional fee, if applicable, is not due at the present time and will be solicited by the IRS before a signed compliance statement is issued. <div style="border: 1px solid black; width: 100%; height: 20px;"></div>
(j) Terminating orphan plan, as defined in Rev. Proc. 20XX-XX, section 5.03, may be granted a waiver of the fee upon request. See instructions and Rev. Proc. 20XX-XX sections 11.03(13) and 12.02(4).	<input type="checkbox"/> No compliance fee is due at this time.

Caution. In some situations, the compliance fee owed on a VCP submission may be higher than the amounts reflected on pages 1 and 2 of this form. See *Determining the Proper Compliance Fee* on page 3 and section 12.

Section references are to Rev. Proc. 20XX-XX, 20XX-XX I.R.B. XXX, unless otherwise noted.

Instructions

Purpose of Form

Generally, a compliance fee is required with each application for an employee plan voluntary correction program (VCP) submission. Use Form 8951 to determine and submit the applicable compliance fee for the VCP submission. Compliance fees are shown on pages 1 and 2. For more information, see section 12.

Effective Date

The compliance fee schedule on Form 8951 is effective for VCP submissions postmarked on or after XXXX, XX, XXXX.

Where To File

Include Form 8951 and the compliance fee with your VCP submission.

Send the documents to:

Internal Revenue Service
P.O. Box 12192
Covington, KY 41012-0192

VCP submissions shipped by express mail or a delivery service should be sent to:

Internal Revenue Service
201 West Rivercenter Blvd
Attn: Extracting Stop 312
Covington, KY 41011

Payment of Compliance Fee

Generally, unless your submission is for a terminating orphan plan, as defined in section 5.03, a compliance fee is due.

Attach a check to Form 8951 payable to "United States Treasury" for the full amount of the compliance fee. If you do not include the full amount of the compliance fee, your application may be returned. In addition, please include a photocopy of the check with your application. See section 12.09.

If you have multiple plans (for example a profit-sharing and a money purchase plan), submit a separate VCP submission (including separate Form 8951) for each plan. Please submit separate checks, including a photocopy of the applicable checks, for each VCP submission.

Your check may be converted to an electronic fund transfer. An electronic fund transfer is the process by which the IRS electronically instructs your financial institution to transfer funds from your account to the Treasury's account, rather than processing your check. By sending your completed, signed check to the IRS, you authorize the IRS to copy your check and to use the account information from your check to make an electronic fund transfer from your account for the same amount as the check. If the electronic fund transfer cannot be processed for technical reasons, you authorize the IRS to process the copy of your check. The electronic fund transfer from your account will usually occur within 24 hours, which is faster than a check is normally processed, so it is important that you have sufficient funds available in your checking account when you send the IRS your check. Your financial institution will not return your cancelled check to you.

General Instructions

Lines 1 through 5 should correspond to the information you entered for line 1a, 1g, 4b, 4a, and 4e respectively on the related Form 8950, Application for Voluntary Correction Program (VCP) under the Employee Plans Compliance Resolution System (EPCRS).

Anonymous Submissions

If the VCP submission is an anonymous submission, the following special instructions are applicable:

- On line 1, enter "Anonymous" and include the name of the plan sponsor's representative, as well as the unique identifying label or number you have assigned to this specific anonymous submission, as required by section 10.10. Your entry should correspond to the information on Form 8950, line 1a.
- On line 2, enter the EIN of the authorized representative's employer (for example, law firm, accounting firm, actuarial firm, etc.). Your entry should correspond to the information on Form 8950, line 1(g).
- For line 3, enter "401" for the first anonymous submission made with Form 8951. For each subsequent anonymous submission made by the specific representative listed on line 1, the plan number to be entered on each compliance fee form will be the next number following 401 (for example, 402, 403, 404, etc.) resulting in successor plan numbers for each subsequent anonymous submission made to the IRS. This numbering will differentiate the anonymous submissions submitted by the specific representative. The number assigned to a specific anonymous submission must not be changed or used for any other anonymous submission made by the representative listed on line 1. Your entry should correspond to the information on Form 8950, line 4(b).
- Line 4 can be left blank.
- For line 5, follow the instructions in Step 1 on Form 8951 to determine the number of plan participants. Your entry should correspond to the information on Form 8950, line 4(e).
- Lines 7 and 8 should be completed.

Compliance Fee

The chart on line 7 is the general compliance fee schedule that applies to VCP submissions that involve qualified plans and 403(b) plans. See section 12.02. Special compliance fee amounts are listed on lines 8(g)-(j), for VCP submissions that involve: SEP, SIMPLE IRA or SARSEP retirement plans; group submissions; terminating orphan plans; and minor modifications of a previously issued compliance statement.

Lines 8(a)-(f) also include some reductions in the general compliance fee amounts if the submission for a qualified plan or 403(b) plan is limited to certain specified failures. In some cases, the compliance fee for qualified plans and 403(b) plans will be the lesser of: the general compliance fee specified on line 7 or the sum of the reduced fees specified on line 8. See "Determining the Proper Compliance Fee" and section 12.

Determining the Proper Compliance Fee

Step 1: On line 5, enter the total number of plan participants recorded on line 6(f) of the retirement plan's most recently filed Form 5500 return. Filers of Form 5500-SF or EZ will use the equivalent line item specified on their forms which is line 5b. For applicants that are exempt from filing a Form 5500 series return, enter the number of plan participants determined as of the last day of the most recently ended plan year. However, if this information is not available at the time the VCP submission is being mailed to the IRS, it is acceptable to use the most recently ended prior plan year for which information on the number of plan participants is available. See section 12.08. Your entry should correspond to the information on Form 8950, line 4e.

Step 2: For those VCP submissions that do not qualify for any of the reduced compliance fees on line 8, the amount of the general compliance fee is determined by checking one of the boxes on line 7 based on the number of participants reported on line 5. The general compliance fee is based on the number of plan participants. See section 12.02(1).

If a submission relates to a multiemployer or multiple employer plan the general compliance fee will normally be determined in accordance with the instructions in Step 1 and in the first paragraph of this Step 2. However, if all of the described failures in the submission apply to fewer than all of the employers under the plan, the plan administrator may choose to have the general compliance fee computed separately for each affected employer based on the participants attributable to that employer rather than the total participants of the entire plan. This would apply in situations where the plan administrator believes each failure is attributable in whole or in part to data, information, actions, or inactions that are within the control of the employers rather than the multiemployer or multiple employer plan (such as attribution in whole or in part to the failure of an employer to provide the plan administrator with full and complete information). See section 10.12 for additional details and conditions. If you are using this special methodology to determine the general compliance fee, do not complete Line 7 and attach a written explanation that details how the compliance fee was determined and how the submission satisfies the conditions mentioned in section 10.12. When completing Form 8951, the plan administrator would complete line 5 in the normal manner by using the total participant count reported on the most recently filed Form 5500 series return for the entire plan.

Example:

Multiple Employer Plan TTDY has 3 participating companies. The most recently filed Form 5500 indicates that the plan has 5,335 participants. Plan participants are divided among the companies in the following manner:

Corporation A has 125 participants
Corporation B has 10 participants
Corporation C has 5,200 participants

Assume Corporations A and B incorrectly excluded eligible employees from the plan by not providing the proper information to the plan administrator due to flaws in their respective HR and payroll processes. Corporation C properly included all eligible employees and had no other failures. A VCP submission is going to be submitted to the Service to resolve these operational failures. The general compliance fee for a VCP submission would normally be \$20,000 given the participant count reported on the Plan's latest filed Form 5500. However, the plan administrator for Multiple Employer Plan TTDY chooses to calculate the general compliance fee separately for each affected employer based on the participants attributable to that employer because the plan administrator believes the filing satisfies the conditions discussed in Section 10.12. The general compliance fee in this situation is determined in the following manner:

Corporation A has 125 participants, so the general compliance fee calculated for this employer is \$5,000.

Corporation B has 10 participants, so the general compliance fee calculated for this employer is \$750.

Adding these two amounts together, the total general compliance fee for this submission is \$5,750.

Step 3: If any of the reduced compliance fee amounts are appropriate for your VCP submission, check the applicable boxes on line 8. However, if (1) you cannot mark any of the boxes in lines 8(h) through 8(j) for your submission, and (2) your submission involves one or more failures that are not described in lines 8(a) through 8(g), then you are not eligible for reduced compliance fee amount (even if your submission includes one or more failures described in lines 8(a) through 8(g)). Under these circumstances, you should simply check the appropriate box on line 7 and not check any of the boxes for reduced compliance fee amounts on line 8. The reduced compliance fee amounts and eligibility rules are as follows:

- Line 8(a). The VCP submission relates to certain failures involving the late adoption of good faith amendments, interim amendments or amendments required to implement optional tax law changes, as described in section 6.05(3)(a). The compliance fee is reduced to \$375. See section 12.03(2).
- Line 8(b). The VCP submission relates to and the VCP submission is made within a 1-year period following the expiration of the plan's remedial amendment period for complying with such changes. The general compliance fee compliance fee by 50%. See 12.03(1).
- Line 8(c). The VCP submission relates to a failure to comply with Internal Revenue Code (IRC) section 401(a)(9) minimum distribution rules affecting 50 or fewer plan participants. The compliance fee is reduced to \$500. See section 12.02(2) for additional requirements and conditions.

- Line 8(d). The VCP submission relates to a failure of participant loans to comply with IRC section 72(p)(2) rules affecting no more than 25% of plan participants in any of the years in which the failure occurred. The general compliance fee is reduced by 50%. See section 12.02(3) for additional requirements and conditions.

- Line 8(e). The VCP submission relates to a failure to timely adopt an amendment (upon which a favorable determination letter is conditioned) within the applicable remedial amendment period, provided the required amendment is adopted within 3 months of the expiration of the remedial amendment period for adopting the amendment. The compliance fee is reduced to \$500. See section 12.03(3).

- Line 8(f). For 403(b) plans, the general VCP compliance fee is reduced by 50% if the VCP submission meets the following conditions:

- (a) It's solely limited to a single failure involving a failure to timely adopt a written 403(b) plan document;
- (b) The VCP submission has been made within the 1-year period beginning with the date of publication of Rev. Proc. 20XX-XX; and
- (c) The VCP submission must be submitted no later than XXXX, XX, 2013. See section 12.02(5).

- Line 8(g). The VCP submission is limited to a request for a minor modification of a previously issued compliance statement and the request is mailed to the IRS before the end of the correction period provided for in the compliance statement. The compliance fee for the request is the lesser of: 50% of the original compliance fee or \$1,500. See section 10.07(10).

- Line 8(h). The compliance fee for a SEP, SARSEP, or a SIMPLE IRA VCP submission is generally \$250. See section 12.06.

- Line 8(i). If the VCP submission is a group submission from an eligible organization as defined in section 10.11(2), the general compliance fee is not applicable. The compliance fee for a group submission is based on the number of plans affected by the failure described in the VCP submission. The initial fee for the first 20 employers is \$10,000 and it is to be submitted with this Form 8951. An additional fee equal to the product of the number of plans in excess of 20 multiplied by \$250 will also apply. The additional fee, if applicable, will be solicited by the IRS before a signed compliance statement is issued. The maximum compliance fee for a group submission is \$50,000. For pre-approved plans, the compliance fee and number of VCP submissions is determined based on the number of basic plan documents submitted rather than the number of approved adoption agreements. See section 12.05.

- Line 8(j). Section 12.02(4) gives the IRS discretionary authority to waive the compliance fee in the case of a terminating orphan plan, if requested. See section 5.03 for a definition of an orphan plan. A VCP applicant who is an eligible party as defined in section 5.03 can request that the compliance fee be waived. Include a written explanation that explains why a waiver should be granted. See section 11.03(13).

Step 4: If a VCP submission consists of failures limited to lines 8(a) through 8(f) and if you cannot mark any of the boxes on lines 8(g) through 8(j) then the compliance fee will be the lesser of: the sum of the reduced fees or the general compliance fee. See section 12.04. If the general compliance fee is lower, simply check the appropriate box on line 7 and do not check any of the boxes on line 8. If the total of the exceptions are less than the general compliance fee, check the applicable boxes on line 8 and include a worksheet showing how you determined the compliance fee for your submission.

Example 1: Plan sponsor of XYZ 401(k) Plan requests a compliance statement to correct (i) 401(a)(9) minimum distribution failures (affecting no more than 50 participants), (ii) late adoption of interim amendments, and (iii) non-amender failures (submitted within one year after the remedial amendment period has expired). The sponsor reports 300 plan participants on Line 5. The required compliance fee is \$3,375, calculated as follows: (i) \$500 (for 401(a)(9) failures), plus (ii) \$375 (for interim amendment failures), plus (iii) \$2500 (for non-amender failures (based on 50% of the general \$5,000 compliance fee for plans with 101 to 500 participants)).

Example 2: Assume the same facts as Example 1, except the sponsor reports 40 participants on Line 5. The required compliance fee is \$1,000, calculated as follows: Pay the lesser of (i) the general \$1,000 compliance fee for plans with 21 to 50 participants, or (ii) \$1,375 (i.e. \$500 (for 401(a)(9) failures), plus \$375 (for interim amendment failures), plus \$500 (for non-amender failures (based on 50% of the \$1,000 general compliance fee)).

- The compliance fee due on some VCP submissions may ultimately be higher than the amounts previously mentioned on this form. Additional compliance fees may be due if the VCP submission involves:

- (a) Egregious qualification failures;
- (b) SEP, SARSEP or SIMPLE IRA plans that choose to allow excess amounts to remain within the affected IRAs;
- (c) Situations where the plan sponsor has requested that the IRS waive the additional 10% tax imposed by IRC section 72(t) on certain plan distributions.

See sections 6.09(6), 12.06, and 12.07. If applicable, the IRS will discuss the matter with the plan sponsor and solicit the additional compliance fee during the review of the VCP submission.

Submission of Additional Compliance Fees

The IRS's office of Employee Plans Voluntary Compliance may contact you regarding additional compliance fees that may be due for a previously submitted VCP case. Submit Form 8951 along with a copy of the check for the additional compliance fee along with an appropriate cover letter. Complete lines 1-5. It is important to complete line 6 by checking the box and entering the amount of the additional compliance fee you are submitting plus the nine-digit VCP case number that has been assigned to your VCP submission. No other items on the Form 8951 need to be completed. Once a VCP submission has been mailed to the IRS, an applicant should not mail any checks to the IRS for any compliance fee matters unless the applicant has received specific instructions from the IRS.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. If you want to have your VCP submission approved by the IRS, you are required to give us the information. We need it to determine whether your correction proposals meet the legal requirements applicable to qualified retirement plans.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by IRC section 6103.

The estimated average time is:

- Recordkeeping** 3 hrs., 21 min.
- Learning about the law or the form** 2 hrs., 39 min.
- Preparing the form** 3 hrs., 45 min.
- Copying, assembling, and sending the form to the IRS** 0 hrs., 16 min.

If you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, we would be happy to hear from you. You can write to the:

Internal Revenue Service
Tax Products Coordinating Committee
SE:W:CAR:MP:T:I
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

Do not send this form to this address. Instead, see *Where To File* above.

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