

June 26, 2018

The Honorable Orrin Hatch
Chairman
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510-6200

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510-6200

Re: Senate IRS Reform Proposal

Dear Chairman Hatch and Ranking Member Wyden:

As organizations interested in ensuring the adequacy of Americans' retirement savings, we thank you for your work on retirement security built through the employer based retirement plan system. We understand the Committee is currently working on bipartisan legislation that would restructure Internal Revenue Service (IRS) operations. We bring to your attention a proposal that would be a good fit in this legislation and has enjoyed bipartisan support.¹

Compliance with the tax laws when businesses sponsor a retirement plan is challenging due to the numerous and complex rules currently in place, leading to many opportunities for mistakes. The ability to voluntarily correct these mistakes in a timely way at a reasonable cost is critically important to a business that finds a mistake.

The proposal would direct the IRS to expand the self-correction program (SCP) within the IRS's Employee Plan Compliance Resolution System (EPCRS), to enable businesses with retirement plans to more easily correct common mistakes. Expanding SCP to address common mistakes enables businesses to fix these problems without a submission to the IRS and the payment of a user fee. Timely and efficient correction protects participating employees by providing them with their expected retirement benefits, including favorable tax treatment.

Congress recognized this in 2006 when it included a provision in the Pension Protection Act authorizing EPCRS.² The provision included specific language directing the IRS to expand SCP under EPCRS in order to foster retirement plan compliance. Further action is needed by Congress to ensure the self-correction program is expanded and works most effectively.

Plan sponsors favor clear rules and reasonable procedures to correct common mistakes. Without the ability to voluntarily correct errors at a reasonable cost, such "foot faults" can put pressure on the system and discourage interest in plan sponsorship. Expanding the self-correction program, as intended in the 2006 Pension Protection Act, will be a common sense improvement to the current plan administration procedures.

¹ SAFE Retirement Act of 2013 (S. 1270, 113th Cong., 1st Sess.), Retirement Plan Simplification and Enhancement Act of 2017 (H.R. 4524, 115th Cong., 1st Sess.).

² Section 1101 of the Pension Protection Act of 2006 (P.L. 109-280).

We thank the Committee for its work to protect the private-sector retirement system. We appreciate your attention to this issue, and we look forward to working with you.

Sincerely,

American Benefits Council

American Retirement Association

ERISA Industry Committee

Investment Company Institute

Small Business Council of America

Society for Human Resource Management

The SPARK Institute

U.S. Chamber of Commerce

SEC. XXX. EXPANSION OF EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM.

(a) IN GENERAL.—

Not later than one year after the date of the enactment of this Act, the Secretary of the Treasury shall modify the Employee Plans Compliance Resolution System (as described in Revenue Procedure 2016–51) to achieve the results specified in the succeeding subsections of this section and to further facilitate corrections and compliance in such other means as the Secretary deems appropriate.

(b) LOAN ERROR.—

(1) In the case of plan loan errors for which corrections are specified under the voluntary compliance program, self-correction shall be made available by methods applicable to such loans through the voluntary compliance program.

(2) The Secretary of Labor shall treat any loan error corrected pursuant to paragraph (1) as meeting the requirements of the Voluntary Fiduciary Correction Program of the Department of Labor.

(c) EPCRS FOR IRAS.—

The Secretary of the Treasury shall expand the Employee Plans Compliance Resolution System to allow custodians of individual retirement plans to address inadvertent errors for which the owner of an individual retirement plan was not at fault, including (but not limited to)—

(1) waivers of the excise tax that would otherwise apply under section 4974 of the Internal Revenue Code of 1986,

(2) under the self-correction component of the Employee Plans Compliance Resolution System, waivers of the 60-day deadline for a rollover where the deadline is missed for reasons beyond the reasonable control of the account owner, and

(3) rules permitting a nonspouse beneficiary to return distributions to an inherited individual retirement plan described in section 408(d)(3)(C) of the Internal Revenue Code of 1986 in a case where, due to an inadvertent error by a service provider, the beneficiary had reason to believe that the distribution could be rolled over without inclusion in income of any part of the distributed amount.

(d) REQUIRED MINIMUM DISTRIBUTION CORRECTIONS.—

The Secretary of the Treasury shall expand the Employee Plans Compliance Resolution System to allow plans to which such system applies and custodians of individual retirement plans to self-correct, without an excise tax, any inadvertent errors pursuant to which a distribution is made no more than 180 days after it was required to be made.

(e) AUTOMATIC CONTRIBUTION FEATURE ERROR CORRECTIONS MADE PERMANENT. –

In order to continue to promote the adoption of automatic enrollment and automatic escalation, the Secretary of the Treasury shall not withdraw or otherwise cut-back the safe harbor correction methods under the Employee Plans Compliance Resolution System set forth in section 3.02 of Revenue Procedure 2015-28 and incorporated in Revenue Procedure 2016-51 for correction of errors related to automatic contribution features.

(f) EXTENSION OF SELF-CORRECTION PERIOD. –

The Secretary of the Treasury, in accordance with section 1101(b)(3) of the Pension Protection Act of 2006 (P.L. 109-280), shall modify the Employee Plans Compliance Resolution System to extend by one year the duration of the self-correction period for significant compliance failures.

(g) SIMPLIFIED EARNINGS CALCULATIONS. –

To promote and simplify the Self-Correction Program, the Secretary of the Treasury shall modify the Employee Plans Compliance Resolution System to add as safe harbors for calculation of lost earnings -

- (1) the plan's average rate of return over the applicable period;
- (2) the rate of return of the plan's designated qualified default investment alternative over the applicable period; or
- (3) the rate of return for a broad based index fund representing the Standard & Poor's 500 Index over the applicable period.

(h) SELF-CORRECTION OF DE MINIMUS LATE AMENDMENTS. –

The Secretary of the Treasury shall modify the Employee Plans Compliance Resolution System to permit self-correction of a plan document failures resulting from a change in law or regulation within the period for correcting significant defects.

(i) CORRECTION OF OPERATIONAL ERRORS BENEFITING PARTICIPANTS –

The Secretary of the Treasury shall modify the Employee Plans Compliance Resolution System to permit self-correction of operational errors by retroactive amendment to conform the plan's language to the manner in which the plan was operated provided the amendment -

- (1) increases benefits or expands the availability of a plan feature beyond that provided by the language of the plan before retroactive amendment;
- (2) does not cut-back any benefit or feature that was provided in operation;
- (3) does not predominately benefit highly compensated employees; and

(4) does not result in a violation of the non-discrimination requirements of section 401(a)(4) of the Code.