

**Social Security
Administration**

**Internal
Revenue Service**

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Reporter

Summer 2013

A Newsletter for Employers

Correct Your Retirement Plan Errors

A retirement plan helps you and your employees save money for retirement. However, plan errors can jeopardize your plan's tax-favored status. Here are a few things you should know:

1. How do plan errors happen?
2. Why should I correct plan errors?
3. How can I correct plan errors?
4. Are there any resources to help me correct plan errors?

How do plan errors happen?

Despite your best intentions, different plan errors may happen. For example:

- You don't allow eligible employees to participate in the plan on time.
- You don't use the correct plan definition of compensation for certain plan operations (for example, contributions and nondiscrimination testing).
- You miss the deadline to amend your written plan document for tax law changes.

To reduce the likelihood of plan errors, your plan should have [internal controls](#).

Why should I correct plan errors?

Correct plan errors for you and your employees to continue to receive the tax benefits of having a qualified retirement plan, including:

- Your deduction (up to certain limits) for plan contributions
- Your employees' tax deferral of their pre-tax contributions and earnings until distribution

See [Tax Consequences of Plan Disqualification](#) for additional information.

How can I correct plan errors?

Generally, there are two ways you can correct plan errors if your plan isn't being audited and you've discovered the error on your own.

- Use the [Self-Correction Program](#) without paying any fee or notifying the IRS if:
 - o your plan has sufficient compliance practices and procedures to avoid errors, and
 - o the plan errors are insignificant operational mistakes, or significant operational mistakes that you correct within an IRS specified timeframe.
- For any errors you can't or don't wish to correct under the Self-Correction Program, you can use the [Voluntary Correction Program](#), which allows you to:
 - o correct qualification failures (errors that affect your plan's tax favored status) with IRS approval, and pay a fee based on the number of plan participants.
 - o Are there any resources to help me correct plan errors?

You can use the [Fix-It Guides](#) to help you find, fix and avoid common mistakes in the following plan types:

- 401(k)
- 403(b)
- SARSEP
- SEP
- SIMPLE IRA

You should also review:

- [Fixing Common Plan Mistakes](#) - articles that describe how to spot problems in your plan and correct mistakes.
- [A Guide to Common Qualified Plan Requirements](#) - list of some important plan requirements to help you apply practices, procedures and internal controls to monitor your plan operations. **IRS**

OIC Pre-Qualifier Tool

We've all seen the ads from companies saying they can settle your IRS tax debt. It sounds good, but there are some things you should know.

These ads are referring to the IRS' Offer-in-Compromise program. An Offer-in-Compromise allows you to settle your federal tax debt for less than the full amount. But the offer program is not for everyone. The IRS will not accept an Offer-in-Compromise if we believe you can pay the amount owed. So you should explore all your [other options](#) first including borrowing or a monthly [payment plan](#).

Before you apply for an Offer-in-Compromise you must file all required tax returns and take steps to make sure you will not owe more federal taxes in the future. Those steps may include adjusting your [withholding](#), making your quarterly [estimated tax](#) payments, or, for businesses, making your [payroll tax](#) deposits.

You should also know that the IRS cannot accept an offer if you are in an open bankruptcy case. And, unless you qualify for a waiver, you must include the \$150 application fee and a non-refundable down payment with your application.

So, when will the IRS consider an Offer-in-Compromise? When there is legitimate doubt that you will be able to pay the full amount you owe. How do you know whether you are eligible to apply for an offer and what an acceptable offer amount might be? We have an app for that. It's called the Offer-in-Compromise Pre-Qualifier tool.

The Pre-Qualifier tool is a five step process that, if you qualify, leads to a proposed offer amount. The steps are:

Offer In Compromise Pre-Qualifier



Status helps you determine whether you are eligible to apply for an offer. Basic information includes your state, county and zip code, how many people in your household, and, the taxes you owe. Then you enter information about your assets, income and expenses. And if it looks like you are a good candidate for an offer, the tool provides a proposal for what an acceptable offer amount might be.

If you've explored your other options and think an Offer-in-Compromise may be right for you, use our [Pre-Qualifier tool](#) to be sure you qualify and to get a realistic idea of what an acceptable offer amount might be. Then prepare and submit your written application. You'll find everything you need at [IRS.gov](#) keyword "offer." **IRS**

New Employment Eligibility Verification Form I-9 from USCIS

On March 8, 2013, U.S. Citizenship and Immigration Services published a revised [Employment Eligibility Verification Form I-9](#). Employers have been required by law to complete the [Form I-9](#) for every person hired since November 1986. You can find the new [Form I-9](#) and instructions online at [www.uscis.gov/I-9Central](#).

What Version of Form I-9 Should You Use?

Effective May 7, 2013, you must only use the latest version of the [Form I-9](#) (revised 03/08/13). The Federal Register notice published with the release of the revised form allowed employers a sixty-day period to transition to the new version. All previous versions of the form are now invalid and must not be used. You can easily check that you are using the correct version of the Form I-9 by confirming that the revision date located on the lower left reads '[Form I-9](#) 03/08/13 N.'

Is There A Spanish Version?

A Spanish version of [Form I-9](#) (revised 03/08/13) is available on the USCIS website for use [in Puerto](#)

[Rico only](#). Outside of Puerto Rico, Spanish-speaking employers and employees may use the Spanish version for reference, but must complete the English version of the form. Visit Central I-9 ([www.uscis.gov/I-9Central/Espanol](#)) for more information about the Spanish version of the form.

What Changes Were Made to Form I-9?

Improvements to [Form I-9](#) include reformatting to reduce errors, new fields, and clearer instructions to both employers and employees. Below are highlights of some of the changes.

New Layout: Form I-9 has gone from one to two pages to allow users more space to enter information clearly and to accommodate changes made to Section 1. In addition, USCIS redesigned Form I-9 to be in line with current USCIS design standards, so you may notice that the font is different and the instructions are now in a one-column format.

New fields: Form I-9 now features new e-mail address and phone number fields. Completing these fields is optional.

Expanded Instructions: USCIS expanded the Form I-9 instructions from three to six pages. The revised instructions clearly describe the information employees must enter in Section 1, and employer's responsibilities in Sections 2 and 3, including when reverification is necessary. There are also expanded instructions on acceptable receipts.

More information about the new Form I-9 is available online on I-9 Central, [www.uscis.gov/I-9Central](#). The [Handbook for Employers, Guidance for Completing Form I-9 \(M-274\)](#) has also been updated to include information about the revised form and helpful new images. In addition, USCIS offers free live [webinars](#) about Form I-9 throughout the month.

American Taxpayer Relief Act of 2012 Extends the Work Opportunity Tax Credit

Recent legislation extended the [Work Opportunity Tax Credit](#) through Dec. 31, 2013.

Taxable employers can claim the WOTC retroactively for all targeted group employee categories hired on or after Jan. 1, 2011, and before Dec. 31, 2013. [Form 5884](#), Work Opportunity Credit, lists the targeted group categories.

The legislation also extends the expanded WOTC for hiring qualified veterans through Dec. 31, 2013, for both taxable and tax-exempt employers.

Pre-screening and Certification Requirements

Before claiming the credit, an eligible employer must file [Form 8850](#), Pre-Screening Notice and Certification Request for the Work Opportunity Credit, with their respective state workforce agency

within 28 days after the eligible worker begins work. However, in [Notice 2013-14](#), the IRS issued transition relief rules for employers who hire employees from one of the targeted group categories, other than qualified veterans, during 2012. ■

Are You an Ineligible 403(b) Plan Sponsor?

If your organization was never eligible to sponsor its 403(b) retirement plan, use the IRS [Employee Plans Compliance Resolution System's](#) Voluntary Correction Program (VCP) to resolve this failure.

Who may sponsor a 403(b) plan?

"Eligible employers" that may sponsor a 403(b) plan are:

- 501(c)(3) tax-exempt organizations,
- public education organizations (Internal Revenue Code Section 170(b)(1)(A)(iii)),
- ministers (defined by IRC Section 414(e)(5)(A)), and
- a state, including a political subdivision of a state, or any agency or instrumentality of a state for its public school employees (IRC Section 170(b)(1)(A)(ii)). (An Indian tribal government is treated as a state (IRC Section 7871(a)(6)(B)).

See:

- Treas. Reg. Section [1.403\(b\)-2](#) for details about employers eligible to sponsor 403(b) plans.
- "[Are you a 403\(b\) plan sponsor that has lost your tax-exempt status?](#)" if you've become ineligible because you lost your tax-exempt status.

Consequences of an ineligible employer adopting a 403(b) plan

If your organization was never eligible to sponsor a 403(b) plan and you don't submit this error under the VCP:

- your organization has to withhold and pay payroll taxes from the contributions to the plan, and
- plan participants are liable for additional income tax because the contributions aren't tax-deferred.

Voluntary Correction Program

Eligibility - you can use VCP if:

- your organization or 403(b) plan is not "under examination" by the IRS (see Revenue Procedure 2013-12 Section 5.09), and
- you immediately stop making salary reduction and employer contributions to the 403(b) plan. Be sure you've complied with all other 403(b) plan rules, including the written plan requirement, universal availability, 403(b) distribution rules and any other requirement under Internal Revenue Code section 403(b) ([Revenue Procedure 2013-12](#) Section 6.03).
- you keep the 403(b) assets in the issued annuity contracts or custodial accounts and don't distribute them before one of the distributable events in IRC Section 403(b).

Benefits - making a VCP submission benefits your organization and your 403(b) plan participants because:

- contributions can remain in the 403(b) annuities or custodial accounts,
- participants' 403(b) annuities and custodial accounts retain their tax favored status, and

- your organization avoids penalties.

Make a VCP submission

- file under the VCP, using [Appendix C part 1 Model Compliance Statement](#), Schedule 6 and [Form 8950](#), Application for Voluntary Correction Program (VCP), and [Form 8951](#), Compliance Fee for Application for Voluntary Correction Program (VCP)
- pay a compliance fee to the IRS based upon the number of employees eligible to participate in the plan
- mail completed documents and any other required documents to:

First class mail:

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

Express mail or private delivery service:

201 West Rivercenter Blvd.
Attn: Extracting Stop 312
Covington, KY 41011

Additional Resources

- [403\(b\) Plan Fix-It Guide](#)
- [403\(b\) plans home page](#)
- [Publication 4483](#), 403(b) Tax-Sheltered Annuity Plan for Sponsor 

Form 8955-SSA...

Does your retirement plan have participants who have separated from service and have deferred vested benefits? List them on Form 8955-SSA ([Resources](#)).



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e-mail: SSA.IRS.REPORTER@irs.gov

Deposit Withheld Income and Employment Taxes Correctly or Risk Being Penalized

The payment of withheld federal income, social security, and Medicare taxes, as well as the employer's share of social security and Medicare taxes and FUTA tax, is handled differently from the payment of other federal taxes. Rather than paying the taxes when filing a return, employers generally must deposit the taxes electronically through the Electronic Federal Tax Payment System (EFTPS), unless the amounts are very small (e.g., a FUTA tax liability of less than \$500 at the end of the year may be paid with the Form 940).

Payroll Tax Deposit Rules

Employers that file Form 941, Employer's Quarterly Federal Tax Return, are assigned one of two depositor status classifications under the deposit rules: monthly or semiweekly. The determination is based on the employer's total liability for federal income, social security, and Medicare taxes during a "lookback period" and generally lasts for an entire calendar year. The lookback period is the 12-month period ending the preceding June 30.

If an employer's four quarterly Forms 941 during the lookback period show a total federal income, social security, and Medicare tax liability of \$50,000 or less, the employer is a monthly depositor for the upcoming year. If the total liability exceeds \$50,000, the employer is a semiweekly depositor. Although the depositor status determination generally lasts for an entire year, there are exceptions for employers with less than \$1,000 of annual tax liability, less than \$2,500 of quarterly tax liability, or more than \$100,000 of accumulated tax liability.

Monthly depositors must deposit their accumulated tax liability for each calendar month by the 15th of the following month. Semiweekly depositors must deposit employment taxes for wages paid on Wednesday, Thursday, and Friday by the following Wednesday. Employment taxes for wages paid on Saturday, Sunday, Monday, and Tuesday must be deposited by the following Friday.

Some special rules also apply for employers with varying tax liabilities. First, if an employer's accumulated tax liability reaches \$100,000 on any day during a monthly or semiweekly deposit period, the taxes must be deposited by the close of the next business day. Next, employers with an accumulated tax liability of less than \$2,500 for any quarter can deposit the liability according to their monthly or semiweekly depositor status or pay it with their Form 941 quarterly return. This rule also applies if the employer's employment tax liability

was less than \$2,500 for the immediately preceding quarter. Third, the IRS allows a safe harbor shortfall so employers are not penalized for depositing a small amount less than the entire amount of their deposit obligation. An employer satisfies its deposit obligation if the amount of the shortfall is no more than the greater of \$100 or 2% of the entire amount due, so long as the original deposit is made timely and the shortfall is deposited by the appropriate "make-up" date.

How to Deposit Payroll Taxes

IRS regulations require the use of EFTPS for all federal tax deposits made on or after January 1, 2011. Other than withheld federal income tax and the employer's and employee's share of social security and Medicare taxes, these taxes include corporate income, estimated income, and excise taxes, federal unemployment (FUTA) tax, tax withheld from nonresident aliens and foreign corporations, and estimated taxes paid by certain trusts. If employers are unwilling or unable to use EFTPS, they can arrange for a tax professional, financial institution, payroll service provider, or other third party to make a deposit on their behalf using a master account. Employers can also arrange for their financial institution to make a same-day wire payment on their behalf.

The requirement to use EFTPS does not apply to employers that are not required to make deposits under the current rules. This means that employers who have a total employment tax liability of less than \$2,500 in the current or preceding quarter can continue to pay their taxes with their Form 941. The same is true for monthly depositors who are paying a lawful deposit shortfall under the safe-harbor rules with their Form 941. Employers who file Form 944 because they have an annual employment tax liability under \$1,000 can also pay their taxes with Form 944.

Penalties for Failure to Deposit on Time

Depositors that fail to deposit the entire amount of tax required by the due date (taking into consideration the safe-harbor rule) without reasonable cause are subject to the following penalties:

- 2 percent of the undeposited amount if it is deposited within 5 days of the due date;
- 5 percent of the undeposited amount if it is deposited within 6-15 days of the due date;
- 10 percent of the undeposited amount if it is deposited more than 15 days after the due date (also applies to amounts paid to the IRS within

10 days after receipt of the first IRS delinquency notice or not made electronically); or

- 15% of the undeposited amount if it is not paid within 10 days after the employer receives its first IRS delinquency notice or on the same day a notice and demand for payment is received.

In advice to its field agents, the IRS said that employers that contracted with a payroll service provider to submit employment tax returns and make tax deposits were liable for penalties when the provider failed to submit the returns or make the deposits. It did not matter that the employers delegated their employment tax responsibilities to an agent.

In 2012, the IRS issued a revenue procedure updating the requirements for completing and submitting Form 8655, Reporting Agent Authorization. It also expressly states that Form 8655 does not relieve the client employer of the responsibility (or from liability for failing) to ensure that all tax returns are filed timely and that all federal tax deposits are made timely.

A reporting agent must provide the employer with a written statement that:

- advises the employer of its responsibility to timely file the returns listed on Form 8655 and make federal tax deposits,
- advises the employer that authorizing a reporting agent to perform any of these obligations does not relieve the employer from any liabilities resulting from the reporting agent's failure to perform these obligations,
- recommends that the employer enroll in and use EFTPS to ascertain whether the reporting agent has timely made all required federal tax deposits, and
- advises the employer that state-level tax verification programs may be available.

The reporting agent must provide the employer with a disclosure statement when it enters into a contract for services with the employer and at least quarterly after that for as long as the reporting agent provides services to the employer. See [Rev. Proc. 2012-32](#) for suggested disclosure statement language. The statement may be provided on paper or electronically and may be provided as a stand-alone communication or as a conspicuous element of other communications.

APA

Additional Medicare Tax Withholding Begins in 2013

New for 2013: employers must report Additional Medicare Tax withholding on Line 5(d) of [Form 941](#), Employer's QUARTERLY Federal Tax Return.

Beginning January 1, 2013, employers are required to withhold 0.9 percent Additional Medicare Tax from wages paid to an employee that exceeds \$200,000 in a calendar year. There is no employer share for Additional Medicare Tax.

Employers are required to *begin* withholding Additional Medicare Tax in the pay period in which the wages paid to an employee exceeds \$200,000. Employers must continue to withhold Additional Medicare Tax in each pay period until the end of the calendar year.

Employers will report Additional Medicare Tax withholding to employees in Box 6 of Form W-2 along with regular Medicare tax.

For additional information on the Additional Medicare Tax, see the [questions and answers](#) posted on [IRS.gov](#).

IRS

Small Business Taxes: The Virtual Workshop

Get help understanding and fulfilling your federal tax responsibilities

Learn about:

- Completing Schedule C and other tax forms
- Filing and paying your taxes using a computer
- Running a business out of your home
- Hiring employees/contractors
- Setting up a retirement plan for yourself and your employees
- Making tax deposits and filing your payroll taxes using a computer
- Hiring of non-U.S. citizens living in the United States
- Managing payroll and withholding the right amount of tax from employees' wages

Use convenient features:

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Reduced Fee for Correcting a Failure to Adopt a Written 403(b) Plan

If you failed to adopt a written plan reflecting a good faith attempt to comply with Internal Revenue Code Section 403(b) and the [403\(b\)](#) final regulations by December 31, 2009, your 403(b) plan is no longer a qualified tax-deferred retirement plan as of January 1, 2009.

Reduced compliance fee

To encourage 403(b) plan sponsors to correct this failure voluntarily, we're reducing the Voluntary Correction Program compliance fee by 50% if you mail your VCP submission to IRS by December 31, 2013. For example, you pay \$2,500 instead of \$5,000 if your plan has 101-500 participants.

Voluntary Correction Program submission

You may correct this error under the IRS's VCP if your organization or 403(b) plan is not under audit ([Revenue Procedure 2013-12](#) Section 5.09). Your organization must:

- Adopt a written plan that complies with Treas. Reg. Section 1.403(b)-3(a)(3) (consult your organization's benefits adviser if necessary),
- Make a VCP submission to the IRS (you may use the [403\(b\) VCP Submission Kit](#)), and
- Pay a compliance fee based on the number of employees eligible to participate in the plan.

As part of your VCP submission, complete and mail:

- Form 8950, Application for Voluntary Correction Program (VCP) (instructions)
- Form 8951, Compliance Fee for Application for Voluntary Correction Program (VCP)
- Appendix C - Part 1 Model Compliance Statement
- Appendix F - Schedule 2, Nonamender Failures (other than those to which Schedule 1 applies)
- Copy of signed and dated written 403(b) plan
- Required 403(b) statements
- Any other attachments

- Benefits of correcting the failure
- All money that has been contributed to the 403(b) plan will remain tax-deferred.
- Plan participants' annuity contracts and custodial accounts will retain their tax-favored status (Revenue Procedure 2013-12 Section 6.10).

Consequences of not correcting

Unless you correct this error under VCP:

- The organization has to withhold and pay payroll taxes from any plan contributions made after January 1, 2009, and
- Plan participants are liable for additional income tax because the funds in the 403(b) plan are generally not tax-deferred and don't receive favorable tax treatment under the Internal Revenue Code.

Additional resources

- [403\(b\) Plan Fix-It Guide](#)
- [403\(b\) plans home page](#)

IRS

National Taxpayer Advocate's Report Targets Payroll Problems

National Taxpayer Advocate Nina E. Olson has released her [Annual Report to Congress](#), identifying the need for tax reform as the top priority in tax administration and designating the complexity of the tax code as the most serious problem facing taxpayers.

"The existing tax code makes compliance difficult, requiring taxpayers to devote excessive time to preparing and filing their returns," Olson wrote. "It obscures comprehension, leaving many taxpayers unaware how their taxes are computed and what rate of tax they pay; it facilitates tax avoidance by enabling sophisticated taxpayers to reduce their tax liabilities and provides criminals with opportunities to commit tax fraud; and it undermines trust in the system by creating an impression that many taxpayers are not compliant, thereby reducing the incentives that honest taxpayers feel to comply."

The problems discussed in the report include the consequences employers face when the payroll service providers (PSPs) they engage to handle their payroll taxes [go out of business or misappropriate clients' funds](#). About 41 percent of small businesses used PSPs to handle their payroll taxes in 2012.

The report notes that while most providers are "legitimate and trustworthy" and the IRS has made significant progress in addressing failures by third-party payers, the IRS can and should do more. "Because the victims of defunct PSPs will have to pay the amount of tax twice – once to the PSP, and again to the IRS – some will go out of business, leaving their employees without jobs and often leaving the IRS with scarce assets from which to collect," Olson wrote. "Each PSP failure can affect thousands of employers and millions of dollars in unpaid payroll taxes."

The National Taxpayer Advocate recommended that Congress [amend the tax code](#) to require third-party payers to furnish a performance bond guaranteeing payment of federal payroll taxes.

The report also discusses continuing problems in the [Combined Annual Wage Reporting \(CAWRI\) program](#), including untimely IRS replies to correspondence and a low response rate from employers.

About the Taxpayer Advocate Service

The Taxpayer Advocate Service is your voice at the IRS. TAS employees help taxpayers who are experiencing financial difficulties, who are seeking help in resolving problems with the IRS, or who believe an IRS system or procedure isn't working as it should. For more information on how TAS may be able to help you, go to www.TaxpayerAdvocate.irs.gov or www.irs.gov/advocate. 

What Employers Should Know When Working with Tribes

To help understand your child support responsibilities when interacting with tribes, the federal Office of Child Support Enforcement prepared: What Employers Should Know When Working with Tribes.

There are more than 560 federally recognized American Indian/Alaska Native tribes in the U.S. According to the 2000 census, more than 30 percent of all Native American children under the age of 18 live with one parent. The following frequently asked questions include:

Do tribes have their own child support programs?

Forty-seven tribes operate federally funded child support programs with 11 more in the development stage. We call these tribal child support (sometimes called "IV-D") agencies. "IV-D" refers to the section of the Social Security Act that authorized federal funding for the child support program in 1975.

Do tribes have their own laws?

Yes. Tribes are sovereign nations and have their own governments with the authority to make and enforce laws, to adjudicate civil and criminal disputes, and to tax and license. A tribal child support agency has similar enforcement authority as a state child support agency and should be responded to accordingly.

Do tribal child support agencies use the OMB-approved Income Withholding for Support Order (IWO) form?

Yes. Tribal child support agencies are required to use the IWO form approved by OMB.

Must I honor an IWO from a tribe if I am not a tribal employer or located on tribal land?

Yes. You are required to honor an IWO from a tribal child support agency just as you would honor one from a state child support agency.

Where should I send payments for an IWO that comes from a tribe?

Send payments to the address indicated on the IWO. This may be the tribe's accounting office, the tribal court, or it may be the tribal child support agency.

Must I honor a request for verification of employment (VOE) from a tribe if I am not a tribal employer or located on tribal land?

Yes. Please complete all VOEs sent by a state or tribal child support agency.

If a noncustodial parent/employee leaves my employment, where should I send the notification of termination?

Send it to the address on the order.

Should I expect to receive a National Medical Support Notice (NMSN) from a tribe?

Probably not. Although a tribe can use the NMSN to seek health coverage for a child, tribes are not required to seek health insurance for tribal children.

Questions? Contact Paige Hausburg, Tribal coordinator, federal Office of Child Support Enforcement at paige.hausburg@acf.hhs.gov or 202-401-5635. Thank you for helping tribal children! 

