



American Retirement Association
Statement for the Record
For the House Small Business
Subcommittee on Economic Growth, Tax,
and Capital Access Hearing on
Small Business Retirement Plans and the IRS' Employee Plans
Fee Change
Held on April 17, 2018

The American Retirement Association (ARA) thanks Chairman Brat, Ranking Member Evans, and the other Members of the House Small Business Subcommittee on Economic Growth, Tax, and Capital Access for holding a hearing to examine the detrimental impact the Internal Revenue Service's recent changes to user fees have had on small business retirement plans and for the opportunity to submit this statement for the record.

The ARA is the coordinating entity for its five underlying affiliate organizations representing the full spectrum of America's private retirement system, the American Society of Pension Professionals and Actuaries ("ASPPA"), the National Association of Plan Advisors ("NAPA"), the National Tax-deferred Savings Association ("NTSA"), the ASPPA College of Pension Actuaries ("ACOPA"), and the Plan Sponsor Council of America ("PSCA"). ARA's members include organizations of all sizes and industries across the nation who sponsor and/or support retirement saving plans and are dedicated to expanding on the success of employer sponsored plans. In addition, ARA has more than 20,000 individual members who provide consulting and administrative services to American workers, savers, and the sponsors of retirement plans. ARA's members are diverse but united in their common dedication to the success of America's private retirement system.

On January 2, 2018, the Internal Revenue Service (IRS) issued Revenue Procedure 2018-4 (Rev. Proc. 2018-4). Surprisingly, and without any advance notice to the regulated community, Rev. Proc. 2018-4 made significant changes to both the structure and amounts of user fees for the Voluntary Correction Program (VCP) within the Employee Plans Compliance Resolution System (EPCRS). These changes, which were effective immediately, significantly increased the costs on small businesses to use VCP.

Specifically, Rev. Proc. 2018-4 changed the fee calculation from being based on the number of participants in the plan to a fee based on the value of the plan's assets. While this results in significantly lower fees for the largest plans, the vast majority of small plans will see a fee increase. For example, the lowest fee has gone up from \$500 (for plans with 20 or fewer participants in 2017) to \$3,000 (for plans with assets in excess of \$500,000 but less than \$10 million). That is a 500% increase in fees for small business plan sponsors. Also dropped from the new fee structure were

reduced fees for certain common qualification failures (e.g., participant loan defects, or required minimum distribution mistakes). This too will result in much higher fees than under the previous schedule for plan sponsors of all sizes that wish to correct these types of mistakes.

The myriad of rules applicable to qualified retirement plans is difficult for any plan sponsor to navigate, and particularly difficult for small businesses which have limited resources and do not generally have the ability to employ dedicated benefits personnel. The ability of plan sponsors to voluntarily correct plan errors at a reasonable cost is an important factor in a sponsor's decision to adopt and maintain a retirement plan.

Congress recognized this in the Pension Protection Act of 2006, the current law of the land. Congress specifically authorized EPCRS in section 1101 of the Pension Protection Act to both encourage employers to sponsor retirement plans and to encourage voluntary compliance with the complicated Internal Revenue Code "qualification" rules for these plans.¹ The EPCRS authorizing provision also clearly directed the IRS to take into account the special circumstances and concerns that small businesses face with respect to compliance and correction of compliance failures.² The IRS totally ignored this Congressional directive with the user fee changes announced in Rev. Proc. 2018-4.

We understand that the IRS is justifying these significant changes to the VCP user fee structure by arguing that they have to comply with Internal Revenue Code (IRC) section 7528, which provides that user fees "shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory)."³ However, IRC section 7528 also grants the IRS wide discretion to reduce or cancel these user fees as the IRS determines to be appropriate.⁴ Given Congress's Pension Protection Act directive coupled with this discretionary authority, the IRS should immediately undo the damage caused by Rev. Proc. 2018-4.

One way to undo the damage would be to significantly expand the Self-Correction Program (SCP) component of EPCRS. Section 1101 of the Pension Protection Act also directed the IRS to expand SCP availability and the duration of the self-correction period.⁵ SCP does not require a submission to the IRS or a user fee. SCP encourages the voluntary correction of plan errors without unduly increasing the risk of improper corrections. SCP reduces the burdens on both the IRS and small businesses resulting from retirement plan corrections. ARA recommends expanding SCP to cover plan loan failures, required minimum distribution failures, and other failures and actively supports legislation that would require the IRS to make those beneficial and common sense changes.

In conclusion, the new fee structure for VCP submissions under Rev. Proc. 2018-4 contravenes the directive of Congress to update and improve EPCRS in a way that takes into account the special concerns and circumstances of small employers. It also is in conflict with the general principles upon which EPCRS is based – that voluntary compliance is promoted by establishing limited fees for voluntary corrections approved by the IRS because it reduces employers' uncertainty regarding their potential tax liability and participants' tax liability.

¹Section 1101(a) of the Pension Protection Act of 2006 (P.L. 109-280).

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

³Section 7528(b)(1)(B) of the Internal Revenue Code

⁴Section 7528(b)(2)(A) of the Internal Revenue Code

⁵Sections 1101(b)(3)&(4) of the Pension Protection Act of 2006 (P.L. 109-280).