

**SMALL BUSINESS RETIREMENT PLANS AND THE
IRS' EMPLOYEE PLANS FEE CHANGE**

HEARING

BEFORE THE

**SUBCOMMITTEE ON ECONOMIC GROWTH,
TAX, AND CAPITAL ACCESS**

OF THE

**COMMITTEE ON SMALL BUSINESS
UNITED STATES**

HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

HEARING HELD
APRIL 17, 2018



Small Business Committee Document Number 115-067
Available via the GPO Website: www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE

29-582

WASHINGTON : 2018

HOUSE COMMITTEE ON SMALL BUSINESS

STEVE CHABOT, Ohio, *Chairman*
STEVE KING, Iowa
BLAINE LUETKEMEYER, Missouri
DAVE BRAT, Virginia
AUMUA AMATA COLEMAN RADEWAGEN, American Samoa
STEVE KNIGHT, California
TRENT KELLY, Mississippi
ROD BLUM, Iowa
JAMES COMER, Kentucky
JENNIFFER GONZÁLEZ-COLÓN, Puerto Rico
BRIAN FITZPATRICK, Pennsylvania
ROGER MARSHALL, Kansas
RALPH NORMAN, South Carolina
JOHN CURTIS, Utah
NYDIA VELÁZQUEZ, New York, *Ranking Member*
DWIGHT EVANS, Pennsylvania
STEPHANIE MURPHY, Florida
AL LAWSON, JR., Florida
YVETTE CLARK, New York
JUDY CHU, California
ALMA ADAMS, North Carolina
ADRIANO ESPAILLAT, New York
BRAD SCHNEIDER, Illinois
VACANT

KEVIN FITZPATRICK, *Majority Staff Director*
JAN OLIVER, *Majority Deputy Staff Director and Chief Counsel*
ADAM MINEHARDT, *Staff Director*

CONTENTS

OPENING STATEMENTS

Hon. Dave Brat	Page 1
Hon. Dwight Evans	2

WITNESS

Ms. Sunita Lough, Project Director, Tax Reform Implementation Office, Internal Revenue Service, United States Department of the Treasury, Washington, DC	4
--	---

APPENDIX

Prepared Statement:	
Ms. Sunita Lough, Project Director, Tax Reform Implementation Office, Internal Revenue Service, United States Department of the Treasury, Washington, DC	14
Questions for the Record:	
None.	
Answers for the Record:	
None.	
Additional Material for the Record:	
American Retirement Association	20
Small Business Council of America	23

SMALL BUSINESS RETIREMENT PLANS AND THE IRS'S EMPLOYEE PLANS FEE CHANGE

TUESDAY, APRIL 17, 2018

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
SUBCOMMITTEE ON ECONOMIC GROWTH,
TAX, AND CAPITAL ACCESS,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 2360, Rayburn House Office Building, Hon. Dave Brat [chairman of the Subcommittee] presiding.

Present: Representatives Brat, Chabot, Evans, and Clarke.

Chairman BRAT. Good morning. I would like to call this hearing to order. Thank you all for being with us.

In light of April 15 occurring on a weekend and yesterday's D.C. holiday, today, Tuesday, April 17, is tax day. We are glad to have the IRS with us to discuss a matter that is critically important for small businesses and all Americans saving for retirement.

Small businesses have a number of options available to offer their employees when it comes to retirement plans. Most fall under one of three categories: defined contribution plans, defined benefit plans, or the various employer-based individual retirement accounts, also known as IRAs. To encourage and incentivize savings, many of these options also include tax advantages.

Unfortunately, research shows that not all small businesses are utilizing these options, and small-business owners often cite resource and cost issues as the reasons they do not offer retirement plans.

This cost issue is why the recent user-fee change implemented by the Internal Revenue Service to its Voluntary Correction Program is concerning.

Small businesses often do not employ an army of compliance officers to interact with the IRS. Instead, it is frequently the owner who sacrifices time away from growing and expanding the business in order to attend to tax matters.

Because of the complexity of the filing process, businesses can utilize the Voluntary Correction Program to correct and fix plan submission errors before an IRS audit commences. In order to utilize this program, a user fee is charged.

In January of this year, the user-fee schedule was altered by the IRS. It went from a table of six different fees corresponding to the number of participants in the plan to three different fees based on a retirement plan's asset size. The lowest fee went from \$500 to

\$1,500. That is a significant increase for any business, especially a small business that operates on the margins.

From Main Streets in my hometown of Virginia to communities across the Nation, small businesses play an important role in the local and national economy. Retirement plans are a key ingredient for hiring, employee retention, and business expansion. Thus, retirement-plan offerings are important to achieve small-business success. It is for these reasons that small-business equity is critical when it comes to compliance issues.

I am looking forward to our witness addressing many of these important topics and helping our Subcommittee better understand the recent user-fee change. This Subcommittee strives to create an environment where small businesses, entrepreneurs, and startups have the opportunity to grow and expand. Today's testimony will help us as we continue to monitor the small-business ecosystem.

I now yield to the ranking member for his opening remarks.

Mr. EVANS. Thank you, Mr. Chairman, for holding this hearing.

As part of their retirement planning, most Americans rely on employer-based retirement plans. As our population ages, it is critical that small employers and their employees have access to quality financial security in their retirement years, but only 14 percent of small firms offer such a benefit.

Small firms not only face the challenge of offering a retirement vehicle but enrolling their employees. Roughly 50 percent of the private-sector workforce participates in an employer-sponsored pension plan. We can do better and have made strides in increasing that number.

However, recently released revenue procedures from the Department of Treasury may have caused us to take two steps back in our effort to increase retirement savings. While it is important to recognize and applaud your efforts to provide relief and fairness, the action taken by the IRS may disproportionately harm small firms. It could even cause small businesses to eliminate their plans.

The Internal Revenue Service is one of the key pieces to maintaining a healthy national retirement system. They have the important jobs of ensuring compliance, fairness within plans. And because they cannot ensure that every plan complies with the relevant rules and regulations, the Employer Plan Compliance Resolution System was created.

This system is an important tool, allowing plan sponsors to correct mistakes and avoid disqualification of the plan. It gives them a predictable and streamlined process for fixing independent mistakes at a fair fee. Doing so has encouraged the sponsorship of many retirement plans and the fiscal security of workers. I call this a tool in our retirement toolbox.

Yet the IRS abruptly and without notice made substantial changes to the Voluntary Correction Program within the system. Rather than base fees on the particular plan size, the IRS now charges fees based on the plan asset value. And they have not provided any evidence suggesting this change was merited and the amounts reasonable. This leaves me very concerned about the future state of our retirement system and the costly consequences it will have on our small plans.

But, most importantly, I hope this hearing will provide more information not only on the facts and circumstances behind this decision, but why the IRS did not allow the statutorily mandated requirement to consider the special concerns and circumstances that small employers face with respect to compliance and correction of compliance fairness.

I understand that fees must be adjusted and changed over the years, but such drastic action by the agency leaves me speechless over the disregard of how this affects small employers and workers all around the country.

These consequences do not conform to the Committee's effort of assisting small firms with their retirement goals. Any policy regarding retirement plans should ensure small employers have the resources they need to overcome challenges in compliance. It is not only in their best interest but our entire economy.

For this reason, we need to make sure that the retirement plans are attractive for small businesses, as their retirement savings is an intricate part of our Nation's future. And this is why we are here today. This hearing will give us the chance to gather information about the rule, how it will harm small businesses, and why the IRS needs to rethink and reverse this rule. Remember: First, do no harm.

I thank the witness for being here today, and I yield back the balance of my time, Mr. Chairman.

Chairman BRAT. Thank you, Mr. Evans.

If Committee members have an opening statement prepared, I would ask that it be submitted now for the record.

I would like to take a moment to explain the timing lights for you. Although, today we just have one speaker; I think we will be in good shape. You have 5 minutes to deliver your testimony. The light starts out green, then yellow, then red. All right? I shortened that up.

Our only witness today is Ms. Sunita Lough. Ms. Lough is the Commissioner of the Tax-Exempt Government Entities Division at the IRS. However, she is currently on assignment leading the IRS in its implementation of the recent tax reform legislation.

With over two decades of IRS service, Ms. Lough has served in roles with the IRS's Large Business and International Division, the Office of Chief Counsel, the Office of Tax-Exempt Bonds, and the Office of Federal, State, and Local Governments.

In addition to her public service, she has nearly a decade of private-practice experience. Ms. Lough has a juris doctorate from George Mason University and a master of law from Georgetown University.

We know today is a big day for the IRS, so we appreciate your participation. We also appreciate the expertise that you will share with us today.

You are recognized for 5 minutes. And you saw that, as usual, the Democrats and Republicans are in total unity on everything up here. It is a day you did see us agree on something, right? So if you want to zoom in after your 5 minutes and spend a couple minutes on probably the primary issue we are here, and then we can go to questions after that.

And you may begin. Thank you very much.

STATEMENT OF SUNITA LOUGH, PROJECT DIRECTOR, TAX REFORM IMPLEMENTATION OFFICE, INTERNAL REVENUE SERVICE, UNITED STATES DEPARTMENT OF THE TREASURY

Ms. LOUGH. Chairman Brat, Ranking Member Evans, and members of the Subcommittee, thank you for the opportunity to testify on small businesses and the IRS Employee Plan Compliance Resolution System, or EPCRS.

Since January, I have been in a temporary posting as the Director of the IRS Tax Reform Implementation Office, having stepped away from my position as the Commissioner of Tax-Exempt and Government Entities Division. I was serving in TE/GE at the time of the fee change at issue.

At the IRS, an important goal is to help small businesses. They are a critical part of the Nation's economy, helping provide jobs for millions of taxpayers. Small businesses face unique challenges complying with the complexity of our Nation's tax laws, and the IRS wants to do everything it can to assist them.

The topic of today's hearing is an important one. The law involving qualified retirement plans is complex, and it is easy for a small business or their plan administrator to have issues navigating the rules. These retirement plans are critical to small businesses as well as the employees who participate in them.

At the IRS, we want to do everything we can to help small businesses stay on track with their retirement plans. To help them navigate plan issues, the IRS has worked hard to offer ways businesses can correct mistakes as simply as possible without jeopardizing their plan status. This is important for everyone involved—the small businesses, their employees, and the tax system.

This is a complex area, so I would like to take moment to walk you through some of our retirement plan correction programs designed to help on these issues.

EPCRS is a comprehensive system of correction programs designed for retirement plans, including small employers, to help correct technical mistakes.

Qualified retirement plans offer significant tax benefits to employers and employees, including current deductability of certain employer contributions and deferral of tax on the retirement fund. Yet these benefits are available only on fulfillment of numerous legal requirements that govern eligibility, vesting, and distribution, which can confuse employers, especially small businesses, who sponsor qualified plans.

EPCRS offers relief from errors in form or operation that would otherwise result in significant tax consequences to the employer, the employee participants, and the trust fund.

Within the EPCRS, the Voluntary Correction Program, or VCP, allows plan sponsors proactively to identify and correct a wide range of operational or form failures. To enter VCP, the plan sponsor completes an application form that identifies the mistake, proposes the appropriate correction method, and remits a fee for the IRS to review the application. Upon approval, the IRS issues a compliance statement indicating that the correction was proper. This is important, because it allows the plan to avoid the serious tax consequences that a plan sponsor and participant would face if a plan lost its qualified status due to a failure. Under VCP, the IRS

can review the correction and work with the plan sponsor, adjusting the correction method to resolve complex mistakes.

In 2018, the VCP were set on three tiers based on the amount of plan assets. The changes were necessary to more accurately reflect resources required to administer the program. These fees were determined by multiplying the average hours to complete the case for each category by the hourly staff cost. I would point out that the new structure called for charging the smallest plans \$3,000 per application, but we reduced that to \$1,500 out of special concern for small employers.

I would also like to mention another important component of EPCRS, which is the Self-Correction Program, or SCP. Under this program, a plan sponsor can correct plan failures without filing an application with the IRS or paying any fees as long as the failure is corrected in a timely manner, and that is 2 years. This can be a very helpful and less costly option for small businesses when they discover mistakes in their plans.

The IRS is continuing to work with the small-business community to find ways within the scope of the law to expand and improve SCP. For example, we will be meeting with several key small-business organizations, including the Small Business Council of America, in early May to discuss such improvements.

Chairman Brat, Ranking Member Evans, and members of the Subcommittee, the IRS is committed to doing everything possible to help small businesses that sponsor retirement plans and ease burdens they may face in administering their plans.

This concludes my statement. I would be happy to answer your questions.

Chairman BRAT. Thank you very much for your testimony, Ms. Lough. I will start out with a couple general ones, and then we will move on through the Committee.

First, with your current responsibility leading the tax reform law office at the IRS, I wanted to begin with just a general question. And I realize the scope is pretty big, but how is the implementation of the tax reform law moving along, in your view, in just kind of a summary statement?

Ms. LOUGH. So, as you know, this is the largest tax reform in the last 30 years, and we have a number of provisions—and much of it is a new tax regime, as you know, in the international area. And we have a team working on it, and we have made quite a bit of—you know, we have moved forward quite a bit.

Forms, we expect to get all the forms done, the new forms done, and the revisions by the end of this month and early release maybe by midsummer; the instructions at the same time.

And we are hoping to issue guidance for—we have issued a lot of frequently asked questions and FAQs and some guidance fairly fast. And we expect to issue most of it in some proposed form so taxpayers know what to do before they file their season.

I am confident we are going to have a good filing season next year.

Chairman BRAT. Good. Well, that is great. Thank you very much for that.

And then changing topics a bit, I know that the chairman was just in the room. Chairman Chabot sent a letter in December to the

IRS on their enforcement of ObamaCare's employer mandate and its impact on small businesses. And can you let our Committee know when the IRS will respond to our chairman's letter?

Ms. LOUGH. Oh, I am not aware of it, but knowing, you know, we are responsive, and I am sure he will be getting a response.

Chairman BRAT. Great. Thank you very much for that.

And then you just mentioned—I don't think any of us have the entire complexity in mind, and you just mentioned another alternative avenue for small businesses to pursue that doesn't have the fee attached. Is there a downside to pursuing that avenue?

Ms. LOUGH. There is no downside to—it is a great thing. They don't have to come in. They correct, and they just keep it within their records. And there is no fee.

The only time they can't come in is if there are tax consequences—not the only time, but one of the times that, for example, they can't come in, if third parties' taxes—there is a tax consequence. For example, if it would affect the participant's tax consequence, then they have to come into us because they have to provide us that information that they may not have.

And, as I stated, we are meeting with a number of interested parties, including the Small Business Council of America, I think it is the first week of May, to discuss further what types of programs can we include in the self-correction.

It is good for them. It is good for us. You know, it doesn't take our resources to work on the self-correction programs. And it is also good for them because they can do it themselves and not have to pay any fee.

Chairman BRAT. Okay. Great. Thank you.

And when you change the metric, it is almost hard to kind of think through the change in the metric, but it went from kind of an employee-based to an asset-based metric in assessing the fee that goes to each size.

And can you just give us the quick logic on why the move and the change from number of employees to assets?

Ms. LOUGH. So, number of participants doesn't necessarily show the size of the plan. You can have a one-person plan with a large asset size, or you can have a number of participants. So, to us, the fair way of looking at it is the size of the plan.

But we also sliced and diced the data every which way to find out, does it matter how many hours we spend on a case? Whether it is number of participants or the asset or whether it is a small employer or large employer, what we found was the hours we spent were comparable. Whichever way we look at it, whether it is a large—if it is a large plan, we spend approximately the same amount of time we do for a small plan. Or whether there are 12 participants or there are a thousand participants. It is the complexity of the issue, not the size of the assets.

And we are required government-wide to use the OMB Circular 825 to determine user fees. So we look at the time spent and the cost of the time, and what we came out with was \$3,000 for small businesses. And we understand that is a lot of money, so we cut it down to \$1,500.

It is also only a one-time fee. It is not a recurring fee. Once they correct their plan, we hope that the plan administrator is watching

over the plan for them—because they sell the plan documents to them and they look at the plan documents, they keep up with the amendments—so the small employer can keep doing what it is supposed to be doing, running its business, and not have to worry about their retirement plans.

Chairman BRAT. Great. Thank you very much.

I think, with that, I will yield for a few minutes and go through the Committee, and I may come back.

And so, with that, Mr. Evans.

Mr. EVANS. Thank you, Mr. Chairman.

The goal of this Committee is to assist small firms in providing retirement plans, because only about 14 percent of employers do so.

Can you explain whether the IRS studied how higher fees could affect compliance rates and sponsorship of retirement plans, particularly as it relates to small—you know, the thinking is what I am most interested in.

Ms. LOUGH. No, we did not study how it would affect, because it is hard for us to figure out how that would work. But we did look at how much time we spent on the entire population that comes in.

And I also want to make a point, that, out of the—I have the data—out of the 694,000 plans, only 3,390 came in in 2015. That is one-half of 1 percent of the plans, the entire population of plans that have to come in. So it is a very small percent of plans that have issues that come in, at least, because a lot of them self-correct. And it is also only a one-time fee that they have to pay.

And the other thing is it really didn't affect the time we spent on it, whether it is participant-based, whether it is a small plan or a large plan. So it is hard to tell how it affects the plan community.

The one thing also to keep in mind is, if they don't come in voluntarily and we pick this plan for audit, the effect on the plan can be, you know, catastrophic, if the plan is picked for audit and then doesn't enter into a closing agreement. That amount of closing agreement sanctions in an audit is far higher than \$1,500 or \$3,000.

And if there is no resolution, there are tax consequences to the participants, who did nothing wrong, or the employer, who actually retained experts to look at its plan, and the employer is running his business. So we want to protect the innocent participants here and offer this program and also expand, as much as we can, the self-correction program.

So the short answer, we don't know how it affects. But we think it affects them positively because they can come in without having to worry about an audit and the huge tax consequences on them.

Mr. EVANS. Maybe this is just a piggyback on, you know—can you further explain how IRS made the determination to base the user fee on the value of the plan? Essentially, how they made that determination?

Ms. LOUGH. Well, we looked at whether the hours spent by number of participants is less versus assets. And we spent the same number of hours whether we charged the fee by number of participants or the number of assets.

But the six-tier fee that we used to have before this one was confusing to the plan participants, because it was also based on the type of failure sometimes. And it is also the participants. So the

three-tier fee intent was to simplify the fee structure. You can look at it and say, oh, I fall within this category, this is what I have to pay.

Plus, we use the government-wide user-fee requirements that OMB has put out to make a determination. We looked at the hours we spent on an average on different types of plans, whether it is by asset or by participants, and we found it didn't matter. Which-ever way we sliced the data, it didn't matter. And so we came to \$3,000 for the small plans, 500,000 or less, and we thought that was a little high for them, so we cut it down to \$1,500.

And I just wanted to add, we have a meeting with the community to see how we can offer more self-correction programs so they can do it themselves and not have to come in.

The other thing is, since the last year and a half, we have changed how we work the cases that come in, and they have become much more streamlined. So it is a biannual review. So when we review again, I am guessing, because we have streamlined the process, the hours will go down for everybody, not just for small businesses but even the large. And so, by OMB requirements, we will have to look at the fee again, and if the hours go down, that means the fees will go down.

Mr. EVANS. I thank you.

And I yield back the balance of my time, Mr. Chairman.

Chairman BRAT. Thank you, Mr. Evans.

At this time, I would like to yield whatever time the Congress-woman from New York, Ms. Clarke, needs.

Ms. CLARKE. Thank you, Mr. Chairman. And I thank the ranking member, Mr. Evans.

I thank you, Ms. Lough, for coming in this morning to testify.

Every American shares the dream of being able to afford retirement. However, a 2017 study by the Pew Charitable Trust found that 40 percent of workers do not have access to employer-provided retirement options.

Small businesses are particularly hard-hit, as they often have fewer benefits to offer employees. They were also particularly affected by Revenue Procedure 2018-04, which restructured the Voluntary Compliance Program to be based on asset size rather than on the number of participants.

Ms. Lough, section 1101 of the Pension Protection Act specifically directed the IRS to take into account the special circumstances that small businesses face with respect to retirement plan compliance, yet some have claimed that the new fee schedule raised compliance costs on small employers by up to 600 percent. Is this the case?

Ms. LOUGH. So the prior fee structure was based on the number of participants. And number of participants doesn't—it wasn't based on asset size. So the number of participants doesn't necessarily mean that the plan asset is less.

So to do a comparison of what it used to be, which wasn't even based on the user fee required by OMB, to what it is now is actually comparing apples to oranges.

Ms. CLARKE. I understand that, but for an employer, with, again, the apples-to-oranges change, the bottom line doesn't necessarily recognize that. It is recognizing what the cost is to the company.

Ms. LOUGH. The cost to the company—some small employers if they were—based on the participants, if they were small, were paying \$500. And now those same employers, if they fall in the same category, you are right, they will be paying \$1,500.

Ms. CLARKE. Right. So I just would be a bit concerned. And do you think that that really comports with the goals of section 1101?

Ms. LOUGH. So we are required—for all the rest of the IRS programs, we use the user fees set forth in OMB Circular 825. The prior program based the fees on the sanctions that the resolution—what type of resolution, what type of error was occurring. And what we did was we changed the user fee, the way we compute the fee, how we do it government-wide and IRS-wide, based on the number of hours spent on each case and the hourly cost as directed by the OMB circular. So now we have the same way of doing fees used for voluntary compliance in the rest of the IRS and for other programs.

Ms. CLARKE. I understand that, but, I mean, I think that small businesses are unique. And I don't know that, sort of, a blanket regulation takes into account the nuances and uniqueness of small business.

Was that part of the discussion at all when you got to the point of where you felt that there needed to be, I guess, a blanket user-fee calculation for all that fall under section 1101?

Ms. LOUGH. So we did take that into account, and we reduced the fee that would have been by 50 percent.

Ms. CLARKE. Okay.

Well, my understanding is that the new user-fee structure was announced with little advance notice to plan sponsors. Many submissions were ready to go and awaiting a plan official to sign the paperwork after the holidays.

Did the IRS consider whether taxpayers should be permitted a transition period to submit VCP applications under the old fee schedule?

Ms. LOUGH. We did not consider that. But that—in the other areas, we have noticed that when we have a transition period, it is far more confusing to the taxpayers, because they have to look to see where it applies, and it causes a lot more confusion versus the——

Ms. CLARKE. So you are determining whether the confusion is comparable to the hardship?

Ms. LOUGH. But this is a one-time fee.

Ms. CLARKE. I understand that, but if you are not planning for an increase in fees, it becomes a hardship when the change is so drastic and there is no planning for it on the part of the businessowner, especially for small businesses.

Ms. LOUGH. Well, I don't recall exactly when the Rev. Proc. came out. And there was a time between when the Rev. Proc. comes out and when the fees are applicable. But we can look it up and see how much——

Ms. CLARKE. I would encourage you to do that.

Ms. LOUGH. Yes. Okay.

Ms. CLARKE. EPCRS includes a self-correction program that does not require an IRS submission or user fee. Many stakeholders

have advocated expanding it to include loan failures, RMD failures, and other failures.

Is the IRS considering expanding the SCP to include these failures?

Ms. LOUGH. Well, we have a meeting in early May with the business community, which includes the small-business community, with the stakeholders. And we are open to looking at where we can expand the Self-Correction Program, which is, like I initially stated, really good for us and it is good for the taxpayers.

But there are certain instances that self-correction doesn't work. And we need to be very careful where there are consequences to the participants, whether, you know, tax consequences to a third party, rather than just the plan, and that we need to make sure that it fits under the Self-Correction Program.

Ms. CLARKE. Ms. Lough, I would want to just suggest that, you know, there be some level of concentration specifically on small businesses. I represent a district where we are really talking about mom-and-pop operations, and we know that their margin of profitability is very, very slim.

So I hope that you will give some consideration to perhaps doing some sort of focus group with a cohort of small businesses so that you can get a far more specific impact, so that they are not sort of put into a pool of businesses that don't necessarily have the same challenges, if you will, that many of our small businesses do in our commercial corridors across this Nation.

And I thank you for your time.

Mr. Chairman, I yield back.

Chairman BRAT. Thank you, Yvette.

I will start up maybe another round of just short questions, and then, Dwight, if you have more, we can go around the loop one more time.

I don't know the answer to this question, so I am just asking it open. What is the average net income of a small business in the country right now?

Ms. LOUGH. I don't know the answer to that.

Chairman BRAT. The average family income in Virginia is about \$70,000. And so, when we are talking about these fees, the \$1,500 fee, et cetera, I think part of the concerns you are hearing from the entire panel here is in light of that ratio, of that \$1,500 to, say, \$60,000, or even a smaller, right, the smallest of the small, and a lot of the small businesses are losing in the first year or two.

And so then you are looking at that, and then I can tell you are obviously professional, skilled, very smart because when you are making reference off the top of your head to OMB Circular 325—right? And the problem that we are facing is that is just one out of—OMB Circular 325. Well, you are up to 325 regs, at a minimum. And then you have all the other government agencies and, I think, about \$2 trillion in regulatory overhang, right, on the U.S. economy, out of \$20 trillion.

And, as an economist, that is hitting my ears the wrong way. And it is not due to you. I think it is due to—at this May meeting, I think we need to assess our pro-growth stance in terms of policy for the country and who should be bearing that \$1,500 cost, right?

So if you are incentivizing small business—and there is no alternative to growth and startups than small business, and without which you don't have public education and all the other social goods you want to have—maybe we should start thinking about who bears the cost in general. Maybe we shouldn't be flipping all of these regulatory costs on the firm, right? Maybe we should apply it in general to society to show society the total cost of regulation in general and then discuss, is this prohibitive, right, is this slowing the economy down too much.

And so I am just—if you can comment on—this May meeting, you are going to go look for feedback. Will there be economists there who assess, hey, look, this regulatory overhang in general, this is just one small piece, but a small business cannot face up to that number, \$1,500, plus a few other of those numbers, and probably survive, much less thrive.

And so just your general comments as to how we look at these numbers.

Ms. LOUGH. So, you know, this is tax day, and you know the IRS is—we are very cognizant of the need for the small businesses to be able to run their business. That is what they want to do. You know, the plumber down the street or the hardware store, that is what they are in the business of. And they need experts and people like from the IRS to help them with their plans. They want to provide retirement plans, and so they purchase these retirement plans—because they don't draft them, most of the time they purchase them—from plan administrators. And the expectation is that these experts will look after their plans, because they just want to run their business.

And even given that, because the law is so complex, errors get made. The amendments don't get done in a timely manner. There are more contributions that should have been done, put in. So those kind of things occur because, as we all know, this is a very complex area of the law.

So we have provided mechanisms for plans to come in. When they find these errors—we want them to find them themselves, rather than us finding them on audit. So we have provided mechanisms for them to come in, and we are looking to provide more ways for them to correct themselves. And we want to encourage people to be more diligent in their—and when they provide their retirement plan, to be diligent. Because if they are not, the tax consequences are not good.

So we are looking to see how we can reduce the fee by even working ourselves into a more streamlined way so we don't spend as much time on working these applications.

So we are doing two things. We are going to see if we can increase the Self-Correction Program in instances. But it can't be all Self-Correction, because there are certain things that can't go into the Self-Correction Program because of, you know, real tax consequences to the participants. But we are also looking to see how we can streamline the Voluntary Compliance Program so we don't spend as much time.

But if we apply user fees, we have to apply them the same way. But we did reduce them. And the less time we spend, the less we can charge—or we would charge.

So we are looking at how we can help the small-business community, but I think it is—we understand that the employers really just want to run their business and not have to worry about their plans.

Chairman BRAT. Right. Good.

And I hate to ask this question, so be gentle and kind with your response. But, you know, with our tax reform, we always try to simplify, on behalf of small business and individuals and whatever. Did we? Or is there even more complexity just because the world adds regulatory—and these complex issues grow more complex by the day.

I mean, on average, did we make things simpler for small business? I think we did for individuals, but on the small-business side, I am interested to hear your expertise.

Ms. LOUGH. Well, we enforce the laws and we implement the laws as Congress passes them. And we are still studying—some of the regimes are new, and we are looking at it. The qualified business income credit, for example, or the international regime. And sometimes small businesses can get involved with the international part also.

So, to answer your question, you know, some things are new, and we are trying to understand how they will work in the small-business community.

Chairman BRAT. Very diplomatic. Thank you.

Mr. Evans?

Mr. EVANS. Thank you, Mr. Chairman.

After listening to this discussion, you really have sort of made the case of a bill I just dropped, H.R. 5512, to require the administrators of the Small Business Administration to establish a grant program to address rising costs of tax compliance.

And your last statement really says it. I mean, we passed a law, and you have the responsibility of trying to implement it. And here, either intentionally or unintentionally, there are consequences, I am hearing about, and questions have been raised.

And, you know, there is no question I totally agree with the chairman about economic growth is ultimately the issue that we all are working towards, and that is where we should be. So that is part of why I dropped that bill, you know, of the Small Business Administration coming up with some kind of program on the rising costs. Because there is no question that small businesses just cannot afford anymore, quote/unquote, “burdens” put upon them, and we have to find ways to allow them to grow.

That is part of the reason why I asked you a question about the study. And, you know, you said you chose not to do the study, but I am just going to ask you, if you dig a little deeper in that, do you think that needs to be reconsidered? Or is it too late to go back and look at the aspect of a study?

Ms. LOUGH. We can certainly look to see what effect—if it is possible for us to see what effect this compliance program has on the small-business employers to provide the retirement plans to their employees. We can certainly go back and look at that, see if there is data, and we can make correlations. Because they only come in once, and it is a one-time fee, in other words. It is not a

recurring fee. So it may be hard. But I am not a researcher or an economist, but we can ask our research folks to look at it.

Mr. EVANS. Super.

Thank you, Mr. Chairman.

Chairman BRAT. And, Ms. Clarke, any further questions?

Oh, sorry. Obviously, there are no further questions.

With that, did you have any further comments you wanted to offer the Committee?

Ms. LOUGH. No. Thank you for the opportunity to be here.

Chairman BRAT. Thank you very much for joining us here today.

Americans face many challenges with regard to saving for retirement. Small businesses can play an outsized role in helping formulate a plan for all workers. I think this discussion today will help us as we continue to look at tax issues and all issues facing small businesses, entrepreneurs, and startups.

I ask unanimous consent that members have 5 legislative days to submit statements and supporting materials for the record.

Without objection, so ordered.

This hearing is now adjourned. Have a great tax day.

[Whereupon, at 10:42 a.m., the Subcommittee was adjourned.]

A P P E N D I X

**WRITTEN TESTIMONY OF
SUNITA B. LOUGH
PROJECT DIRECTOR, TAX REFORM IMPLEMENTATION
OFFICE
IN HER CAPACITY AS
COMMISSIONER
TAX-EXEMPT/GOVERNMENT ENTITIES DIVISION
INTERNAL REVENUE SERVICE
BEFORE THE
HOUSE COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON ECONOMIC GROWTH, TAX &
CAPITAL
ACCESS
ON THE IRS' EMPLOYEE PLANS FEE CHANGE
AND THE IMPACT ON SMALL BUSINESS RETIREMENT
PLANS
APRIL 17, 2018**

INTRODUCTION

Chairman Brat, Ranking Member Evans and Members of the Subcommittee, thank you for the opportunity to testify on small businesses and the IRS Employee Plan Compliance Resolution System (EPCRS). Since January, I have been in a temporary posting as Director of the IRS Tax Reform Implementation Office, having stepped away from my position as Commissioner of the Tax-Exempt/Government Entities (TE/GE) Division. I was serving in TE/GE at the time of the fee change at issue.

EPCRS is a comprehensive system of correction programs designed to help retirement plans, including those of small employers, correct technical mistakes. Qualified retirement plans offer significant tax benefits to employers and employees, including current deductibility of certain employer contributions and deferral of tax on the retirement fund. Yet these benefits are available only on fulfillment of the numerous legal requirements that govern eligibility, vesting, and distribution, among other topics, which can confuse employers, especially small businesses, who sponsor qualified plans. EPCRS offers relief from errors in form or operation that

could otherwise result in significant tax consequences to the plan sponsor, participants, and trust fund.

Currently, EPCRS contains provisions intended to benefit or assist the small business sector. The Self-Correction Program (SCP) contains flexible provisions permitting both individual plan sponsors and financial institutions providing services to employer-sponsored retirement plans, including Simplified Employee Pensions (SEPs) and Savings Incentive Match Plans for Employees of Small Employers maintained in Individual Retirement Arrangements (SIMPLE IRA Plans) to self-correct operational defects. Additionally, EPCRS has special provisions for small corrections, including recovery of small overpayments and the distribution of small excess amounts, which may have greater applicability to small business, even though the provisions are available to all plans.

Since the creation of EPCRS a couple of decades ago, the applicable fees have been on a “sliding scale” relative to plan size, favoring small business. Incentives for voluntary compliance were implicit at the inception of EPCRS, even before there could have been historical data on program costs. Through a series of governing revenue procedures, the IRS has adjusted the fees over the years. Although the IRS recently changed the fees for one program within EPCRS—the Voluntary Correction Program (VCP), which is described in more detail below—the sliding scale persists.

OVERVIEW OF EPCRS

The IRS and the Department of the Treasury developed EPCRS to provide a remedy for retirement plan failures without having to revoke the qualified status of the plan under the tax law. Otherwise, revocation could have a dramatic impact on not just the plan sponsor, who may lose deductions for contributions, but also on plan participants and beneficiaries whose benefits generally would become currently taxable if revocation occurred.

Currently, Revenue Procedure 2016-51 sets forth the requirements for the three components of EPCRS:

- Self-Correction Program (SCP), mentioned above, is available for a sponsor of a qualified plan that has either insignificant operational failures or significant operational failures that the plan sponsor proactively identifies and corrects in a timely fashion (basically, within two years). To correct the failure, the plan sponsor must establish practices and procedures reasonably designed to promote and facilitate overall compliance with the tax law so that the error does not recur. The plan sponsor must maintain adequate records to demonstrate the correction in the event of an audit of the plan. As the name implies, the IRS does not review self-correction, and consequently, there is no fee for SCP. By the same token, SCP focuses on those types of errors that are susceptible to clear correction methods, which require little judgment, as prescribed in the revenue procedure. Other types of failures that do not fit within SCP may qualify for the other EPCRS components described below.

- Voluntary Correction Program (VCP) allows plan sponsors proactively to identify and correct a wide range of operational or form failures that are either not small enough to qualify for SCP or occur beyond the two-year SCP window. To enter VCP, the plan sponsor completes an application form that identifies the mistake, proposes the appropriate correction method, and remits a fee for the IRS to review the application. Upon approval, the IRS issues a compliance statement indicating that the correction is proper. Under VCP, the IRS can review the correction and work with the plan sponsor, adjusting the correction method to resolve complex mistakes.
- Audit Closing Agreement Program (Audit CAP) may address plan operational and form failures that are not eligible for SCP or VCP because of the type of failure or because they are discovered by the IRS. Audit CAP is most often employed on examination where the failure is discovered by the IRS. Audit CAP may be the last option before plan revocation. This program permits the plan sponsor and the IRS to enter into a closing agreement that defines the terms of plan correction for a negotiated sanction amount that is less than the Maximum Payment Amount (*i.e.* the tax that would be due if the plan were disqualified). Audit CAP sanctions are based on facts and circumstances. The sanctions are more than the VCP fees because the errors are not generally identified by the plan sponsor and are not based on the cost of processing an application, but reflect the nature, extent, and severity of the failures. Relevant factors for Audit CAP sanctions include: the extent of internal controls designed to ensure that the plan had no failures or that such failures were identified and corrected in a timely manner; number of affected employees; impact on staff (“non-highly compensated employees”); type of failure, whether demographic or employer eligibility; length of time over which the failure occurred; and reason for the failure. Audit CAP is a voluntary program, but because errors are generally found by the IRS, failure to come to an agreement on correction will often result in plan disqualification.

HISTORY OF EPCRS

The history of EPCRS goes back to the establishment of the Audit CAP pilot program in the early 1990s, in which plan sponsors could correct deficiencies found on audit based on a percentage of the tax that would be due if the plan were disqualified.

In 1992, the Voluntary Compliance Resolution (VCR) program began as a pilot program that became permanent in 1994, allowing plan sponsors who had favorable determination letters to disclose operational violations to the IRS, make the required corrections, pay a fee to the IRS, and receive confirmation of the plan’s continued qualified status.

To ameliorate plan failures and the adverse consequences to innocent participants and beneficiaries while still maintaining the incentive for plan sponsors to abide by the tax law, Revenue Procedure 98-22 modified and consolidated the various correction pro-

grams into one comprehensive system for sponsors of retirement plans referred to as EPCRS. In 2001, various programs were combined into what is now known as VCP.

Congress has repeatedly endorsed EPCRS. On the 1998 enactment of the IRS Restructuring & Reform Act, the Senate Finance Committee report stated:

[I]t is important to allocate sufficient funds for EP/EO staffing adequately to monitor and assist businesses in establishing and maintaining retirement plans. Recently, in Revenue Procedure 98-22, the IRS announced the expansion of the self-correction programs it offers employers to encourage companies to identify and correct errors without incurring significant penalties. These changes are welcomes

. . . .

In the Pension Protection Act of 2006, sec. 1101, Congress praised EPCRS, as created by Revenue Procedure 98-22, especially VCP, directing the IRS to continue to update and improve EPCRS, by focusing on the concerns of small employers, and assure that any tax, penalty or sanction is not excessive and bears a reasonable relationship to the nature, extent and severity of the compliance failure.

EPCRS FEES

When a qualified plan does not meet the tax requirements, there are many potential ramifications. The IRS may disqualify the plan; disallow the plan sponsor's deduction for contributions to the plan; and tax the income of the trust, participants, and beneficiaries. These potential ramifications encourage a plan sponsor to meet the tax requirements and to fix any problems when they arise.

As introduced above, VCP and Audit CAP are two of the programs in EPCRS designed to help plan sponsors fix these problems. The difference between the two programs is the timing and the payment necessary to participate in each program.

A plan enters VCP prior to examination by IRS. Under VCP, the plan sponsor and the IRS work together to correct any qualification failures. At the conclusion of the process, the IRS will issue a compliance statement, which resolves the issues. To participate in VCP, the plan sponsor must pay a fee authorized by statute to offset the cost of the program.

On the other hand, Audit CAP applies when a retirement plan is under examination by the IRS. Under this program, the plan sponsor and the IRS can agree to resolve an examination. At the conclusion of the process, the parties will sign a closing agreement pursuant to statutory settlement authority.

As part of Audit CAP, the plan will have to pay a sanction amount. The amount is based on a number of factors including, but not limited to: the income tax ramifications of disqualification; the culpability for the plan failure; the efforts to fix the failure; and the total number of affected employees. Audit CAP sanction amounts tend to be significantly larger than VCP program fees.

PERIODIC ADJUSTMENT OF PROGRAM FEES

From 1994 through 2001, the fees for VCR were on four tiers based on a combination of the size of plan assets and the number of participants. The fees ranged from \$500 for plans with few assets and participants to \$10,000 for plans with many assets and participants. (The dollar amounts of the fees for these programs are not indexed for inflation.)

In 2002, the fees for VCP changed to a range based on a presumptive amount. The presumptive amount ranged from \$2,000 for small plans up to \$35,000 for large plans. The fee was generally the presumptive amount unless certain factors applied to move the fee up or down. However, the fee for applications based on operational failures continued to follow the pre-2002 fee schedule.

In 2003, the fees changed again. The new structure had eight tiers based on the number of plan participants. The fees ranged from \$750 for the smallest plans to \$25,000 for the largest plans. This fee structure remained in place until 2016.

In 2016, the fee structure changed to six tiers generating a range of fees, from \$500 for the smallest plans to \$15,000 for the largest plans. Until 2018, VCP also provided for miscellaneous user fees for specific types of plan failures, such as the failure to make minimum distributions or the failure to make payments under a plan loan. These amounts were generally less than the standard fees.

In 2018, the VCP fees changed to three basic tiers based on the amount of plan assets. Also, most of the miscellaneous user fee amounts imposed for specific types of plan failures were eliminated. The fees now range from \$1,500 for the smaller plans, to \$3,000 for larger plans, to \$3,500 for the largest plans.

The 2018 VCP fees were determined by multiplying the average hours needed for the IRS to complete VCP cases by the IRS's hourly staff cost of processing the cases. Analysis of data from previous years revealed that a steeply tiered system based on the number of plan participants was no longer appropriate. The data showed that the average time spent and complexity of each case did not vary significantly across VCP applications based on plan size. Specifically, to issue a compliance statement approving the correction of a plan's qualification failure, the IRS staff cost did not vary greatly depending on the size of the plan. Consequently, changes to the fees were necessary to more accurately reflect the resources required to administer the VCP program.

CONCLUSION

Although changes to the fees were necessary to more accurately reflect resources required to administer the program, the recent VCP user fee changes continue to reflect special concern for small employers. In particular, the fee for plans with the smallest amount of plan assets (\$1,500) is less than half of the fee for the largest plans (\$3,500). Within this narrower range, a "sliding scale" of user fees that depends on plan size persists.

Chairman Brat, Ranking Member Evans and Members of the Subcommittee, this concludes my statement. I would be happy to answer your questions.



**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 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 di-

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

rected 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.

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).



SMALL BUSINESS COUNCIL OF AMERICA
 STATEMENT FOR THE RECORD
 U.S. HOUSE SMALL BUSINESS SUBCOMMITTEE ON ECONOMIC GROWTH, TAX AND
 CAPITAL ASSETS HEARING ON
 "SMALL BUSINESS RETIREMENT PLANS AND THE IRS' EMPLOYEE PLANS FEE CHANGE"

APRIL 17, 2018

The Small Business Council of America (SBCA) appreciates the opportunity to submit this statement.

The SBCA is a national nonprofit organization which has represented the interests of privately-held and family-owned businesses on federal tax, health care and employee benefit matters since 1979. On behalf of the more than 100,000 small businesses from across the country represented by the SBCA, we wish to express our serious concerns about the new user fees for the IRS's Voluntary Correction Program (VCP) that were announced in Revenue Procedure 2018-4, without any advance notice, effective immediately on January 2, 2018. In particular, Rev. Proc. 2018-4 changes the basis used for calculating fees from the number of participants to the value of the plan's assets.

The SBCA certainly appreciates that there are costs associated with the IRS's efforts in administering the VCP and that some level of user fee is necessary. We also know that it is in the best interests of both the IRS and the employer/plan to correct operational errors before an audit occurs, and most small business owners appreciate that a reasonable user fee is appropriate in exchange for the opportunity to correct inadvertent errors and avoid sanctions under audit.

However, the new user fee structure marks a significant departure from the previous user fee approach and it disproportionately and drastically increases VCP fees for small businesses.

This immediate and large fee increase for small businesses appears to run counter to the Pension Protection Act of 2006's direction that the Secretary of the Treasury update and improve EPCRS while giving special attention to, among other things, "[the] special concerns and circumstances that small employers face with respect to compliance and correction of compliance failures."¹

Since small employers may be somewhat more likely to make inadvertent errors because they often do not have dedicated in-house people administering the plan and small businesses have fewer resources even though the costs of administering a small plan is higher on a per participant basis than a larger plan, small employers were historically given reduced rate user fees for filing under the VCP program.

¹ Section 1101(b)(2) of the Pension Protection Act of 2006 (P.L. 109-280).



As mentioned above, before January 2, 2018, the VCP user fees were based on the number of participants in the plan as follows:

Total Plan Participants	User Fee
20 or fewer	\$500
21-50	\$750
51-100	\$1,500
101-1,000	\$5,000
1,001-10,000	\$10,000
More than 10,000	\$15,000

The plan qualification failures that the VCP is designed to correct, such as plan document failures, operational failures, demographic failures, and employer eligibility failures, are typically not considered to be fully corrected until a correction has been made as to each participant. Accordingly, basing the VCP user fees on the total number of participants is appropriate because the more participants and beneficiaries are affected, the more effort and review it will take for the correction to be completed.

Under the new fee structure, the fees are now based on plan assets and there is no reduction for small plans:

Total Plan Assets	User Fee
\$500,000 or less	\$1,500
\$500,001 - \$10M	\$3,000
Over \$10M	\$3,500

Basing the fees on plan assets will harm those small employers who have been successful in encouraging their employees to save in the plan – and effectively punish small employers who have sponsored a plan for a long period of time, made significant contributions for their employees and/or have succeeded in helping their employees save in the plan. *Perversely, this new structure punishes small employers for encouraging and helping their employees save.*

Not only have the standard VCP user fees been significantly increased, the special reduced VCP user fees that had been established for plan sponsors needing to voluntarily correct common compliance failures – such as missed minimum distributions, participant loan failures and certain late amendments or no amendments – have been eliminated altogether. **These specially reduced rates were utilized by all sponsors but have been especially important for small businesses that do not have the financial resources of their large counterparts.**

The VCP is a program designed to be beneficial to plans/employers, participants and the IRS. Plan sponsors should be encouraged to make voluntary correction. **Unfortunately, the new**



fee structure will disincentivize small employers from utilizing VCP. Even though they will try to self correct, they will not have the IRS' blessing on their correction, thereby putting the plan at risk. The new maximum VCP user fee amount of \$3,500 (for plans with net assets greater than \$10 million) is significantly lower than the previous VCP user fees of \$5,000, \$10,000, and \$15,000 for plans with more than 100, more than 1,000, and more than 10,000 participants, respectively. This change is likely to encourage large plans (the common term for plans over 100 participants) to utilize VCP. **However, this new fee schedule triples, quadruples, or even sextuples the VCP fee for small plans. This unfair impact on small plans runs contrary to both the PPA mandate and general public policy.**

It seems that IRS is under the misconception that most small plans fall under the first category of having assets of \$500,000 or less, but the reality is that most small plans fall under the second and third categories of having assets of more than \$500,000 and up to \$10,000,000 or more than \$10,000,000. A small plan with fewer than 50 participants that has been in existence for 5 or more years is very likely to be over the \$10,000,000 mark. We are concerned that many small businesses will forgo using the VCP because of the sharp increase in costs and will choose to self correct even though not allowed to do so under the current IRS rules. By doing this, these companies will be putting their plans at risk of disqualification by the IRS which could require that all of the plan participants take out their retirement plan money and be hit with income tax all in one year. This, of course, is exactly counter to what our nation's retirement plan policy should be where it is desirable for participants to keep money in the plan and then in an IRA for as long as possible so that they have security in their retirement.

If Congress allows the IRS to retain these dramatically increased user fees for small business, which we believe are inadvisable and counter to Congressional intent, the IRS should modify the Employee Plans Compliance Resolution System (EPCRS) to remove the limitations on the self-correction procedures and allow as many plan errors as possible to be corrected by self-correction. The SBCA believes that IRS is taking action in this regard and while this is laudable, the VCP user fees should still be returned to how they stood prior to this unprecedented action at least for plans with fewer than 100 participants.

The SBCA respectfully urges Congress to take action to require the IRS to return to calculating user fees based on the number of plan participants, rather than plan assets, or alternatively allow employers to select the choice which fee schedule to apply – either the fee schedule in place before February, 2018 or after. The reduced user fee rates should be retained, at least for small employers and many of the limitations on the self-correction procedure should be removed.

For more information, please contact:

Paula Calimafde, Chair
301-951-9325
calimafd@paleyrothman.com

Gary Kushner, President
269-488-7520
GKushner@kushnerco.com