

LIMITATION OF LETTER FORWARDING PROGRAM MAY AFFECT VCP SUBMISSIONS AND PLAN TERMINATIONS

Sep 14, 2012

In Revenue Procedure 2012-35, the Internal Revenue Service limited the use of its letter forwarding program to “humane purposes,” such as emergency situations, and specifically indicated that it will not be available to locate missing participants who may be entitled to a retirement benefit. The new limitation applies to letter forwarding requests postmarked on and after August 31, 2012.

One of the practical implications of that was discussed by IRS officials in a recent phone forum. The correction of certain operational failures under the Voluntary Correction Program (“VCP”) may affect former participants by, for example, requiring corrective allocations or distributions. In those cases, the VCP submission must indicate the method that will be used to locate and notify those individuals of the failure and the correction. Many submissions designate the IRS letter forwarding program as one or more methods that will be used for that purpose. As a result, an IRS agent may contact the plan administrator to revise the proposed correction method in a pending VCP submission, particularly if no alternative method of locating former participants has been proposed. Alternative methods will have to be proposed in all new VCP submissions.

One IRS official indicated that several acceptable alternative methods are described in the Department of Labor’s Field Assistance Bulletin 2004-02, which discussed fiduciary obligations with respect to locating missing participants in defined contribution plan terminations. The alternative methods described in FAB 2004-02 include the Social Security Administration letter forwarding service and the use of Internet search tools, commercial locator services, and credit reporting agencies.

One or more of those alternative methods will now have to be used to locate missing participants when terminating defined contribution plans as well.

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