

IRS Introduces Pre-Examination Compliance Pilot Program

June 14, 2022

Starting this month, when the IRS selects a tax-qualified retirement plan for examination, it will notify the plan sponsor by letter and provide the sponsor a 90-day window to review the plan document and operations for compliance with all plan qualification requirements.

If the sponsor's review reveals any operational or documentary failures that would otherwise qualify for self-correction under the IRS's Employee Plan Compliance Resolution System ("**EPCRS**"), the sponsor will have the opportunity to self-correct those mistakes. If the plan sponsor's review reveals any operational or documentary failures that, absent the examination, would require correction under the voluntary correction program ("**VCP**") component of EPCRS, the sponsor can request a closing agreement, and the IRS will use the VCP fee structure to determine the sanction amount the sponsor will pay under the closing agreement.

The sponsor must notify the IRS of the errors discovered and the correction within the 90-day window. The IRS will then review the documentation and determine if it agrees with the sponsor's conclusions and that it appropriately corrected any mistakes. The IRS will then either issue a closing letter or conduct either a limited or full scope examination.

If the sponsor does not respond within 90 days, the IRS will contact the sponsor to schedule a full examination. Any failures discovered by the IRS during that examination would be subject to negotiated sanctions under the Audit CAP component of EPCRS, which can be many multiples of the VCP user fee that would be assessed if the employer discovers and self-reports the failure.

Because the penalties imposed by the IRS for a failure discovered upon examination can be severe, it is imperative that a plan sponsor engage competent benefits counsel immediately upon receiving a notice under this pilot program. Having a knowledgeable team in place to review the plan document and plan operations (and correct any discovered failures) should mitigate the sponsor's exposure to a hefty sanction from the IRS.

The IRS announced the Pre-Examination Compliance Program in the June 3, 2022 Employee Plans News, which is available [here](#).

EPCRS is available [here](#).