IRS Issues Interim Guidance on Expanded EPCRS

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Section 305 of the SECURE 2.0 Act of 2022 (the ***"SECURE 2.0 Act"***) expanded the Employee Plans Compliance Resolution System (***"EPCRS"***) effective December 29, 2022, to permit self-correction of certain "Eligible Inadvertent Failures" and directed the Secretary of the Treasury to update EPCRS accordingly.

In Notice 2023-43, the IRS provides interim guidance, answering some questions that have been frequently asked by plan sponsors regarding the expanded EPCRS. A few of the highlights include:

- Plan sponsors may self-correct Eligible Inadvertent Failures that occurred before December 29, 2022. (Q&A-8)
- If there is an excise tax associated with an Eligible Inadvertent Failure, self-correction does not result in a waiver of the excise tax; waiver instead may be requested by submitting the correction through the voluntary correction program component of EPCRS. (Q&A-9)
- Plan sponsors may self-correct Eligible Inadvertent Failures that are insignificant even after an IRS examination of the plan or plan sponsor has commenced and even if the failure is discovered on examination. (Q&A-5)
- Plan sponsors may self-correct other Eligible Inadvertent Failures after an IRS examination has commenced only if prior to coming under examination, the plan sponsor demonstrated a specific commitment to self-correcting the Eligible Inadvertent Failure. For this purpose, the IRS uses a facts and circumstances analysis to determine whether a specific commitment has been demonstrated, and those facts must show that the plan sponsor is actively pursuing correction of the specific identified failure. (Q&A-4, Q&A-6)

A copy of Notice 2023-43 can be found here.

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