

IRS Pre-Examination Compliance Pilot 2.0 Program for Retirement Plans

March 12, 2024

PRACTICES Employee Benefits and Executive Compensation, Retirement Plans

As we previously reported [here](#), in 2022 the IRS introduced a pre-examination compliance program under which the IRS notified retirement plan sponsors that their plans were selected for an upcoming examination. As further explained below, the pre-exam letters sent out to plan sponsors gave them a 90-day period to review their plan documents and operations and to correct certain errors that may be discovered. If sponsors did not respond to the pre-examination letter, the IRS scheduled a full examination. The program focused on compliance with required plan compensation limits under Section 415 of the Code.

Due to the success of the first phase of the program, the IRS is starting the second phase, which, similar to the first phase, will provide each selected plan sponsor with a 90-day window to review its plan document and operations to determine if the plan meets current IRS requirements. The IRS likely will broaden the scope of its review to other types of common plan errors, in addition to Section 415 errors.

During the 90-day review period after the pre-examination letters are sent out, plan sponsors can determine if any errors that are discovered may be self-corrected. If errors discovered during the review period cannot be self-corrected, plan sponsors can request a closing agreement. The sanctions imposed under any closing agreement under the pre-examination compliance program are limited to the IRS's Voluntary Compliance Program fee structure, which is significantly less than sanctions the IRS could impose under a normal examination outside of this program.

Because the IRS will schedule a full examination of the plan if the plan sponsor does not respond within 90 days of receiving a pre-examination letter, it is imperative that the plan sponsor coordinate with the plan's benefits counsel to timely respond to any letter received in connection with this IRS program and review the plan's documentation and operations.

Knowing that this program is in place, plan sponsors also should annually conduct a self-audit of plan operations for common errors, such as the application of the definition of compensation, deferral timing, plan loan failures, and failure to timely start required minimum distributions. Identification and correction of issues before the IRS identifies them can make the process of dealing with the IRS less onerous.

The IRS announcement of the Pre-Examination Compliance Pilot 2.0 Program on February 7, 2024 is available [here](#).