

Insights

IRS Announces Launch of Pre-Examination Compliance Program for Qualified Retirement Plans

June 28, 2022

By: Alex C. Eads

In June 2022, the Internal Revenue Service (“IRS”) will launch a new pilot compliance program for qualified retirement plans, including 401(k) plans, employee stock ownership plans, and pension plans. The IRS pre-examination compliance program for qualified retirement plans (the “Program”) aims to reduce taxpayer burdens by reducing the amount of time the IRS spends on examining retirement plans. The Program will also assist plan sponsors in avoiding potential tax penalties that may have resulted from a scheduled audit. A copy of the IRS June 3rd newsletter announcing and briefly explaining the Program can be found here (included in the June 3rd drop-down menu).

The Program will supplement the existing Employee Plans Compliance Resolution System (“EPCRS”) included in Revenue Procedure 2021-30, a summary of which can be found here. EPCRS enables plan sponsors to correct errors in their qualified retirement plans through three correction programs: the Self-Correction Program (“SCP”), the Voluntary Correction Program (“VCP”), and the Audit Closing Agreement Program (“Audit CAP”).

Overview of the Program

Pursuant to the Program, the IRS will notify qualified plan sponsors by letter that their plan was selected for audit. The letter will allow a 90-day window during which the plan sponsor can review the plan’s documents and operations to determine if they meet current tax law requirements. During the review period, if the plan sponsor detects errors in the plan’s documents or operations and the errors are eligible for self-correction, the plan sponsor may self-correct the mistakes under SCP. However, if the mistakes are not eligible to be corrected under SCP, a plan sponsor can request a closing agreement from the IRS approving the corrections. Prior to the Program, calculated sanctions would be assessed against the plan sponsor at this time. Under the Program, the IRS will use the fee structure for VCP to determine the amount the plan sponsor will pay under the closing agreement. The VCP fee is based on total plan assets, with a maximum fee of \$3,500 (as of the date of publication).

If the IRS is satisfied with the plan sponsor’s conclusion and documentation of its corrections, the IRS will issue a closing letter. If not, the IRS will conduct either a limited or full-scope audit.

Effects on the EPCRS

Prior to the Program's implementation, if an IRS audit found errors, VCP correction was unavailable to the plan sponsor and SCP was only available under limited circumstances. Plan sponsors were required to use Audit CAP to correct plan errors found by the IRS during audit.

Under the Program, plan sponsors are permitted to self-correct eligible plan errors during the 90-day review period. Plan sponsors will pay no fee if the error is correctable under SCP. If, however, the error is not correctable under SCP, plan sponsors will pay the user fee determined under VCP. If plan sponsors take advantage of self-correcting plan errors during the 90-day review period, they will likely reduce their IRS fees and administrative costs well below what they would have been sanctioned under Audit CAP.

Conclusion

The IRS has not announced how long the pilot program will last or whether all notices of audit will include access to the Program. However, if a plan sponsor receives notice of IRS audit, they should immediately contact employee benefits counsel to ensure that they take the appropriate steps to comply with the letter according to EPCRS guidance, which may include utilizing the Program.

If you have any questions regarding the new Pre-Examination Compliance Program, please contact Alex Mounts, Alex Eads or any member of our employee benefits practice group.

Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.