



Retirement Plan Sponsors Should Prepare For the New IRS Pre-Examination Pilot Program

In June 2022, the IRS launched a pre-examination pilot program for retirement plans that could help employers avoid costly penalties. The program aims to reduce the burden of, and time spent on, retirement plan audits, which are typically a time consuming endeavor for plan sponsors. The program ultimately should be good news for plan sponsors in terms of both financial penalties and, presumably, a more efficient audit process.

The Pre-Examination Program

Under this program, the IRS will notify retirement plan sponsors that the plan will be subject to an upcoming audit. Plan sponsors will then have a 90-day window to review, identify, and in certain circumstances, correct any plan document or operational compliance errors it discovers. Plans that do not respond within the 90-day window will be subject to a full examination, so it is important for employers to quickly identify and address any issues.

During this 90-day window, plan sponsors can self-correct any plan document or operational errors that are eligible for self-correction under the IRS's EPCRS Self-Correction Program guidance, which was most recently updated in Revenue Procedure 2021-30.

Plan sponsors may request a closing agreement for any errors that are ineligible for self-correction. Notably, however, if an error is self-identified through this pilot program, the IRS will utilize the Voluntary Correction Program (VCP) fee structure under EPCRS in determining the amount of any applicable financial sanction, rather than the Audit Closing Agreement Program (Audit CAP) fees typically assessed in a full examination. VCP fees are significantly lower than Audit CAP fees.

Once the IRS reviews the plan's response to the pre-examination inquiry, it will issue a closing letter if satisfied with the plan's actions, or determine whether it will conduct a limited or full scope audit.

Advantages over the Standard Audit Process

Before the IRS implemented this pilot program, self-correction was only available to plans under audit in limited circumstances. Plans under audit were not eligible to correct under the VCP program. Thus, the program gives employers an additional chance to identify operational errors and self-correct them after the plan has been targeted for audit.

Action Steps for Employers that Receive a Pre-Examination Letter

- Contact ERISA counsel and consultants immediately to aid in plan document and operational review;
- Identify any potential plan document and/or operational errors;
- Work with ERISA counsel to determine the appropriate correction available for any identified errors;
- Work with ERISA counsel to respond to the IRS letter within the 90-day window.

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