

IRS Unveils New Pre-Examination Compliance Pilot Program for Retirement Plans

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Ever wished you could predict the future? Or at the very least, predict the timing of a retirement plan audit? Well, you may be in luck on your second wish.

Last Friday, the IRS Employee Plans division announced a [new pilot program](#) whereby it will notify retirement plan sponsors **90 days in advance** that their plan has been selected for upcoming examination. The pilot program has three key features:

- **Advance Notice of an Upcoming Audit:** Ninety days in advance of starting examinations, the IRS will notify plan sponsors by letter that their retirement plans have been selected for an upcoming audit. It is unclear from the announcement whether this 90-day review period will apply to all retirement plan audits (including those occasioned by a referral from another agency, like the Department of Labor), or only to retirement plans randomly selected for audit.
- **90-Day Review Period to Self-Correct Errors:** Plan sponsors are encouraged to use the 90-day period to review their plan document and operations to confirm compliance with current tax-qualification rules. Plan document and operational errors identified during this 90-day period, if eligible, may be self-corrected by the plan sponsor using the principles of the IRS's [voluntary compliance program](#) set forth in Employee Plans Compliance Resolution System (EPCRS). The IRS will review any proposed self-correction and documentation to confirm that it agrees with the resolution. The IRS will then issue a closing letter *or* conduct a limited or full scope examination.
- **Reduced Fees for Errors Not Eligible for Self-Correction:** If, within the 90-day period, a plan sponsor identifies errors that are not eligible for self-correction, it can request a closing agreement from the IRS. In that process, the IRS will apply the VCP fee structure to determine the sanction amount, rather than the normal Audit CAP fees that would otherwise apply to errors identified in an IRS examination. Because Audit CAP fees are far more unpredictable and can be significantly higher than the VCP fees, this pilot program provides a valuable opportunity for plan sponsors to get in front of costly errors not eligible for self-

correction.

Although it is only a pilot and not (yet) part of the IRS's compliance program, for as long as it lasts, this pre-examination pilot program marks a potentially helpful new tool for plan sponsors to ensure tax-qualification compliance for retirement plans.

So, what should plan sponsors do next? The ability to predict the future is valuable only to those who use the information to change their proverbial destiny. Sponsors and administrators who receive a 90-day pre-examination notice should immediately work with their attorneys and other advisors to conduct a self-audit to identify any compliance issues and address them within the 90-day window.

Of course, given what is involved in conducting a detailed review, identifying errors, coordinating internally and then fully correcting the errors, the 90-day period may feel shorter than it is. That being the case, it is a good idea for plan sponsors and administrators to consider working with their professionals to conduct self-audits on a periodic basis even in the absence of an impending audit.

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