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## IRS Announces Pre-Examination Compliance Pilot Program for Qualified Retirement Plan Sponsors

June 22, 2022

On June 3, 2022 the Internal Revenue Service (“IRS”) [announced](#) a pilot audit program and has already issued notices to retirement plan sponsors. This pilot program notifies retirement plan sponsors that they have been selected for an audit and gives them 90 days to prepare and self-correct plan errors. A plan sponsor that takes quick action upon receipt of the letter may be able to narrow the scope of the audit, reduce or eliminate potential fines by self-correcting any issues before the audit starts, or even avoid the audit entirely.

The IRS’ announcement was very short, and we hope more details will be provided. While details of the program are unclear, the IRS has stated that its goal with this pilot program is to reduce taxpayer burden and the amount of time the IRS spends on examinations. This client alert summarizes what is currently known about the program and what to do if you receive a letter from the IRS.

### **The Letter**

The IRS will notify plan sponsors if one of their retirement plans was selected for an audit. The letter will list one or more areas of focus for the IRS during the audit. The plan sponsor will have 90 days from the date of the letter to review the plan’s documents and operations and identify any errors. If the plan sponsor does not respond to the letter, the IRS will contact the plan sponsor to schedule the audit.

### **The Correction Process**

If any mistakes are found in the plan’s documents or operations during this 90 day window, the plan sponsor may be eligible to self-correct those mistakes. There are two ways such corrections may be made:

- If the mistake is eligible for self-correction under the IRS’ Employee Plans Compliance Resolution System (“EPCRS”), a plan sponsor may remedy the error in accordance with EPCRS’ self-correction principles, as described in Rev. Proc. 2021-30. All voluntary self-corrections will be submitted to the IRS to determine whether they are appropriate.
- Violations ineligible for self-correction may still be corrected using EPCRS. To do this, the plan sponsor can request a closing agreement from the IRS, which will then assess a sanction. The IRS will use the Voluntary Correction Program (“VCP”) fee structure to determine the amount of the sanction. VCP fees are generally much lower and more predictable than the Audit Closing Agreement Program (“Audit CAP”) fees that would normally apply.

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Once a plan sponsor has completed its review, information detailing the audit process and corrections must be given to the IRS for review. If the IRS agrees with the plan sponsor's conclusions and corrections, and the documentation shows no additional compliance errors, the IRS will apparently issue a closing letter. If the IRS does not agree or suspects there are additional errors, it may conduct a limited or full-scope audit of the plan. If the plan sponsor does not respond and provide documentation, an audit will be scheduled.

### Advantages of This Program

It is unclear how long the IRS will pilot this program. The program offers two clear advantages to plan sponsors that choose to conduct a self-review during the 90-day period. The first is that the program potentially allows plan sponsors to avoid an IRS audit entirely. Even if the audit cannot be avoided completely, the second advantage of the program is that voluntary correction using the VCP fee structure should result in much lower sanctions.

### What To Do

If you receive a letter from the IRS, you should contact a member of Kutak Rock's [Employee Benefits Practice Group](#) immediately. The 90-day clock starts running as of the date of the letter, and success under the program is dependent upon acting quickly to identify and correct errors in accordance with IRS guidance. Our experienced attorneys can assist you in reviewing your plan, correcting any errors found, documenting the self-audit and corrections, and drafting a response to the IRS. For more information regarding our employee benefits practice, please visit us at [www.KutakRock.com](http://www.KutakRock.com).

