

# IRS Announces New Pilot Program for Retirement Plan Audits

by Kimberly S. Couch on June 6, 2022

On June 3, 2022, the Internal Revenue Service (“IRS”) announced a new pre-examination compliance pilot program beginning in June 2022. Under the pilot program, the IRS will notify a plan sponsor by letter that its retirement plan has been selected for examination and will provide the plan sponsor with 90 days to review its retirement plan documents and plan operations and to correct any issues that may be found. This post provides background and describes the pilot program in more detail.

## IRS Retirement Plan Audits

The IRS conducts hundreds of audits of qualified retirement plans each year. There are several factors that may trigger an audit, including (i) information included on a retirement plan’s annual return (Form 5500), (ii) participant complaints, (iii) referrals from other agencies such as the Department of Labor or Pension Benefit Guaranty Corporation, (iv) determination letter applications, and (v) random selection by the IRS.

The IRS typically begins the audit process with an initial audit letter (Letter 6031) notifying the plan sponsor of the examination and requesting retirement plan documents and other information. An overview of the IRS retirement plan examination process can be found [here](#). Once the IRS commences an audit, it may expand its examination to prior or subsequent plan years or to related returns or issues. If an IRS audit reveals a plan qualification error, the error may be corrected in one of two ways under the IRS Employee Plans Compliance Resolution Program (“EPCRS”), which is set forth in [Revenue Procedure 2021-30](#). First, if the qualification error is insignificant, the IRS agent may permit the plan sponsor to self-correct the error under the EPCRS Self-Correction Program (“SCP”) without paying any sanctions. Second, if the IRS agent deems the error to be significant, the plan sponsor must correct the error under the EPCRS Audit Closing Agreement Program (“Audit CAP”), pay sanctions to the IRS, enter into an IRS closing agreement, and possibly adopt new procedures to prevent future qualification errors.

## New IRS Pre-Examination Compliance Pilot Program

The IRS examination process is time-consuming and costly for both the IRS and plan sponsors, and the new pre-examination pilot program is intended to promote compliance while reducing audit costs. Although the IRS announcement is not specific, it appears that the pilot program will apply to IRS examinations of both 401(a) and 403(b) retirement plans. The IRS announcement does not state whether all or only some retirement plans selected for audit will be offered the pre-examination pilot program.

The good news is that plan sponsors offered the pilot program have 90 days to review their plan documents and plan operations for qualification errors, and may be able to self-correct errors using the correction procedures under SCP and avoid a full-blown audit. The plan sponsor must submit a description of the errors and documentation of correction to the IRS. The IRS will review the documentation and determine if it agrees that the qualification errors have been corrected and were eligible for self-correction under SCP. If it agrees, the IRS will issue a closing letter. If the sponsor discovers qualification errors that may not be corrected under SCP, it may correct through Audit CAP and request a closing agreement with the IRS. The IRS will use the fee structure for the EPCRS Voluntary Correction Program set forth [here](#) (which should be lower than fees assessed under Audit CAP) to determine the sanction amount under the closing agreement. Under the pilot program, the IRS may still proceed with a limited scope or full examination, regardless of whether corrections have been undertaken. If the plan sponsor does not respond to the IRS within 90 days with proposed corrections under SCP or Audit CAP, the IRS will schedule a retirement plan examination.

At the end of pilot program – the announcement does not say when the pilot program ends – the IRS will evaluate the program’s effectiveness in reducing time spent on retirement plan examinations and determine if the program should be part of the IRS’s ongoing compliance strategy.

### **Actions for Plan Sponsors**

Plan sponsors should be proactive instead of waiting for an IRS letter. They should ensure that their plan documents are up to date with current tax laws. In addition, they should review their retirement plan procedures to ensure they are consistent with their plan documents and are being followed. If errors are discovered, plan sponsors should use self-correction procedures under SCP, if eligible, or voluntary correction procedures under EPCRS instead of waiting for an IRS audit. Ninety days is not a significant amount of time to find and correct errors, particularly if Board (or committee) approval is needed for a plan amendment or correction method.

Please contact a member of our [Employee Benefits & Executive Compensation Group](#) if you have any questions regarding the IRS pilot program or correction methods under EPCRS, or if you need assistance in reviewing your plan documents and procedures.



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