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IRS Issues EPCRS Guidance Under SECURE 2.0

Good news! The IRS has released interim guidance to shed a bit of light onto Section 305 of SECURE 2.0, which expands self-correction options under EPCRS. The guidance (Notice 2023-43, referred to herein as the "Notice") provides some welcome answers to many questions left open under the text of SECURE 2.0. Full guidance updating EPCRS will be released within two years.

The old rule for self-correction. Broadly speaking, before SECURE 2.0, plan failures were generally eligible for SCP if they were either: (1) an insignificant operational failure or (2) a significant operational failure that was corrected timely (generally within three plan years).

The new rule for self-correction. SECURE 2.0 expands SCP to include any "eligible inadvertent failure," so long as: (1) the plan sponsor demonstrates a "specific commitment to implement a self-correction" prior to the IRS identifying the failure and (2) the correction is completed within a "reasonable period" after the failure is identified.

When can the expanded SCP be used? The Notice provided welcomed confirmation that plan sponsors are able to use the expanded SCP immediately. In addition, the Notice confirms that failures occurring prior to December 29, 2022 (the date SECURE 2.0 was signed into law) may be corrected now using the expanded SCP rules.

What errors are "eligible inadvertent failures" eligible for SCP? Generally, an error that occurs in a plan despite reasonable practices and procedures to facilitate overall compliance with the tax code is an "eligible inadvertent error" that may now be corrected under SCP, including testing errors, documentation errors, and employer eligibility failures. However, the Notice provides that certain types of failures will not be considered "eligible inadvertent failures", so be sure to review the Notice to confirm any particular error is eligible.

How must the error be corrected? The error must be corrected in accordance with EPCRS's correction principles and rules of general applicability, and the plan cannot use a correction method that is prohibited under the current EPCRS. The plan may, but is <u>not</u> required, to use one of the safe harbor correction methods in the appendices to EPCRS (although those are deemed reasonable and appropriate methods of correcting a failure).

What is the new deadline for correction when using SCP? Corrections must be completed within a reasonable period after the failure is identified and the plan must have demonstrated a specific commitment to implement self-correction regarding the failure before the failure is identified by the IRS. Whether these requirements are met is based on facts and circumstances. However, the Notice provides that errors corrected within 18 months of when the plan identifies the error (6 months for employer eligibility failures) will be deemed corrected in a reasonable period. The IRS also reminds plans that they should document the correction.

When your client inevitably discovers an error, be sure to work with your TPA partner to utilize this expanded program that will save your client money. More SCP corrections means fewer fees going toward VCP!

Reminders

- **June 1, 2023:** IRS has opened its determination letter program to certain 403(b) plans.
- **July 29, 2023:** Deadline to distribute a summary of material modifications (SMM) to participants for plan changes (unless already included in an updated SPD).
- **August 14, 2023:** Deadline for participant-directed defined contributions plans to distribute quarterly benefit statements for plan fees in Q2 2023.

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Kelsey's practice is focused in the areas of Employee Benefits and Executive Compensation. She works with business owners and HR executives to understand and manage employee benefits and executive compensation arrangements. She routinely represents clients before the Internal Revenue Service, Department of Labor, and Pension Benefit Guarantee Corporation and has extensive experience in virtually all aspects of employee benefit plans and executive compensation arrangements.