

Act Fast (If You Get the Letter)! IRS Pre-Examination Retirement Compliance Pilot Program is Extended

Employee Benefits & Executive Compensation on **February 8, 2024**

On February 7, 2024, the IRS [announced the second phase](#) of its Pre-Examination Retirement Compliance Program (we discussed phase one in our earlier post [here](#)).

Under this program, sponsors will be notified that their plan is selected for examination and will have 90 days to review and correct any plan document or operational errors, similar to the process for phase one. If no response is received within that window, the IRS will commence its audit. The IRS noted the efficiency of phase one (72% of the letters generated a proactive plan sponsor request) and an intent that this program reduce the burden of audits on taxpayers, expedite plan examinations and encourage self-correction.

If errors are identified during the 90-day window, they may be self-corrected if eligible. The IRS will review the correction documentation and determine if appropriate corrective measures have been taken, and then will issue either a closing letter or open further examination. Such further examination may be either limited or full in scope. If the plan sponsor identifies errors that are ineligible for self-correction, the plan sponsor may request a closing letter. Any fees assessed as part of such closing letter will be determined using the fee structure for self-identified corrections under the IRS's Voluntary Correction Program ("VCP") rather than the significantly higher fees that may be assessed under the IRS audit cap program that typically governs correction of mistakes found after commencement of an audit.

Proskauer Perspective

If a plan sponsor receives a letter notifying them of an upcoming examination, it is important to *act quickly* and loop in benefits counsel as soon as possible. Plan administrators have a relatively short time to review operations and plan documents and determine any appropriate corrective measures in order to take advantage of this limited and valuable window for correction with reduced or no penalties.

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