

IRS LAUNCHES PILOT PRE-EXAMINATION RETIREMENT PLAN COMPLIANCE PROGRAM



In its June 3, 2022, [Employee Plans Newsletter](#), the Internal Revenue Service announced a pilot compliance program affecting retirement plans and their sponsors. Under this pilot program, the IRS will notify a plan sponsor by letter 90-days in advance if their retirement plan has been selected for examination rather than immediately initiating a retirement plan audit. This allows the plan sponsor a 90-day window to review the plan's documents and operations to determine if they meet current tax law requirements.

90-Day Review Period to Self-Correct Errors

If the sponsor's review reveals any errors, the sponsor may be able to self-correct them using the correction principles in the [IRS Voluntary Compliance Program](#). If mistakes are found during the sponsor's review that are not eligible to be [self-corrected](#), the sponsor can request a closing agreement. In this case, the IRS will use the [voluntary correction program fee structure](#) to determine the fees under the closing agreement. 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.

Depending on its evaluation of the plan sponsor's report, the IRS may take one of three actions:

1. Determine that no further action is necessary and issue an audit closing letter with no further contact; or
2. Enter into a closing agreement that addresses any errors identified in the self-examination that are not eligible for self-correction; or
3. Open a limited or full-scope audit, if the IRS determines that a closer review of the retirement plan is necessary.

Previously, plans that had been selected for audit were not eligible for the Voluntary Correction Program and the ability to self-correct was very limited. Under the new program, if the sponsor receives the initial IRS letter but does not respond within the 90-day window, the IRS will contact the sponsor to schedule a full examination. Sponsors are advised to timely respond to any IRS notices to minimize the chances of the matter progressing to a full examination.

The IRS has stated that at the end of the pilot program, they will evaluate its effectiveness and determine if it should continue to be a part of their overall compliance strategy.

Although the new IRS program appears to be designed to ease the IRS audit burden on certain plans, history tells us that the IRS (as well as the US Department of Labor) take plan compliance very seriously. Employee plans operate in a complex regulatory landscape. For these reasons, employers should not only take immediate action if they are notified that their plan has been selected for examination but should also regularly take proactive steps to be sure their plans are in compliance with applicable laws and regulations.

Examples of non-compliance within the retirement plan environment include but are not limited to:

- Operating outside the terms of the Plan document
- Plan documents that are outdated / not amended to comply with recent tax law changes or not designed in accordance with the [Internal Revenue Code](#)

and Employee Retirement Income Security Act (ERISA)

- Missing, late, or incorrect annual filings, including Form 5500
- Failure to perform non-discrimination testing (NDT) or to timely address NDT tests that need remediation (such as refunding excess deferrals to highly compensated participants to satisfy the ADP test)
- Failure to pay Required Minimum Distributions
- Using the wrong definition of compensation for Plan purposes
- Failure to provide required information to participants (such as the Summary Annual Report and fee disclosures)

BMF's robust Employee Benefit Plan practice audits over 100 plans annually and provides tax compliance and sophisticated advisory services to plans and their sponsors. We have assisted many plans with various types of governmental examinations. Should you receive any correspondence from the IRS or other regulatory agencies regarding your plan, please get in touch with your BMF Advisor.