IRS Issues Interim Guidance On Plan Corrections Under SECURE 2.0 Act

The SECURE 2.0 Act of 2022 (SECURE 2.0) contains provisions that may benefit employers who may have compliance concerns. Specifically, SECURE 2.0 expands the Employee Plans Compliance Resolution System (EPCRS) to allow eligible inadvertent failures to be corrected under a Self-Correction Program (SCP).

SCP Immediately Available to Qualified Plan Sponsors

SECURE 2.0 allows an employer to self-correct any eligible inadvertent failure if completed within a reasonable time after the error is discovered. While the Internal Revenue Service (IRS) must release more detailed guidance on this provision by December 2024, it has issued Notice 2023-43 to provide interim relief before it revises the comprehensive EPCRS guidance in Rev. Proc. 2021-30. Notice 2023-43 specifies that employers can self-correct failures that meet specific conditions and limitations before updated guidance is provided.

What You Should Know

What is an eligible inadvertent failure? SECURE 2.0 defines an "eligible inadvertent failure" as one that occurs despite an employer's suitable practices and procedures and that is *not*:

- egregious,
- related to the diversion or misuse of plan assets, or
- related to an abusive tax avoidance transaction.

Conditions. Employers may now correct eligible inadvertent failures under SCP at any time if two conditions are met:

1. The IRS must not discover the failure (e.g., during an audit) before the employer has taken "any actions that demonstrate a specific commitment to implement a self correction."
2. The self-correction must be completed within a reasonable period after the failure is identified.

NOTE: Employers may self-correct *insignificant* failures even if initially discovered by the IRS.

Limitations. There are circumstances in which employers cannot self-correct eligible inadvertent failures. While any failure normally *may be* corrected using EPCRS' Voluntary Correction Program (VCP), certain cases *require* correction through the VCP. Employers may prefer to correct failures through the VCP if they:

- implement a correction method not described in Rev. Proc. 2021-30,
- seek a waiver of an excise or additional tax, or
- want written assurance that their correction method has received IRS approval.

Staying on Track

Most retirement plans likely have occasional "hiccups" that an IRS examiner could uncover, but the IRS seems more interested in plans complying with qualification requirements than in punishing employers for errors. With the relief provided in Notice 2023-43, employers may find it easier to keep their plans on the proper track.