GROOM LAW GROUP

Publications

The IRS's New Pre-Examination Pilot Program – Key Features and Questions

ATTORNEYS & PROFESSIONALS

Randy Bunnell
rbunnell@groom.com
202-861-5441

Elizabeth Thomas Dold
edold@groom.com
202-861-5406

Mark Lofgren
mlofgren@groom.com
202-861-6614

Louis T. Mazawey
lmazawey@groom.com
202-861-6608

PUBLISHED

06/21/2022

SOURCE

Groom Publication

SERVICES

- Retirement Programs
- Fiduciary & Plan Governance

Earlier this month, the IRS announced a new pilot program under which retirement plan sponsors will be given 90-days notice that their plan has been selected for examination which they may be able to largely avoid by taking certain steps. We discuss the key features of this pilot program below, along with some questions and considerations.

90-Day Review and Correction Period

Under the new pilot program, 90 days before an IRS examination begins, the IRS will notify plan sponsors by letter that their retirement plan has been selected for examination. This notice letter from the IRS triggers a 90-day review period during which plan sponsors may review their plan document and operations to confirm compliance with current tax law requirements. We understand that the IRS notice letter will identify a particular issue or issues that IRS will focus on. For example, we have seen one such letter for a defined contribution plan which indicates that the IRS would be focusing on the Code section 415(c) limitation "plus any other issues that exist." We suspect that other issues and types of plans will be part of the pilot program, but it is not yet clear if the program will be limited to only certain plans or issues.

Treatment of Errors Identified and Corrected During the 90-Day Review Period

Any identified errors may be self-corrected, if eligible, using the principles set forth in the Employee Plans Compliance Resolution System ("EPCRS"), Revenue Procedure 2021-30. If errors are identified that are not eligible to be self-corrected, the plan sponsor can seek a closing agreement with the IRS. The IRS will apply the Voluntary Correction Program ("VCP") fee structure to determine the sanction amount in lieu of the much higher Audit Closing Agreement Program ("Audit CAP") fees which would ordinarily apply to errors identified by the IRS on examination.