

# IRS ISSUES EPCRS GUIDANCE TO IMPLEMENT SECURE 2.0'S EXPANSION OF SELF-CORRECTION OPPORTUNITIES

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The IRS maintains the Employee Plans Compliance Resolution System (“EPCRS”) under which retirement plan errors can be corrected to avoid disqualification. Section 305 of SECURE Act 2.0 expands the EPCRS self-correction provisions by allowing retirement plans to self-correct “eligible inadvertent failures.” The broader availability of self-correction may help plan sponsors reduce the cost of correction for a greater number of failures by avoiding use of the more expensive voluntary correction program (“VCP”) correction method under EPCRS.

The parameters of EPCRS are currently set forth in Revenue Procedure 2021-30, which must be updated by December 29, 2024, to reflect SECURE Act 2.0 changes. In the meantime, interim guidance in the form of IRS Notice 2023-43 was recently published to help plan sponsors better understand how SECURE Act 2.0 Section 305 is intended to change the EPCRS self-correction rules applicable to “eligible inadvertent failures.”

Highlights of the rules addressed in the Notice are as follows –

- A qualified retirement plan sponsor may immediately self-correct an “eligible inadvertent failure” (including certain plan loan failures) even though Revenue Procedure 2021-30 is not yet updated, subject to certain conditions and exceptions.
- A custodian of an individual retirement account or an individual retirement annuity (IRA) may not self-correct an “eligible inadvertent failure” under EPCRS until Revenue Procedure 2021-30 is actually updated.
- An “eligible inadvertent failure” may be self-corrected under the new self-correction guidelines if:
  - The plan or plan sponsor has not come under examination by the IRS with respect to the failure, *unless* the plan sponsor is able to demonstrate there already is a specific commitment, based on all the facts and circumstances, to implement a self-correction with respect to the “eligible inadvertent failure” (e.g., the plan sponsor is actively pursuing correction). An insignificant “eligible inadvertent failure” may still be self-corrected even if the plan or plan sponsor comes under examination.

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- The self-correction is completed within a reasonable period after identification of the failure. A reasonable period is determined by considering all relevant facts and circumstances, but a failure that has been corrected by the last day of the 18th month following the date the failure is identified by the plan sponsor will be treated as having been completed within a reasonable period after it is identified.
- It is not egregious, does not directly or indirectly relate to an abusive tax avoidance transaction, and does not relate to the diversion or misuse of plan assets.
- The plan sponsor has established practices and procedures reasonably designed to promote and facilitate overall compliance with applicable Code requirements.
- The plan sponsor applies the correction principles and rules of general applicability set forth in Revenue Procedure 2021-30.
- The plan sponsor does not use a correction method that is prohibited under Revenue Procedure 2021-30.
- Until Revenue Procedure 2021-30 has been updated, the prohibitions on self-correction of certain loan failures, demographic failures, and employer eligibility failures do not apply if those failures otherwise qualify as “eligible inadvertent failures.”
- There is a list of “eligible inadvertent failures” that may *not* be self-corrected before Revenue Procedure 2021-30 is actually updated, including –
  - A failure to initially adopt a written plan.
  - A significant failure in a terminated plan.
  - Certain SEP or SIMPLE plan failures, including a failure that involves excess contributions to a SEP or SIMPLE IRA plan and that is corrected by permitting the excess contributions to remain in an affected participant’s IRA.
  - An operational failure that is corrected by a plan amendment that conforms the terms of the plan to the plan’s prior operations in a manner that is less favorable for a participant or beneficiary than the original terms of the plan.
  - A failure in an ESOP that involves Code Section 409 in which tax consequences other than plan disqualification are associated with the failure.
- The requirement that a qualified plan or 403(b) plan be the subject of a favorable determination letter does not apply with respect to self-correction of “eligible inadvertent failures.”
- The requirement that correction of a significant failure must be completed or substantially completed by the last day of the third plan year following the plan year for which the failure occurred does not apply with respect to self-correction of “eligible inadvertent failures.”
- While the Notice imposes no new IRS recordkeeping requirements with respect to the self-correction of “eligible inadvertent failures,” it serves as an important reminder that self-correction must be appropriately documented. Not only might an IRS auditor ask for documentation substantiating the identified failures, how they occurred, and how and when they were corrected, but a plan sponsor also could be asked to show there were established practices and procedures (formal or informal) reasonably designed to promote and facilitate overall compliance.

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The guidance in Notice 2023-43 is not intended to be comprehensive. Nonetheless, plan sponsors may rely on the guidance provided in the Notice until Revenue Procedure 2021-30 has been updated. If a self-correction was completed by a plan sponsor on or after the SECURE 2.0 Act was enacted (i.e., December 29, 2022), and before the date Notice 2023-43 was issued, the plan sponsor may apply a good faith, reasonable interpretation of SECURE Act 2.0 Section 305 in completing the self-correction.

Note that Notice 2023-43 does not address the separate sections of the SECURE Act 2.0 that specifically relate to the recovery of plan overpayments or the correction of automatic contribution errors in 401(k), 403(b), and 457(b) plans – it only addresses the expansion of the EPCRS self-correction by SECURE Act 2.0 Section 305. The guidance in Notice 2023-43 became effective when it was issued on May 25, 2023.

Please contact a member of the [Employee Benefits Practice](#) if you would like to learn more about the process of correcting plan errors.

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