



TaxNewsFlash

United States



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Notice 2023-43: Guidance regarding expansion of employee plans compliance resolution system under Secure Act 2.0

The IRS today released an advance version of [Notice 2023-43](#) [PDF 179 KB] providing guidance on section 305 of the SECURE Act 2.0 (signed into law on December 29, 2022, as part of the “Consolidated Appropriations Act of 2023” (H.R. 2617)) regarding the expansion of the Employee Plans Compliance Resolution System (EPCRS).

Section 305 expands the Self-Correction Program under EPCRS and requires that Rev. Proc. 2021-30 be revised to take into account the provisions of section 305 no later than two years after the date of enactment of the SECURE 2.0 Act. The notice is intended to assist taxpayers by providing interim guidance in advance of the update to Rev. Proc. 2021-30 and is not intended to provide comprehensive guidance with respect to section 305 of the SECURE 2.0 Act.

The notice provides guidance in a question and answer (Q&A) format with respect to the following issues in particular:

- A plan sponsor may self-correct an eligible inadvertent failure (as defined in section 305(e) of the SECURE 2.0 Act) before Rev. Proc. 2021-30 is updated if certain conditions are satisfied and certain exceptions do not apply.
- A custodian of an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b) may not correct an eligible inadvertent failure under EPCRS before Rev. Proc. 2021-30 is updated.
- Interim interpretive guidance that applies with respect to corrections of eligible inadvertent failures is provided.

The notice does not address section 301 of the SECURE 2.0 Act, which relates to the recovery of plan overpayments, or section 350 of the SECURE 2.0 Act, which relates to correcting automatic contribution errors in a plan described in section 401(a), 403(b), 408, or 457(b). The notice also does not address any elements of section 305 of the SECURE 2.0 Act over which the Department of Labor has authority.

Plan sponsors may rely on the notice beginning on the date it is issued and ending on the date Rev. Proc. 2021-30 is updated pursuant to section 305(g) of the SECURE 2.0 Act. If a self-correction is completed by a plan sponsor on or after December 29, 2022, and before the date the notice is issued, the plan sponsor may apply a good faith, reasonable interpretation of section 305 of the SECURE 2.0 Act in completing the self-correction. A plan sponsor that completes a self-correction during this period in a manner that accords with the notice will be treated as having applied a good faith, reasonable interpretation of section 305 of the SECURE 2.0 Act.

The Treasury Department and IRS invite comments on the guidance in the notice and any other aspect of section 305 of the SECURE 2.0 Act on or before August 23, 2023. In particular, the Treasury Department and IRS seek comments relating to:

- Additional correction methods that are required to be used to correct eligible inadvertent failures, including general principles of correction if a specific correction method is not specified by the Secretary
- A description of common IRA failures and suggested correction methods for those failures, and the possibility of expanding EPCRS to be available for both IRA custodians and IRA owners.

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