

MEMO# 35421

August 28, 2023

ICI Submits Comment Letter to IRS and Treasury on EPCRS Program

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: ICI Submits Comment Letter to IRS and Treasury on EPCRS Program

ICI on August 23, 2023, submitted a comment letter (Letter) to the IRS and Treasury addressing SECURE 2.0 Act section 305, which amends the Employee Plans Compliance Resolution System (EPCRS), and IRS Notice 2023-43, which provides interim guidance under section 305.[\[1\]](#) The Letter, which is attached for your reference, requests clarification of aspects of the interim guidance provided in Notice 2023-43 to implement section 305, poses additional questions regarding section 305 itself, and makes recommendations for future guidance.

Broadly speaking, section 305 allows plan sponsors to self-correct eligible inadvertent failures that are identified too late for self-correction under the prior EPCRS[\[2\]](#) as in effect before the SECURE 2.0 Act. Section 305 also directs IRS to expand EPCRS by making it available to IRAs. Section 305 requires IRS and Treasury to amend or update EPCRS within two years of the date of enactment of the SECURE 2.0 Act to effect the requirements of section 305.

Notice 2023-43, issued May 25, 2023, provides interim guidance pending a future amendment of EPCRS. Notably, Notice 2023-43 defers the extension of EPCRS to IRA custodians. Notice 2023-43 also requests comments on both the Notice and on "any other aspect of" section 305.

ICI's comment letter addresses the following items.

- We requested that IRS and Treasury clarify the applicable time period to self-correct eligible inadvertent failures under section 305. Importantly, we asked that any further guidance make clear that in no event would the available time period to self-correct be reduced from that under EPCRS as it existed prior to the SECURE 2.0 Act.
- We asked that IRS and Treasury confirm that in addition to making self-correction available to IRA custodians, the expanded EPCRS will permit IRA custodians to use the

Voluntary Correction Program, or VCP.

- We highlighted a number of common IRA errors that would be appropriate for IRA custodians to self-correct under an amended EPCRS. These include:
- Failure to satisfy the 60-day rollover requirement;
- Required minimum distribution failures;
- Inadvertent or unauthorized distributions from IRAs;
- Setup of, or transfer to, wrong IRA account type; and
- Failure to comply with the one-per-year limit on indirect IRA rollovers.

David Cohen
Associate General Counsel, Retirement Policy

Notes

[1] Letter to IRS and Treasury from Elena Chism and David Cohen, dated August 23, 2023. For a discussion of the SECURE 2.0 Act, see ICI Memorandum No. 34795, dated January 12, 2023, available at www.ici.org/memo34795. For a discussion of Notice 2023-43, see ICI Memorandum No. 35377, dated July 18, 2023, available at www.ici.org/memo35377.

[2] For a description of the prior EPCRS program as reflected in Rev. Proc. 2021-30, see ICI Memorandum No. 33711, dated August 2, 2021, available at www.ici.org/memo33711.

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