

5 KEY TAKEAWAYS

Correcting Retirement Plan Compliance Issues under SECURE 2.0

Kilpatrick Townsend partners [Lois W. Colbert](#) and [Sterling Perkinson](#) recently presented a webinar focused on new rules for correcting compliance issues for 401(k) and profit-sharing plans, 403(b) plans, and defined benefit pension plans under SECURE 2.0, which is major retirement plan legislation passed at the end of 2022.

Key Takeaways from the presentation include:

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SECURE 2.0 greatly expands the ability for employers to self-correct retirement plan compliance issues without any IRS filing, fees, or penalties. The IRS has issued guidance recognizing the expansive scope of self-correction opportunities under SECURE 2.0, but has imposed some limitations.

Employers should take this opportunity to review their plan documents and plan operations to identify and correct any compliance issues promptly. All corrective actions should be well documented, including an assessment of controls and procedures put in place to avoid similar failures in the future.

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Even with the expansion of self-correction, there may be situations where employers find correction under the Voluntary Correction Process (VCP) appropriate. IRS approval of a correction may be desired because there is uncertainty about the correction method applied or to obtain relief from excise taxes.

SECURE 2.0 revamps the correction procedures for overpayments from retirement plans so that plans may not be required to attempt to recover overpayments from participants and beneficiaries, and employers may not need to make additional contributions to the plan to make up for overpayments. In addition, when a plan decides to recover an overpayment, SECURE 2.0 imposes restrictions on recovery efforts and limits the amount that can be recovered from participants and beneficiaries in many circumstances.

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The Department of Labor has announced proposed changes to its Voluntary Fiduciary Correction Program that will introduce a self-correction component for late deposits of employee contributions.

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