

NEWSLETTER

President's Message:



As I enter my second year as your appointed chapter president, I would like to thank the Board of Directors, Committees, and all our Chapter Members for their meaningful contributions. Also, a special thank you to

our sponsors for their continued financial support that helps us cover expenses and keeps our membership fees down. We are proud that our chapter is one of the largest and most active of the 10 chapters. For the first time in many years all the chapter logos have been updated, we hope you enjoy the new look.

The SECURE Act 2.0 will continue to be the dominant topic at conferences, seminars, and general discussions for several months to come. To ensure we stay up to date on regulatory requirements and best practices our program committee is lining up speaker meeting presentations on this important legislation. Not only do our breakfast meetings provide us with useful information, they also offer valuable social networking opportunities.

Last month, we gathered at Bowlero to celebrate our Members. Our member appreciation events are an opportunity to have some fun with our colleagues in a different setting. See our article on this event later in the newsletter.

Western Pension & Benefits Council is hosting a 1½ day conference on October 19 and 20, 2023 at the Westin Kierland Resort in Scottsdale, Arizona. Registration is open and a block of hotel rooms have been reserved. This is the first conference in several years put on solely by Western Pension & Benefits Council. If you are not a current member of Western Pension & Benefits Council, please join and enjoy the many benefits of membership, including a discount on conference registration!

I hope to see you at our breakfast meeting at Andre's restaurant on September 14th. Stephen Forbes will be speaking on "Self-Correction after SECURE Act 2.0." Be sure to register, we'll be raffling off one admission ticket to our conference and two nights stay at the Westin Kierland!

Warm Regards,
Tom Drosky, PenChecks Trust
Orange County Chapter President

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MEMBER APPRECIATION



WINNERS!

Our Chapter met for our 2023 Member Appreciation Event on August 24th at Bowlero in Tustin for an afternoon of laughs, fajitas, drinks, and of course, some competitive bowling! Trophies were presented to recognize outstanding performance. We appreciate our members for making Orange County the strongest Western Pension Chapter and look forward to the start of our regular season on September 14th.



ASK THE EXPERT



STEPHEN FORBES

Stephen is an ERISA attorney and educator with 35 years of experience practicing and teaching in the retirement plan area. Recently, Mr. Forbes received ASPPA's 2019 Educators Award. Stephen was vice president of SunGard in charge of Relius Education. He teaches seminars, conferences and webcasts on retirement plan compliance, design and correction. He also provides professional consulting. Mr. Forbes has drafted qualified plan, 403(b), 457(b), 409A and IRA documents. He was the author of "The Form 5500 Filing Guide" and the co-author of "The Pension Library." Mr. Forbes was a Tax Law Specialist at the IRS National Office (Employee Plans Division) where he trained IRS employees, wrote IRS Notices and Revenue Rulings and participated in several Treasury regulations committees.

SELF-CORRECTION: GOOD NEWS FROM THE IRS!

It is rare that we associate good news with the IRS. However, the IRS recently issued Notice 2023-43 (Notice) that provided guidance on the SECURE Act 2.0 expansion of self-correction (Section 305). The Notice not only provided answers to some important questions, it provided good news regarding self-correction. Previous to SECURE 2.0, the IRS generally only permitted self-correction of operational failures and normally those failures had to be corrected within three years. Under Section 305, most failures (i.e., operational, demographic and plan document) may now be self-corrected. In this article, we will answer the important questions regarding the new expanded self-correction procedures.

What plan failures may be self-corrected? Section 305 provides that any eligible inadvertent failure (EIF) that fails to comply with the qualified plan, 403(b), SEP or SIMPLE IRA rules may be self-corrected, except to the extent the failure was identified by the IRS prior to any actions that demonstrate a specific commitment to implement a self-correction with respect to such failure, or the self-correction is not completed within a reasonable period after identification of the failure. Section 305 also provides that, for purposes of self-correction of an EIF, the correction period is indefinite, other than with respect to failures identified by the IRS prior to any actions that demonstrate a specific commitment to implement a self-correction. In other words, effectively all plan failures may now be self-corrected unless the IRS identifies the failure before you have started the correction, or, the IRS has identified the failure as not eligible for self-correction.

What plan failures may not be self-corrected? Section 305 provides that self-correction of an EIF is not available if such failure is identified by the IRS prior to any actions which demonstrate a commitment to implement self-correction with respect to the failure or the self-correction is not completed within a reasonable period after discovery.



ASK THE EXPERT!

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The Notice provides a list of failures that, until EPCRS is updated, may not be self-corrected. These include:

- 1.the failure to initially adopt a written plan document;
- 2.failures in orphan plans;
- 3.a significant failure in a terminated plan;
- 4.a demographic failure that is corrected not using a method set forth in Treas. Reg. §1.401(a)(4)-11(g);
- 5.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 than the original terms of the plan (scrivener's error);
- 6.excess contributions to a SEP or SIMPLE IRA that remain in the participant's IRA;
- 7.failures in SEPs or SIMPLE IRAs that do not use mode; and
- 8.a failure in an ESOP involving Code §409.

What is an eligible inadvertent failure (EIF)?

Section 305 defines an EIF as a failure that occurs despite the existence of practices and procedures (EPCRS §4.04), or (b) similar standards in the case of an IRA. Under section 305, an EIF does not include any failure that is egregious, relates to the diversion or misuse of plan assets, or is directly or indirectly related to an abusive tax avoidance transaction.

What is considered reasonable period for self-correcting an EIF?

Under EPCRS, a significant failure needed to have been corrected by the earlier of (1) the close of the third plan year following the plan year of the failure, or (2) the date the IRS notifies the plan of an examination. The three-year correction period no longer applies.

However, the Notice provides that a failure must be corrected within a reasonable time after being identified by the employer. Whether an EIF is corrected within a reasonable time after being identified by the employer is determined by considering all relevant facts and circumstances. The Notice provides a safe harbor - a failure that is corrected within 18 months of being identified will be treated as having been completed within a reasonable period.

What self-correction rules are no longer applicable?

The Notice provides a list of provisions in the current version of EPCRS relating to self-correction that no longer apply to self-correcting eligible inadvertent failures. These include:

- 1.the requirement that a qualified plan or 403(b) plan have a favorable determination letter;
- 2.the prohibition of self-correction of demographic failures and employer eligibility failures;
- 3.the prohibition of self-correction for significant failures of SEPs or SIMPLE IRAs;
- 4.the prohibition of self-correction of certain loan failures; and
- 5.the requirement that a significant failure must be completed or substantially completed by the end of the third plan year following the year in which it occurred.

If the IRS identifies a plan failure in IRS examination and the failure is "insignificant," may the plan still self-correct the failure?

Yes. Under EPCRS, if a failure is insignificant, there is no time limit on correcting the failure and the employer may correct the failure even if it is identified in an IRS examination.

[Read More](#)

ASK THE EXPERT!

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The Notice makes it clear that this position continues under the expanded self-correction.

When is new self-correction provision of SECURE 2.0 effective? Can a plan take advantage of the new self-correction provision for failures that occurred prior to the enactment of Section 305? Practitioners were unsure as to whether they could use the expanded self-correction immediately or if they were required to wait until the IRS updates EPCRS to reflect the changes. The Notice confirms that a practitioner may use Section 305 immediately and provides interim guidance, which is in effect until EPCRS is updated. Furthermore, Section 305 applies to failures that occurred prior to its enactment.

When will the next EPCRS procedure be issued? Will the new procedure include additional correction methods? Section 305 instructs the IRS to update EPCRS within two years of the passage of SECURE 2.0 – December 29, 2024. Note: The IRS has been particularly slow about issuing SECURE 2.0 guidance, so the new EPCRS is not expected until late 2024 (if then).

Did Section 305 increase the type of loan failures that can be self-corrected? Yes. Under EPCRS, a plan may correct a failure to make loan repayments. Under Section 305, an employer may now correct a time limit failure (loan exceeding 5 years) and amount limit failure (lesser of 50% of vested account balance or \$50,000).

Is VCP obsolete? No. A plan that wishes an IRS compliance letter may still file under VCP. A practitioner may correct failures under VCP: (1) that are not eligible for self-correction, or (2) for which the plan wants to obtain a waiver of excise taxes associated with failures.

In completing a self-correction, what documentation requirements apply? If requested upon an IRS examination, an employer must be able to provide documentation substantiating the self-correction, such as: (1) identifies the failure, including the years of occurrence, the number of employees affected, and the date the failure was identified; (2) explains how the failure occurred and demonstrates there were established practices and procedures (formal or informal) reasonably designed to promote and facilitate overall compliance that were in effect when the failure occurred; (3) identifies and substantiates the correction method and the date of the completion of the correction; and (4) identifies any changes made to those established practices and procedures to ensure that the same failure would not recur.

How will the IRS determine whether actions taken by an employer demonstrate a specific commitment to implement the self-correction of an EIF? A determination as to whether actions taken by an employer demonstrate a specific commitment to implement the self-correction will be made based on all the facts and circumstances. However, these actions must generally demonstrate that the plan sponsor is actively pursuing correction of the specific identified failure. The mere completion of an annual compliance audit or adoption of a general statement of intent to correct failures when they are discovered are not actions demonstrating a specific commitment to implement the self-correction of an identified failure. Hiring an attorney or another practitioner to correct the plan failure may be sufficient.



Continue the discussion with Stephen Forbes at Andrei's!
Thursday September 14, 2023
7:30 am – 9:45 am
<https://wpbcorangecounty.org/event-5388220>

SPONSOR PROFILE



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Describe what services your business provides.

Pensionmark provides investment advisory and consulting services to employers who sponsor qualified retirement plans, and financial wellness programs and financial planning services to their employees.

Why do you support WP&BC OC?

I have been a member of the WP&BC OC chapter for over 10 years, and over the years I have developed relationships with so many great people within our industry and learned so much from the programs. I support WP&BC OC because I believe in the mission and think it is important to have a forum for professionals in our industry to network and learn from each other.

What changes have you seen in the retirement plan marketplace over the past 5-10 years?

While there has been no shortage of consolidation, fee compression, regulations, and legislation, I feel that it has been beneficial to plan sponsors, industry leaders and retirement plan specialists.

Ten years ago, generalists, including health and life insurance brokers, and financial advisors were servicing retirement plans. Today, more plan sponsors are working with specialists because they recognize the need for a partner who can advise them as a fiduciary and help them navigate through the never-ending changes.

What new directions do you see the industry taking?

I see our entire industry going through 2.0, and not just because of SECURE 2.0. Investment products that were traditionally available only to large retirement plans will be utilized by mid and small plans. Retirement income solutions are being developed and both recordkeepers and advisors are focusing more time marketing to and working with participants to help them transition from the accumulation to the distribution phase.

What do you perceive as some of the biggest obstacles to plan sponsors or those servicing plans?

We are all having to do more with less. Plan sponsors are managing retirement plans with fewer personnel and turnover, which can lead to costly errors. Service providers are dealing with fee compression and scale, which can lead to a decline in service.

What do you think we can do as an industry to help overcome those obstacles?

We, as industry professionals, should work together as a team to educate our plan sponsors on the benefits of outsourcing services and help them identify ways to optimize the operation and administration of their retirement plans.

On a more personal note:

What is your favorite restaurant in Orange County?

The Hobbit in Orange. It is such a fun experience, always a different menu and I really enjoy talking to the chefs during the intermission.

If you had a day off, what would you like to be doing?

Boarding a plane to fly to a country I haven't visited yet. Of course, that would require more than one day off.

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Self-Correction after SECURE Act 2.0

Speaker: Stephen Forbes

Location: Andrei's in Irvine

Time: 8:00 am to 9:45 am

Registration Link:

<https://wpbcorangecounty.org/event-5388220>



Live Raffle!! All attendees will be entered to win:

- 1 ticket to the Western Benefits Annual Conference in Scottsdale, AZ and 2 nights hotel accommodations at the Westin Kierland!
- Andrei's Gift Card
- Starbucks Gift Card



Payroll Integration and Cybersecurity

Speaker: Jeff Kayajanian, Payroll Integration and

Trish McGinity, Empower

Location: Andrei's in Irvine

Time: 8:00 am to 9:45 am

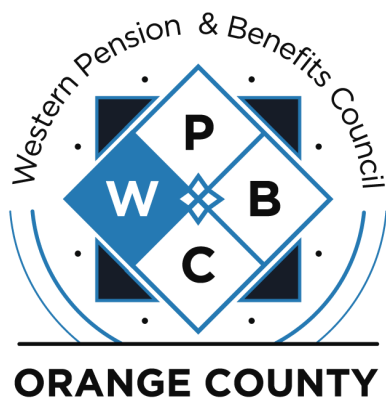


Year-end "to dos" for plan sponsors and advisors, including SECURE 2.0 provisions that take effect in 2024, fiduciary best practices and more!

Speaker: Sherrie Boutwell, Boutwell Fay, LLP

Location: Andrei's in Irvine

Time: 8:00 am to 9:45 am



JOIN TODAY!

Attendees are offered an excellent opportunity to network, increase their learning and exposure to the latest legislation and education from respected industry leaders.

INDIVIDUAL

- Reduced fees to our many program offerings including monthly Breakfast/Afternoon Forums and seasonal Technical Lunches
- Access to WP&BC-OC membership directory
- Opportunities to earn up to 25 CE credits applied to AIF, ERPA, ASPPA, NIPA, CEBS, CFP, CPA (CA), CRPS, General & MCLE

\$ 150

GOLD

- Provides all the advantages of Individual Membership, PLUS:
- All Orange County Monthly Forums are pre-paid
- Invite one guest free of charge to the Monthly Forums and Technical Lunch Forums

\$ 400



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CORPORATE

- Up to three associates may attend the Monthly Forums at no added cost
- Reduced rates on all other WP&BC-OC events, Annual National Conference, and WP&BC Webinars
- Recognition on a PowerPoint presentation at each OC chapter meeting and on the WP&BC-OC website
- Current Corporate Members include CrossPlans, Financial Management Network, Index Fund Advisors, Invesco, Irvine Company, PPSS, Inc., OneDigital Retirement and Withum

\$ 1500

SPONSOR

Enjoy all the Above PLUS: By being a Sponsor, your company receives a tremendous number of promotional opportunities that include:

- Up to three representatives/guests may attend live Monthly Forums at no added cost.
- Your logo displayed on a banner on all WP&BC-OC emails, large posters and tabletop displays at all meetings
- Your logo featured on the Orange County Chapter Newsletter & Chapter Website
- Reach over 1,000 benefits professionals on every mass email sent out.

\$ 2500



Western Pension & Benefits Council

Orange County Chapter

2023-2024 Board of Directors

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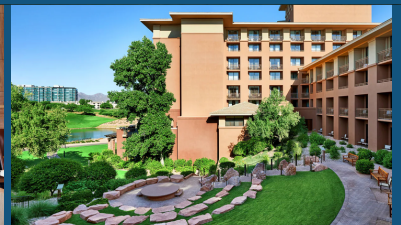
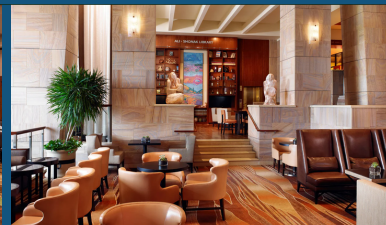
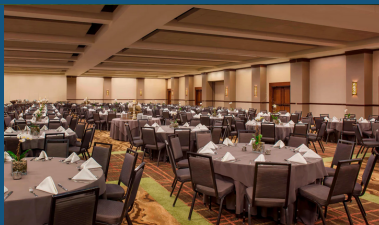
2023 Western Benefits Conference Returns!



October 19–20, 2023

Early Bird Deadline

Friday, September 15



VISIT OUR WEBSITE

REGISTER NOW



<https://amc.mcdonaldamc.com/2023-western-benefits-conference/>

ADDITIONAL DETAILS

Location: Westin Kierland Resort
Scottsdale, Arizona

Room Block Deadline ends Thursday,
September 21

- Discount Rate \$339/night
- Regular Rate \$595/night