

EPCU 401(k) Compliance Check Questionnaire Project

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During the week of May 17th, the Internal Revenue Service (IRS) sent letters to 1,200 randomly selected 401(k) plan sponsors (based on those who filed a 2007 Form 5500) as part of a comprehensive compliance project administered by the Employee Plans Compliance Unit (EPCU). The letter includes instructions and the required PIN code for the plan sponsors to complete a 46-page online Questionnaire, which contains 69 questions (some in multiple parts). The selected plan sponsors have 90 days to reply.

The Questionnaire covers the following areas regarding plan features and operations and requires responses for plan years 2006, 2007, and 2008:

- Demographics (e.g. – plan features, determination letter status, pre-approved plan status, active status of plan, related employer status)
- 401(k) plan participation (e.g. - # of employees, # of HCEs, eligibility and exclusions, # of participants)
- Employer and employee contributions (e.g. – amounts by type, reductions to match or non-elective, matching contribution levels and allocation requirements)
- Top heavy and nondiscrimination rules (e.g. – top heavy status, ADP/ACP testing and correction, safe harbor compliance)
- Distributions and plan loans (e.g. – distribution options, loan availability and policies, hardship availability and policies, tax reporting, 402(g) corrections)
- Other plan operations (e.g. – economic impact on plan, incidents of fraud or theft, employer stock, foreign investments, unrelated business income)
- Automatic contribution arrangements (e.g. – type of arrangement, effective dates, default rate and increase levels, notice delivery)
- Designated Roth features (e.g. - # of participants who elected, amount of elections by year)
- IRS voluntary compliance programs (e.g. – sponsor awareness of EPCRS, usage, programs utilized, comment solicitation on improved guidance for 401(k) plans)
- Plan administration (e.g. – policies and procedures, review process, Plan Administrator, responsibility for plan amendments and reporting, who completed Questionnaire)

It is anticipated that virtually all plan sponsors will require the assistance of their service provider, recordkeeper, and/or legal counsel in answering the complex and technical questions included in the Questionnaire. Indeed, some questions may require additional calculations or research by the service provider or recordkeeper. Accordingly, the completion of the Questionnaire is expected to take considerable time. In addition some of the questions contain potential answers that could lead to follow-up enforcement.

The information that will be gathered from the Questionnaire will be used to assist the IRS in identifying the areas of compliance in which additional “education, guidance and outreach” are needed, as well as to help the IRS determine where to focus their enforcement efforts. As repeated by the IRS on their website and in the FAQs, this project is a compliance check and is neither an investigation under IRC §7605(b) nor an audit of the plan under §530 of the Revenue Act of 1978. A compliance check is an enforcement action by the IRS and failure of a sponsor to complete the Questionnaire or respond to the IRS will result in further “enforcement actions”, which may include an examination of the plan.

Because of the importance of providing complete and accurate responses within the 90 day deadline, plan sponsors should work with their plan advisors and, if necessary, appoint someone with power of attorney (IRS Form 2848) to represent the plan during the compliance check. Additional information on this initiative, including a copy of the cover letter, Questionnaire, Instructions, and FAQs, is provided on the IRS’ website

<http://www.irs.gov/retirement/article/0,,id=223440,00.html>.