

ALERT

IRS MAILS 401(k) COMPLIANCE QUESTIONNAIRE TO EMPLOYERS SPONSORING 401(k) PLANS

IRS warns employers that failure to respond or provide complete information will result in further action.

On May 18, 2010 the IRS' Employee Plans Compliance Unit (EPCU) began sending out a compliance questionnaire to 1,200 randomly selected 401(k) plan sponsors. The EPCU launched this initiative in an effort to ensure that these popular retirement plans are being operated properly. The agency will use the information gathered to gauge plan compliance and to gain insight into how to address non-compliance trends.

Plan sponsors will have 90 days to complete and return the "voluntary" questionnaire.

According to the IRS, the 401(k) Compliance Check Questionnaire Project is neither an audit nor an investigation -- but it is an "enforcement action." While participation is not mandatory, failure to accurately complete and return the questionnaire within the three-month window could trigger a plan audit. The questionnaire is quite detailed and technical. Responding with wrong answers also could result in a plan audit.

About the Questionnaire

The 46-page questionnaire covers a broad spectrum of 401(k) plan compliance issues, including:

- Demographics
- 401(k) plan participation
- Employer and employee contributions
- Top heavy and nondiscrimination rules
- Distributions and plan loans
- Other plan operations
- Automatic contribution arrangements
- Designated Roth features
- IRS voluntary compliance programs
- Plan administration



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IRS will be able to review compliance with the law and non-discrimination requirements thanks to detailed questions about total employees and excluded employees, and total elective deferrals for highly compensated and non-highly compensated employees.

Further, the questionnaire includes queries about plan sponsors' other non-qualified deferred compensation plans, if any. Your responses could potentially compel the IRS to look deeper into whether these other plans comply with Section 409A of the Internal Revenue Code.

Tread Carefully

To make sure your responses are accurate but unlikely to trigger an audit, we recommend that you consult with us. We can assist you with completion of the questionnaire or, we can prepare and submit for you.

If you are aware of any unresolved 401(k) plan compliance issues, they should be addressed immediately. To identify any outstanding issues you might want to conduct a self-audit of your company's 401(k) plan to determine its level of compliance. According to the IRS, a plan sponsor may self correct. Sponsors that voluntarily correct non-compliance issues may avoid the extra penalties that may be imposed if the IRS discovers the same issue during an audit.

Once you are ready to actually complete the questionnaire, be sure to do so online. Do not mail paper copies. The 90-day deadline is already ticking down.

Need Assistance?

Participation in the 401(k) Compliance Project is essentially mandatory. If your plan is selected, we encourage you to contact Bob McKendry (bmckendry@theLBAGroup.com), Director of LBA Retirement Plan Services, for guidance.



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