

401(k) Compliance Check Questionnaire

A Review of the Interim Report

Presenters

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Overview

- Section 401(k) plans are the most popular plans in the United States
 - More than 500,000 401(k) plans
 - Cover over 60 million participants
- EP Compliance Check Questionnaire project objectives
 - Look at plan form and operation issues
 - Learn how our outreach & compliance programs are working
 - Optimize EP outreach & compliance efforts

Timeline

- 2009/2010 - Questionnaire developed
 - Covered 2006, 2007, & 2008 plan years
 - Could only be completed on-line
- 2010 - Employee Plans Compliance Unit (EPCU) requests 1,200 401(k) plan sponsors complete questionnaire
- 2011 – Analyzed data
- February 3, 2012 – Issued interim report
- 2012 – Issue final report

Background

- Compliance Check performed by EP Compliance Unit (EPCU)
- First TEGE on-line compliance check
- Statistical sample of 1,200 randomly selected plan sponsors
 - Stratified based on plan size
 - Number of participants

Background

- 98% of the plan sponsors responded
- Initiated examinations on all EPCU Compliance Questionnaire non-responders
- Questionnaire data analyzed to
 - Identify potential compliance problems
 - Design future compliance efforts
 - Improve case selection models
- Prepared interim report

Questionnaire Categories

- Demographics
- Plan Participation
- Contributions
- Nondiscrimination
- Distributions/Plan Loans
- Automatic Contributions
- Other operations
- Roth features
- Voluntary Compliance
- Plan Administration

Project Purpose

- Measure health of 401(k) plans
- Identify compliance issues
- Evaluate effectiveness of voluntary compliance tools/programs
- How IRS can foster greater compliance

Interim Report Highlights

Plan Type

- Safe harbor plan 43%
- SIMPLE plan 5%
- Pre-approved plan document 86%
- Requested IRS determination letter 23%

Interim Report Highlights

Employee Contributions

- Catch-up contributions allowed 96%
- Roth contributions allowed 22%
- Change deferral elections at any time 41%
- Change deferral elections once a year 2%

Interim Report Highlights

Employer Contributions

- Provide matching contributions 68%
- Require 1 year service (matching) 58%
- Provide nonelective contributions 65%
- Suspended/discontinued matching
 - 2006 1%
 - 2008 4%

Interim Report Highlights

Employer Contributions

- Suspended/discontinued nonelective
 - 2006 2%
 - 2008 5%
- Reduced nonelective
 - 2006 1%
 - 2008 5%

Interim Report Highlights

Participation in Elective Deferral Contributions

- No service requirement 13%
- One-year service requirement 54%
- Age 21 restriction 64%

Interim Report Highlights

Top Heavy

- Top heavy plans (2008) 20%
- Provide non-key employees with minimum contributions 79%

Interim Report Highlights

Nondiscrimination Testing

- ADP test – use current year method 60%
- ADP test – use prior year method 31%
- Correct ADP testing failures by distributing excess contributions
 - 2006 61%
 - 2007 58%
 - 2008 67%

Interim Report Highlights

Distributions

- Permit participant loans 65%
- Permit hardship distributions 76%
- Allow in-service withdrawals 62%
- Permit direct rollover distributions 79%
- Most common form of benefit Lump Sum

Interim Report Highlights

Investments

- In employer securities 1%
- In foreign investments 1%

Interim Report Highlights

Plan Administration

Third-party administrators used for

- Plan administration 53%
- Making plan amendments 73%
- Form 5500 preparation 83%

Interim Report Highlights

IRS Resources

- Use www.irs.gov/ep 57%
- Aware of EPCRS 65%
- Used EPCRS & found it helpful 75%

EPCRS – Employee Plans Compliance Resolution System

Next Steps

- Use Questionnaire and other data to
 - Complete and publish a final report
 - Design and improve case selection strategies
 - Develop follow-up compliance projects
 - Develop outreach materials

Common 401(k) Errors Found on Examination

- Non-Amenders
- Definition of "Compensation"
 - Plan vs. operational definition not consistent
- Excluding eligible employees
- Including ineligible employees
- Plan loans
 - Failure to withhold loan payments

Common 401(k) Errors Found on Examination

- Matching contributions not made
 - Failure to properly count Hours of Service
 - Incorrect plan entry date
- ADP and ACP testing failures
 - Not completed
 - Not passed
- Excess elective deferrals

IRS Internet Resources

Use the 401(k) Compliance Check Questionnaire as a self-audit tool

- From www.irs.gov/ep, click "Types of Plans" on top left side
- Click "401(k) Plans"
- Find this internal control device under the "Operate and Maintain" section

IRS Internet Resources

Use the 401(k) Fix-It Guide to find, fix, and avoid common errors

- From www.irs.gov/ep, click “Correcting Plan Errors” on top left side
- Click “Fix-It Guides” located middle of page
- Click “401(k) Plans”

More Information

On the home page: www.irs.gov/ep

Tax Information for Retirement Plans Community



[401\(k\) Compliance Check Questionnaire Interim Report](#)

Report and highlights chart summarize responses to the Questionnaire

More Information

401(k) Compliance Check Questionnaire Interim Report

- [Interim Report](#) (PDF – 65 pages)
- [Comments](#) from Monika Templeman, Director of EP Examinations
- [FAQs](#) regarding the Interim Report