
Are You Ready For the IRS 401(k) Compliance Check Questionnaire?

by Kathleen D. Bardunias

The IRS Employee Plans Compliance Unit has launched its 401(k) Compliance Check Questionnaire Project and is sending instruction letters to 1,200 randomly selected sponsors of 401(k) plans that filed a Form 5500 (Annual Report) for the 2007 plan year. The IRS intends to use the information gathered to identify key compliance issues for future guidance on, and enforcement of, these issues. Although this Project is not an IRS audit or investigation, failure to respond or provide complete information will result in IRS enforcement action, which may include an examination of the 401(k) plan. Plan sponsors that must complete the Questionnaire should develop a comprehensive review process with legal counsel and third-party administrators.

The Questionnaire seeks detailed information on a wide range of topics. Topics include: demographics, participation, employer and employee contributions, top-heavy and nondiscrimination testing, distributions (including plan loans), automatic contribution arrangements, designated Roth features, plan operations and administration, and IRS voluntary compliance programs. There are approximately 70 questions, many questions with multiple subparts. Although plans were randomly selected for participation based on 2007 Form 5500 filings, many questions seek information from the 2006, 2007, and 2008 plan years. The Questionnaire can be seen on the IRS website at <http://www.irs.gov/retirement/article/0,,id=223440,00.html> (Click on "View/Print the Guide to Completion of the 401(k) Questionnaire").

We recommend that all 401(k) plan sponsors review the Questionnaire to identify and address any areas where their plan may have compliance issues, regardless of whether the plan is selected for formal participation in the Project. Be sure to review the Glossary of definitions (also on the website) in order to correctly respond to the Questionnaire. For example, the Glossary notes that "employer" only includes companies whose employees are covered by the plan and not other members of the controlled group. As the IRS intensifies its enforcement of 401(k) plan compliance, plan sponsors should conduct self-audits to proactively address any issues. Plan sponsors that identify compliance issues early may be able to take advan-

tage of the Employee Plans Correction Resolution System and significantly reduce the fees and penalties that would be imposed if the issues were discovered on audit.

If you receive the instruction letter, the Questionnaire must be completed and submitted to the IRS within 90 days of the date on the letter. While the Questionnaire is publicly available on the IRS website, plan sponsors completing the Questionnaire must do so through a secure online system on the IRS website. Whether you are selected by the IRS to complete the Questionnaire or you wish to conduct a self-audit to proactively address possible compliance issues, we are available to assist you.

If you have any questions about the content of this client alert, please contact the Pillsbury attorney with whom you regularly work or any of the members of the Executive Compensation & Benefits group.

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