

401(k) Phone Forum

Presented by

Monika A. Templeman, Director, EP Examinations

Janice M. Gore, EP Examinations Area Manager, Great Lakes

Roger Kuehnle, EP Rulings and Agreements, Technical Guidance

October 21, 2010

401(k) Operating Priority

- Analyze and address **401(k) plan compliance** issues
 - Our fastest growing market segment
 - Has a huge impact on the health of the private retirement system in America
 - Continues to be a key Operating Priority

IRS 401(k) Compliance Check Questionnaire

- An EP Compliance Unit (EPCU) project
 - See EPCU web page at www.irs.gov/ep
- **GOOD NEWS!** It is not an audit
 - Employers who discovered problems with their plans as a result of completing the questionnaire were able to use EPCRS
 - self correction
 - voluntary compliance

Why is there a IRS 401(k) Project?

- Information gathered will be analyzed to gain a better understanding of 401(k) plans compliance behaviors
- Web-based tools provided to improve compliance
 - 401(k) Checklist
 - 401(k) Fix-It Guide
 - Common Problems, Real Solutions
 - Find/Fix/Avoid common problems
- How are these tools working?

401(k) Plan Checklist

This checklist is *not* a complete description of all plan requirements, and should *not* be used as a substitute for a complete plan review.

Every year it is important that you review the requirements for operating your 401(k) retirement plan. Use this checklist to help you keep your plan in compliance with many of the important rules. Click on "[\(More\)](#)" in any of the following questions for additional information (including examples) on how to find, fix, and avoid each mistake. See www.irs.gov/ep for online versions of the checklists, Fix-It Guides, and other resources for 401(k) and other plan types.

For Business Owner's Use

(DO NOT SEND THIS WORKSHEET TO THE IRS)

1. Has your plan document been updated within the past few years? Yes No

If your plan has not been updated to reflect recent law changes, the plan needs to be revised.

[\(More\)](#)

2. Are the plan's operations based on the terms of the plan document? Yes No

Failure to follow the terms of the plan is a common problem encountered on audit.

[\(More\)](#)

3. Is the plan's definition of compensation for all deferrals and allocations used correctly? Yes No

Because your plan may use different definitions of compensation for different purposes, it's important that you apply the proper definition according to your plan

6. Were all eligible employees identified and given the opportunity to make an elective deferral election? Yes No

By supplying your tax advisor with information regarding all employees who receive a Form W-2, you may reduce the risk of omitting eligible employees.

[\(More\)](#)

7. Are elective deferrals limited to the amounts under IRC §402(g) for the calendar year? Yes No

Failure to distribute deferrals in excess of the 402(g) limit may result in additional taxes and penalties to the participant and employer.

[\(More\)](#)

8. Have you timely deposited employee elective deferrals? Yes No

IRS 401(k) Fix-It Guide

Common Problems, Real Solutions

| -----Trends----- | -----Tips----- | | | |
|---|--|---|--|---|
| Potential Mistake | How to Find the Mistake | How to Fix the Mistake | | How to Avoid the Mistake |
| | | Corrective Action | Correction Program(s) Available | |
| 1) Has your plan document been updated within the past few years to reflect recent law changes? (More) | Review annual cumulative list published close to year-end to see if plan made all required law changes (for example, Notice 2009-98). (More) | EPCRS VCP: Streamlined application available. See Appendix F and schedules 1 and 2 . Adopt amendments for missed law changes. (More) | VCP Audit CAP (More) | Resort to a calendar (tickler) that notes when you must complete amendments. Review your plan document annually. Maintain regular contact with the company that sold you the plan. (More) |
| 2) Are the plan's operations based on the terms of the plan document? Failure to follow plan terms is a very common mistake. (More) | Independent review of plan and its operation. (More) | EPCRS Apply reasonable correction method that would place affected participants in the position they would have been in if there were no operational plan defects. (More) | SCP* VCP Audit CAP (More) | Develop a communication mechanism to make all relevant parties aware of changes on a timely and accurate basis (best practices). Perform a review at least annually to ensure you are following plan terms. (More) |
| 3) Is the plan's definition of compensation for all deferrals and allocations used correctly? (More) | Review the plan document. (More) | EPCRS Corrective contribution or distribution. (More) | SCP* VCP Audit CAP (More) | Perform annual reviews of compensation definitions and ensure that the person in charge of determining compensation is properly trained to understand the plan document. (More) |

IRS 401(k) COMPLIANCE CHECK QUESTIONNAIRE

- The IRS released the 401(k) plan compliance questionnaire in May 2010 and sent it to 1,200 select employers for their completion
- While the questionnaire is not in and of itself an audit tool, failure to complete and return the survey resulted in IRS follow-up

If You Received The Questionnaire For Completion...

- You should have visited the EPCU webpage for this project and
 - Printed out a copy of the questionnaire and the glossary of terms
 - Read the Frequently Asked Questions (FAQs)
 - Completed the questionnaire within 90 days from the cover letter date
 - Contacted the person on the letter to ask for an extension if more time was needed

If You Did Not Receive The Questionnaire For Completion...

- You should visit the EPCU webpage for this project
 - Print out a copy of the questionnaire and the glossary of terms
 - Read the Frequently Asked Questions (FAQ)
 - Use the questionnaire as a self-audit tool



SEARCH

[Advanced Search](#) [Search Tips](#)[Individuals](#)[Businesses](#)[Charities & Non-Profits](#)[Government Entities](#)[Tax Professionals](#)[Retirement Plans Community](#)[Tax Exempt Bond Community](#)[Benefits Practitioner](#) | [Plan Participant/Employee](#) | [Plan Sponsor/Employer](#)

[Retirement Plans Navigator](#)

Web guide for choosing a retirement plan, maintaining it and correcting plan errors.

[Fix-It Guides - Common Problems, Real Solutions](#)

Find, fix, and avoid common mistakes in plans.

[Employee Plans Programs](#)

Specialty areas: Determinations, Audits, EPCU, EPTA, ERPA, and more.

[Nonbank Trustees and Custodians](#)

Guidance, application procedures and approved nonbank trustees and custodians.

[Site Map](#)

Information by topic.

On the home page...

Questionnaire Findings

The findings from 401(k) Compliance Check Questionnaire will be used to address potential issues through education and outreach, determinations, guidance, and enforcement activities.

IRS 401(k) COMPLIANCE CHECK QUESTIONNAIRE

- Information gathered from the Questionnaire will ultimately result in a IRS final report
 - sharing the responses
 - identifying those areas where additional education, guidance, and outreach is needed
- This report will be posted to the Retirement Plans Community web page

IRS 401(k) COMPLIANCE CHECK QUESTIONNAIRE

The Questionnaire categories are:

- 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

Top 10 401(k) Errors

- Plan Document failure
- Failure to follow the terms of the Plan document
- Failure to use the Plan's definition of Compensation
- Failure to follow the Plan's matching contribution provisions
- Failure to satisfy the ADP/ACP nondiscrimination testing

Top 10 401(k) Errors

- Failure to include all eligible employees
- Failure to limit elective deferrals to the IRC 402(g) limits for the calendar year
- Failure to timely deposit elective deferrals
- Failure to follow the Plan's loan provisions and violation of IRC 72(p)
- Failure to follow the Plan's terms regarding hardship distributions

Internal Controls

Use the 401(k)
Compliance Check
Questionnaire as a



QUESTION?