

IRS Focuses on 401(k) Plans -- Audits Will Begin

By Jewell Lim Esposito February 07, 2011



During the 2010 summer, the IRS issued its first-ever electronic 401(k) Compliance Check Questionnaire to 1,200 plan sponsors. According to Monika Templeman, IRS Director, Employee Plan Examinations at a meeting with both IRS officials and tax practitioners last week, some "double digit" (i.e., 10 to perhaps 99) plan sponsors refused to respond. She signaled that the IRS intends to conduct a full scope audit of those non-responder plans. As to those who did respond, the IRS will help guide those who might have experienced some compliance issues, as a sort of gesture of gratitude for helping the IRS determine where the ERISA/tax lapses were overall. Compared to the full scope audits, Templeman said the IRS involvement for those who took the time to respond would be "nothing draconian."

The IRS expects to publish the full compilation of the compliance issues revealed through the 401(k) Questionnaire this coming summer. Templeman listed, though, the issues that seem to pervade:

- Participants obtain loans or hardship distributions, without having met the Internal Revenue Code for allowing such loans or hardship distributions;
- Companies fail to transmit employee elective deferrals timely to the plan;
- Companies fail to amend their plan documents timely and, better yet, fail to execute the documents;
- Companies do not use the proper definition of "compensation" when determining match or other allocations;
- Companies fail to include eligible employees into their plans;
- Companies do not know how to evaluate results of discrimination testing, including the ADP/ACP test (and, if there are failures, companies do not know how to resolve them).

With sanctions from the IRS that can reach into the "eight figures" and with the IRS expecting to make at least 14,500 new contacts and close as many files with its 600 field agents in 2011, plan sponsors should take the opportunity to review their internal controls with respect to their plan administration. The 401(k) Questionnaire remains posted on the Retirement Plans tab on the IRS website; it continues to give the areas on which the IRS is narrowing its focus of inquiry.

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