

## IRS Sends Out 401(k) Compliance Questionnaires

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The IRS recently announced that it would be sending 401(k) Compliance Questionnaires to 1,200 401(k) plans. (There are approximately 500,000 401(k) plans in existence so the odds of receiving a letter are fairly small.) The Questionnaire, which is meant to be filled out on-line based on 2008 plan data, is not an audit, but the IRS likely will use the results to target an audience for future audit activity. It recently announced the audit of executive pay and unrelated business income practices in over 30 colleges and universities as a result of answers to a 2008 questionnaire sent out to 400 such entities.

I have gone through the Questionnaire (it is available in hard copy at [http://www.irs.gov/pub/irs-tege/epcu\\_401k\\_questionnaire.pdf](http://www.irs.gov/pub/irs-tege/epcu_401k_questionnaire.pdf)). The hard copy questionnaire is 46 pages long. Given its length and what I judge to be its fairly technical wording, it is not going to be "user-friendly" for the typical CFO or human resources director who likely would be tasked with completing the Questionnaire. Therefore I strongly urge that plan sponsors take the following steps if they receive a notice in the mail requiring that they complete the on-line Questionnaire:

First, contact a tax professional before submitting "live" answers to the questionnaire. Ideally you should complete a hard copy version of the Questionnaire using your 401(k) "adoption agreement" as a guide, seeking assistance first on any questions that don't make sense. Your third party administrator, benefits broker, or investment provider contact can likely assist you at this phase.

Second, submit your completed draft Questionnaire to your tax professional for review and correction.

Third, complete the online Questionnaire based on the revised hard copy questionnaire, as marked up by a tax professional.

Following this process will both avoid incorrect responses, and will also identify any problem areas that can be corrected under the EPCRS program (whether by "self-correction," or submitting an application to the VCP program). In that regard, receiving the Questionnaire does not mean that an employer or its plan is "under examination" and thus limited in its use of EPCRS correction methods. Failure to complete the Questionnaire, however, will result in "further enforcement action" by the IRS, potentially including a plan examination.

Finally, plan sponsors should give some thought to using the printable Questionnaire as a self-audit tool. Also useful for self-audit purposes is the IRS 401(k) Checklist and Fix-It Guide, which is found at <http://www.irs.gov/pub/irs-tege/pub4531.pdf>.