

IRS to Survey 401(k) Plan Sponsors

By Sandy Wendler

The IRS has begun mailing plan compliance questionnaires to a randomly selected cross section of approximately 1,200 401(k) plan sponsors. The questionnaires are intended to help the IRS assess (1) compliance with the statutory and regulatory rules governing 401(k) plans, (2) potential failures to follow a plan's written terms, (3) whether payroll systems and other internal controls are appropriate, and (4) other topics related to the operation of 401(k) plans. The Service has announced that the questionnaire is "technically voluntary," but they do want the information. A plan sponsor will receive the questionnaire along with a letter describing the program. It will also receive a personal identification number to access an online questionnaire. The Company will have ninety days to comply with extensions available.

The IRS is expected to issue a report on its findings and to develop strategies to deal with any noncompliance trends reflected in the data. Other IRS reviews have shown significant 401(k) noncompliance from a lack of internal controls at the plan sponsor. The IRS may also respond with the start of an enforcement action if the answers to certain questions indicate that the plan document or the plan administration is not in compliance.

If your company receives one of these questionnaires, you should consider discussing responses with your outside benefits counsel, third-party administrator, trustee, and other plan service providers before returning the questionnaire to the IRS. If you suspect that your plan may have failed to comply with some of the tax rules covering 401(k) plans, consider using the voluntary IRS Employee Plans Compliance Resolution System. The program generally allows a plan sponsor to correct noncompliance issues related to its plan by disclosing the errors to the IRS and paying a set filing fee. By correcting compliance issues through the voluntary program, plan sponsors can avoid having the same issues raised by the IRS during an audit of the plan, which typically results in larger penalties.