IRS Update:
401(k) Final Report & EPCRS

May 2013
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2013 Priorities

• 401(k) Plans
• International
• 403(b) Plans
new 401(k) Final Report
Section 401(k) plans are the most popular plans in the United States

- More the 500,000 401(k) plans
- Cover over 60 million participants

401(k) Compliance is a key priority
- Most prevalent plan, so audits prevalent as well to ensure plan form and operation issues
401(k) Final Report – Next Steps

- Final Report was published March 29, 2013
- We will use the findings to:
  - Modify & improve our 401(k) plan compliance tools
  - Produce outreach materials and guidance
  - Improve EPCRS voluntary compliance programs
  - Assess the need for additional guidance and
  - Develop & implement follow-up compliance projects and enforcement activities
• Brief Historical Recap
  • 2010 - EPCU contacts 1,200 401(k) plan sponsors
  • Questionnaire completed on-line
  • 98% response rate
  • 2012 – Interim report published
Defaulted loans

- 60% of plans saw an increase in the number of defaulted loans from 2006 to 2008.
- 47% of plans saw an increase in the number of outstanding loans from 2006 to 2008.
- There was a decrease in the number of loans originated during the same time period.
  - This is an indication that older loans are not being timely repaid.
Top Heavy plan issue

• Failure to provide 3% minimum contribution

• 28% of plans that indicated they were Top Heavy provided some lesser level of top-heavy contribution based on the Questionnaire responses.
Small Employers with Multiple Plans

• Approximately 79,000 out of the 396,000 plan sponsors with less than 100 participants (about 20%) had more than one plan.
Final Report – Issues of Concern

- Aware of EPCRS 65%
- Used the IRS website to obtain information about retirement plans 57%
- Aware of EPCRS and Fix-It Guide 41%
- Very Large Plans are more likely to be aware of EPCRS and our website at www.irs.gov/Retirement-Plans
401(k) Compliance Check Questionnaire
Final Report - Next Steps and Web Resources

We’ll use the Questionnaire’s findings to:

- enhance our 401(k) plan administration compliance tools,
- produce outreach materials,
- improve voluntary compliance programs,
- assess the need for additional guidance, and
- define upcoming projects and enforcement activities.

401(k) plan sponsors can use the Questionnaire, along with these findings, to strengthen internal controls over plan operations.

Web Resources

401(k) Plans
401(k) Plan Overview
Good News! We are adding new internal control questions and repackaging the 401(k) Questionnaire as the QSAT (Questionnaire Self Audit Tool)

Scheduled to be released in 2013

The QSAT will help plan sponsors to find, fix and avoid costly mistakes
Starting at www.irs.gov/Retirement-Plans...
More Information

401(k) Compliance Check Questionnaire
Final Report

The Final Report (pages 91) summarizes the results from the 401(k) Compliance Check Questionnaire. The results are both:

- generalized to the 401(k) plan population that files Form 5500, and
- stratified to highlight the differences in the results by plan size.

The 401(k) Questionnaire requested information in the following areas: demographics, plan participation, contributions, designated Roth features, distributions, top-heavy and nondiscriminatory testing, IRS correction programs and plan administration.

Learn more:

- FAQs regarding the Final Report
- Next Steps and Web Resources

The following chart contains highlights of the findings from the Questionnaire. Unless otherwise indicated, all findings are for the 2008 plan year.
new

EPCRS Revenue Procedure 2013-12
### Employee Plans Compliance Resolution System

#### The EPCRS Menu

**What's Your Choice?**

The impact of non-compliance left unchecked can be costly.

Preventive Maintenance – Fix Mistakes Immediately!!
• New Revenue Procedure 2013-12 was issued December 31, 2012
• Supersedes Rev. Proc. 2008-50
• Has been a rapidly growing program, necessitating need to change filing aspects
  • (i.e. processing in Cincinnati)
Click on "Correcting Plan Errors" at www.irs.gov/Retirement-Plans

Correcting Plan Errors

The Employee Plans Compliance Resolution System (EPCRS) offers three programs for correcting plan errors:

- Self-Correction Program (SCP)
- Voluntary Correction Program (VCP)
- Audit Closing Agreement Program (Audit CAP)

What’s new in EPCRS?

- Revenue Procedure 2013-12 updates EPCRS
- Chart of significant changes to EPCRS
- Topical index for Revenue Procedure 2013-12
Major Changes

- Expanded to cover correction of 403(b) plans for plan document failures in light of issuance of regulations requiring written 403(b) plan documents
- IRS letter forwarding program to locate lost participants no longer for Plan Sponsors
- New forms added to streamline VCP Forms 8950 and 8951
- Changes to appendices
Letter Forwarding Program

• As of 8/31/12 IRS Letter Forwarding Program no longer available
• Provides limited extension to take other reasonable actions to locate lost participants and beneficiaries
• Rev Proc. comprehensively revises the Appendices that have formed the basis of VC submissions since Rev Proc. 2008-50
• Also revises/adds many of the correction requirements applicable to defined failures
• Contains 2 “one-time discounts”
  • Late signed proposed determination letter amendments
  • Late initial 403(b) document
• Rev Proc. 2013-12 clarifies situations in which determination letter filing concurrent with VC submission is appropriate
  • Integrating VC and DL programs more closely where there are concurrent filings is desirable for all parties involved
• Improving our overall processing by migrating this work from “exception” work into regularly filed submissions
• Generally allows 403(b) plans sponsors to correct failure in same manner as qualified plans
• Correct failures arising from noncompliance with the form and operational requirements of the 403(b) final regulations and other guidance
• Correct failure to timely adopt 403(b) plan
• For 403(b) failures that occurred prior to Jan. 1, 2009, use definitions in Rev. Proc. 2008-50
• Adds definitions of Plan Document Failure, Overpayment and Favorable Letter
• Revises definitions of Operational, Demographic and Employer Eligibility Failure
• Failure to adopt a written plan may be corrected under VCP and Audit CAP
• Temporarily reduced compliance fee for failure to timely adopt a written 403(b) plan
Other Changes

• Self correction of section 415(c) failures - Plan sponsors can use SCP to correct certain recurring excess annual additions if they take certain actions within a specified time.
• Rules for plans subject to section 436 restrictions
• Added a limited expansion of correction for 457(b) plans
New Submission Procedures

- New forms 8950 and 8951
  - Must be used with all VCP submissions
- Mail VCP submissions to Covington, KY instead of Washington, D.C.
- Revision of Appendices C, D, & F
• Improper loans
• PPA 1101 and excise taxes
• Scriveners errors
• Compensation errors
• 401(k) testing and/or contribution errors
• 415 language
• Non-amenders
EP is working with LB&I and using a corporate approach to:

- Facilitate effective global tax administration
- Identify and address global issues impacting retirement plans
- Expand coordination with US Territories
- Develop educational tools and guidance
- Partner with international stakeholders
- Address potential noncompliance and abuse
- Develop new global compliance projects
• U.S. companies w/ increasing number of employees In U.S. Territories

• Global economy has huge impact on retirement plans
  • Non-compliance
  • Information reporting on cross-border transactions
Activity at all economic levels - from
- Huge multinational corporations to
- IRAs maintained by retirees

Current exam focus
- Large case (EPTA) examinations
  - Over 200 examined
- Puerto Rico
- U.S. Virgin Islands
- EPCU Projects
How Can I Find The Retirement Information?

1. Type "retirement" in search box

2. Subsc:
   - Individuals
   - Businesses
   - Charities & Non-Profits
   - Government Entities
   - Tax Professionals
   - Retirement Plans
   - Tax Exempt Bonds

### SEP Plan Fix-It Guide
Common Problems, Real Solutions

<table>
<thead>
<tr>
<th>Potential Mistake</th>
<th>Find the Mistake</th>
<th>Fix the Mistake</th>
<th>Avoid the Mistake</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) You have not updated your SEP plan document for current law</td>
<td>Determine if your Form 5305-SEP is the current revision (December 2004)</td>
<td>Adopt revised Form 5305-SEP (More)</td>
<td>Maintain regular contact with the company that sold you the plan (More)</td>
</tr>
<tr>
<td>(More) (Video)</td>
<td>(More)</td>
<td>(More)</td>
<td>(More)</td>
</tr>
<tr>
<td>2) The plan excluded employees of related businesses from participating</td>
<td>Identify any companies that you own or with which you have a financial relationship</td>
<td>Apply reasonable correction method that would place affected employees in the position they would have been in if there were no operational plan mistakes</td>
<td>Determine if you own any other businesses (More)</td>
</tr>
<tr>
<td>(More)</td>
<td>(More)</td>
<td>(More)</td>
<td>(More)</td>
</tr>
</tbody>
</table>

**Video Explanations**

1. **EP Internal Control Tools**
   - Fix-It Guides - Common Problems, Real Solutions
   - Find, fix, and avoid common mistakes in plans.

2. **SEP Plan Fix-It Guide**
   - Common Problems, Real Solutions
This Checklist is not a complete description of all plan requirements, and should not be used as a substitute for a complete plan review.

For Business Owner’s Use

(DO NOT SEND THIS WORKSHEET TO THE IRS)

It is important to review the requirements for operating your 403(b) retirement plan annually. This checklist is a “quick tool” to help you keep your plan in compliance with many important tax rules. See IRS Publication 571, Tax Sheltered Annuity Plans (403(b) Plans) for Employees of Public Schools and Certain Tax-Exempt Organizations at www.irs.gov/ep. Underlined text below shows a link to expanded explanations and resources, also at www.irs.gov/ep.

1. Does your organization qualify as a public educational institution or as a charitable organization exempt from tax under IRC 501(c)(3)?
   Only public educational institutions described in IRC 170(b)(1)(A)(ii), or 501(c)(3) organizations may establish a 403(b) plan.

6. If your program permits age 50+
catch-up contributions, were each of your employees age 50 and over informed of their rights to make catch-up deferrals?
   If your plan permits, participants age 50+ may defer an additional $5,000 to the 403(b) plan for 2006.

7. Does the 403(b) annuity contract...
Other EP Internal Control Tools

- 401(k) Questionnaire
- Trends and Tips
- EPTA
  - Trends and Tips
  - Internal Controls Questionnaire
- EP Exam Guidelines
- Plan Maintenance Reminders
Three Agency Strategic Collaboration