

IRS 401(k) Compliance Check Results

In 2010, 1200 401(k) Plans were randomly selected to complete a compliance check questionnaire instituted by the IRS to ensure proper operation of this popular plan type. Are more reviews to come?

IRS 401(k) Compliance Check Questionnaire

The IRS' Tax Exempt and Government Entities division (TE/GE) and the EPCU recently wrapped up the 401(k) Compliance Check Questionnaire project. As part of the project, 1,200 randomly selected 401(k) plan sponsors received a compliance check questionnaire regarding their plan to complete online. The 200+ question IRS Form 14146 was aimed at measuring the health and overall compliance of 401(k) plans, identifying principal tax compliance issues affecting 401(k) plans, evaluating the effectiveness of voluntary compliance programs and tools, and determining how the IRS can foster greater compliance. Ninety-eight percent of recipients completed the questionnaire, answering questions regarding plan demographics, participation, employee and employer contributions, top-heavy and nondiscrimination rules, distributions and loans, additional plan operations, automatic contribution agreements (ACA), designated Roth features, IRS voluntary compliance programs, and plan administration.¹ The IRS asserts that the questionnaire is neither an audit nor an investigation and is not mandatory; however failure to respond or responding incorrectly could trigger a plan audit.

From the self-reported questionnaire responses, the IRS gathered information about the population of 401(k) plans. A few of their key findings are listed below.²

	Plan Provision	% Plans
Eligibility	1 Year of Service	54%
	Age 21 or older	64%
Contributions	Employer Matching Contributions	68%
	Safe Harbor Provisions	43%
	Automatic Contribution Arrangement	5%
Loan/Distributions	Plan Loans	65%
	Inservice Withdrawals (of certain funds)	62%

The full list of Key Findings can be found in pages 4 through 7 of the Final Report prepared by the Tax Exempt and Government Entities Division of the IRS at http://www.irs.gov/pub/irs-tege/401k_final_report.pdf.

¹ 401(k) Compliance Check Questionnaire, Final Report - FAQs. (2014, May 23). Internal Revenue Service. [http://www.irs.gov/Retirement-Plans/401\(k\)-Compliance-Check-Questionnaire-Interim-Report---FAQs](http://www.irs.gov/Retirement-Plans/401(k)-Compliance-Check-Questionnaire-Interim-Report---FAQs)

² Section 401(k) Compliance Check Questionnaire, Final Report. (2013, March) Internal Revenue Service. Pgs. 3-10. http://www.irs.gov/pub/irs-tege/401k_final_report.pdf

Using these findings, the IRS plans to modify and improve 401(k) compliance tools, produce outreach materials, improve voluntary compliance programs, assess the need for additional guidance, and define upcoming projects and enforcement activities.

Roth Compliance and Future Compliance Questionnaires

The 401(k) Compliance Check Questionnaire just ended, but is a Roth compliance check next? That is certainly not off the table. The Roth 401(k) Compliance Project is among more than 20 projects approved by the EPCU Project Selection Committee. While approval does not mean that the project will start immediately, the Roth 401(k) Project is a likely successor to the 401(k) Compliance Check Questionnaire. More information on current, approved, and completed EPCU projects can be found on the [EPCU website](#).

Bernard E. Kaplan, Managing Director at CBIZ MHM posted a June 16th article on Employee Benefit News alerting plan sponsors that the IRS launched a “Roth compliance check questionnaire program aimed at helping the IRS understand compliance related to the Roth deferral provision in 401(k) plans”. While no news of a Roth compliance questionnaire can be found on the IRS website, Mr. Kaplan does offer good advice for recipients of future IRS questionnaires. While they may not explicitly say so, the IRS does not consider the compliance questionnaires to be voluntary. According to the IRS, they followed-up with non-responders of the 401(k) questionnaire and “examined the plans of all intentional non-responders”.³ Kaplan advises sponsors of plans with a Roth feature to conduct a self-audit of their plan and to seek assistance from an ERISA expert if selected to complete an IRS Roth compliance check questionnaire.⁴

³ 401(k) Compliance Check Questionnaire, Final Report - FAQs. (2014, May 23). Internal Revenue Service. [http://www.irs.gov/Retirement-Plans/401\(k\)-Compliance-Check-Questionnaire-Interim-Report---FAQs](http://www.irs.gov/Retirement-Plans/401(k)-Compliance-Check-Questionnaire-Interim-Report---FAQs)

⁴ Kaplan, B. E. (2014, June 16). IRS targets Roth feature in 401(k) plans. Employee Benefit Views.