

457(B) PLAN UPDATE – IRS COMPLIANCE CHECK ON THE HORIZON

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From BenefitsBryanCave.com

Tax-exempt entities are permitted to sponsor non-qualified deferred compensation plans for select groups of highly compensated employees, managers, directors or officers (i.e., “top hat” plans) under Code Section 457(b). Approximately 200 non-governmental organizations sponsoring these plans will receive a “compliance check” letter by the end of September 2013, and another 200 in the next 12-month rolling period, from the IRS’s Employee Plans Compliance Unit (“EPCU”). This outreach effort is part of a project recently announced by the IRS designed to:

- learn more about the operation of these plans,
- verify that the plans comply with the applicable Code requirements,
- identify common issues of noncompliance, and
- recommend ways to remove any “barriers” to compliance.

EPCU is requesting “timely” responses to its request for information (or a response indicating that the compliance request was received in error because the employer does not maintain a 457(b) plan). While the compliance check letter is not an audit notice (and the EPCU does not necessarily plan to inspect books and records based on the compliance check), if a targeted employer does not respond to the request for information, the IRS has indicated that it “may need to take other measures to ensure compliance, including an audit of your plan or organization.”

What should an employer with a section 457(b) plan do at this point in time? An internal compliance check may be in order. If the EPCU determines that a plan is not established or operated in accordance with Code Section 457(b), EPCU plans to inform the sponsor what actions it believes are needed. In this case, an audit of the plan may be performed or correction may be suggested under the IRS’s Voluntary Correction Program, so it’s advisable to get into compliance before the IRS knocks on the door.

What should an employer do if it receives a Section 457(b) compliance check letter? Prepare a thoughtful and careful response in a timely manner. As we learned during a similar 401(k) plan compliance check program conducted by the IRS several years ago, an improperly prepared response, or a failure to respond, will likely lead to further action by the IRS, possibly including a full-scale audit.

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