ASSESSING 401(k) PLAN OPERATIONAL COMPLIANCE

BNY Mellon Retirement

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ASSESSING 401(k) PLAN COMPLIANCE

I. THE IMPORTANCE OF SELF-ASSESSMENT
II. PLAN DOCUMENT REVIEWS
III. OPERATIONAL CHECK-UP
SECTION I.

THE IMPORTANCE OF SELF-ASSESSMENT
ENFORCEMENT FRAMEWORK

Focus
- Compliance with tax rules
- Plan document requirements
- Operational compliance

Focus
- Fiduciary rules and participant protections
- Timely deposits
- Avoiding prohibited transactions
EMPLOYEE PLAN (EP) COMPLIANCE TRENDS AND TIPS

- IRS EP EXAMINATION
  - Enforcement
  - Guidance: EP Examinations Trends and Tips
IRS LESE EXAM PROJECTS

- LESE
  - Learn
  - Educate
  - Self-Correct
  - Enforce (LESE)

- FOCUSED IRS EXAMINATION
  - Based on a sampling – generally about 50 plans
  - Similar characteristics that the IRS believes may reveal problems
  - Assess compliance levels for selected groups of retirement plans
# IRS 401(k) COMPLIANCE PROJECT UPDATE

## SECTION 401(k) COMPLIANCE CHECK QUESTIONNAIRE

**FINAL REPORT**  
March 2013

Internal Revenue Service  
TE/CE Employee Plans  
Employee Plans Compliance Unit (EPCU)

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This Final Report was prepared by the Employee Plans Compliance Unit of the Internal Revenue Service (IRS). The report contains the results of a compliance check on 401(k) plans. The checks included a review of plan documents, plan operations, and plan administration. The report provides recommendations for improving plan compliance and includes a summary of findings and conclusions.
SELF-CORRECTIONS PROGRAMS

- IRS EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM (EPCRS)
  - Self-Correction Program (SCP)
  - Voluntary Correction Program (VCP)

- DOL CORRECTIONS PROGRAMS
  - Delinquent Filer Voluntary Compliance Program (DFVCP)
  - Voluntary Fiduciary Correction Program (VFCP)
SECTION II.

PLAN DOCUMENT REVIEWS
PLAN DOCUMENT SOURCES AND AMENDMENT REQUIREMENTS

- **PLAN DOCUMENT SOURCES**
  - Document specialists
  - Form of document
    - Customized plan documents (e.g., individually designed) – to be submitted to IRS
    - IRS pre-approved documents (e.g., prototype, volume submitter)

- **PLAN AMENDMENTS**
  - Discretionary amendments
  - IRS-mandated amendments
    - Interim amendments
    - Restatements
# RECENT PLAN AMENDMENTS

<table>
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<tr>
<th>Tax Law</th>
<th>Plan Amendment</th>
<th>Deadline to Adopt</th>
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| **Small Business Jobs Act of 2010** | Allowed participants to convert vested traditional 401(k) accounts into Roth 401(k) assets | Later of  
• The last day of the plan year in which the amendment was effective, or  
• December 31, 2011 |
| **Worker, Retiree, and Employer Recovery Act of 2008 (WRERA)** | • Allowed plans to suspend RMDs for 2009  
• Allowed non-spouse beneficiaries to roll over plan distributions into IRAs | The last day of the first plan year that began on or after January 1, 2011 (e.g., December 31, 2011, for calendar year plans) |
| **Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART)** | Special benefit for participants who serve in the military or their survivors | The last day of the first plan year that began on or after January 1, 2010 (December 31, 2010, for calendar year plans) |
| **Pension Protection Act of 2006 (PPA)** | • Expanded portability options  
• Expanded diversification rights for employer securities  
• Made plan-related EGTRRA changes permanent  
• Restricted vesting schedules | • The last day of the first plan year that began on or after January 1, 2009 (e.g., December 31, 2009, for calendar year plans)  
• Amendments relating to investment diversification – end of the first plan year that began on or after January 1, 2010 |
### PLAN DOCUMENT CHECKLIST: IS YOUR PLAN DOCUMENT UP-TO-DATE?

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>1.</strong> Do you have a signed copy of the original plan document and each adoption agreement?</td>
<td>✔</td>
</tr>
<tr>
<td><strong>2.</strong> Have you signed each IRS-mandated amendment and retained a copy?*</td>
<td>✔ ✔</td>
</tr>
<tr>
<td><strong>3.</strong> Have you amended your plan document for each plan design change you implemented (e.g., automatic enrollment, designated Roth contributions)?</td>
<td>✔ ✔</td>
</tr>
<tr>
<td><strong>4.</strong> Do you have a copy of the IRS approval letter for your plan (e.g., opinion letter, determination letter)?</td>
<td>✔ ✔</td>
</tr>
<tr>
<td><strong>5.</strong> Have you kept written minutes or records of each board resolution approving the original plan and each amendment?</td>
<td>✔ ✔</td>
</tr>
<tr>
<td><strong>6.</strong> Do you have a copy of the Summary Plan Description (SPD) and amendments to the SPD?</td>
<td>✔ ✔</td>
</tr>
<tr>
<td><strong>7.</strong> Do you have a copy of each Summary of Material Modifications (SMM) that was delivered to participants and a record of the delivery date and method?</td>
<td>✔</td>
</tr>
</tbody>
</table>

*Your plan document provider is the best resource for a list of required amendments.
DOCUMENT-RELATED NOTICES

- **SUMMARY PLAN DESCRIPTION ( SPD )**
  - Explains key provisions in the plan to employees
  - Plan sponsor must distribute within 120 days after the plan is established and within 90 days after an employee becomes eligible to participate in the plan

- **SUMMARY OF MATERIAL MODIFICATIONS ( SMM )**
  - Communicate new benefits or changes to current benefits
  - Plan sponsor must distribute within 210 days after the plan year in which the change takes effect
MONITORING PLAN DESIGN

- ALIGN PLAN FEATURES WITH BUSINESS OBJECTIVES
  - Maximize contributions for owner/key employees – cross-tested plans
  - Minimize mandatory contributions – deferral-only plans
  - Ensure maximum participation rate – automatic enrollment and automatic deferral increases
  - Eliminate failed nondiscrimination testing – automatic enrollment or 401(k) safe harbor plans

- PLAN DESIGN EXPERTS CAN CREATE PROJECTIONS
  - Customized based on actual plan demographics
  - Projected employer contribution amount
  - Likelihood of passing nondiscrimination testing
SECTION III.

OPERATIONAL CHECK-UP
OPERATIONAL CONSIDERATIONS —
FOLLOWING THE TERMS OF THE PLAN

 IRS EP EXAMINATION TRENDS AND TIPS
 IT’S NOT ENOUGH THAT YOUR PLAN DOCUMENT IS UP-TO-DATE
  – Many operational errors result from not following the plan document

 DEFINITION OF COMPENSATION
  – Impacts many areas of plan operations
  – Rely on retirement professionals for assistance
COMMON OPERATIONAL ERRORS — FOLLOWING THE TERMS OF THE PLAN

- **EMPLOYEE ELIGIBILITY TRACKING**
  - Following plan terms
  - Tracking service

- **VESTING DETERMINATIONS**
  - Certain events require 100% vesting

- **CALCULATING CONTRIBUTIONS**
COMMON OPERATIONAL ERRORS

- ADMINISTERING LOANS AND HARDSHIP WITHDRAWALS
- COMPLIANCE TESTING
  - Testing failures
    - ADP and ACP tests
    - Top-heavy determination
    - 402(g) contribution and annual additions limits
  - Must adhere to testing procedures indicated in the plan document
    - “Current Year” vs. “Prior Year” testing
    - Proper definition of compensation
    - Methods for correcting excess contributions
- DATA INTEGRITY IS KEY
PLAN WELLNESS CHECKLISTS

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## OPERATIONS CHECKLIST: ARE THE PLAN’S OPERATIONS BASED ON THE TERMS OF THE PLAN DOCUMENT?

<table>
<thead>
<tr>
<th>Question</th>
<th>Status</th>
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<tbody>
<tr>
<td>1. Is the plan’s definition of compensation for all deferrals and allocations used correctly?</td>
<td>✔</td>
</tr>
<tr>
<td>2. Were employer matching contributions made to all appropriate employees under the terms of the plan?</td>
<td>✔ ✔</td>
</tr>
<tr>
<td>3. Has the plan satisfied the 401(k) nondiscrimination tests (ADP and ACP)?</td>
<td>✔ ✔</td>
</tr>
<tr>
<td>4. Were all eligible employees identified and given the opportunity to make an elective deferral election?</td>
<td>✔ ✔</td>
</tr>
<tr>
<td>5. Are elective deferrals limited to the amounts under IRC §402(g) for the calendar year?</td>
<td>✔ ✔</td>
</tr>
<tr>
<td>6. Have you timely deposited employee elective deferrals?</td>
<td>✔ ✔</td>
</tr>
<tr>
<td>7. Do participant loans conform to the requirements of the plan document and IRC §72(p)</td>
<td>✔ ✔</td>
</tr>
<tr>
<td>8. Were hardship distributions made properly?</td>
<td></td>
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SUMMARY

- **PROACTIVE SELF-AUDITS ARE ESSENTIAL TO ENSURE OPERATIONAL COMPLIANCE**
  - Plan documents
  - Plan operations

- **TAP INTO SERVICE PROVIDERS TO OPERATE YOUR PLAN EFFECTIVELY AND IN COMPLIANCE**
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