

# *IRS is performing compliance checks on non-governmental 457(b) plans*

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## ***In brief***

The IRS has recently begun performing [compliance checks](#) on 457(b) plans maintained by tax-exempt employers. According to the IRS, the Employee Plans Compliance Unit (EPCU) will be sending [compliance check letters and questionnaires](#) to approximately 200 organizations in fiscal year 2013 (which ends September 30, 2013) and another 200 in fiscal year 2014.

## ***In detail***

### ***Background***

The stated goal of this review process is to:

- Learn more about the operation of non-governmental 457(b) plans
- Verify that the plans comply with the Internal Revenue Code requirements
- Identify issues of noncompliance, and
- Recommend ways to remove any barriers to compliance.

The questionnaire starts out by asking employers to provide general information about the organization and whether they sponsor a 457(b) plan. It then asks for demographic information, including the number of workers who are eligible to participate in the plan, broken down by numbers of highly compensated

employees, management, and all employees. The rest of the questionnaire focuses on specific areas of concern, including whether the plan contains features not permitted in a top hat plan, such as loans, age 50 catch-up provisions, or whether the plan assets are available to the organization's general creditors. It also asks for a copy of the top hat plan filing made with the Department of Labor (DOL) and whether there has been any hardship distributions made within the last three years.

This compliance check project is similar to the 401(k) project conducted a couple years ago — it is not considered an audit as it does not involve an inspection of the plan's books and records. However, failure to respond to the questionnaire will likely lead to an audit of the plan.

### ***Top hat plan filing with DOL***

Unfunded nonqualified deferred compensation plans for a select group of management or highly compensated employees (top hat plans) are eligible for limited ERISA reporting if they file a statement with the DOL in lieu of filing an annual report (Form 5500) for the plan. The statement is required to be filed within 120 days after the plan becomes subject to ERISA. Once the statement is filed, no other reporting is required other than providing plan documents to the Secretary of Labor upon request. However, if the statement is not timely filed, the plan is subject to an annual reporting requirement.

Organizations that have not timely made a top hat filing may take advantage of the [DOL's Delinquent Filer Voluntary Compliance Program](#), under which they can pay a substantially reduced penalty of \$750. See FAQ 18 for details.

## ***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact:

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