

IRS Sets Sights On Small 401(k), 403(b) Plans for 2011

By Mariana Lemann November 5, 2010

The Internal Revenue Service is teeing up small 401(k) plans and 403(b) plans as it looks to enforcement practices in 2011.

As it does every year, the IRS laid out its [road map](#) for future enforcement as it relates to employee retirement plans.

The IRS's areas of focus include 401(k) plans sponsored by small businesses, 403(b) plans and plans sponsored by foreign companies with U.S. subsidiaries. The agency also plans to improve service to governmental plan sponsors, identify and communicate abusive tax schemes that could affect sponsors and participants, and streamline the plan approval process.

To support these goals, the agency has invested in people and technology.

With this document, the IRS is "trying to tell you where the puck is going, and it appears to be 403(b)s and small businesses," says John Carl, president of the **Retirement Learning Center**.

The plan suggests that the IRS is looking for ways to provide better support to 401(k) plans and encourage small businesses to adopt 401(k) plans, says Jason Roberts, partner at **Reish & Reicher**. Roberts represents service providers to 401(k) plans and plan sponsors.

"At the same time, if you look at the work plan closely, the integral plan is to foster and promote compliance. There is a renewed commitment to enforcement," he says.

In fact, the document states that one of the agency's goals is to "enforce the law to ensure everyone meets their obligation to pay taxes."

Even though the IRS's work plan emphasizes enforcement, plan sponsors, recordkeepers and service providers to retirement plans have no reason to worry about potential changes in regulation coming from the IRS in the near future, says Larry Goldbrum, general counsel of **The Spark Institute**, an industry association of retirement plan service providers and investment managers.

"I don't think this is something that is targeted at changing rules or regulations," he says. "The IRS is trying to figure out where there may be weaknesses in plan compliance, and develop educational programs and also to step up their enforcement activity."

To tackle problem areas associated with 401(k) plans, the IRS issued this summer a questionnaire that targets a random sample of 1,200 401(k) plan sponsors. An interim report will be prepared in the third quarter of 2011 before the final report is released in early 2012.

"They've hired more people, they put out that questionnaire, and the analysis will show where most plans are falling short, and that will be the playbook for the auditors," Carl says. "They are running their market research and they are going to be educating these new enforcement employees to focus on the problem areas of plans."

These new enforcement employees will have much easier and faster access to information on plans with the new electronic filing of Form 5500, where plan sponsors must provide detailed information about the plans. "The availability and the access to information, based on the electronic 5500 filing, gives up-to-the-minute access to information to help auditors," Carl says.

When the [questionnaire](#) was announced in the summer, The Spark Institute raised concerns about potential consequences of plan sponsors' answering the questionnaire. The association had issues with some of the questions asked, the way they were presented and the potential implications for plans submitting responses.

Even though the IRS stated that the compliance check is neither an audit nor an investigation nor a review of the sponsor's books and records, failure to comply with the compliance check could result in an examination of the plan.

Therefore, Spark alerted plan sponsors that “many of the questions, particularly the multiple choice questions, include answers that are unacceptable under the law” and urged sponsors contacted by the agency to contact legal counsel.

“The questionnaire was very detailed and long,” says Carl. “You would not have wanted to respond to that as a plan sponsor without some professional consulting support.”

On the 403(b) front, the IRS stated that it plans to develop strategies and procedures to enhance the 403(b) compliance initiative. “This would be accomplished by opening the 403(b) pre-approved programs and designing the 403(b) approval letter program for individually designed plans....”

For the first time in the history of 403(b) plans, regulatory changes introduced in 2009 required them to have a plan document in place. That was a foreign concept to many plan sponsors, which include school, universities, health care providers and charitable organizations. Even though the IRS had suggested it was going to launch a [prototype plan document](#) for these sponsors, it hasn't done so, Goldbrum says.

“The compliance deadline has come and gone,” Goldbrum says. “Service providers will be looking for what the IRS will be using as prototype as it does provide a government-approved document. There is value to that.”