



UPDATE Employee Benefits and Compensation

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IRS Compliance Checks on Section 457(b) Top-Hat Plans

The IRS Employee Plans Compliance Unit recently announced that it has established a new compliance project for nongovernmental Section 457(b) plans. These plans are used by tax-exempt organizations, including hospitals and educational institutions, to provide an opportunity for additional retirement savings for a select group of management or highly compensated employees. A small group of organizations were randomly selected for the current Compliance Check, based on their filing of Forms 990 and W-2 showing contributions to a 457(b) plan.

Although the Compliance Check is not a full-scale examination or an audit of an organization or its employee plans, its objective is to verify a plan's compliance with IRS rules and to identify areas of noncompliance. Depending on the plan sponsor's responses to the Compliance Check, an audit of the plan may follow. If the audit reveals noncompliance, the IRS has stated that it may direct the organization to obtain correction under the IRS Voluntary Correction Program; however, it is unclear how such a correction would be processed because Section 457(b) plans are not formally included in any existing IRS correction program (although the IRS has indicated that it will entertain select Section 457(b) problems and may permit their correction).

This Compliance Check focuses on verifying that the plan sponsor is eligible to sponsor a 457(b) plan, the plan sponsor has filed for top-hat status for the plan with the Department of Labor, and participation has been limited to a select group of management or highly compensated employees. The Compliance Check also includes requests for information regarding plan features, operation, and Form W-2 deferral reporting.

As a result of this new IRS interest in Section 457(b) plans of nongovernmental employers, sponsors of such plans may consider conducting their own compliance check to ensure that their Section 457(b) plan is up-to-date with current law, that the terms of the plan are being followed, and that proper records are being maintained.

For more information or if you have any questions about your Section 457(b) plan, please contact one of the following attorneys in Robinson & Cole's [Employee Benefits and Compensation Practice Group](#):

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