

The logo for Nyhart, featuring a large black vertical bar on the left and a red vertical bar on the right. A black horizontal bar is positioned across the top of the red bar, containing the word "nyhart" in white lowercase letters.

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The 401(k) Questionnaire – What Does It Tell Us?

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401(k) Questionnaire

- Section 401(k) plans most popular plans in U.S.
 - More than 500,000 401(k) plans
 - Cover about 60 million participants
 - Average account balance = \$58,000

401(k) Questionnaire

- Prompted by recurring issues
 - Non-amender/late amender
 - Failure to follow terms of the plan
 - Compensation definition
 - Matching contribution errors
 - Nondiscrimination testing
 - Omitting eligible employees
 - 402(g) limits
 - Timely deposit of employee elective deferrals

401(k) Questionnaire

- Goal of IRS:
 - Look at plan form and operation issues
 - Learn how outreach and compliance programs are working
 - Optimize Employee Plans outreach and compliance efforts

401(k) Questionnaire

- 1200 plans surveyed
 - 98% responded
 - Examinations were initiated for the 2% non-responders.
 - IRS did not check employer responses
 - Asked about plan provisions, contributions, testing



The Final Report

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- Issued March 2013
- Similar to Interim report
 - Divided some issues by size of employer
 - Small (0-5 participants)
 - Medium (6-100 participants)
 - Large (101- 2500 participants)
 - Very Large (over 2500 participants)

The Final Report

- Summary of findings
 - Eligibility
 - 54% require 1 year of service
 - 64% have age 21 requirement
 - Larger plans have more lenient eligibility

The Final Report

- Summary of findings
 - Contributions
 - 4% of 401(k) plans permit after-tax contributions
 - Very large plans more likely to permit
 - 22% permit Roth contributions
 - 68% of plans provide matching contributions
 - Large and very large plans most like to provide

The Final Report

- Summary of findings
 - Contributions
 - 15% of plans reported suspension, reduction, or discontinuance of matching or nonelective contribution in 4 years preceding questionnaire
 - Very large plans most like to experience this
 - Matching contribution
 - Percentage discontinuing increased from 1% to 4% from 2006 to 2008
 - 1% reduced during period

The Final Report

- Summary of findings
 - Contributions
 - Nonelective contribution
 - Percentage discontinuing increased from 2% to 5% from 2006 to 2008
 - Percentage reducing contribution increased from 1% to 5% during period

The Final Report

- Summary of findings
 - Automatic contribution arrangements
 - 5% of plans
 - More likely in larger plans
 - 43% of participants use default rate, 29% use more, 7% use less and 21% elect out entirely
 - Less than half of those with auto enroll were also an EACA

The Final Report

- Summary of findings
 - Plan documents
 - 86% are on a pre-approved plan
 - Very large plans less likely to use pre-approved
 - 23% requested an FDL
 - 6% also maintain a DB plan
 - 7% terminated a DB plan from 1995 to 2010

The Final Report

- Summary of findings
 - Plan Administration
 - 53% use a TPA for administration
 - 73% use for making plan amendments
 - 83% use TPA for Form 5500 administration
 - Inclusion of definition of “plan administration” in the survey may get different results?

The Final Report

- Summary of findings
 - Hardship distributions
 - 76% of plans permit
 - Very large plans more likely to allow

Type of event	Plans
Payment of Medical Expenses	98%
Purchase of Primary Residence	93%
Payment of Education Expenses	92%
Prevention of Foreclosure	94%
Payment of Funeral Expenses	96%
Making Repairs to Residence	73%
Other	4%

The Final Report

- Summary of findings
 - 72% of plans provide for involuntary cash-outs
 - Very large plans more likely to allow
 - 62% permit in-service withdrawals
 - Very large and large plans more likely to allow

The Final Report

- Summary of findings
 - ADP testing
 - Method
 - 31% prior year
 - 60% current year
 - 9% claim exempt

The Final Report

- Summary of findings
 - ADP testing

Method of correction	2006	2007	2008
Distribution of excess	61%	58%	67%
Additional contribution of QNECs	4%	3%	4%
Additional contribution of QMACs	0%	0%	0%
Recharacterizing elective deferrals as after-tax	23%	26%	17%
More than one method	5%	7%	7%
Other method	7%	6%	4%

The Final Report

- Summary of findings
 - ACP testing
 - Method
 - 31% prior year
 - 60% current year
 - 7% claim exempt

The Final Report

- Summary of findings
 - ACP testing

Method of correction	2006	2007	2008
Distribution of excess	83%	88%	90%
Additional contribution of QNECs	0%	0%	0%
Additional contribution of QMACs	0%	0%	0%
More than one method	4%	0%	0%
Other method	12%	12%	10%

The Final Report

- Summary of Findings
 - More than 50% of plans correct ADP and ACP failures within 2 ½ months
 - 43% of plans are safe harbor plans
 - Small plans are more likely to use this feature

The Final Report

- Summary of Findings
 - 65% of plans know about EPCRS
 - 6% have used EPCRS
 - 59% of very large plans have used (less than 20% for all other size plans)
 - 6% of these plans have used it more than once
 - 75% of them found it helpful

The Final Report

- Summary of Findings
 - Customer Education & Outreach
 - 41% of plan sponsors aware of 401(k) Fix-It Guide
 - Very large plans more likely to be aware of it
 - 7% of those have used it
 - » Of those aware of it, very large plans more likely to use it
 - 57% of plan sponsors have used the IRS website to obtain information

The Final Report

- Issues of Concern to IRS
 - Loans
 - 65% of plans permit loans
 - Very large plans more likely to allow

Interest Rate	Plans
Prime Rate	16%
Prime Rate plus one percent	46%
Prime Rate plus two percent	19%
Prime Rate plus three percent	1%
Local Bank Rate	11%
Other Rate	8%

The Final Report

- Issues of Concern to IRS
 - Loans
 - 47% saw increase in number of outstanding loans
 - 60% saw increase in number of defaulted loans
 - Decrease in number of loans originated during same period
 - Concern that this is indicator that older loans are not being timely repaid

The Final Report

- Issues of Concern to IRS
 - Top-heavy plans
 - 20% of plans that indicated they were top-heavy also indicated they provided a lesser level of top-heavy contribution
 - Small employers with multiple plans
 - About 20% of plans with less than 100 participants had more than one plan.

Next Steps

- How IRS will use findings:
 - Enhance 401(k) plan administrative compliance tools
 - Produce outreach materials
 - Improve voluntary compliance programs
 - Comments from Sponsors on SCP
 - Create forms and checklists
 - Allow more corrections by plan amendment
 - Allow longer time for correction of significant errors

Next Steps

- How IRS will use findings:
 - Assess the need for additional guidance
 - Define upcoming projects and enforcement activities

Next Steps

- Projects based on concerns
 - Top heavy 401(k) plans
 - Listed on IRS website
 - 401(k) plans with a Roth feature
 - Small employer with multiple plans project
 - Listed on IRS website
 - Non-qualified 401(k) project

Next Steps

- Projects based on concerns
 - Safe harbor 401(k) plans
 - Initial year 401(k) plans

Next Steps

- Projects based on concerns
 - LESE (Learn/Educate/Self-Correct/Enforce)
 - Plan loan project
 - Not being repaid timely
 - Loan terms not being followed

IRS Tools

- Self-Audit Tool (QSAT)
 - 401(k) questionnaire with additional internal control questions
 - Internal controls
 - This is incorporated into upcoming plan audits
 - Coordinates with requirement to have documented procedures for EPCRS
 - At December 2013 AICPA National Employee Benefit Plan Conference, IRS stated they are scheduled to release QSAT.

IRS Tools

- Sign up for Employer Plan News from IRS
 - Website address: <http://www.irs.gov/Retirement-Plans/Newsletters>
- Read plan document
- IRS website has helpful tools
 - Compliance Check-Up
 - <http://www.irs.gov/Retirement-Plans/Have-You-Had-Your-Retirement-Plan-Check-Up-This-Year%3F>
 - Fix-It Guides
 - <http://www.irs.gov/Retirement-Plans/Plan-Sponsor/Fix-It-Guides---Common-Problems,-Real-Solutions>

**ATTENTION:
PLAN
SPONSORS!**












**EMPLOYEE PLANS
COMPLIANCE RESOLUTION
SYSTEM**

The EPCRS Menu

What's Your Choice?

The impact of
non-compliance left unchecked
can be costly.

**Preventive Maintenance –
Fix Mistakes Immediately!!**

	Audit CAP	Voluntary Correction	Self- Correction
Cost of Correction			
IRS Fees			\$0
Time Involved			
Result			

What can Service Providers do?

- Use problem areas identified to conduct audits of current plans
- Use QSAT when taking on a new client with an existing 401(k) plan
 - go over issues and determine if any issues
- Direct clients to IRS tools for self-audit

Questions?