



**CONSTANGY**  
**BROOKS & SMITH, LLP**  
The Employers' Law Firm, Since 1946

**June 14, 2010**

**IRS Creates 401(k) Compliance Questionnaire**

With a new compliance initiative, the Internal Revenue Service (“IRS”) has added another tool to assist the government in discovering non-compliant 401(k) plans. The IRS has created an electronic plan compliance questionnaire composed of nearly 70 questions that cover a broad range of compliance issues, such as the method of plan administration, participation rates, and nondiscrimination compliance. Recently, the IRS randomly selected 1,200 sponsors of 401(k) plans to complete the questionnaire.

Plan sponsors chosen to participate should review their plan documents and administrative procedures in order to prepare well-researched and accurate responses within the 90-day response period to avoid further action by the IRS. The answers should be detailed and accurate as the responses will become a part of each plan sponsor’s permanent record with the IRS. Receipt of a questionnaire does not suggest compliance issues with a particular plan, nor does it imply the potential for a plan review or audit by the IRS. However, the IRS cautions that failure to complete the questionnaire within the 90-day timeframe will result in further action, up to and including an audit and/or penalties.

Even if you have not been randomly selected to participate in this survey, Constangy can perform or assist in a review of your 401(k) plan to identify any areas of non-compliance. Given this obvious indication of intent of the IRS to step up compliance reviews and enforcement, we recommend that you move quickly to confirm that plan documents are in order, plan summaries and forms are consistent with the plan, and that plan administration is in accordance with the plan and all applicable laws. We also suggest that you consider conducting the same type of review for any other retirement plans that you sponsor. We will be happy to assist you in identifying areas with the greatest potential for compliance issues and to advise you regarding corrective actions, if needed, to ensure full plan compliance. You can review the questionnaire at [http://www.irs.gov/pub/irs-tege/epcu\\_401k\\_questionnaire.pdf](http://www.irs.gov/pub/irs-tege/epcu_401k_questionnaire.pdf).

If you would like Constangy to conduct or assist in a review of your 401(k) plan, or if you have any questions regarding the *401(k) Compliance Check Questionnaire*, please contact Dana Thrasher (205-226-5464), Bob Ellerbrock (205-226-5462), or Dave Pearson (813-222-1367).

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