

IRS Announces 401(k) Compliance Check Questionnaire Project

Lawyers for Employers [®]

Breaking Developments In Labor and Employment Law 05/18/10

Recipients Will Have 90 Days to Complete and Return Extensive Questionnaire

Late last week, the Internal Revenue Service Employee Plans Compliance Unit ("EPCU") announced the implementation of a new compliance initiative: the 401(k) Compliance Check Questionnaire Project (the "401(k) Compliance Project").

Under the 401(k) Compliance Project, 1,200 401(k) plans will be selected at random from among those plans for which Form 5500 returns were filed in 2007.

Plan sponsors selected for the 401(k) Compliance Project will receive a letter that includes a 401(k) Compliance Check Questionnaire ("Questionnaire").

The Questionnaire is *46 pages long* and covers the gamut of 401(k) plan compliance issues, including:

- Demographics
- 401(k) plan participation
- Employer and employee contributions
- Top heavy and nondiscrimination rules
- Distributions and plan loans
- Other plan operations
- Automatic contribution arrangements
- Designated Roth features
- IRS voluntary compliance programs
- Plan administration

Plan sponsors are given 90 days in which to complete and return the Questionnaire. Given the comprehensive nature of the Questionnaire, recipients should contact their plan service providers as soon as possible to ensure that the Questionnaire can be timely and accurately completed.

Interestingly, the Questionnaire includes questions that relate to the existence (and number) of the plan sponsor's other *non-qualified deferred compensation plans*. It is conceivable that answers to the Questionnaire could result in further IRS inquiries regarding these arrangements' compliance with the requirements of Section 409A of the Internal Revenue Code.

Participation in the 401(k) Compliance Project is not voluntary. The IRS is careful to characterize the 401(k) Compliance Project as neither an audit nor an investigation. However, it *is* an enforcement action, meaning that failure to accurately complete and timely return the Questionnaire could result in further enforcement action, including an audit or investigation of the plan.

In many cases, compliance failures identified in the Questionnaire can be remedied – but plan sponsors will have to act quickly in order to prevent identified compliance failures from resulting in further IRS enforcement action and/or monetary penalties.

If your plan is selected for the 401(k) Compliance Project, we encourage you to contact an employee benefits attorney to answer any questions you might have about the Questionnaire – especially if you are aware of any possible unresolved 401(k) plan compliance issues.

For more information, please contact the Labor and Employment Law Practice Group at Lane Powell:

206.223.7000 Seattle
503.778.2100 Portland
907.277.9511 Anchorage
employlaw@lanepowell.com
www.lanepowell.com

We provide *Employer Adviser* as a service to our clients, colleagues and friends. It is intended to be a source of general information, not an opinion or legal advice on any specific situation, and does not create an attorney-client relationship with our readers. If you would like more information regarding whether we may assist you in any particular matter, please contact one of our lawyers, using care not to provide us any confidential information until we have notified you in writing that there are no conflicts of interest and that we have agreed to represent you on the specific matter that is the subject of your inquiry.

Copyright © 2010 [Lane Powell PC](http://www.lanepowell.com)
Seattle - Portland - Anchorage - Olympia - Tacoma - London