



To Our Clients and Friends

June 16, 2010

IRS 401(k) Plan Questionnaire

The IRS recently sent letters to 1,200 randomly selected 401(k) Plan Sponsors instructing them to complete a 401(k) Compliance Check Questionnaire (the "Questionnaire") online. The letter states that the information gathered from the Questionnaire will be used to provide the IRS with a comprehensive view of 401(k) Plans and assist the IRS Employee Plans Compliance Unit in identifying the principal compliance issues that require further education, guidance and enforcement.

It is important you understand that if you received the Questionnaire, you are required to complete and submit it to the IRS within 90 days of the date on the letter. While this is only a compliance check and is not considered an audit or investigation of your 401(k) Plan, the IRS has specifically stated that a plan sponsor's failure to respond or provide complete information may result in further action or examination of their plan.

The Questionnaire contains questions on a broad range of 401(k) Plan compliance issues, which include: demographics, participation, employer and employee contributions, top-heavy and nondiscrimination testing, distributions and plan loans, plan operational issues, automatic enrollment arrangements, designated Roth features, IRS voluntary compliance and correction programs and plan administration. Certain questions that appear in the Questionnaire will not apply to your plan if the plan does not have the specific feature to which the question relates.

As the IRS enhances its enforcement activities with respect to 401(k) Plans, we advise that, even if you have not received a formal letter from the IRS, you review the Questionnaire and use it as a model to identify possible compliance issues with your 401(k) Plans. Although the Questionnaire can only be completed online, the site also contains a paper copy (Guide to Completion) and a Glossary of Definitions which you can print and review. This can be accessed at IRS website: <http://www.irs.gov/retirement/article/0,,id=223440,00.html>. The advantage of your doing such a review is that any compliance issues that you identify by use of the Questionnaire may be correctable through the IRS Employee Plans Correction Resolution System, which can significantly reduce the otherwise obligatory fees and penalties that could apply in the event that such issues were discovered during an IRS audit of your 401(k) Plan.

If you have any questions or need assistance with the Questionnaire, please contact Norman J. Misher (212) 903-8733, Allen J. Erreich (212) 903-8769, Howard W. Hans (212) 903-8767, or Gia G. Brock (212) 903-8737.