

## *CLIENT ALERT*

**May 27, 2010**

### **IRS Issuing 401(k) Plans Questionnaire**

The IRS's Employee Plans Compliance Unit (EPCU) is sending a letter and instructions to a random sampling of 1,200 employers that sponsored 401(k) plans, and filed a form 5500 for the 2007 plan year, asking them to complete a comprehensive "401(k) Compliance Check Questionnaire." (*Retirement News for Employers, Spring 2010*; [www.irs.gov](http://www.irs.gov))

According to the IRS, the questionnaire was developed because of the critical role 401(k) plans play in the private retirement system. The IRS noted that these plans have far surpassed defined benefit pension plans as the preferred retirement vehicle for the majority of employers. There are nearly half a million 401(k) plans in the U.S. covering over 50 million participants.

An Employee Plans Examinations Study of 79 market segments indicated that 401(k) plans are by far the most non-compliant type of retirement plan. Since 401(k) plans make up over 60% of the retirement plans, it is important to the future of the private retirement system that 401(k) plans maintain the highest level of compliance possible.

The information gathered from the questionnaire will provide a comprehensive view of 401(k) plans, and will help EPCU maximize its resources for education, outreach, guidance, and enforcement efforts while minimizing the burden to compliant plan sponsors. The EPCU will use a secure website to collect responses on:

- demographics;
- participation;
- employer and employee contributions;
- top-heavy and nondiscrimination testing;
- distributions and plan loans;
- other plan operations;
- automatic contribution arrangements;
- designated Roth features;
- IRS voluntary compliance and correction programs; and
- plan administration.

All plan sponsors will complete the same questionnaire, but some questions may only apply to plans with particular features. The IRS cautioned that the failure to respond or provide complete information will result in further action or examination of the plan. Visit the following link to the EPCU webpage for more information about the questionnaire: (<http://www.irs.gov/retirement/article/0,,id=223440,00.html>).

These types of questionnaires are designed to uncover lapses in correction methods undertaken by a plan choosing to “self-correct” an operational or design failure. Now is the time to examine your plans from a compliance standpoint and address all plan failures in accordance with the correction procedures set forth by the IRS. Simandl & Prentice encourages employers sponsoring 401(k) plans who receive the questionnaire to adhere to its general requests. If the IRS follows up with more specific questions, or asks you to provide additional information, we recommend that you contact your benefits counsel immediately.

If you have any questions regarding the IRS’s self-correction program or any other 401(k) issues, please contact Robert J. Simandl at (262) 717-3171 or Bret A. McKittrick at (262) 717-3178, or any of the following Simandl & Prentice attorneys.

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