

### **IRS 401(k) Compliance Questionnaires Issued**

**May 18, 2010**

On May 17, the Internal Revenue Service (IRS) initiated a 401(k) compliance review by sending questionnaires to 1,200 plan sponsors.<sup>1</sup> This is the first time that the IRS has undertaken such an initiative. In light of the popularity of 401(k) plans and their increased significance in retirement planning for the U.S. workforce, the IRS wishes to ensure that these plans are being operated properly. The IRS intends to use the information gathered from the compliance questionnaires to gauge plan compliance and to gain a better understanding of how to address any noncompliance trends.

The IRS selected the plans that will receive the questionnaire randomly, based on IRS Form 5500 and census data. We understand that plan sponsors that are currently under audit have been excluded from the process.

We recommend that any plan sponsor receiving a compliance questionnaire carefully consider its response. The IRS has issued similar questionnaires in other areas within its purview in the past, and has subsequently opened audits based on employer responses indicating areas of noncompliance. If a question highlights a plan failure, we recommend involving legal counsel to review any response relating to such failure, and to consider appropriate corrective action. We would also recommend that employers who receive the questionnaire thoughtfully complete and return the questionnaire to the IRS. Disregarding the questionnaire would likely lead to further investigation or enforcement action by the IRS.

#### **Action Steps**

In order to proactively address the compliance questionnaire for 401(k) plans, a plan sponsor should consider conducting a self-audit of its 401(k) plan to determine its level of compliance. Conducting a self-audit will allow a plan sponsor to evaluate its 401(k) plan compliance on its own terms. A copy of the questionnaire is available on the IRS website at the URL referenced below. A plan sponsor that identifies issues may use the IRS's Employee Plans Correction Resolution System (EPCRS) to address areas of noncompliance. Under EPCRS, a plan sponsor may correct noncompliance issues through disclosure to the IRS and payment of a fee. Plan sponsors that voluntarily correct noncompliance issues may avoid the increased penalties that would result if the IRS discovers the same issue in an audit.

---

<sup>1</sup> See Department of Treasury – Internal Revenue Service Form 14146, *Guide to Completion of the 401(k) Compliance Check Questionnaire*, available 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 have any questions or would like more information on any of the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

**Chicago**

Brian D. Hector	312.324.1160	<a href="mailto:bhector@morganlewis.com">bhector@morganlewis.com</a>
-----------------	--------------	----------------------------------------------------------------------

**Dallas**

Patti J. Hedgpeth	214.466.4132	<a href="mailto:phedgpeth@morganlewis.com">phedgpeth@morganlewis.com</a>
Riva T. Johnson	214.466.4107	<a href="mailto:riva.johnson@morganlewis.com">riva.johnson@morganlewis.com</a>

**New York**

Craig A. Bitman	212.309.7190	<a href="mailto:cbitman@morganlewis.com">cbitman@morganlewis.com</a>
-----------------	--------------	----------------------------------------------------------------------

**Philadelphia**

Robert L. Abramowitz	215.963.4811	<a href="mailto:rabramowitz@morganlewis.com">rabramowitz@morganlewis.com</a>
I. Lee Falk	215.963.5616	<a href="mailto:ilfalk@morganlewis.com">ilfalk@morganlewis.com</a>
Vivian S. McCardell	215.963.5810	<a href="mailto:vmccardell@morganlewis.com">vmccardell@morganlewis.com</a>
Steven D. Spencer	215.963.5714	<a href="mailto:sspencer@morganlewis.com">sspencer@morganlewis.com</a>

**Pittsburgh**

Lisa H. Barton	412.560.3375	<a href="mailto:lbarton@morganlewis.com">lbarton@morganlewis.com</a>
John G. Ferreira	412.560.3350	<a href="mailto:jferreira@morganlewis.com">jferreira@morganlewis.com</a>
Lauren Bradbury Licastr	412.560.3383	<a href="mailto:llicastro@morganlewis.com">llicastro@morganlewis.com</a>
R. Randall Tracht	412.560.3352	<a href="mailto:rtracht@morganlewis.com">rtracht@morganlewis.com</a>

**Washington, D.C.**

Althea R. Day	202.739.5366	<a href="mailto:aday@morganlewis.com">aday@morganlewis.com</a>
Benjamin I. Delancy	202.739.5608	<a href="mailto:bdelancy@morganlewis.com">bdelancy@morganlewis.com</a>
David R. Fuller	202.739.5990	<a href="mailto:dfuller@morganlewis.com">dfuller@morganlewis.com</a>
Mary B. (Handy) Hevener	202.739.5982	<a href="mailto:mhevener@morganlewis.com">mhevener@morganlewis.com</a>
Gregory L. Needles	202.739.5448	<a href="mailto:gneedles@morganlewis.com">gneedles@morganlewis.com</a>

**About Morgan, Lewis & Bockius LLP**

With 22 offices in the United States, Europe, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, regulatory, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived startups—across all major industries. Our international team of attorneys, patent agents, employee benefits advisors, regulatory scientists, and other specialists—more than 3,000 professionals total—serves clients from locations in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, Minneapolis, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, and Washington, D.C. For more information about Morgan Lewis or its practices, please visit us online at [www.morganlewis.com](http://www.morganlewis.com).

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states.  
Please note that the prior results discussed in the material do not guarantee similar outcomes.

**© 2010 Morgan, Lewis & Bockius LLP. All Rights Reserved.**