

March 4, 2010

Department of Labor Issues New Reporting Requirements for Multiemployer Plans

In the March 2, 2010 *Federal Register* the Department of Labor issued a final rule requiring multiemployer plans to provide copies of certain actuarial and financial documents regarding the plan upon request. The requested documents must be furnished within 30 days of the date a written request is made by a plan participant, beneficiary, employee representative or contributing employer. Failure to timely provide the requested documents may result in a civil penalty of up to \$1,000 per day late.

The following documents must be provided upon written request:

- A copy of any periodic actuarial report (including sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days prior to the date of the written request;
- A copy of any quarterly, semi-annual, or annual financial report prepared by any plan investment manager or advisor or other fiduciary which has been in the plan's possession for at least 30 days before the plan receive written request; and
- A copy of applications filed with the Secretary of the Treasury requesting an extension under Internal Revenue Code Section 431(d) or ERISA Section 304 and the determination of such Secretary pursuant to such application.

There are limits to what plan administrators are required to furnish upon request. A plan administrator is not required to produce the following:

- More than one copy of a document during any 12-month period;
- Any report or application that has been in the plan's possession for 6 years or more as of the date on which the request was received by the plan;
- Information that has not been in the plan's possession for less than 30 days prior to the date of the written request - because requestors may not know about this limitation, plan administrators must provide a notice to the requestor informing them of the existence of the report and the earliest date it may be available;
- Any information or data that served as the basis for any report or application that is required to be furnished; and
- Individually identifiable information regarding any plan participant, beneficiary, employee, fiduciary, or contributing employer or proprietary information – the requestor must be informed if such information is withheld and the rationale for the withholding.

Alabama

•

California

•

Florida

•

Georgia

•

Illinois

•

Massachusetts

•

Missouri

•

New Jersey

•

North Carolina

•

South Carolina

•

Tennessee

•


Texas

•

Virginia

•

Wisconsin



The final rule allows employers to charge a fee for the production cost. This fee must be the lesser of the actual cost for the least expensive method of acceptable reproduction or \$.25 per page plus mailing or delivery costs.

The final rule is effective April 1, 2010. Plan administrators of multiemployer plans will need to amend their plan's summary plan descriptions to include language that informs participants and beneficiaries of their disclosure request rights.

If you have any questions regarding the final rule or would like assistance in amending your summary plan description, please contact Dana Thrasher (205-226-5464), Dave Pearson (813-222-1367), Bob Ellerbrock (205-226-5462), or Jay Turner (205-226-5468).

Alabama

•

California

•

Florida

•

Georgia

•

Illinois

•

Massachusetts

•

Missouri

•

New Jersey

•

North Carolina

•

South Carolina

•

Tennessee

•

Texas

•

Virginia

•

Wisconsin

IRS Circular 230 Notice: Federal regulations apply to written communications (including emails) regarding federal tax matters between our firm and our clients. Pursuant to these federal regulations, we inform you that any U.S. federal tax advice in this communication (including any attachments) is not intended or written to be used, and cannot be used, by the addressee or any other person or entity for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code.

www.constangy.com

This is a publication of Constangy, Brooks & Smith, LLP. The information contained in this newsletter is not intended to be, nor does it constitute, legal advice. The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience. No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.