



## More DOL Guidance on 2009 Form 5500 Schedule C Reporting

*Effective January 1, 2010, employee benefit plans must use the revised Form 5500 and Schedule C for reporting information for the 2009 plan year. The Department of Labor recently issued additional guidance on the expanded requirements for reporting service provider fee and other compensation information on Schedule C.*

### Background

In late 2007, the DOL issued final regulations implementing new Schedule C reporting requirements for direct and indirect compensation received by service providers in connection with ERISA-covered employee benefit plans. The DOL, IRS and PBGC concurrently adopted revisions to the Form 5500 Annual Return/Report, effective for plan years beginning on or after January 1, 2009. (See our December 19, 2007 [For Your Information](#).) Plan administrators must use the new Form 5500 and Schedule C for 2009 plan year reporting.

Generally, large plans (i.e., 100 or more participants at the beginning of the plan year) must report compensation on Schedule C if the aggregate amount paid to the service provider for the year is \$5,000 or more. Transition relief is available for sponsors of 403(b) plans subject to ERISA that make good faith efforts to comply with the annual Form 5500 reporting requirements for the 2009 and subsequent plan years. (See our August 12, 2009 [For Your Information](#).)

The new Schedule C requirements have generated many questions from plan administrators and service providers. In response, the DOL has now provided additional guidance on the 2009 Schedule C fee reporting requirements in the form of 25 frequently asked questions ([FAQs](#)). The new FAQs supplement the instructions to Schedule C and [prior FAQs](#) published by the DOL in July 2008.

### Issues Covered in the New FAQs

The FAQs address a number of technical issues, including such areas as how to complete certain fields on Schedule C, reporting gifts and gratuities, the treatment of different types of investment fees and expenses, the effect of particular structures or characteristics of service providers on reporting, and health and welfare plan issues. Some of these issues are discussed briefly below.

## Schedule C Reporting

The DOL indicates that it will accept a reasonable good faith effort to use the proper codes on the 2009 Schedule C to classify services and fees, and confirms that it will not reject the forms solely because it uses a different code than the service provider or plan administrator. The DOL also clarifies that plan administrators may use the Employer Identification Number (EIN) of a service provider's parent company to identify the service provider as long as it is used consistently from year to year and on different schedules that identify the same service provider. (Schedule C instructions previously explained that a service provider's address can be used as an alternative to an EIN and the new FAQs do not change this.)

The FAQs clarify that plan administrators will not be required to report a service provider who fails to provide information, if the service provider (1) provides a written statement that it was unable to complete necessary recordkeeping and information system changes for the 2009 plan year reports despite reasonable, good faith and timely efforts, and (2) provides any information that it was able to collect. Nonetheless, the DOL makes clear that it expects administrators to discuss with their providers steps being taken to provide the required information in the future.

## Gifts, Entertainment and Other Non-Monetary Compensation

The DOL makes several clarifications –

- Ordinary promotional items (e.g., coffee mugs, calendars, trophies) are generally presumed to have a value of under \$10 for Schedule C reporting purposes and are not counted toward the aggregate value of gifts from one source.
- Gifts valued at less than \$50 and the aggregate value of gifts from one source of less than \$100 in a calendar year are excludable from Schedule C non-monetary compensation.
- Business meals and entertainment received by persons who have business relationships with ERISA plans are not reportable compensation as long as they are not based on the recipient's position or amount of business with the plans.
- Although generally reportable, reimbursements for travel, meals and lodging for a plan representative's attendance at a service provider's educational conference will not have to be reported if there was a fiduciary's prior written determination that the plan's payment of the expenses would be prudent and consistent with a written plan policy or provision designed to prevent abuse, the conference was reasonably related to the representative's duties, and the expenses were reasonable and unlikely to compromise the representative's ability to carry out his or her duties.

## Investment Fees

The FAQs address the reportability of different plan investment fees including, for example, fees in pooled investment funds. The DOL clarifies that mutual fund redemption fees are not reportable if they are used to defray the costs associated with the redemption and are paid directly to the investment fund. Reporting cannot be avoided by labeling a deferred sales charge or back-end load a redemption fee.

The FAQs confirm that fees, expenses and charges of the plan or plan's investments (e.g., contingent deferred sales charges, market value adjustments, surrender/termination charges) would be Schedule C reportable compensation if received and retained by a service provider. Fees disclosed in a mutual fund prospectus (e.g., 12b-1 fees, sub-transfer agent fees, and shareholder service fees) can be treated as eligible indirect compensation even if the recordkeeper received the amounts through a conduit mutual fund agent as opposed to directly from the fund.

## Bundled Services

The FAQs clarify situations in which fees received by service providers under a bundled service arrangement must be separately reported.

## Health and Welfare Plans

The new FAQs confirm that health and welfare plans currently exempt from Schedule C filing requirements (i.e., certain plans with respect to which premiums and benefits are not paid from a trust) will remain so. The fact that there are revenue sharing payments among the plan's service providers will not require the plan to complete a Schedule C. However, group health and other welfare plans that are funded through a trust will have to file Schedule C and are subject to the indirect compensation reporting rules. The FAQs also provide that certain health plan fees will be treated as transaction-based fees for Schedule C reporting purposes.

## Conclusion

The latest FAQs provide useful guidance for filling out Schedule C, but plan administrators and service providers will face many challenges in collecting needed information and complying with the expanded Form 5500 reporting requirements. Buck's consultants are available to help you review the new requirements, and to assist you in satisfying your reporting obligations for the 2009 plan year.

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*This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.*