

PREPARING FORM 5500 SCHEDULE C

A Presentation of The Profit Sharing/401k
Council of America, The Securities
Industry and Financial Markets Association
and the U.S. Chamber of Commerce

New Disclosure Rules

- In November 2007, DOL finalized changes to the Form 5500, the annual report for employee benefit plans, effective for the 2009 plan year
- For calendar year plans, this revised filing will be due July 31, 2010 unless extended
- The most significant changes relate to service provider compensation on the Schedule C

Webinar Panelists

- Melanie Franco Nussdorf is a partner at Steptoe & Johnson, LLP in Washington, D.C. specializing in employee benefits
- Linda Fisher is Delivery Group Manager for Hewitt's Compliance Government Filing Services Unit and has worked with Form 5500 filings and financial statement audit preparation for the past 15 years. She also serves as a primary Form 5500 resource within Hewitt and works closely with clients to help manage their benefit plans, government reporting, and disclosure requirements
- Doug Kant is a Senior Vice President and Deputy General Counsel in the Fidelity Legal Department. Doug specializes in ERISA and employee benefits law and shares senior responsibility in the legal department for the institutional retirement businesses.

Schedule C Requirements

- Identity of service provider (if compensation received by the service provider is in excess of \$5,000)
 - Services taken into account include services provided to the plan indirectly, including as a subcontractor through other service providers
- Service code of the service provider: from a list of 58 different service codes specified by the DOL
- Any relationship of the service provider to any known party in interest to the plan
- Amount of “reportable compensation”, unless the alternative rule applies

Duty of the Plan Administrator

- Obligation to complete and file the Schedule C rests with the Plan Administrator
- Service Providers are required to cooperate in providing the required information to the Plan Administrator
- Recordkeepers, Custodians, Trustees and Third Party Administrators will be helpful in guiding Plan Administrators through the process

Relevant Service Providers

- The Schedule C requires all direct and indirect compensation to be reflected on the form
- The Schedule C requires the reporting of fees with respect to persons who provide services directly to the plan or to any investment vehicle in which ERISA plans invest – whether or not the entity is otherwise subject to ERISA
 - Mutual funds
 - Hedge funds that limit plan participation below 25% for each class of equity
 - Private equity funds
 - Fund of funds
- The Schedule C requires the reporting of fees paid by the plan, or fees paid by the investment vehicle, or fees paid to plan service providers by an advisor, a transfer agent or a distribution agent
 - Management fees paid by mutual fund to investment adviser
 - Sub-transfer agency fees paid to broker or to recordkeeper
 - Shareholder servicing fees paid to broker or to recordkeeper
 - 12b-1 fees
 - Account maintenance fees

Reportable Compensation

- Reportable Compensation:
 - Direct Compensation
 - Indirect Compensation

Includes money and any other thing of value (for example, gifts, awards, trips), received by a person, directly or indirectly, from the plan (including fees charged as a percentage of assets and deducted from investment returns) in connection with services rendered to the plan, or the person's position with the plan.

Direct Compensation

- Payments made by the plan for services rendered to the plan or because of a person's position with the plan
 - Direct payments from a plan account
 - Charges to plan forfeiture accounts
 - Charges to fee recapture accounts
 - Charges to a trust account before allocations to participant accounts
 - Charges to participant accounts

Direct Compensation

Direct Compensation does not include payments from the plan sponsor. Thus if a plan sponsor pays a service provider from the sponsor's own funds, and not from the plan, that payment does not need to be reported on the Schedule C.

Indirect Compensation

- Compensation is considered to have been received in connection with the person's position with the plan or for services rendered to the plan if the person's eligibility for a payment or the amount of the payment is based, in whole or in part, on services that were rendered to the plan or on a transaction or series of transactions with the plan.

Indirect Compensation, Cont'd.

- Indirect compensation does not include compensation that would have been received had the service not been rendered or the transaction had not taken place and that cannot be reasonably allocated to the services performed or transactions with the plan.

Indirect Compensation

- Finders fees, revenue sharing, 12b-1 fees, sub ta fees
- Float revenue
- Brokerage commissions (from a nonmanaged account)
- Soft dollar services
- Gifts
- Entertainment

Indirect Compensation

- Fees and expense reimbursements from mutual funds, bank commingled trusts, insurance company pooled separate accounts, and other separately managed accounts and pooled investment funds in which the plan invests that are charged against the fund or account and reflected in the value of the plan's investment

The Alternative Reporting Rule

- “Eligible Indirect Compensation”
 - Available to service providers who receive only indirect compensation from an investment vehicle or a separately managed account
- Check yes on line 1a
- Enter the information identifying the person who provided the alternative reporting rule material on line 1b

The Alternative Reporting Rule

- Only for Eligible Indirect Compensation
- Gifts and entertainment and other nonmonetary compensation are not Eligible Indirect Compensation
- “fees charged to the fund”
- Plan Administrator must have received written materials that disclosed and described:
 - The existence of the indirect compensation
 - The service provided for the indirect compensation
 - The amount or estimate of the compensation or a description of the formula used to calculate the compensation
 - The identity of the parties paying and receiving the compensation.

Gifts and Entertainment

- New rule this year
- Applies both to amounts received by plan sponsors and by service providers
- Non-monetary compensation (other than compensation with a value of less than \$50 and an aggregate annual value from any one source of less than \$100) is reportable
- Gifts with a value of less than \$10 are not counted towards the \$100 threshold
- Employees of an organization who provide a benefit are treated as one source, but employees of an organization who receive benefit are treated as separate persons
- No stated de minimis rule for ERISA self-dealing prohibitions

Next Steps

- Call your recordkeeper, your custodian, your trustee or your TPA
- With respect to most investment vehicles, you will already have the necessary information in your investment management agreement and ADV, fund description, prospectus, etc.
- Check the DOL's website for frequently asked questions: www.dol.gov/ebsa

Questions and Discussion