

Supplemental Frequently Asked Questions about the 2009 Schedule C



U.S. Department of Labor
Employee Benefits Security Administration
Updated February 2010

Q1: What is the purpose of this FAQ guidance?

The Department of Labor is publishing these FAQs to supplement FAQs published in July 2008, and to provide further guidance in response to additional questions from plans and service providers on the requirements for reporting service provider fees and other compensation on the Schedule C of the 2009 Form 5500 Annual Return/Report of Employee Benefit Plan. Inquiries regarding these supplemental FAQs may be directed to EBSA's Office of Regulations and Interpretations at 202.693.8523.

Q2: Are promotional gifts of little intrinsic value such as a coffee mug, calendar, greeting cards, plaques, certificates, trophies or similar items intended solely for the purpose of presentation and displaying a company logo, reportable Schedule C indirect compensation to the recipient?

Generally, no. The Department explained in its July 2008 FAQ 34 that administrators are allowed to exclude from Schedule C non-monetary compensation of insubstantial value, which is tax deductible for federal income tax purposes by the person providing a gift or meal and that would not be taxable income to the recipient. The non-monetary gift or gratuity must be valued at less than \$50, and the aggregate value of gifts from one source in a calendar year must be valued at less than \$100. If the \$100 aggregate value limit is exceeded, then the value of all the gifts will be reportable compensation. The instructions state that, for this purpose, non-monetary gifts of less than \$10 do not need to be counted toward the \$100 limit. Non-monetary gifts of less than \$10 also do not need to be included in calculating the aggregate value of all gifts required to be reported even if the \$100 limit is otherwise exceeded.

In the Department's view, it is permissible to presume that ordinary promotional gifts, such as a coffee mug, calendar, greeting cards, plaques, certificates, trophies and similar items of insubstantial value that display a company logo of the person or entity providing the promotional gift have a value of less than \$10 for purposes of Schedule C reporting. On the other hand, this FAQ would not cover a gift that clearly has a value in excess of \$10, such as a \$400 golf club or an expensive luxury pen, for example, merely because it was embossed with a company logo.

This guidance is for purposes of Schedule C reporting only. Filers are strongly cautioned that gifts and gratuities of any amount paid to or received by plan fiduciaries may violate ERISA and give rise to civil liabilities and criminal penalties.

Q3: Are all free business meals and entertainment received by persons who have business relationships with ERISA plans indirect compensation to the recipient for purposes of Schedule C?

No. It is the view of the Department that a reasonable reading of the Schedule C instructions supports the conclusion that the value of meals, entertainment, and other gifts (other than cash or cash equivalents) is not reportable compensation for purposes of the Schedule C if neither the amount of the gift nor eligibility to receive the gift is based, in whole or in part, on the recipient's position with one or more

ERISA plans, or the amount or value of services provided to or business conducted with one or more ERISA plans.

Thus, if a brokerage firm invites employees of investment managers to a business conference, including reimbursement for travel, meals, and lodging, where eligibility for the invitation or the value of gifts provided is not based, in whole or in part, on whether the investment manager does business with ERISA plans or on the value or amount of business conducted that includes ERISA covered plans, the expenses for the conference, travel, meals and lodging would not constitute Schedule C reportable indirect compensation received by the investment managers or their employees.

Similarly, if an investment platform provider hosts a hospitality suite, including food, other refreshments, and entertainment, at a business conference focused on ERISA issues and allows any person who attends the conference to visit the hospitality suite, the value of the food, refreshments, and entertainment would not be reportable Schedule C compensation to persons who visit the hospitality suite merely because they may hold a position with an ERISA plan or have service provider relationships with ERISA plans.

An exchange of holiday gifts that is based solely upon a personal relationship between persons that happen to do business with ERISA plans is not Schedule C reportable indirect compensation. The example in the Department's July 2008 FAQ 35 regarding a gift of a holiday basket was intended to illustrate the mechanics of allocating the value of a gift where eligibility for the gift was based on business done with multiple ERISA plans; it was not intended to indicate that in all circumstances gifts exchanged among persons who have business relationships with ERISA plans necessarily constitute indirect compensation to the recipient for purposes of Schedule C.

This guidance is for purposes of Schedule C reporting only. Filers are strongly cautioned that gifts and gratuities of any amount paid to or received by plan fiduciaries may violate ERISA and give rise to civil liabilities and criminal penalties.

Q4: An entity that provides services to employee benefit plans conducts educational conferences designed to educate and explain employee benefit issues and products at no cost to employee pension or welfare plan personnel (e.g., plan sponsor's human resources staff and finance personnel). In holding the conference, the entity provides conference rooms, speakers, audio-visual equipment, and refreshments during conference breaks, meals, travel, and lodging. Do all of those expenses have to be reported as non-monetary compensation?

Paying for or reimbursing plan personnel for travel, meals, and lodging expenses associated with the plan representative's attendance at an educational conference generally constitutes reportable Schedule C compensation because it is provided due to the person's position with the plan. Waiver of any conference registration fee would also be reportable indirect compensation. The cost of the meals, travel, lodging, and waived conference registration fee must be included in the calculation of Schedule C reportable compensation for the recipients. An allocated share of the costs of the conference rooms and audio-visual equipment, however, does not need to be included.

The Department has decided that it will not require such educational conference expenses to be reported on Schedule C if a plan fiduciary other than the plan representative attending the conference reasonably determined, in advance and without regard to whether such conference expenses will be reimbursed, that (a) the plan's payment of educational expenses in the first instance would be prudent, (b) the payment or reimbursement of the expenses would be consistent with a written plan policy or provision designed to prevent abuse, (c) the conference had a reasonable relationship to the duties of the attending plan representative, and (d) the expenses for attendance were reasonable in light of the benefits afforded to the

plan by such attendance and unlikely to compromise the plan representative's ability to carry out his or her duties in accordance with ERISA. The fiduciary's determination must be in writing.

This guidance is for purposes of Schedule C reporting only. Filers are strongly cautioned that gifts and gratuities of any amount paid to or received by plan fiduciaries may violate ERISA and give rise to civil liabilities and criminal penalties.

Q5: In the context of a plan's investment in a "look-through" investment fund is Schedule C reporting required for fees received by persons at the lower tier funds?

For Schedule C reporting purposes, fees received in connection with a plan's direct investment in a pooled investment fund ("top tier" fund) would be subject to Schedule C reporting to the extent the fees constitute reportable direct or indirect compensation.

If a top tier investment fund makes an investment in another investment fund ("lower tier" fund), fees received by persons at the lower tier fund level in connection with the top tier fund's investment in the lower tier fund would not be reportable compensation for Schedule C purposes. Compensation received directly or indirectly by persons at the top tier from the lower tier fund in connection with the investment of an ERISA plan or plans would, however, be subject to Schedule C reporting requirements.

This FAQ does not cover situations where the top tier fund is a separately managed investment account that contains assets of an individual plan, a master trust, or is merely a vehicle through which participants in participant-directed plans make investments in lower tier funds.

Q6: For purposes of reporting indirect compensation on Schedule C, must a limited partnership hedge fund that is not holding plan assets pursuant to the "less than 25% benefit plan investor exception" under section 3(42) of ERISA be treated as an investment fund?

Yes. The 2009 Form 5500 instructions provide that persons who provide investment management services to investment funds in which plans invest are treated for Schedule C reporting purposes as indirectly providing investment management services to those investing plans. Thus, fees that are paid out of an investment fund's assets to the fund's investment adviser (or its affiliates) for managing the fund's investment portfolio are reportable indirect compensation for Schedule C purposes. The instructions are clear that "investment funds" for this purpose include registered investment companies (commonly referred to as mutual funds) that do not hold plan assets by reason of ERISA section 401(b). The Department's July 2008 FAQs in explaining this requirement drew a line between "investment funds" and entities that would be treated as "operating companies" under the Department's plan asset regulation at 29 C.F.R. § 2510.3-101 (Definition of "plan assets" – plan investments). See 2008 FAQ 7. In the Department's view other investment funds that do not hold "plan assets" are similarly subject to the Schedule C compensation reporting requirements. Thus, for instance, fees paid to persons for management of a real estate hedge fund that did not meet the requirements for being a real estate operating company under 29 C.F.R. § 2510.3-101 would be reportable Schedule C compensation, but property management fees paid to persons managing the underlying properties owned by the funds could be treated as ordinary operating expenses of the fund. See 2008 FAQ 4.

Q7: Can mutual fund 12b-1 fees, sub-transfer agent fees, and shareholder servicing fees received by a retirement plan record keeper be classified as eligible indirect compensation for purposes of the Schedule C alternative reporting option, regardless of whether such fees were received from a mutual fund agent or directly from a mutual fund?

The Department would generally consider fees disclosed in a mutual fund prospectus, such as 12b-1 fees, sub-transfer agent fees, and shareholder servicing fees, as charged against the mutual fund assets and reflected in the value of the investing plans' shares for purposes of Schedule C's definition of eligible indirect compensation. The fact that a 12b-1 fee, for example, is received by a record keeper through a conduit mutual fund agent would not prevent the fee from being treated as eligible indirect compensation. On the other hand, the fact that a revenue sharing fee received by a record keeper from a broker might ultimately have been derived from 12b-1 fees received by the broker and disclosed in a mutual prospectus does not mean that the revenue sharing payment would be eligible indirect compensation.

Q8: Revenue sharing payments often travel through the hands of several different service providers before getting to their ultimate intended recipient in a "chain" of plan service providers. Does only the ultimate recipient of the compensation need to be identified as having received the compensation?

Not necessarily. One purpose of the Schedule C reporting structure is to provide plan fiduciaries with better information regarding the flow of amounts that represent fees received in connection with services provided to the plan. Accordingly, it is possible that a person could receive a fee that would constitute indirect compensation and pass some of that fee on to another person for whom the amount passed on would also represent reportable indirect compensation. In such a case, the information reported regarding the first and second person who received the fee could include a description of the total fee received and the portion of the fee passed on to the next level recipient. Alternatively, it may be that the consolidated bundled fee reporting option could be used instead of reporting revenue sharing compensation received by individual members of the bundle.

On the other hand, if an intermediary fund agent is merely a conduit for transmission of the revenue sharing fee to the ultimate recipient, the conduit would not itself be receiving any reportable compensation by acting as the conduit.

Q9: Are costs and expenses incurred by an insurance company in connection with a general account investment contract that promises a guaranteed rate of return reportable compensation for purposes of the Schedule C?

The answer generally depends on whether plan services are included as part of the investment contract. FAQ 22 in the July 2008 guidance dealt with Schedule C reporting for a "stable value contract" that is "combined with plan recordkeeping, trusteeship, and similar services." In the FAQ, the insurer reduced the crediting rate on the contract to account for the insurer's expenses and costs for providing services, such as recordkeeping and similar services, to investing plans. The FAQ was intended to describe an insurance based situation where plan services were characterized as "free" because the compensation for those services was collected indirectly by, in effect, imposing a charge against the plan's investment. The Department concluded that Form 5500 reporting on the compensation for providing plan services could not be avoided in such cases merely by incorporating the compensation for those services into a reduction in the crediting rate on an insurance investment contract.

A different situation is presented if an insurance company general account investment contract is not combined with any plan services. An insurance company general account investment that promises a guaranteed rate of return takes into account various factors, including insurance company costs and expenses, in establishing the guaranteed crediting rate. Similar to the July 2008 FAQ on mutual fund operating expenses (see 2008 FAQ 4), such insurance company costs and expenses do not involve the insurer receiving reportable compensation for providing services, such as investment management services, for an investment fund portfolio in which the plan invests.

Payment of commissions and other compensation to agents, brokers and other persons in connection with the placement or retention of the insurance contract would, however, be reportable compensation to the recipients, regardless of how they are characterized. See 2008 FAQ 6. For example, fees and commissions would still be reportable, even if they were characterized as being within a “mortality and expense” charge used to establish the crediting rate. The instructions for the Schedule C provide that insurance fees and commissions received by agents, brokers, and other persons in connection with a plan’s purchase of or investment in an insurance contract that are reported on Schedule A do not need to be reported again on Schedule C.

Q10: The July 2008 guidance in FAQ 40 provides limited transition relief where a service provider makes reasonable, good faith efforts to develop systems to track information regarding its reportable indirect compensation in a timely fashion but, despite such efforts, is unable to collect the necessary information for the 2009 plan year reports. Will the Department reject the Form 5500 or impose penalties if the Schedule C does not include information that was not provided to the plan administrator or the plan’s Form 5500 preparer by a service provider that gives the plan administrator the statement described in Q40?

No. In addition to the statement described in FAQ 40, the Department expects the service provider will provide the information on its reportable compensation that it was able to collect. The Department also expects that plan administrators who receive such statements from service providers will communicate with the service provider regarding the statement and the steps the service provider is taking to be able to provide the necessary information in connection with future Schedule Cs the plan is required to file.

Q11: Are “contingent deferred sales charges,” market value adjustments for annuity contracts, or surrender/termination charges reportable compensation and if so, are they to be reported as direct or indirect compensation?

“Contingent deferred sales charges” are typically understood to be back-end or deferred sales loads or commissions investors pay when they redeem mutual fund shares or other investments. Although sales loads frequently are used to compensate outside brokers that distribute fund shares, some funds that do not use outside brokers still charge sales loads. To the extent paid by the plan or charged to a plan or participant’s account, such sales loads or commissions would be direct compensation to the person receiving the load or commission. Such a deferred load or commission charged against an investment fund and reflected in the value of the plan’s investment could be treated as eligible indirect compensation assuming the required disclosures are provided. The Department would apply similar treatments to exchange fees imposed on shareholders if they exchange (transfer) to another fund within the same fund group, account fees imposed on investors in connection with the maintenance of their accounts, and purchase fees imposed to defray some of the fund’s costs associated with a purchase of fund shares.

Market value adjustments or similar surrender or termination charges that are adjustments to the value of the investment in accordance with the contract would not be reportable compensation for Schedule C purposes where the market value adjustment or surrender charge reflects only the contractual difference in the value of the plan’s investment because it was not held for the stated duration of the contract.

Q12: Some mutual funds have imposed short-term trading fees as a result of SEC Rule 22c-2. These are commonly known in the industry as “redemption fees.” Other investment products (collective trust funds, separate accounts, etc.) may impose similar fees to curb short-term trading. Such fees are generally assessed when a participant transfers out of an investment fund within a certain timeframe (often 30-

60 days) after investment in the fund. The fees flow back into the fund, trust, or account through a reporting and remittance process developed between the record keeper or intermediary and the fund or investment company. Should these fees be reported as redemption fees using code 57 on Schedule C as direct compensation to the fund company?

A redemption fee described in SEC Rule 22c-2 is a type of fee that some funds charge their shareholders when the shareholders redeem their shares. Although a redemption fee is deducted from redemption proceeds just like a deferred sales load, it is not considered to be a sales load. Unlike a sales load, such a redemption fee is used to defray fund costs associated with a shareholder's redemption and is paid directly to the investment fund. Such redemption fees paid directly to an investment fund are neither direct nor indirect compensation to a service provider reportable on Schedule C. On the other hand, a person could not avoid Schedule C reporting merely by labeling a fee a "redemption fee," for example, calling a deferred sales charge or back-end load a "redemption fee."

Q13: Record keepers may receive revenue sharing payments from fund companies in the form of shareholder servicing fees. In some cases, the plan and the record keeper may agree to an "ERISA fee recapture account" where the revenue sharing exceeds a fee level negotiated between the record keeper and the plan sponsor. How are the following two common approaches treated for Schedule C purposes?

- a. All revenue sharing received by the record keeper, or the amount in excess of the fees needed by the record keeper to administer the plan, is deposited into a retirement plan trust account and used to pay administrative expenses of the plan. Amounts remaining in the account at the end of the plan year are generally allocated to participants in accordance with provisions in the plan document.**
- b. All revenue sharing is retained by the record keeper and applied as a credit to the plan or plan sponsor to pay for or offset expenses of administering the plan. Amounts in excess of the fees negotiated by the record keeper to administer the plan are available to pay plan administrative expenses as directed by the plan administrator.**

This question describes fee recapture arrangements, sometimes called ERISA fee recapture accounts, ERISA accounts, or ERISA budget accounts, which are designed to help plans control costs by recapturing some revenue sharing dollars and allowing plans to use them to pay plan expenses. If, in the question above, revenue sharing compensation is paid into the plan's trust account and the record keeper is merely serving as a conduit between the fund company and the plan trust, then the excess amounts that flow directly through the record keeper from the fund company to the plan trust do not have to be reported as indirect compensation received by the record keeper for Schedule C purposes.

If the amount deposited into the plan's trust account by the record keeper is net of the record keeper's service fees, however, the amount the record keeper retains would be reportable indirect compensation for Schedule C purposes.

Amounts paid to persons out of the plan's ERISA fee recapture trust account for services rendered to the plan are considered direct compensation to the receiving service provider.

If the record keeper retains the revenue sharing income but reflects some or all of it on the record keeper's accounts as a credit to the plan (as opposed to depositing in the plan's trust account), payments by the record keeper to other persons for rendering services to the plan that reduce the plan's credit balance would be reportable indirect compensation to the persons receiving the payments.

Nothing in this answer should be read as expressing a view on when ERISA accounts and similar revenue sharing arrangements may present prohibited transaction issues under section 406 of ERISA.

Q14: Many recordkeeping service arrangements apply some portion of a shareholder servicing fee charged by an investment fund in which its client plans invest toward the payment of the record keeper's fees. In cases where such revenue sharing payments from the investment fund do not cover the full amount of the record keeper fee, an additional direct payment is made by the plan to the record keeper to cover the total recordkeeping fee. Under such circumstances, can part of the recordkeeping fee be reported as indirect compensation and part direct compensation for purposes of Schedule C reporting?

Yes.

Q15: If plan service providers or plan administrators make a good faith attempt to classify their services and the fees they receive using the codes in the Schedule C instructions, will the Department reject Form 5500s in 2009 due to inadvertent misclassifications?

No. A reasonable good faith effort to properly classify services and fees is required, but EBSA will not reject 2009 Form 5500s solely because the Department might have used a different service or fee code than did the service provider or plan administrator in a particular filing, provided that a reasonable good faith effort was made to select the proper codes.

Q16: Provider A has an "alliance" with Provider B. Provider B has developed a program to assist participants in fund selection. Provider A pays Provider B a flat fee of \$20,000 to have access to the Provider B program, regardless of whether any of Provider A's plan clients use it. Plan Z pays a direct fee to Provider A of \$5,000 that allows Plan Z participants to access Provider B's service. Provider A shares \$1,000 with Provider B.

The \$5,000 paid by Plan Z to Provider A is reportable direct compensation to Provider A. If the access to the Provider B program by Client Z is described as part of the services that Client Z gets for its \$5,000 payment to Provider A, the \$1,000 Provider A pays to Provider B could be treated as part of a bundled arrangement and not separately treated as indirect compensation received by Provider B. Assuming Provider B does not receive any other direct or indirect compensation related to Plan Z, Provider B would not be required to be separately listed on Plan Z's Schedule C.

Q17: By what date must the disclosure materials necessary to satisfy the "written disclosures" requirement for treating indirect compensation as eligible indirect compensation be presented to the plan administrator?

The instructions to Schedule C do not specify the date by which the materials necessary to satisfy the written disclosure requirement must be provided to the plan administrator. Under ERISA section 103(a)(2), if some or all of the information necessary to enable the administrator to comply with the annual reporting requirements of Title I of ERISA is maintained by an insurance carrier that provides benefits under the plan or holds assets of the plan in a separate account, a bank or similar institution that holds assets of the plan in a common or collective trust or a separate trust or custodial account, or the plan sponsor, the insurer, bank, or sponsor must transmit and certify the accuracy of such information to the administrator within 120 days after the end of the plan year. In other cases, the Department would expect that the written materials would have to be provided by whatever date is agreed upon with the

administrator, or, if no such date has been established, the administrator would need to obtain the materials sufficiently in advance of the date the related Form 5500 is due or filed, whichever comes first, so as to enable the administrator to conclude that the conditions for using the alternative reporting option have been met and timely file a complete and correct Form 5500.

Q18: If it is difficult to ascertain the Employer Identification Number (EIN) for some service providers that are part of a group of affiliated companies, would it be sufficient to provide the EIN of a “parent” company?

The Department recognized in the Schedule C instructions that EINs may not always be available to plan administrators to use to identify service providers. The Schedule C thus allowed use of a service provider’s address as an alternative to providing an EIN. If a service provider is part of an affiliated group of companies, use of a parent company EIN would also be acceptable. If an EIN is used to identify a service provider, the Department would expect the same EIN to be used consistently from year to year and on different schedules that identify the same service provider.

Q19: May reporting of fees and expenses for plans with assets invested in a Master Trust Investment Account (MTIA) be reported on the Form 5500 filing for the MTIA rather than the Form 5500 filing for each plan involved?

Yes, but in the case of a master trust for which more than one master trust investment account (MTIA) Form 5500 report is required to be filed, the fees and expenses would have to be allocated to the proper MTIA or MTIAs. Being able to report fees and expenses at the MTIA level rather than at the plan level does not change any fiduciary or other obligation under ERISA to allocate the fees and expenses properly among the plans using the master trust as a vehicle for investing and reinvesting plan assets. Consistent with current practices, fees and expenses reported on the MTIA level are not to be reported again on the plan level.

Q20: If a trade confirm is sent to the plan or to the participant with each participant directed trade made through a 401(k) plan brokerage window, does that meet the requirements of the eligible indirect compensation rule that requires disclosure to the plan administrator?

Providing a participant rather than the plan administrator with a trade confirmation would not satisfy the eligible indirect compensation requirements relating to disclosure to the plan administrator.

Q21: If a broker identifies, for each plan with respect to which it receives 12b-1 fees, shareholder service fees, subtransfer agency fees charged against an investment fund and reflected in the value of the plan’s investment, the name of each fund and range of payments it receives: (e.g. “from all these funds we get between 25 and 45 basis points and/or up to 15 dollars per position”) will that satisfy the disclosure requirements for the eligible indirect compensation alternative reporting option?

No. The required disclosures for eligible indirect compensation include an identification of the services provided for which the broker is receiving indirect compensation. It also would not be sufficient to provide a fee range as described in the question for multiple funds. If the compensation with respect to any given fund may fluctuate over a range that would be difficult to describe with more precision than a range of basis points, however, it would be permissible to set forth for each separate fund such a range to describe the formula used to determine the broker’s indirect compensation.

Q22: If an investment advisor has a standard disclosure on soft dollar compensation that meets the requirements of the securities laws, but would not meet the requirements of the alternative reporting option for eligible indirect compensation because it does not provide estimates or descriptions of eligibility criteria or the names of the brokers paying the soft dollar compensation, do additional disclosures need to be provided?

If the disclosures that meet the securities laws requirements do not include the information necessary to meet the eligible indirect reporting option, additional disclosures would be required for a plan to take advantage of the alternative reporting option for eligible indirect compensation. There is no specific form or method of disclosure required for disclosures to satisfy the alternative reporting option requirements, and the disclosures do not have to come from a particular party. Plans and plan service providers thus have substantial flexibility in establishing programs to provide the necessary disclosures.

Q23: Are group health plans and other welfare benefit plans that are required to file a Schedule C subject to the indirect compensation reporting requirements?

Yes. Group health plans and other welfare plans required to file a Schedule C are subject to the indirect compensation reporting rules.

Q24: In the health plan context, and specifically with regard to health care claims, what fees will be considered as charged on a per transaction basis?

A fee charged on a per claim basis would be considered charged on a transaction basis for Schedule C reporting purposes. Similarly, fees charged for each benefit eligibility inquiry and response, claim status request and response, and other similar fees could be treated as transaction-based fees for Schedule C reporting purposes.

Q25: Assume that a plan sponsor pays all direct expenses relating to the administration and funding of benefits of an unfunded, self-insured welfare plan, such as the third-party claims administration expenses under an employer-pay-all disability plan. No plan assets are used to pay any direct expenses, nor are plan assets used to reimburse the plan sponsor for the payment of direct expenses. Would revenue sharing payments among the plan's service providers be required to be reported on a Schedule C?

The instructions specifically provide that health and welfare plans that meet the conditions of the limited annual reporting exemption under 29 CFR 2520.104-44 or Technical Release 92-01 are not required to file a Schedule C. Where the plan is eligible for that limited exemption, the fact that there are revenue sharing payments among the plan's service providers would not mean that such a plan would be required to complete a Schedule C.

Q26: Pharmacy Benefit Managers (PBMs) provide services to plans and are compensated for these services in various ways. How should this compensation be reported?

PBMs often act as third party administrators for ERISA plan prescription drug programs and perform many activities to manage their clients' prescription drug insurance coverage. They are generally engaged to be responsible for processing and paying prescription drug claims. They can also be engaged to develop and maintain the plan's formulary and assemble networks of retail pharmacies that a plan sponsor's members can use to fill prescriptions. PBMs receive fees for these services that are reportable

compensation for Schedule C purposes. For example, dispensing fees charged by the PBM for each prescription filled by its mail-order pharmacy, specialty pharmacy, or a pharmacy that is a member of the PBM's retail network and paid with plan assets would be reportable as direct compensation. Likewise, administrative fees paid with plan assets, whether or not reflected as part of the dispensing fee, would be reportable direct compensation on the Schedule C. Payments by the plan or payments by the plan sponsor that are reimbursed by the plan for ancillary administrative services such as recordkeeping, data management and information reporting, formulary management, participant health desk service, benefit education, utilization review, claims adjudication, participant communications, reporting services, website services, prior authorization, clinical programs, pharmacy audits, and other services would also be reportable direct compensation.

Q27: PBMs may receive rebates or discounts from the pharmaceutical manufacturers based on the amount of drugs a PBM purchases or other factors. Do such rebates and discounts need to be reported as indirect compensation on Schedule C?

Because formulary listings will affect a drug's sales, pharmaceutical manufacturers compete to ensure that their products are included on PBM formularies. For example, PBMs often negotiate discounts and rebates with drug manufacturers based on the drugs bought and sold by PBMs or dispensed under ERISA plans administered by a PBM. These discounts and rebates go under various names, for example, "formulary payments" to obtain formulary status and "market-share payments" to encourage PBMs to dispense particular drugs. The Department is currently considering the extent to which PBM discount and rebate revenue attributable to a PBM's business with ERISA plans may properly be classified as compensation related to services provided to the plans. Thus, in the absence of further guidance from the Department, discount and rebate revenue received by PBMs from pharmaceutical companies generally do not need to be treated as reportable indirect compensation for Schedule C purposes, even if the discount or rebate may be based in part of the quantity of drugs dispensed under ERISA plans administered by the PBM. If, however, the plan and the PBM agree that such rebates or discounts (or earnings on rebates and discounts held by the PBM) would be used to compensate the PBM for managing the plan's prescription drug coverage, dispensing prescriptions or other administrative and ancillary services, that revenue would be reportable indirect compensation notwithstanding that the funds were derived from rebates or discounts.

This guidance is for Schedule C reporting purposes only. Nothing in this answer should be read as expressing a view on the application of any other provision of Title I of ERISA.