



U.S. Department of Labor

Employee Benefits Security Administration

FAQs About The 2009 Form 5500 Schedule C

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Q1: What is the purpose of this FAQ guidance?

On November 16, 2007, the Department of Labor's Employee Benefits Security Administration (EBSA) published final form revisions and a final regulation, generally effective for plan years beginning on or after January 1, 2009, providing new 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. The purpose of these FAQs is to provide guidance to plan administrators and service providers on complying with the requirements of the 2009 Form 5500 Schedule C. Questions concerning this guidance may be directed to EBSA's Office of Regulations and Interpretations at 202.693.8523.

Q2: Is the Schedule C information on service provider indirect compensation required to be reported based on the plan's year or can the information reported be based on the service provider's fiscal year?

Although direct compensation paid by the plan should be reported based on the plan's year, the amount or estimate of indirect compensation or the formula used to calculate indirect compensation may be based for Schedule C reporting purposes on a service provider's fiscal or other reporting year that ends with or within the plan year, as long as the selected method is used consistently from year to year. This is similar to the Schedule A rule that allows information on insurance contracts or policies (including fee and commission information) to be reported either on the basis of the plan year or the insurance contract or policy year that ends with or within the plan year.

Q3: Can the alternative reporting option for "eligible indirect compensation" be used to report compensation paid or received in separately managed investment accounts of a single plan?

Yes. The Schedule C instructions state that "eligible indirect compensation" includes fees or expense reimbursement payments charged to "investment funds" and reflected in the value of the plan's investment or return on investment. The instructions do not further define the term "investment fund" for this purpose. Investment funds would include mutual funds, bank common and collective trusts, and insurance company pooled separate accounts. In the Department's view, the term would also include separately managed investment accounts that contain assets of an individual plan. Thus, so long as the other conditions for eligible indirect compensation are met, the Schedule C alternative reporting option can be used for indirect compensation received in connection with separately managed investment accounts of employee benefit plans.

Q4: Are all the fees and expenses charged against an investment fund and reflected in the value of the plan's investment, such as an investment fund's payments for legal services provided to the fund, fees paid to the fund's accountant, and expenses associated with SEC filing requirements, reportable indirect compensation for Schedule C purposes?

No. The Schedule C Instructions provide a general rule that indirect compensation includes compensation received in connection with services rendered to the plan or a person's position with the plan. A person will be considered to receive indirect compensation for Schedule C reporting purposes if "the person's eligibility for a payment or the amount of the payment is based, in whole or in part, on [1] services that were rendered to the plan or [2] on a transaction or series of transactions with the

plan.” In the case of charges against an investment fund, reportable “indirect compensation” includes, for example, the fund’s investment adviser asset-based investment management fee from the fund, fees related to purchases and sales of interests in the fund (including 12b-1 fees), brokerage commissions and fees charged in connection with purchases and sales of interests in the fund, fees for providing services to plan investors or plan participants such as communication and other shareholder services, and fees relating to the administration of the employee benefit plan such as recordkeeping services, Form 5500 filing and other compliance services. Amounts charged against the fund for other ordinary operating expenses, such as attorneys’ fees, accountants’ fees, printers’ fees, are not reportable indirect compensation for Schedule C purposes. Also, brokerage costs associated with a broker-dealer effecting securities transactions within the portfolio of a mutual fund or for the portfolio of an investment fund that holds “plan assets” for ERISA purposes, should be treated for Schedule C purposes as an operating expense of the investment fund not reportable indirect compensation paid to a plan service provider or in connection with a transaction with the plan.

Q5: Are the requirements to report indirect compensation on Schedule C different for participant-selected investments through “open brokerage” windows?

“Open brokerage windows” in self-directed 401(k) plans allow plan participants to invest in a wide range of funds, stocks, bonds and other investments offered through a designated broker for the brokerage window. Although the requirement to report indirect compensation applies to participant-selected investments from a range of investment alternatives under the plan, in the absence of any other guidance, Schedule C reporting can be limited to direct and indirect compensation received by the designated broker(s) and other brokerage window providers, transaction fees in connection with the purchase, sales, or exchanges made through the brokerage window, and any other plan-related fees. This limitation on reporting for Schedule C purposes does not relieve fiduciaries from obligations to prudently select and monitor designated brokers or other brokerage window providers in a brokerage window option under the plan.

Q6: Are commissions paid to an agent in connection with the sale of an investment, product, or service to a plan reportable indirect compensation?

Yes. Indirect compensation for Schedule C reporting purposes includes, among other things, payment of “finder’s fees” or other fees and commissions by a service provider to an independent agent or employee for a transaction or service involving the plan. Thus, commissions received from a person, other than those received directly from the plan or plan sponsor, in connection with the sale of an investment, product, or service to a plan would be reportable indirect compensation. The treatment of the commission as reportable indirect compensation is not dependent on whether the seller or the agent has any other relationship to the plan other than the sale itself.

Q7: Is compensation received in connection with the management and operation of venture capital operating companies (VCOCs), real estate operating companies (REOCs), and other operating companies reportable indirect compensation?

No. Although the requirement to report indirect compensation is not limited to fees received by persons managing plan assets, unlike investment funds (e.g., mutual funds, collective investment funds), fees received by third parties from operating companies, including real estate operating companies (REOC) or venture capital operating companies (VCOC), in connection with managing or operating the operating company, generally would not be reportable indirect compensation. Fees or commissions received by an investment manager or investment adviser in connection with a plan investment in a VCOC, REOC, or other operating company would, however, be reportable indirect compensation. This answer would not be affected by whether the VCOC, REOC, or other operating company were wholly owned by a plan such that the assets of the entity would be deemed to be plan assets.

Q8: A mutual fund pays eligible indirect compensation to a fund administrator,

advisor, or distributor (a “fund agent”). In turn, the fund agent pays fees to the recordkeeper for “compliance services” provided to one or more participating plans, including discrimination testing, QDRO administration, and Form 5500 preparation. The recordkeeper is not an affiliate of the mutual fund or the fund agent. Is the mutual fund payment to the recordkeeper reportable indirect compensation? If it is reportable indirect compensation, is the fee received by the recordkeeper eligible indirect compensation?

Plan recordkeepers may receive fees for shareholder services and recordkeeping services directly or indirectly from investment providers under a wide variety of arrangements. Among others, they may receive compensation from fund agents (such as fund administrators, advisers or distributors) as well as other agents, representatives or intermediaries such as mutual fund “platform” providers, broker-dealers, banks, and insurance companies.

The fees for compliance services received by the recordkeeper from the mutual fund agent are reportable indirect compensation. The alternative reporting option for eligible indirect compensation would not apply to such payments because the payments are not among the categories listed in the Schedule C instructions for eligible indirect compensation. Instructions to Schedule C define “eligible indirect compensation” as “[i]ndirect compensation that is fees or expense reimbursement payments charged to investment funds and reflected in the value of the investment or return on investment of the participating plan or its participants[,] finders’ fees[,] ‘soft dollar’ revenue, float revenue, and/or brokerage commissions or other transaction-based fees for transactions or services involving the plan that were not paid directly by the plan or plan sponsor (whether or not they are capitalized as investment costs).”

Amounts received by a plan recordkeeper from fund agents would not constitute eligible indirect compensation on the basis of being “other transaction-based fees for transactions or services involving the plan” merely because the plan had to make an investment in the mutual fund before the recordkeeper would receive any fees. If such a broad interpretation of “transaction-based fees for transactions or services involving the plan” were adopted for purposes of the eligible indirect compensation definition, it would substantially undermine the bundled fee reporting option which requires “transaction based” fees to be reported separately from the bundle.

Q9: A recordkeeper may enter into an “alliance” arrangement with a broker-dealer to provide services offered together as a “package” sold by agents of the broker-dealer. The recordkeeper and broker-dealer are not affiliated to one another and each has a separate contract or arrangement with the plan. In connection with this alliance arrangement, the broker-dealer pays compensation to the recordkeeper. The compensation may be flat per-participant fees or asset-based fees based on the value of plans’ investments in mutual funds or other investment vehicles offered to the plans by the broker-dealer. The broker-dealer pays the compensation for plan administration and recordkeeping services the recordkeeper provides to the broker-dealer's plan clients. Is the compensation paid by the broker-dealer to the recordkeeper “eligible indirect compensation?”

Unless the recordkeeper's fees are charged to the investment fund and reflected in the value of the plan's investment, the fees received by a recordkeeper would not constitute eligible indirect compensation regardless of whether the fund agent determines the recordkeeper's compensation using an asset-based formula or a flat per participant fee.

Q10: A recordkeeper and an unaffiliated insurance company enter into an “alliance” arrangement similar to the alliance arrangement described in Q9. Under this version of an alliance arrangement, an insurance company agent offers the plan investments through a group variable annuity or other insurance products and also introduces the recordkeeper's service offering to prospective plan clients. The plan

has a separate contract or arrangement with the insurance company and with the recordkeeper. The insurance company pays from its general assets compensation to the recordkeeper for plan administration and recordkeeping services the recordkeeper provides to plans with investments in insurance contracts issued by the insurance company, which may be flat per participant fees or asset-based fees based on the value of plans' investments in the insurance contracts. Do the amounts paid to the recordkeeper by the insurance company constitute eligible indirect compensation?

No. For the same reasons described above, the amounts paid by the insurer to the recordkeeper in connection with a plan's investments do not constitute eligible indirect compensation. If the amount paid to the recordkeeper is reported on a Schedule A filed for the plan, and the recordkeeper did not receive any other compensation reportable on the Schedule C, the amounts would not have to be reported again on the Schedule C.

Q11: Should float income on an account holding the assets of one plan be treated as direct or indirect compensation for Schedule C reporting purposes?

Float income is specifically listed as a form of indirect compensation in the Schedule C instructions. The fact that the float revenue is received as "transaction float" or "check float" on the account of a single plan rather than at an omnibus account level would not require it to be treated as direct compensation for Schedule C reporting purposes.

Q12: Will disclosure of float income sufficient to satisfy the guidance in Field Assistance Bulletin 2002-03 meet the requirements of the alternative reporting option?

Disclosure of float income sufficient to satisfy the guidance under Field Assistance Bulletin 2002-03 will generally be sufficient to satisfy the disclosure requirements for the Schedule C alternative reporting option. In order to satisfy the Schedule C alternative reporting option, the disclosure must disclose the existence of the indirect compensation, the amount (or estimate) or a description of the formula used to calculate or determine the compensation, an explanation of the reason for the payment of float income, and the parties paying and receiving the float income.

Q13: What rules govern the determination of the services or providers included in the scope of a bundled arrangement for purposes of Schedule C reporting?

The instructions for Schedule C provide that for Schedule C reporting purposes, a bundled service arrangement includes any service arrangements where the plan hires one company to provide a range of services either directly from the company, through affiliates or subcontractors, or through a combination, which are priced to the plan as a single package rather than a service-by-service basis. The instructions further state that a bundled service arrangement would also include an investment transaction in which the plan receives a range of services either directly from the investment provider, through affiliates or subcontractors, or through a combination. As long as all the compensation required to be reported is identified on the Schedule C or disclosed in accordance with the rule for "eligible indirect compensation," there is flexibility in determining what services or providers are included as part of a bundled arrangement.

Q14: What is an example of fees that are required to be broken out regardless of whether they are part of a "bundle?"

The Schedule C instructions include a general rule that, in the case of bundled service arrangements, revenue sharing within the bundled group generally does not need to be separately reported, with two exceptions.

The first exception is that any person in the bundle receiving separate fees charged against a plan's

investment (e.g., investment management fees, float revenue, and other asset-based fees, such as shareholder servicing fees, 12b-1 fees, and wrap fees if charged in addition to the investment management fee) must be treated as receiving separately reportable compensation for Schedule C purposes.

Examples of separate fees charged against a plan's investment for purposes of this exception are revenue sharing payments for shareholder services, recordkeeping or compliance services that are paid by an investment provider to a third party administrator ("TPA") if they are charged against the plan's investment as a separate amount or pursuant to a separate formula. Thus, if the investment provider pays the TPA out of an overall investment management or shareholder services charge assessed against the plan's investment the payment to the TPA by the investment manager out of its fees would not be a separate fee for this purpose.

The second exception is that compensation must be separately reported if (i) the compensation is received by any person in the bundle who is one of the service providers enumerated on Line 3 of Schedule C, and (ii) the compensation received is "commissions and other transaction based fees, finders' fees, float revenue, soft dollars and other non-monetary compensation."

Q15: Where the only compensation received by a service provider is "eligible indirect compensation" and all of the disclosures necessary to satisfy the alternative reporting option have been provided, is it necessary to complete any information on Schedule C regarding that service provider other than identifying the person providing the disclosures on Line 1?

No. The only information required when the alternative reporting option is being used with respect to a particular service provider is the identifying information on Line 1. However, for a service provider who receives \$5,000 or more in "eligible indirect compensation" and other reportable indirect compensation, the service provider must be separately listed on line 2 and "key" service provider information must be reported on line 3.

Q16: Does Part I, Line 3 of the Schedule C require reporting with respect to sources of indirect compensation if the compensation is "eligible indirect compensation?"

No. Line 3 of Part I of the Schedule C states that "If you reported on line 2 receipt of indirect compensation, other than eligible indirect compensation, by a service provider . . ." (emphasis added). This instruction makes it clear that the Line 3 reporting only is required for indirect compensation that is not eligible indirect compensation. For example, if a service provider receives both eligible indirect compensation (including satisfaction of the disclosure requirements) and other indirect compensation, Line 3 reporting only applies with respect to the portion of the service provider's compensation that does not constitute eligible indirect compensation.

Q17: If a service provider receives eligible indirect compensation (for which the disclosures have been made) and either direct compensation or indirect compensation that is not eligible, does Line 2(h) of Part I apply to the portion that is eligible indirect compensation?

No. Line 2(h) is a follow up question to line 2(g), and only need be completed with respect to indirect compensation excluding eligible indirect compensation.

Q18: Must the service provider receiving "eligible indirect compensation" be the person who provides the disclosures needed to meet the alternative reporting option?

No. Any person can provide the required disclosures.

Q19: If more than one person provides the same required disclosure for eligible indirect compensation, must all persons providing the disclosure be identified?

No. Multiple persons can be listed on the Schedule C as providing different required disclosures, but if multiple persons provide the same disclosures, only one person must be listed for the disclosure or disclosures.

Q20: When identifying the person who provided the required disclosures for the Schedule C alternative reporting option, must the name of an individual be provided?

No. The person listed may be an individual or entity that actually furnished the disclosures to the plan. If a mutual fund prospectus is used to provide required disclosures for eligible indirect compensation, however, it would not be sufficient to identify the mutual fund as providing the prospectus unless the mutual fund itself provided the prospectus directly to the plan.

Q21: Are insurance contract "wrap fees" considered "eligible indirect compensation" for purposes of the alternative reporting option on Schedule C?

Where the wrap fees are charged against the plan's investment or are transaction-based fees for transactions or services involving the plan, they can be treated as "eligible indirect compensation."

Q22: Some insurance companies provide a "net rate" investment product where an investment contract is combined with plan recordkeeping, trusteeship, and similar services. Instead of charging fees for those services, the insurer credits the plan's investment in a stable value option with interest at a crediting rate that is "net" of the insurer's expenses and costs determined based on the overall experience of the insurer's general account. Is the portion of the insurance company's expenses and costs used to reduce the crediting rate reportable indirect compensation even though it is calculated based on the overall experience of the general account? If so, can these amounts be treated as eligible indirect compensation?

The fact that expenses that constitute reportable compensation are netted against the crediting rate in determining the plan's rate of return on the stable value contract would not be a basis for excluding those expenses as reportable compensation for Schedule C purposes. Further, the fact that the formula for the fees is based on overall operating costs of the insurance company would not affect that conclusion. Expenses "netted" in this fashion may be treated as fees charged against the plan's investment and reflected in the value of the plan's investment for purposes of the Schedule C alternative reporting option for eligible indirect compensation.

Q23: Is the spread earned by a broker on principal transactions involving the plan "eligible indirect compensation?"

No. For this purpose, the Department will follow the definition of commission used by the Securities and Exchange Commission under Section 28(e) of the Exchange Act as described in SEC Release No. 34-45194. Thus, securities commissions for Schedule C purposes would include a markup, markdown, commission equivalent, or other fee paid by a managed account to a dealer for executing a transaction where the fee and transaction price are fully and separately disclosed on the confirmation and the transaction is reported under conditions that provide independent and objective verification of the transaction price subject to self-regulatory organization oversight. Fees paid for eligible riskless principal transactions that are reported under NASD Rule 4632, 4642, or 6420 would fall within this interpretation.

Q24: May a plan administrator use a formula for reporting indirect compensation on the Schedule C that is required to be specifically reported on Line 2?

Yes. The preamble to the final amendments to regulations relating to the annual reporting requirements states that "[f]ilers generally have the option of reporting a formula used to calculate indirect compensation received instead of an actual dollar amount or estimate . . ." 72 Fed. Reg. 64710, 64712 (Nov. 16, 2007). It is permissible to use a formula for reporting indirect compensation even in cases where it may be possible for the service provider to calculate a monetary amount or estimate. The Department, therefore, would not expect service providers to be identified on the Schedule C as failing to provide information necessary to complete the Schedule C merely because they provided a formula when disclosing their indirect compensation to plan administrators, including for indirect compensation that is not "eligible indirect compensation."

Q25: If a service provider discloses a formula used to determine its indirect compensation, is the plan administrator required to calculate or estimate dollar amounts from the formula for purposes of Schedule C reporting (to the extent that compensation described by a formula is not eligible indirect compensation)?

No. Element (g) on Line 2 of Part I of Schedule C requires the plan administrator to enter the "total of all indirect compensation that is not eligible indirect compensation" and Element (c) on Line 3 of Part I of Schedule C states that the plan administrator should "Enter amount of indirect compensation." Where a plan administrator receives a formula from a service provider for amounts reportable on Line 2, the plan administrator may enter "0" if that is the only indirect compensation reportable in element (g) on Line 2. The plan administrator must check "yes" in element (h) of Line 2, and attach a statement describing the formula(s) that is labeled "Schedule C, Line 2(h) formula description." Where a plan administrator receives a formula from a service provider for amounts reportable on Line 3, the plan administrator may enter "0" if that is the only indirect compensation reportable in element (c) on Line 3. The plan administrator must include in element (e) on Line 3, a description of the formula(s).

Q26: Plan administrators are not required to report on Schedule C information with respect to service providers receiving less than \$5000 in total compensation (direct and indirect) from the plan. Schedule C, Part I, Line 2 states that service providers should be reported in descending order of compensation. Are plan administrators required to estimate a service provider's compensation for purposes of determining whether to include information about a service provider on Form 5500, or for purposes of reporting service providers in descending order of compensation on Part I, Line 2?

If a "key" service provider reports its compensation by a formula, the amount of indirect compensation is presumed to meet the \$5000 reporting threshold. Also, if any key service provider reports a formula for its indirect compensation (that is not eligible indirect compensation), information about that indirect compensation is reportable on Part I, Line 3 of Schedule C. Key service providers are those service providers for which Schedule C, Part I, Line 3 reporting is required (i.e., service providers who are fiduciaries, or who provide contract administrator, consulting, custodial, investment advisory, investment management, broker, or recordkeeping services).

In the case of service providers that are not key service providers, a plan administrator must either assume that the \$5000 reporting threshold is met if a service provider provides only a formula for its compensation or calculate an estimate from the formula to determine whether the \$5000 reporting threshold is met. Although the plan administrator is ultimately responsible for determining whether the \$5,000 reporting threshold is met, the plan administrator may rely for Schedule C reporting purposes on an estimate of compensation provided by a service provider in the absence of any information that should lead the administrator to question the estimate.

Plan administrators are not required to calculate estimates of service providers' total direct and indirect compensation merely for purposes of reporting service providers in descending order of compensation on Part I, Line 2. The plan administrator should list the most highly compensated service providers first to the extent the plan administrator has total actual or estimated compensation data. If total compensation data is not available, however, the plan administrator may list service

providers in any reasonable order.

Q27: What guidelines apply where service providers elect to provide an “estimate” of compensation?

Service providers that provide an estimate of their indirect compensation may use any reasonable method for developing an estimate, as long as the method is disclosed with the estimate. Where more than one reasonable method is available for generating an estimate, it would be appropriate for the plan and the service provider to consider the relative costs involved in selecting a method.

Q28: If a service provider provided the plan administrator with an estimate of its indirect compensation or a formula used to calculate its indirect compensation, but later determines a dollar amount for the compensation it received, does the plan administrator need to obtain an updated disclosure of the dollar amount in order to be able to rely on the Schedule C alternative reporting option?

No. A second disclosure with the actual dollar amount does not need to be obtained in order to rely on the alternative reporting option. It may be appropriate for the plan administrator in such circumstances to consider obtaining information about a dollar amount as part of monitoring the service arrangement, e.g., to verify the reliability of an estimate or to confirm that a formula was correctly applied.

Q29: Can a recordkeeper satisfy the alternative reporting option for eligible indirect compensation by furnishing the plan administrator with prospectuses, brokerage fee schedules, the SEC Form ADV, or other already available documents prepared and provided to the administrator for separate purposes, or must it create its own written disclosure document?

As long as the person who is identified on the Schedule C as providing the required disclosures for the eligible reporting option advises the plan administrator that disclosures in those documents are intended to satisfy the alternative reporting option in addition to serving the other purposes for which the documents were generated, provision of existing documents will satisfy the alternative reporting option if a reasonable plan administrator can readily determine from the documents: (a) the existence of the indirect compensation; (b) the services provided for the indirect compensation or the purpose for the payment of the indirect compensation; (c) the amount (or estimate) of the compensation or a description of the formula used to calculate or determine the compensation; and (d) the identity of the party or parties paying and receiving the compensation. Furnishing the plan administrator with a separate document that identifies the other already provided documents that contain the required information also would satisfy the eligible indirect compensation disclosure requirement provided the separate document includes references to pages or sections of the document that contain the required information.

Q30: For purposes of satisfying the “written disclosure” requirement for the alternative reporting option, is electronic disclosure such as e-mail or other web-based technology satisfactory?

Yes. Electronic disclosures can be used satisfy the “written disclosure” requirement for the alternative reporting option. There must be some record that affirmatively indicates that the “written materials” were received by the plan administrator, and those records must be retained in accordance with ERISA’s recordkeeping requirements.

Q31: Do the disclosures regarding “eligible indirect compensation” need to be provided at least annually in order for the alternative reporting option to be available?

There is no specific requirement that the disclosures be provided annually. In order to take advantage of the alternative reporting option, however, the plan administrator must review the disclosures at least annually in connection with the preparation of the Form 5500 and confirm that the information continues to be correct. If any of the required information has changed, updated disclosures would be required to take advantage of the alternative reporting option. Also, the plan administrator must retain for the period required under section 107 of ERISA documentation sufficient to demonstrate the results of this review.

Q32: Will post-trade confirmation serve as adequate written disclosure of brokerage fees and commissions for purposes of the alternative reporting option?

Accurately reconciled post-trade confirmations may be relied upon to satisfy the written disclosure requirements for eligible indirect compensation if, either alone or in conjunction with other disclosures, the plan administrator receives the required information.

Q33: For Schedule C reporting purposes, where a service provider has received free attendance at a conference or seminar the constitutes reportable indirect compensation, is it adequate to report payments for meals, hotel, transportation costs, and other individual expenses? Must the plan administrator also report that portion of the expenses attributable to every conference attendee for costs such as guest speaker fees and other conference overhead?

Payments for meals, hotel, transportation costs, tickets to a sporting or entertainment event, and other individual expenses would be reportable indirect compensation. Waiver of any conference registration fee would also be reportable indirect compensation. Conference overhead expenses, such as guest speaker fees, conference space rental, continental breakfast and other refreshment expenses normally included in the cost of the conference registration fee, are not reportable indirect compensation for Schedule C reporting purposes.

Q34: If a plan is required to report non-monetary compensation received by a service provider because the amount involved exceeds the Schedule C exclusion for occasional non-monetary compensation of insubstantial value, do gifts of less than \$10 need to be included?

Administrators are allowed to exclude non-monetary compensation of insubstantial value (such as gifts or meals of insubstantial value) which is tax deductible for federal income tax purposes by the person providing the gift or meal and would not be taxable income to the recipient. The 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, gifts of less than \$10 do not need to be counted toward the \$100 limit. Gifts of less than \$10 also do not need to be included in calculating the aggregate value of all gifts required to be reported if the \$100 limit is exceeded.

Q35: If a person providing services to the plan is provided a meal or other entertainment based on a general business relationship that includes both ERISA and non-ERISA business, is it required to be reported on the Schedule C?

It depends. The Schedule C instructions state that indirect compensation would not include compensation that would have been received had the service not been rendered to the plan or the transaction had not taken place with the plan and that cannot be reasonably allocated to the service (s) performed or transaction(s) with the plan. However, if a person's eligibility for receipt of a gift (such as meals, travel, or entertainment) is based, in whole or in part, on the value (e.g., assets under management, contract amounts, premiums) of contracts, policies or transactions (or classes thereof) placed with ERISA plans, the gift would constitute reportable indirect compensation for Schedule C purposes. Where the eligibility for or amount of the gift is based on an book of business,

including ERISA plan business, a pro rata share of the value of the gift should be treated as indirect compensation for the ERISA plans involved.

A determination of whether non-monetary compensation is reportable indirect compensation is not necessary if the allocable dollar value of the gift is below the thresholds for Schedule C reporting on non-monetary compensation even if the service provider received other reportable compensation that is at or above the \$5,000 threshold. For example, a broker sends a holiday gift basket worth \$75 to an investment manager with which it has an established business relationship. Ninety percent of the business the broker has with the investment manager is non-ERISA plan business. A reasonable allocation method would be pro rata so the amount for any particular ERISA plan would be less than \$10 for Schedule C reporting purposes and would not be required to be reported on any plan's Form 5500 as indirect compensation received by the investment manager.

Q36: If a person receives compensation that is reportable on Schedule A and compensation that is reportable on Schedule C, does the compensation that must be reported on Schedule A also be reported on Schedule C?

Compensation reported on Schedule A is not required to be reported again on Schedule C. The amount of the compensation that must be reported on Schedule A must, however, be taken into account in determining whether the Schedule C-only compensation plus the Schedule A compensation is \$5,000 or more and thus, required to be reported. For example, if a broker received \$4,000 in insurance commissions from an insurance company in connection with policies purchased by the plan and \$2,000 from the plan for providing consulting services to the plan, the plan's 5500 filing would include a Schedule A identifying the \$4,000 in commissions and a Schedule C entry for the broker reporting the \$2,000 for the consulting services provided to the plan.

Q37: If a plan sponsor pays a third-party service provider on the plan's behalf and seeks reimbursement from the plan, should the Schedule C reflect a direct payment from the plan to the service provider and not a payment to the employer?

Yes. When a plan sponsor pays a plan third-party service provider and then seeks reimbursement from the plan, the Schedule C for the plan should reflect a direct payment from the plan to the service provider. In this regard, direct compensation is defined in the instructions for purposes of Schedule C as "[p]ayments made directly by the plan for services rendered to the plan or because of a person's position with the plan" and excludes "[p]ayments made by the plan sponsor, which are not reimbursed by the plan" The Department notes that if the plan sponsor pays a service provider directly, and does not seek reimbursement from the plan, such payment does not need to be reported on the Schedule C.

Q38: Where a plan service provider is providing non-plan related investment services to participants, and charging reduced fees for plan related services based on the anticipation of receiving fees from participants for non-plan related services, do the fees for non-plan related investment services need to be reported on the Schedule C?

No. Fees for non-plan related investment services provided directly to participants that are not paid by the plan, charged to a plan account, or reflected in the value of plan investments are not reportable compensation for Schedule C purposes. This should not be read as expressing any view on the application of ERISA's fiduciary responsibility or other provisions to such an arrangement.

Q39: Do both proprietary soft-dollar compensation (e.g., research prepared by the entity providing brokerage services) and non-proprietary soft dollar compensation (e.g., research prepared by independent/third parties) fall within the definition of "eligible indirect compensation?"

Yes. Both proprietary and non-proprietary soft dollar revenue can be treated as "eligible indirect compensation" for purposes of the alternative reporting option if the written disclosure requirements are also met.

Q40: Under what circumstances is a service provider expected to be identified on Schedule C for failing to provide information necessary to complete the Schedule C?

The Department recognizes that, in order to furnish their employee benefit plan clients information necessary to comply with the new Schedule C annual reporting requirements, certain service providers may have to modify their current recordkeeping and information management systems. The Department also recognizes that it may be difficult for some service providers to make those adjustments sufficiently in advance so that their systems will be fully operational when employee benefit plan clients start to make requests for, or otherwise need, Schedule C related data for filing their 2009 plan year Form 5500. In an effort to address the concerns of both service providers and plans, the Department has decided that, with respect to those employee benefit plans which are dependent on service providers for information necessary to complete the Schedule C, the plan administrator will not be required for 2009 plan year reports to list a service provider on line 4 of the Schedule C as failing to provide information necessary to complete the Schedule C if the plan administrator receives from the service provider a statement that (i) the service provider made a good faith effort to make any necessary recordkeeping and information system changes in a timely fashion, and (ii) despite such efforts, the service provider was unable to complete the changes for the 2009 plan year.

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