



Filing 5500 Schedule C: Ensuring Compliance with Disclosure and Reporting Requirements

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Speaker Bios

Randy L. Gegelman, Partner, Faegre & Benson

Randy Gegelman is the practice team leader of our Employee Benefits and Executive Compensation practice. He has over 20 years experience in the employee benefits and executive compensation areas, including experience with qualified and non-qualified plans of deferred compensation, stock-based compensation arrangements, and executive contracts and compensation. He has special expertise in stock-based 401(k) plans, hybrid pension plans, executive compensation arrangements and international pension issues. He also represents financial institutions that offer product and services into this employee benefits market.

Peggy D. Lin, Associate, Faegre & Benson

Peggy assists employers with a range of employee benefit and executive compensation issues. She advises employers on design and compliance issues associated with qualified retirement plans, including defined benefit and cash balance pension plans, 401(k) plans, employee stock ownership plans and other tax-favored retirement vehicles. Peggy has focused experience with qualified domestic relations orders, issues connected with benefit plan administration, benefit plan claims, required minimum distributions, and other tax law compliance issues for defined benefit and defined contribution plans. She also advises investment managers and service providers on compliance with ERISA's prohibited transaction rules and assists employers with benefits issues that arise in mergers and acquisitions.

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Filing Form 5500: Understanding Schedule C

Randy L. Gegelman

Peggy D. Lin

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Introduction

- I. Fee Disclosure Reform – Putting Schedule C Into Context
- II. Responsibilities and Liabilities
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Introduction (Cont.)

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I. Fee Disclosure Reform

- Schedule C has required disclosure of fees paid to plan service providers for many years.

SCHEDULE C (Form 5500)		Service Provider Information	Official Use Only OMB No. 1210-0110
Department of the Treasury Internal Revenue Service Department of Labor Employee Benefits Security Administration Person Benefit Guaranty Corporation		This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974. ► File as an attachment to Form 5500.	2008 This Form is Open to Public Inspection.
For calendar plan year 2008 or fiscal plan year beginning		and ending	
A Name of plan		B Three-digit plan number ►	
C Plan sponsor's name as shown on line 2a of Form 5500		D Employer Identification Number	
Part I Service Provider Information (see instructions)			
1 Enter the total dollar amount of compensation paid by the plan to all persons, other than those listed below, who received compensation during the plan year: 2 On the first item below list the contact administrator, if any, as defined in the instructions. On the other items, list service providers in descending order of the compensation they received for the services rendered during the plan year. List only the top 40. 103-12 IEs should enter N/A in (c) and (d). (a) Name			

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I. Fee Disclosure Reform

- Many efforts to improve and increase fee disclosure
- Proposed guidance on participant disclosure
 - Plan to participant
 - Proposed regulations July 23, 2008
 - Pending legislation: The 401(k) Fair Disclosure for Retirement Security Act, H.R. 1984
- Proposed service-provider disclosure regulations
 - Service-providers to plan fiduciaries
- Plan administrator disclosures
 - Plan administrator to government via Form 5500 Schedule C

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II. Responsibilities and Liabilities

- Who is responsible for making sure annual report is filed and accurate?
 - **PLAN ADMINISTRATOR** – not the service-providers or anyone else.
- It's just a Form 5500 – right?
 - The Department of Labor views the annual report as an essential part of the legal mechanism in place to protect participants and detect and avoid abusive plan practices.
 - The DOL takes the annual report **very seriously**.

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II. Responsibilities and Liabilities

- What can happen if the annual report is sloppy?
 - Civil penalties of up to \$1,000 per day
 - Failure to file an annual report can result in a civil penalty of up to \$1,000 per day.
 - EBSA Office of the Chief Accountant reviews annual reports to ensure that the information is complete and accurate.
 - If there is a deficiency, the report can be rejected, potentially subjecting the plan administrator to the civil penalty.
 - Litigation risk
 - Attention to annual report is an essential risk management technique.

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III. Basic Requirements

- For 2009, Schedule C will require significantly increased disclosure of both direct and indirect compensation paid with respect to services provided to a plan.

SCHEDULE C (Form 5500)		Service Provider Information	
Department of the Treasury Internal Revenue Service Department of Labor Employee Benefits Security Administration Plan Year Beginning		OMB No. 1210-0110 2009 This form is open to public inspection.	
This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA). ► File as an attachment to Form 5500.			
For calendar plan year 2009 or fiscal plan year beginning _____ and ending _____.			
A Name of plan		B Three-digit plan number (PN) ►	
C Plan sponsor's name as shown on line 2a of Form 5500		D Employer identification number (EIN)	
Part I: Service Provider Information (see instructions)			
You must complete this Part, in accordance with the instructions, to report the information required for each person who received, directly or indirectly, \$5,000 or more in total compensation (i.e., money or anything else of monetary value) in connection with services rendered to the plan or the person's position with the plan or the plan's service provider. If you answered line 1a "Yes," enter the name and EIN or address of each person who received the required disclosures, you are required to answer line 1 but are not required to include that person when completing the remainder of this Part.			
1 Information on Persons Receiving Only Eligible Indirect Compensation			
a Check "Yes" or "No" to indicate whether you are excluding a person from the remainder of this Part because they received only eligible indirect compensation for which the plan received the required disclosures. (see instructions for definitions and conditions) _____ <input type="checkbox"/> Yes <input type="checkbox"/> No			
b If you answered line 1a "Yes," enter the name and EIN or address of each person providing the required disclosures for the service providers who received only eligible indirect compensation. Complete as many entries as needed (see instructions).			
(b) Enter name and EIN or address of person who provided you disclosures on eligible indirect compensation			

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III. Basic Requirements

- Who must file Schedule C?
 - Large pension plans, large welfare plans (generally over 100 participants)
 - Plans with service-providers that received \$5,000 or more in “reportable compensation” in connection with services rendered or their position with the plan.
- Payments made by the plan sponsor to service-providers which are not reimbursed by the plan are not required to be reported on Schedule C.

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IV. Direct Compensation

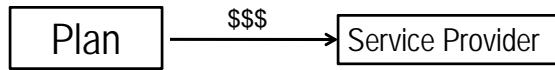
- Payments made directly by the plan (or by the plan sponsor if reimbursed by the plan) for services rendered or because of recipient’s position with the plan.
- Includes:
 - Direct payments from a plan account
 - Charges to plan forfeiture account
 - Charges to trust before allocation to individual accounts
 - Amounts paid from participant accounts

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IV. Direct Compensation

- Keep in Mind:

- In years before 2009, Schedule C was generally limited to direct compensation.
- 5500 did not require plans to report any amounts that weren't paid directly by the plan (with limited exceptions).



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IV. Direct Compensation

- Examples:

- Defined benefit plan pays actuarial fees from plan assets. Payment to actuary is reportable as direct compensation on Schedule C:

Schedule C (Form 5500) 2009

Page 3

2. Information on Other Service Providers Receiving Direct or Indirect Compensation. Except for those persons for whom you answered "yes" to line 1a above, complete as many entries as needed to list each person receiving, directly or indirectly, \$5,000 or more in total compensation (i.e., money or anything else of value) in connection with services rendered to the plan or their position with the plan during the plan year. (See instructions.)

(a) Enter name and EIN or address (see instructions)							
Actuarial Services, Inc. 99-8743129							
(b) Service Code(s)	(c) Relationship to employer, service organization, or person known to be a party-in-interest	(d) Enter direct compensation paid by the plan. If none, enter .00.	(e) Old service provider received direct compensation? (sources other than plan or plan sponsor)	(f) Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures?	(g) Enter total indirect compensation received by service provider, including eligible indirect compensation for which you answered "yes" to line 1a (f). If none, enter .00.	(h) Did the service provider give you a formula or method of determining the amount or estimated amount?	
11.50	NONE	\$50,000	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	
(a) Enter name and EIN or address (see instructions)							

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IV. Direct Compensation

- Examples

- 401(k) participants pay loan and distribution fees from their accounts to the plan recordkeeper. Total loan and distribution fees are direct compensation and included in entry for plan recordkeeper:

Schedule C (Form 5500) 2009 Page 3

2. Information on Other Service Providers Receiving Direct or Indirect Compensation. Except for those persons for whom you answered "yes" to line 1a above, complete as many entries as needed to list each person receiving, directly or indirectly, \$5,000 or more in total compensation (i.e., money or anything else of value) in connection with services rendered to the plan or their position with the plan during the plan year. (See instructions.)						
(a) Enter name and EIN or address (see instructions)						
Recordkeeper, Inc. 66-1234567						
(b) Service Code(s)	(c) Relationship to employer, employee organization, or person known to be a party-in-interest	(d) Enter direct compensation paid by the plan. If none, enter -0-	(e) Did service provider receive indirect compensation? (sources other than plan or plan sponsor)	(f) Did indirect compensation include eligible indirect compensation, for which the plan receives the required disclosures?	(g) Enter total indirect compensation received by service provider excluding compensation for which the plan receives the required disclosures?	(h) Did the service provider give you a formula instead of an amount of estimated amount?
37,49,50	NONE	\$127,413	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	-0-	Yes <input type="checkbox"/> No <input type="checkbox"/>
(a) Enter name and EIN or address (see instructions)						

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IV. Direct Compensation

- Examples

- Plan sponsor pays trustee fees from corporate assets. Trustee fees are NOT reportable on Schedule C as direct compensation, because they are not paid by the plan.

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V. Indirect Compensation

- Compensation that a service-provider receives from sources other than directly from the plan or the plan sponsor if compensation was “received in connection with services rendered to the plan or the person’s position with the plan.”
- Includes:
 - Management fees, brokerage commissions/fees charged for buying or selling mutual fund interests, 12b-1 fees, fees for shareholder services
 - Finders’ fees, float revenue, brokerage commissions
 - Research or other products received from a broker/dealer or other third party in connection with securities transactions

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V. Indirect Compensation

- Indirect compensation is very broad, and picks up fees that were not reported on Schedule C in past years:
 - Example: Mutual fund fees
 - For 2009 and beyond, some fees are indirect compensation:
 - Asset-based investment management fees
 - 12b-1 fees
 - Fees for shareholder services
 - Other fees are not indirect compensation and not reportable:
 - Amounts charged against mutual fund for other operating expenses – attorneys’ fees, accountants’ fees, printers’ fees

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V. Indirect Compensation

- Relief is available for reporting certain indirect compensation:
 - Eligible indirect compensation
 - Simplified reporting available
 - Ineligible indirect compensation
 - Plan must report amount of IIC
 - For some service-providers, the plan must report source of ineligible indirect compensation

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V.A. Eligible Indirect Compensation

- Eligible Indirect Compensation
 - Compensation received by service-providers from omnibus level fees charged to investment funds (thus reducing return of the funds) for distribution, investment management, recordkeeping or shareholder services
 - Commissions and finders fees
 - Soft dollar revenue
 - Float revenue
 - Brokerage commissions, other transaction based fees that were not paid directly by the plan or plan sponsor

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V.A. Eligible Indirect Compensation

- Reporting Relief:
 - Simplified reporting of EIC on Schedule C if plan received required disclosures.
 - Plan administrator must receive written materials (electronic delivery is OK) that disclose:
 - Existence of indirect compensation
 - Services provided for the indirect compensation
 - Amount (actual or estimated) of the indirect compensation or a description of the formula used to calculate it
 - Who received indirect compensation
 - If required disclosures are not received, eligible indirect compensation becomes INELIGIBLE and actual amount of compensation must be reported.

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V.A. Eligible Indirect Compensation

- Scenario – Soft-Dollars:

Defined benefit plan has engaged an investment manager to manage an equity portfolio. The investment manager charges XX bps as an investment management fee. The investment manager directs trades to broker-dealers and, in addition to execution, receives certain research services from the broker-dealers pursuant to Section 23(e) of the Securities Exchange Act of 1934. This includes access to research and analysts directly from the broker-dealer ("proprietary research"), and also includes redirected commissions that are credited to a pool to be used by the manager to pay for third-party research ("non-proprietary research"). The existence of these "soft-dollar" arrangements is reported in the investment manager's ADV (Schedule F).

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V.A. Eligible Indirect Compensation

- Analysis under Schedule C
 - The investment manager is a service-provider to the plan.
 - The research services received by the investment manager are indirect compensation for purposes of Schedule C – because:
 - Compensation includes cash or anything of value received in connection with services rendered to the plan.
 - The research services are of value to the investment manager, and the manager is receiving such services (at least in part) in connection with services rendered to the plan – the transactions directed to the broker-dealers are what allows the manager to receive the research services.
 - The services are received from a third-party (not the plan) and thus are “indirect compensation”.

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V.A. Eligible Indirect Compensation

- Analysis under Schedule C
 - The research services are eligible indirect compensation for purposes of Schedule C – because:
 - They are specifically so identified in the instructions to Schedule C.
 - But also, because they are charged to the fund and affect the value of the investment.

(It is the type of expense that is consistent with treatment as eligible indirect compensation because there already is disclosure about the soft-dollar in the ADV.)

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V.A. Eligible Indirect Compensation

- Reporting under Schedule C
 - As eligible indirect compensation, the actual dollar value of the soft-dollar services need not be reported, provided that the plan administrator receives an acceptable eligible indirect compensation disclosure.
 - Disclosure – written materials that disclose:
 1. Existence of the indirect compensation;
 2. Services provided for the indirect compensation;
 3. The amount (or estimate) of the compensation or a description of the formula used to calculate or determine the compensation;
 4. The identify of the party(ies) paying the compensation.

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V.A. Eligible Indirect Compensation

- Reporting under Schedule C
 - Focus on the amount (or estimate) of compensation, or formula description.
 - Proprietary soft-dollars
 - No break-down by transaction or in any other way that meaningfully allows break-down by plan.
 - DOL recognizes this – in regulation preamble says: "The Department recognizes that it may not be practicable to provide a formula or estimate to calculate the value of certain types of 'soft-dollar' non-monetary compensation at the plan level, particularly so-called 'proprietary' soft-dollar arrangements, such as access to information from certain research specialists."
 - In that case, provide description of eligibility conditions for soft-dollars sufficient to allow a plan fiduciary to evaluate them for reasonableness and potential conflicts of interest.

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V.A. Eligible Indirect Compensation

- Reporting under Schedule C
 - Focus on the amount (or estimate) of compensation, or formula description.
 - Non-proprietary soft-dollars
 - Typically know how much is credited to pool by any given broker-dealer.
 - Provide list of total credits for non-proprietary research for each broker-dealer
 - Provide information on total assets under management to allow plan fiduciary to estimate how much of given pool is attributable to plan.

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IV. Eligible Indirect Compensation

- Reporting under Schedule C
 - Packaging the information
 - It is permissible to rely on multiple documents to satisfy the disclosure requirements.
 - However, in this case there typically is not an existing document that contains the information regarding the soft-dollar revenue (or estimate) and thus a separate document with that information is required from the investment manager.
 - This document then typically references the other documents (prospectuses, ADV) that contain the other required information.

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V.A. Eligible Indirect Compensation

- Scenario: Float
 - A 401(k) plan engages a plan recordkeeper and trustee to provide recordkeeping and trust services, including processing distributions by check. The recordkeeper and trustee charge for these services in various ways, including transaction-based fees, revenue-sharing fees, and trustee fees. The recordkeeper maintains an omnibus distribution account for all of its plans. When a participant requests a distribution, the money is removed from the trust and placed in the distribution account pending the check clearing. The recordkeeper receives interest on the amounts held in the distribution account. The existence of the float revenue is disclosed in the plan's service agreement with the recordkeeper.

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V.A. Eligible Indirect Compensation

- Analysis under Schedule C
 - The recordkeeper and trustee are service-providers to the plan.
 - The float revenue received by the recordkeeper is indirect compensation for purposes of Schedule C – because:
 - Compensation includes cash (i.e., float revenue/interest on the disbursement account) received in connection with services rendered to the plan (i.e., check clearing services).
 - The float revenue is received from a third-party – the disbursement account interest – not from the plan and thus is indirect compensation.

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V.A. Eligible Indirect Compensation

- Analysis under Schedule C
 - The float is eligible indirect compensation for purposes of the plan's Schedule C because:
 - It is specifically enumerated as one of the eligible types of indirect compensation in the instructions to Schedule C.
 - The plan administrator received the required disclosures:
 - The existence of the float revenue is disclosed in the plan's service agreement.
 - The identity of the recipient must be disclosed.
 - Presumably the recordkeeper can disclose the formula used to derive float revenue (interest received on the disbursement account can be quantified).

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V.A. Eligible Indirect Compensation

- Reporting under Schedule C
 - The actual amount of the float revenue need not be reported since plan administrator received acceptable eligible indirect compensation disclosure.

C Plan sponsor's name as shown on line 2a of Form 5500	D Employer Identification Number (EIN)
Part I <u>Service Provider Information (see instructions)</u>	
You must complete this Part, in accordance with the instructions, to report the information required for each person who received, directly or indirectly, \$5,000 or more in total compensation (i.e., money or anything else of monetary value) in connection with services rendered to the plan or the person's position with the plan during the plan year. If a person received only eligible indirect compensation for which the plan received the required disclosures, you are required to answer line 1 but are not required to include that person when completing the remainder of this Part.	
1 Information on Persons Receiving Only Eligible Indirect Compensation	
a Check "Yes" or "No" to indicate whether you are excluding a person from the remainder of this Part because they received only eligible indirect compensation for which the plan received the required disclosures (see instructions for definitions and conditions). <input type="checkbox"/> Yes <input type="checkbox"/> No	
b If you answered line 1a "Yes," enter the name and EIN or address of each person providing the required disclosures for the service providers who received only eligible indirect compensation. Complete as many entries as needed (see instructions).	
(b) Enter name and EIN or address of person who provided you disclosures on eligible indirect compensation	
Plan Recordkeeping Incorporated, LLC 77-1234567	

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V.A. Eligible Indirect Compensation

- Scenario – 12b-1, shareholder servicing:

Defined contribution plan has several mutual fund investment options available to participants. All of the funds pay investment management fees which serve to reduce the return of the fund. One of the funds discloses a "shareholder servicing fee" of 25 bps in its prospectus, which flows back to the recordkeeper for the plan. This fee is in addition to the investment management fee and also serves to reduce the return of the fund. With respect to another one of the funds, the investment manager for the fund has an arrangement in place whereby it shares 25 bps of its investment management fee with the plan recordkeeper. This revenue sharing arrangement is not disclosed in the fund prospectus.

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V.A. Eligible Indirect Compensation

- Analysis under Schedule C
 - The plan recordkeeper is a service-provider to the plan.
 - The shareholder servicing and revenue sharing payments received by the recordkeeper are indirect compensation for purposes of Schedule C – because:
 - The record keeper is receiving such payments in connection with services rendered to the plan – the plan assets in the mutual funds allow the manager to receive the payments.
 - The payments are received from a third-party (not the plan) and thus are "indirect compensation".

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V.A. Eligible Indirect Compensation

- Analysis under Schedule C
 - The shareholder servicing fees received from the mutual fund are eligible indirect compensation for purposes of Schedule C – because:
 - Such fees are charged to the fund and affect the value of the investment, and
 - Are disclosed in the mutual fund prospectus
 - As eligible indirect compensation, the actual dollar value of the shareholder servicing fees need not be reported, provided that the plan administrator receives an acceptable eligible indirect compensation disclosure.

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V.A. Eligible Indirect Compensation

- Analysis under Schedule C
 - The revenue sharing fees received from the investment manager are NOT eligible indirect compensation for purposes of Schedule C – because:
 - Such fees are not disclosed in the mutual fund prospectus.
 - Accordingly, the dollar amount of the fees received with respect to the plan must be reported on Schedule C as indirect compensation.

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V.B. Ineligible Indirect Compensation

- Scenario: Gifts, trips or perquisites
 - Defined contribution plan recordkeeper regularly works with plan sponsor's HR representative to resolve plan participant issues. The recordkeeper sends a large holiday gift to the HR representative.

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V.B. Ineligible Indirect Compensation

- Analysis under Schedule C
 - The HR representative is a service-provider to the plan.
 - The gift is indirect compensation for purposes of Schedule C – because:
 - Compensation includes money and any other thing of value, including gifts, awards, or trips received in connection with services rendered to the plan.
 - The HR representative received the gift in connection with services rendered to the plan.
 - The gift is received from the recordkeeper (not the plan) and is thus indirect compensation.

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V.B. Ineligible Indirect Compensation

- Analysis under Schedule C
 - There are some exceptions. If the gift is a personal gift, not reportable on Schedule C.
 - If the HR representative's total compensation did not exceed \$5,000 with respect to the plan, not reportable on Schedule C.
 - The gift is ineligible indirect compensation for purposes of Schedule C
 - because:
 - Gifts are not an enumerated type of compensation that qualifies as eligible direct compensation.
 - The existence of gifts is likely not disclosed to the plan administrator in any written materials.

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V.B. Ineligible Indirect Compensation

- Assuming the gift is reportable, the actual amount of gift must be reported on plan's Schedule C.
- Other Gift Scenarios:
 - Recordkeeper sponsors conference for plan sponsor employees
 - Brokerage firm business conference
 - Hospitality suites

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V.B. Ineligible Indirect Compensation

- Additional reporting of ineligible indirect compensation required if service-provider is a fiduciary, or provides enumerated services. Plan administrator must report the amount, source, and formula used to determine service-provider's eligibility for indirect compensation.
- Enumerated services include:
 - Contract administrator
 - Consulting
 - Custodial
 - Recordkeeping
 - Investment advisory
 - Investment management
 - Broker

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VI. Bundled Service Arrangements

- Scenario: Bundled Service Arrangements
401(k) plan sponsor has engaged a single service-provider that provides recordkeeping, trustee, investment management, and other services to the plan. Services are provided through the entity's trust affiliate, recordkeeping affiliate, and investment management affiliate. The recordkeeping affiliate receives 12b-1 and shareholder servicing fees from several mutual funds in the plan's lineup. The recordkeeping affiliate also receives transaction-based fees from participant accounts (checkwriting, QDRO and loan fees). The recordkeeping affiliate does not actually write checks; instead, it subcontracts checkwriting to a third party. The trust affiliate receives trustee fees directly from the plan. The investment management affiliate receives investment management fees that serve to reduce the rate of return on the funds it manages, and it also receives soft dollar research services from several broker/dealers.

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VI. Bundled Service Arrangements

- Analysis under Schedule C
 - There is some **direct compensation** in this bundled service arrangement: transaction-based fees from participant accounts, and the trustee fee paid from plan assets. This direct compensation can be reported as compensation of the service-provider entity as a whole and is not required to be reported as compensation to the recordkeeping or trustee affiliate or to be attributed to the subcontractor that processes checks.
 - There is some **indirect compensation** in this bundled service arrangement: the investment management fees and soft-dollar research services received by the investment management affiliate.

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VI. Bundled Service Arrangements

- Analysis under Schedule C
 - The **indirect compensation** in this example must be treated as separate reportable compensation by the affiliate receiving the fee.
 - Thus, the investment management fees and soft-dollar research services received by the investment management affiliate must be separately disclosed as received by that entity. If the plan administrator received the required disclosure, these fees would be **eligible indirect compensation** (and the amount would not be reported on Schedule C).
 - Remember, if plan administrator did not receive required disclosure, fees are ineligible indirect compensation and source and amount of fees must be reported.

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VII. "Bad Actors" List

- What if, despite the plan administrator's best efforts, service-providers refuse to supply necessary information for Schedule C?
 - Line 4 – Service Providers Who Fail or Refuse to Provide Information
 - Requires plan to disclose name of service-provider, type of services provided, and information service-provider failed or refused to provide.
 - Exception for 2009 – if service-provider provides a statement that it made a timely good faith effort to make system changes in a timely fashion but was unable to complete those changes for 2009 plan year, plan administrator is not required to include service provider on the "Bad Actors" list.

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VIII. What Should Plans Be Doing Now?

- For calendar year plans, 2009 Form 5500 due by July 31, 2010
 - Extension until October 15, 2010 available
- Reach out to service-providers with detailed questions about Schedule C:
 - How service-provider was compensated – direct and/or indirect compensation
 - Details regarding monetary and non-monetary compensation
 - Cross-reference to or resubmit required disclosure for eligible indirect compensation

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Thank You



CCM Upcoming Events

Exempt Employee Guidelines: How to Classify, Pay, and Meet FLSA Requirements

Health Care Reform: Employer's Top 10 Questions Answered

FLSA and Wage and Hour Law Compliance

Developing a Social Media Policy: Clear Guidelines to Prevent or Reduce Employment-Related Problems

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