

MEMO# 23996

December 4, 2009

Institute Compliance Tool for Providing Information to Retirement Plans for Schedule C of Form 5500

[23996]

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TO: BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 52-09
BROKER/DEALER ADVISORY COMMITTEE No. 63-09
COMPLIANCE ADVISORY COMMITTEE No. 6-09
TRANSFER AGENT ADVISORY COMMITTEE No. 90-09
SMALL FUNDS MEMBERS No. 70-09
OPERATIONS MEMBERS No. 27-09
PENSION MEMBERS No. 59-09
SEC RULES MEMBERS No. 131-09 RE: INSTITUTE COMPLIANCE TOOL FOR PROVIDING
INFORMATION TO RETIREMENT PLANS FOR SCHEDULE C OF FORM 5500

The Institute developed the attached template for mutual funds to use as a compliance tool in providing information to defined contribution plans (like 401(k) plans) and defined benefit plans to allow plans to complete Schedule C of their annual report (Form 5500). This template was developed in consultation with a working group of Institute members focused on Schedule C of Form 5500.

Background

Retirement plans subject to ERISA file Form 5500 annually with the Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation. Generally, plans with 100 or more participants must include with their Form 5500 a Schedule C, which reports compensation paid to service providers during the plan year. Beginning with the 2009 plan year, Schedule C requires significantly more information about “indirect”

compensation, including compensation earned by investment advisers to mutual funds and other investment companies in which a plan invests, and compensation paid to brokers, 401(k) recordkeepers, fund platforms, and others that provide services to plans. [\[1\]](#) For most plans (i.e. those with a calendar year plan year), the 2009 Form 5500 will be due on July 31, 2010, although extensions may be available.

Purpose and Use of Template

Retirement plans typically use a service provider to assist them in preparing the Form 5500, in the case of 401(k) and similar defined contribution plans, typically the plan's recordkeeper or third party administrator. These plan service providers will need information from mutual funds and other investment companies to assist plans in completing Schedule C of Form 5500. (A mutual fund itself is not required to complete and file Form 5500; this is an obligation of the plan administrator.)

The Institute template is intended to provide a compliance tool as mutual funds and other registered investment companies determine how to provide information to plans that invested in them during a plan year.

Members can use the template in several ways. It can be used as a reference tool to identify and clarify what information mutual funds need to provide in connection with Schedule C and the fund can develop another method or format to provide the information. It also can be used as a standardized document by fund companies and their distribution partners in its current form, or with modifications, to deliver the information. Use of the template by Institute members is strictly voluntary.

The template includes detailed instructions that provide background and explanation on the data points in the template. The instructions incorporate guidance the Department of Labor has provided to date about the new rules. On interpretive questions on which the Department of Labor has not provided guidance, the template and accompanying instructions seek to take a reasonable approach consistent with the existing guidance about what information in the possession of the fund company plans will need for Schedule C compliance, although in many cases there is not complete consensus on the correct interpretation.

This template is not a substitute for legal advice regarding Form 5500 filing obligations, for plans, service providers, or investment companies or their advisers. Before using the template as a compliance tool, funds should review the Form 5500 Schedule C instructions [\[2\]](#) and the Department of Labor's Frequently Asked Questions and Supplemental Frequently Asked Questions for Schedule C. [\[3\]](#)

The Institute may update the template as mutual funds, their distribution partners, service providers to plans, and plan sponsors work through the best way to ensure plans have the information needed to comply.

If you have any questions about or comments on the template, please contact Michael Hadley (202-326-5810 or mhadley@ici.org).

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[Attachment](#)

endnotes

[1] For background on the new Form 5500 requirements as applied to mutual funds in which plans invest, see [Memorandum](#) to Pension Members No. 69-07 [21958], dated November 19, 2007; [Memorandum](#) to Pension Members No. 40-08, Broker/Dealer Advisory Committee Members No. 19-08, Bank, Trust and Recordkeeper Advisory Committee No. 21-08, Operations Committee No. 10-08, and Transfer Agent Advisory Committee No. 32-08 [22698], dated July 16, 2008; and [Memorandum](#) to Pension Members No. 51-09, Broker/Dealer Advisory Committee Members No. 58-09, Bank, Trust and Recordkeeper Advisory Committee No. 49-09, Operations Committee No. 22-09, Transfer Agent Advisory Committee No. 79-09, and SEC Rules Committee No. 63-09 [23901], dated October 27, 2009.

[2] As of December 2009, the new Form 5500 instructions have not been released and are available only in the Federal Register version, available here: <http://www.dol.gov/ebsa/regs/fedreg/notices/20071116.pdf> (the Schedule C instructions appear on pages 64824 through 64828).

[3] Available at http://www.dol.gov/ebsa/faqs/faq_scheduleC.html and <http://www.dol.gov/ebsa/faqs/faq-sch-C-supplement.html>, respectively.

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