

MEMO# 22698

July 16, 2008

DOL Addresses Mutual Fund Reporting Issues in Guidance on Schedule C of Form 5500

[22698]

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TO: PENSION MEMBERS No. 40-08
BROKER/DEALER ADVISORY COMMITTEE No. 19-08
BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 21-08
OPERATIONS COMMITTEE No. 10-08
TRANSFER AGENT ADVISORY COMMITTEE No. 32-08 RE: DOL ADDRESSES MUTUAL FUND
REPORTING ISSUES IN GUIDANCE ON SCHEDULE C OF FORM 5500

The Department of Labor released guidance in the form of questions and answers on the new reporting obligations for plan administrators on Schedule C of Form 5500. [\[1\]](#) The guidance favorably addresses a number of the concerns that the Institute and others had raised with DOL about Schedule C reporting for payments from mutual funds to entities other than direct plan service providers. DOL also provides limited relief for plan service providers that, despite a good faith effort, cannot implement necessary systems changes in time for 2009 filings.

Mutual fund portfolio brokers and miscellaneous service providers

The Institute had expressed concern that Schedule C reporting appeared to apply to numerous mutual fund service providers that had no connection to the plan investing in the fund. Q&A-4 addresses these concerns by stating that a person will be deemed to receive indirect compensation for services to the plan “if the person’s eligibility for a payment or the amount of the payment is based, in whole or in part, on [1] services that were rendered to the plan or [2] on a transaction or series of transactions with the plan.”

DOL states that 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.” In contrast, DOL provides two categories of payments that are not reportable indirect compensation:

- Amounts charged against the fund for other ordinary operating expenses, such as attorneys’ fees, accountants’ fees, and printers’ fees.
- Brokerage costs associated with a broker-dealer effecting securities transactions within the portfolio of the mutual fund.

Use of prospectus

DOL states in Q&A-29 that a recordkeeper can satisfy the alternative reporting option for eligible indirect compensation by furnishing the plan administrator with prospectuses, brokerage fee schedules, Form ADV, or other documents provided to the plan administrator for separate purposes. The person providing the document should advise the plan administrator that the prospectus or other document is intended to satisfy the alternative reporting option. DOL makes clear that the prospectus or other document must satisfy the notice requirements of eligible indirect compensation, namely that a reasonable plan administrator can readily determine from the document:

- the existence of the indirect compensation;
- the services provided for the indirect compensation or the purpose for the payment of the indirect compensation;
- the amount (or estimate) of the compensation or a description of the formula used to calculate or determine the compensation; and
- the identity of the party or parties paying and receiving the compensation.

DOL states that furnishing the plan administrator with a separate document that identifies the previously provided documents that contain the required information also would satisfy the eligible indirect compensation disclosure requirement. The separate document must include references to pages or sections of the document that contain the required information.

Fiscal year reporting

Q&A-2 addresses a mismatch between a mutual fund’s fiscal year and the plan year being reported on Form 5500. DOL states that, although direct compensation should be reported based on the plan year, the amount or estimate of indirect compensation or the formula used to calculate indirect compensation may be based on a service provider’s fiscal year

that ends with or within the plan year, as long as the selected method is used consistently from year to year.

Open brokerage windows

Q&A-5 states that in the absence of other guidance from DOL, reporting for open brokerage windows that allow plan participants to invest in a wide range of funds, stocks, bonds and other investments offered through a designated broker may be limited to direct and indirect compensation received by the designated broker and other brokerage window providers, transaction fees in connection with purchases, sales, or exchanges made through the brokerage window, and any other plan-related fees.

Selling fees

Q&A-6 confirms that commissions received in connection with the sale of an investment, product, or service to a plan would be reportable indirect compensation, including if paid to an agent or employee of a service provider. This is true whether or not recipient has any other relationship to the plan other than the sale itself.

Payments from fund agents to recordkeepers

Q&A-8 addresses a situation in which a mutual fund pays eligible indirect compensation to a fund agent such as the fund's administrator, advisor, or distributor. The agent in turn pays fees to a recordkeeper for compliance services like nondiscrimination testing and QDRO administration. DOL states that the compensation received by the recordkeeper is reportable indirect compensation but cannot be reported under the alternative reporting option for eligible indirect compensation.

Miscellaneous clarifications

Other Q&As include guidance on:

- Bundled services (13 and 14)
- Float (11 and 12)
- Completing Schedule C with regard to eligible indirect compensation (15, 16, 17, 18, 19, 20 and 31)
- Use of formulas and estimates (24, 25, 27, and 28)
- Electronic disclosure (30)
- Non-monetary compensation (33, 34, and 35)
- Brokerage and soft dollars (23, 32, 39).

Relief for 2009 plan year filings

Plan administrators must list on line 4 of Schedule C the identity of any service provider that failed to provide the plan with the information necessary to complete Schedule C. This raised concern that service providers would not complete systems changes in time for filings for the 2009 plan year. In Q&A-40, DOL provides limited relief for this situation. DOL states that a plan administrator will not be required to list a service provider on its 2009 Form 5500 if the plan administrator receives a statement from the provider that despite a good faith effort to make any necessary recordkeeping and information system changes in a timely fashion, the service provider was unable to complete the changes for the 2009 plan year.

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endnotes

[1] The guidance is available here: http://www.dol.gov/ebsa/faqs/faq_scheduleC.html. For a description of the final Form 5500 changes, see Memorandum to Pension Members No. 69-07 [21958], dated November 19, 2007.

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