

## 2009 Schedule C: Fiduciary Re-SPONSOR-bility

Every year, the IRS and DOL make minor changes to the Form 5500. This year is the exception, with the exception being the word “minor.” The 2009 Form 5500 has undergone extensive reconstruction, most notably to the Schedule C. Having prepared Form 5500s for nearly 20 years, we have seen many changes to both to Department of Labor (DOL) reporting requirements and to the form itself, but nothing like what lies ahead for the 2010 filing season with mandatory electronic filing and the greater Schedule C disclosure.

Looking back on the past few years it is no wonder why these changes have occurred. From the “Wall Street or Main Street” argument, to class action lawsuits regarding plan fees, company disclosures have become increasingly scrutinized. It seems as if every penny must be accounted for and reasonably spent for the task at hand.

The burden of this fiduciary responsibility has always been held by Plan Sponsor, but the significance of the Schedule C has never been this cosmic. The 2009 Form 5500 Schedule C requires the Plan Sponsor to identify and quantify certain direct and indirect compensation paid to the Plan’s service providers. These changes come with enormous responsibility, and failing to take the necessary precautions could lead to consequential penalties.

It is now the duty of the Plan Sponsors to identify fiduciaries and certain service providers of the plan. As outlined in our previous white paper titled “2009 Form 5500 Changes,” there is no longer a limit as to how many service providers are to be disclosed on the Schedule C. Because of this change, Sponsors must now keep precise recordkeeping of ALL service providers. Not only must a Plan Sponsor know *who* is a service provider, but they must also know *how much* each provider is being paid, as well as *which* services they provide.

It should also be noted that if a Plan Sponsor requests information from a service provider and, after a reasonable number of attempts the service provider fails to provide the information, the Plan Sponsor must report this on Schedule C. Complete, accurate supporting documentation is more important than ever.

The Schedule C changes remain under intense scrutiny, even after the DOL released two sets of Frequently Asked Questions (FAQs). In a recent survey conducted by the SPARK Institute, almost three quarters of respondents were of the opinion that the DOL had not provided sufficient guidance to determine what elements of compensation qualified for treatment of Eligible Indirect Compensation (EIC). Nearly two-thirds of respondents were of the opinion that they do not have enough information on non-cash compensation payments.

The survey, which included 17 detailed questions on Schedule C changes, shows how confused service providers are with the recent changes. As stated earlier, it is the responsibility of the Plan Sponsor to accurately gather and report expense information, not that of the service provider. This confusion will make the job of collecting information much more difficult.

The SPARK survey results clearly show that there will be extra cost and effort in the Schedule C reporting under the new rules. Sponsors will bear most of this burden. Confusion on the part of service providers may result in reporting inconsistencies and/or inaccurate data. Sponsors will have to set aside more time and effort in order to successfully gather the data in a timely and accurate manner.

In a perfect world, Plan Sponsors would have contacted the service providers at the beginning of 2009 requesting that they keep track of all fees and expenses made throughout the year. These expenses could have been categorized at the time they occurred, and a running total could have been kept throughout the year. Then, at the end of the plan year, the Sponsor would contact the service provider, requesting the information, and the information would be readily available to be sent to the Plan Sponsor.

Unfortunately, we do not live in a perfect world. In the real world, it is still unclear how every fee should be categorized, service providers have not kept running totals, and information will need to be researched thoroughly in order to comply with the Schedule C requirements. Plan Sponsors must also depend on timely completion of Schedule C requests, which in the past has rarely been the case.

The following steps are recommended to successfully perform your fiduciary responsibility with regard to Schedule C, if you were to do it alone:

1. Identify ALL plan service providers.
2. Contact all service providers to relay the information that will be necessary to disclose for 2009.
3. Work with an ERISA Attorney to ensure that the information being disclosed is sufficient.
4. For those service providers who fail to disclose the information, follow up and document communications.
5. Keep track of all correspondence to and from service providers, ensuring that everything was done timely and accurately.

Although Atéssa Benefits, Inc. would not bear the burden of fiduciary responsibility for the Plan Sponsor, we are able to ease the burden by collecting expense information and preparing the Schedule C. The following steps are recommended to successfully perform your fiduciary responsibility, if you were to contract Atéssa Benefits, Inc.:

1. Identify ALL plan service providers
2. Send a detailed worksheet of all service providers, along with address and primary contact

Atéssa will take care of the rest!