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WHITE PAPER

2009 Form 5500 Changes

“Greater transparency. More disclosure. Accountability.” Do these buzzwords sound all too familiar to you? Are you wondering how they will impact the Form 5500 reporting process? If so, you are not alone.

As a result of the 2006 Pension Protection Act and the Department of Labor’s new EFAST2 filing system, changes are coming. While it may seem early to start focusing on next year’s Form 5500, Atéssa® Benefits, Inc. hopes to ease the pain by explaining what to expect and how to prepare for the inevitable.

CHANGES TO THE 2009 FORM 5500 FILING PROCESS

Mandatory Electronic Filing

The first major change for 2010 is the mandatory electronic filing of Form 5500. Dubbed EFAST2, this new web-based electronic filing system will replace the current optional EFAST filing system. The Department of Labor has recently released information on how to register for the new system and how to file the forms (for more information go to www.dol.gov/ebsa or call 866-GO-EFAST).

Form 5500 Schedule C – Service Provider Information

On November 16, 2007, the U.S. Department of Labor’s (DOL) Employee Benefits Security Administration (EBSA) passed final regulations that affect Form 5500 reporting, most notably the Schedule C. Following is a brief overview of upcoming changes to prepare plan sponsors for what is to come and how to prepare for the road ahead.

Schedule C has undergone extensive changes. Why? To provide more detailed information about plan expenses – both direct and indirect – which will result in greater transparency and disclosure. “Today’s action completes the first component of our fee transparency initiative for employee benefit plans,” said Bradford P. Campbell, assistant secretary of labor for EBSA. “The expanded reporting of compensation received by service providers will make it easier for plan officials to understand and monitor investment fees charged to plan accounts and revenue sharing arrangements that compensate brokers, pension consultants and other investment service providers.¹

In the past, only the top 40 services providers receiving \$5,000 or more in total compensation were reported on Schedule C. The 2009 Schedule C requires that all service providers receiving \$5,000 or more be reported. Fiduciaries and “Enumerated Service Providers” receiving more than \$1,000 in indirect fees (including gifts, awards,

trips, etc.) must also be listed on the Schedule C. In order to capture all reportable compensation, the 2009 Schedule C will have a new, larger list of service codes, disclosing the relationship of the service provider to the plan. *Note: Small plans (less than 100 participants) are not required to file Schedule C.*

The biggest challenge may be understanding how plan expenses are defined. The 2009 Schedule C defines fees and compensation as either “direct” or “indirect,” which are further broken down between “monetary” or “non-monetary” fees. Some fees may be difficult to identify, especially if they are lumped into a “bundling” arrangement and need to be broken out.

Direct compensation is any payment made directly to a service provider from the plan or plan sponsor for a service relating to the plan. These expenses include, but are not limited to, payments from the plan for recordkeeping services, auditing services, actuarial services, consulting, investment management, as well as many others.

Indirect compensation is any payment received from sources other than directly from the plan or plan sponsor if received in connection with services rendered to the plan (either monetary or non-monetary). These include fees and expense reimbursement payments received by a person from mutual funds, bank commingled trusts, insurance company PSAs, 12b-1 fees that have not been directly paid from the plan or plan sponsor. Other examples of indirect compensation include finder’s fees, float revenue, brokerage commissions, research or other products or services received from a broker-dealer of other third party in connection with securities transactions (soft dollars) and other transaction-based fees received in connection with the transactions or services whether or not capitalized as investment costs.

In order to narrow the amount of information reported on Schedule C, the instructions further identify **eligible indirect compensation** as indirect compensation that meets the following conditions:

1. Indirect compensation that is (1) fees or expense reimbursement payments charged to investment funds and reflected in the investment return of the participating plan or its participants; (2) finders’ fees soft dollar revenue; (3) float revenue; and/or (4) 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. If a fee falls into this category, the only information required to be disclosed on the Schedule C is who provided the information.
2. The plan administrator must receive written materials that describe and disclose (1) the existence of indirect compensation; (2) services provided for this compensation; (3) formulas used to calculate the value of this compensation; (4) who received the compensation; and (5) who paid the compensation.

Determining the dollar amounts to attach to indirect fee types could become a source of confusion. Some indirect fees are straightforward; however, problems could arise when the calculation of fees is left to the best judgment of the service provider. In all cases, service providers must disclose the formulas used for determining the compensation to the plan sponsor.

Service providers who fail to provide fee information to the plan sponsor will be reported on a new section of Schedule C. (Service providers do not have to be identified if only “eligible direct compensation” has been received during the year.) “It is a fiduciary duty to get to the bottom of what is being paid in fees, especially indirect fees to service providers,” said Louis J. Campagna, chief of the Division of Fiduciary Interpretations, Office of Regulations and Interpretations for the DOL’s EBSA.²

(Caution: Filers are strongly cautioned that gifts or gratuities or any amount paid to or received by plan fiduciaries may violate ERISA and give rise to civil liabilities and criminal penalties.)

The following table summarizes the major changes to the Schedule C:

Pre-2009	2009
<ul style="list-style-type: none"> • Limited to top 40 service providers to be disclosed • Only 23 Service Codes to classify reportable compensation • One total fee/commission disclosed • “Bundled Service Arrangements” fees reported as one fee 	<ul style="list-style-type: none"> • No Limit. All service providers making with over \$5,000 in fees and/or commissions to be disclosed <ul style="list-style-type: none"> – Fiduciaries and enumerated service providers with over \$1,000 in indirect fees must also be disclosed • Increased number and definitions of Service Codes • Fees broken down by type: <ul style="list-style-type: none"> – <i>Direct</i> Payments made directly by the plan or plan sponsor for services – <i>Indirect</i> Received from sources other than directly from the plan or plan sponsor if received in connection with services rendered to the plan during the year – <i>Eligible Indirect Compensation</i> • “Bundled Service Arrangements” fees reported separately by type: <ul style="list-style-type: none"> – Direct payments may be reported as direct compensation – Indirect compensation must be reported separately • New section to disclose non-cooperative service providers

For more information on the 2009 Schedule C, visit:

<http://www.dol.gov/ebsa/newsroom/07-1767-NAT.html>

What Plan Sponsors Can Do NOW

Because the plan sponsor takes the ultimate responsibility for the information reported on Form 5500, we recommend the following:

- Make sure that your service providers are aware of the increased disclosure requirements and are prepared to provide both direct and indirect expenses beginning with the 2009 plan year. *(Note that service provider fees could increase due to the additional time spent gathering and disclosing required information.)*
- See the chart below as a guide for determining types of expenses paid out of the plan to be reported on the Schedule C.
- Begin collecting and saving data as soon as possible. The sooner you start saving the information, the easier Form 5500 reporting will be in 2010.

Existing Schedule C Official Plan Positions (Direct Expenses)	2009 Schedule C Additional Plan Positions (Indirect Expenses)
Accounting (including auditing)	Employee (plan)
Actuarial	Names fiduciary
Contract Administrator	Real estate brokerage
Administration	Securities brokerage
Brokerage (real estate)	Valuation (appraisals, etc.)
Brokerage (stocks, bonds, commodities)	Employee (plan sponsor)
Computing, tabulating, ADP, etc.	Copying and duplicating
Consulting (general)	Participant loan processing
Custodial (securities)	Participant communication
Insurance agents and brokers	Investment company/mutual fund
Investment advisory	Foreign entity
Investment management	Other services
Legal	Direct payments from the plan
Printing and duplicating	Investment management fees paid directly by the plan
Recordkeeping	Investment management fees paid indirectly by the plan
Trustee (individual)	Insurance brokerage commission and fees
Trustee (corporate)	Sales loads (front end and deferred)
Pension insurance advisor	Other commissions
Valuation services (appraisals, asset valuations, etc.)	Non-monetary compensation
Investment evaluations	Redemption fees
Medical	Product termination fees (surrender charges, etc.)
Legal services to participants	Shareholder servicing fees
Other	Sub-transfer agency fees
	Finder fees/placement fees
	Float revenue
	Distribution (12b-1) fees
	Recordkeeping fees
	Shareholder servicing fees
	Account maintenance fees
	Insurance mortality and expense charge
	Soft dollar commissions
	Insurance brokerage commissions and fees
	Consulting fees
	Securities brokerage commissions and fees
	Other investment fees and expenses
	Other insurance fees and expenses (not reported on Schedule A)

Form 5500 Schedule E – ESOP Annual Information

Schedule E, an annual information return for an employee stock ownership plan (ESOP), will be eliminated from the Form 5500.

Form 5500 Schedule R – Retirement Plan Information

A few questions will be added to Schedule R under a new section called “Summary of Funding Improvement Plan.” The first part contains numerous open ended questions for multiemployer plans in endangered or seriously endangered status. Then follows a section called “Certain Information for Multiemployer Plan,” in which numbers regarding participants and employers must be entered, as well as certain employer information. The final section deals with the distribution of assets.

Form 5500 Schedule SSA – Separated Participants with Deferred Vested Benefits

The Schedule SSA is being eliminated from the 2009 Form 5500 and will be replaced by Form SSA, which will be filed directly with the IRS separate from the Form 5500. The requirements for filing Form SSA will be made available by the IRS.

Given the current focus on increased transparency and disclosure, plan administrators carry a greater burden for annual Form 5500 reporting. Understanding the new reporting requirements and collecting data now are the first steps to a smooth filing process in 2010.

Fair Value Reporting

The Financial Accounting Standards Board issued statement No. 157 defining Fair Value Measurements. It lays the groundwork for measuring fair value in generally accepted accounting principles (GAAP) and increasing consistency across the board.

According to the FAS website, FAS 157 defines fair value as “the price that would be received to sell the asset or paid to transfer the liability (an exit price), not the price that would be paid to acquire the asset or received to assume the liability (an entry price).”³

The investment inputs will fall into one of three categories, categorized by how the value is determined:

1. Quoted prices in active markets, which are prices that can be obtained on a specific date,
2. Prices that can be obtained using market data and use assumptions, or
3. No market price available – fiduciary must use best judgment in pricing the input.

While some of the upcoming changes to the Form 5500 may ease the filing burden, others may create confusion and more work. Plan sponsors need to be aware of the changes and prepare for new reporting requirements.

Your Compliance Partner, Atéssa Benefits, Inc., is staffed with compliance specialists who keep current on regulations affecting filing requirements and who manage the entire filing process. Plan sponsors count on Atéssa Benefits, Inc. to meticulously prepare timely and accurate reports and government filings including the

IRS Form 5500. For more information or to request a quote, please contact Debbie Mettenleiter, Marketing Director, at 858.673.3690.

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¹ <http://www.dol.gov/ebsa/newsroom/07-1767-NAT.html>

² <http://subscript.bna.com/pic2/ppa.nsf/id/BNAP-6XWK7U?OpenDocument>

³ <http://www.fasb.org/st/summary/stsum157.shtml>