



ERISA Alert...

July 2010

FORM 5500 Schedule C - New Demands Create Hostilities amid Plan Sponsors and Service Providers in 2010 and Beyond

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On November 16, 2007, the Department of Labor (“DOL”) published a revised Form 5500. The revisions apply to the 2009 filing year due in 2010. The revisions impose significant reporting changes on a plan sponsor relative to compensation paid to service providers for services rendered. Compensation paid to service providers is reported on the Schedule C and is meant to improve fee transparency and assist with the fiduciary duty “to know”. Although the new regulation relates to all types of plans that file 5500s, this PrimeTRUST Alert specifically addresses some issues creating a potential rift between plan sponsors and service providers that could cause harm to retirement plans and their fiduciaries.

If you are a fiduciary or you are responsible for completing or executing a Form 5500, you must know what is required and involved since the Form 5500 is executed under penalties of perjury. In addition, once filed, the Form becomes publicly available. The DOL and the IRS have the authority to assess financial penalties (personal and corporate) and seek convictions if annual reporting requirements are not met or are intentionally incorrect or incomplete.

Unfortunately, early indications are that there is a difference between what is required to be reported and what will actually be enforced if there is a mistake or misrepresentation. Although the number of specific identification codes has been expanded to 55, and you are supposed to list as many as may be applicable to a specific fee, quite a few codes lack clear definition. In addition, service providers are allowed to use estimates and formulas if they can not specifically determine the amount of the fees they receive from a plan. Therefore, confusion and inconsistency will be prevalent.

A code must be used if the fee paid by, or the compensation derived from, the plan is more than \$5,000 – with separate definitions for direct and indirect compensation. However, for some codes relating to fiduciary, administrative, securities brokerage, investment, and consulting roles, the threshold for reporting is lowered to \$1,000.

We will attempt to interpret some of the potentially important and telling codes that could be used regarding your retirement programs. Please note, the instructions state “Enter as many as apply”; therefore, multiple codes could be involved. As independent, fee-based investment advisors and consultants, who take a fiduciary role with their clients, the codes that should be most prominently used in these types of retainer relationships are:

- ★ Code 17 – Consulting Fees (for Pensions not Welfare plans)
- ★ Code 27 – Investment Advisory Fees (for plans not participants)
- ★ Code 50 – Direct Payments from Plan Assets
- ★ Code 70 – Consulting Fees



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The codes that may indicate a *non-fiduciary*, more commissioned oriented, arrangement could include some or more of the following and should be the cause of acute awareness (especially if you were expecting a fiduciary services relationship):

- ★ Various insurance products and services
 - Code 22 – Insurance Agents and Brokers Fees
 - Code 23 – Insurance Services Fees
 - Code 53 – Insurance Brokerage Commissions and Fees
 - Code 65 – Account Maintenance Fees
 - Code 66 – Insurance Mortality and Expense Charges
 - Code 67 – Other Insurance Wrap Fees
 - Code 73 – Other Insurance Fees and Expenses

- ★ Various securities brokerage and investment products and services
 - Code 33 – Securities Brokerage Fees
 - Code 54 – Sales Loads (front end and deferred)
 - Code 55 – Other Commission Fees
 - Code 57 – Redemption Fees
 - Code 61 – Finders Fees
 - Code 63 – Distribution Fees (12b-1)
 - Code 68 – Soft Dollar Commission Fees
 - Code 71 – Securities Brokerage Commissions and Fees
 - Code 72 – Other Investment Fees and Expenses

We encourage you to determine which codes were used in preparing your 2009 Form 5500 Schedule C report. If you see any one of these codes being used, you should be able to verify the amount and origin of the fees and compensation (direct and indirect) being paid to the service provider identified. You should also be able to validate the “reasonableness” of such compensation in relation to the services being provided. If you are negligent in either of these responsibilities, you could be putting your company, yourself, and any other fiduciaries at risk for breach of fiduciary duty. Questionable, “excessive” and indirect fees should cause you to review the respective service provider’s services agreement since it may no longer serve in the best interest of your participants.

To help plan sponsors, we are available to interject on your behalf with your service providers and/or your record keeper to provide you with the information you need to understand the Schedule C. Our fee based analysis, interpretation, and explanation can be completed without creating angst between you and your service providers. This service does not require you to replace any existing relationship. If you are interested in discussing the value of this service call Chip Hunt in Greenville or Chip Hardy in Columbia at the numbers listed below.

This PrimeTRUST Alert is meant to be informational and should not be construed as legal or tax advice. For a more in-depth explanation of these issues, please refer to an excellent article from the most recent [ASPPA Journal](#). Additional information on this topic can also be found on the DOL’s website at <http://www.dol.gov/ebsa/>.