United States Government Accountability Office

GAO

Report to the Chairman, Committee on Education and Labor, House of Representatives

November 2009

# PRIVATE PENSIONS

# Additional Changes Could Improve Employee Benefit Plan Financial Reporting

GAO

Accountability * Integrity * Reliability

GAO-10-54

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# Highlights

Highlights of GAO-10-54, a report to the Chairman, Committee on Education and Labor, House of Representatives

## Why GAO Did This Study

The Department of Labor (Labor) collects information on fees charged to 401(k) plans primarily through its Form 5500. Labor issued final regulations in November 2007, making changes to, among other things, Schedule C of the Form 5500. Labor put emphasis on reporting the indirect compensation paid to service providers and between service providers, in an effort to capture all of the costs that plan sponsors incur. Congress and others are concerned that Labor's rules could result in duplicative and confusing reporting. Given these concerns, GAO was asked to examine the new requirements and determine whether Labor's new requirements will provide (1) clear and understandable guidance to plan sponsors and (2) useful information to Labor and others. GAO analyzed Labor's regulations and interviewed Labor and other officials about disclosure and reporting practices.

## What GAO Recommends

GAO recommends that Labor (1) provide additional guidance and require all indirect compensation be disclosed on the Schedule C, (2) coordinate the implementation of its new Form 5500 requirements with the publication of its 408(b)(2) regulation, and (3) require that asset-based fees be explicitly reported. Labor generally agreed with GAO's recommendations, although the agency proposes evaluating the data after reporting begins to determine how best to address indirect compensation.

View GAO-10-54 or key components.
For more information, contact Barbara D. Bovbjerg at (202) 512-7215 or bovbjergb@gao.gov.

## What GAO Found

Sponsors and service providers report confusion over Labor's new reporting requirements for the Form 5500 Schedule C and over how plan expenses are defined. Specifically, they have questions regarding the distinction between eligible and ineligible indirect compensation, that is, which types of indirect compensation must be reported on the Form 5500 (compensation that qualifies as "eligible" does not have to be reported). Labor's guidance on its Web site thus far has been limited, and, according to sponsors and service providers GAO spoke with, has raised additional questions that remain unanswered. Specifically, Labor has not provided sufficient guidance for sponsors and providers to accurately determine what elements of compensation qualify as eligible indirect compensation (fees or expense reimbursements charged to investment funds and reflected in the value of the investment). Therefore, interpretations have been left up to sponsors and providers and may result in a range of reporting practices, causing Labor to receive inconsistent and incomplete data. In addition to the new Form 5500 requirements, Labor has proposed another regulation on service provider fee disclosure (its 408(b)(2) regulation), but it has not yet been finalized. Sponsors and service providers GAO talked with stressed the importance of coordinating this initiative with the new Form 5500 requirements. Doing so may reduce the burden and the cost to service providers of making changes to their data gathering and reporting systems and clarify for plan sponsors the information they need to understand and compare the fees charged by various service providers. In GAO's discussions with Labor officials, they agreed that there was a need to coordinate the two regulations, and said that although they are working to finalize the proposed 408(b)(2) regulation, it is uncertain when it will be published.

Labor officials told GAO that they do not have specific plans for using the data received as a result of the new Form 5500 requirements and will wait to see what information is reported before deciding what to do with the data. Although Labor's new requirements are meant to ensure that plan sponsors obtain the information they need to assess the compensation paid to service providers for services rendered to the plan, the Form 5500 may not provide useful information to Labor and others. Because plan sponsors are likely to report indirect compensation in varying formats, it is unclear how Labor will be able to compare such data across plans. In addition, GAO previously reported that the information provided to Labor on the Form 5500 has limited use for effectively overseeing fees paid by 401(k) plans because it does not explicitly list all of the fees paid from plan assets, yet these types of fees comprise the majority of fees in 401(k) plans. For example, plan sponsors are not required to explicitly report asset-based fees that are netted from an investment fund's performance, even though they receive this information for each of the mutual funds they offer in the 401(k) plan. Thus, despite the changes to the Form 5500, the new information provided may not be very useful to Labor, plan sponsors, and others.

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## Abbreviations

| | |
|---|---|
| FAQ | frequently asked questions |
| ERISA | Employee Retirement Income Security Act of 1974 |
| IRC | Internal Revenue Code |
| IRS | Internal Revenue Service |
| DFE | direct filing entities |
| PBGC | Pension Benefit Guaranty Corporation |
| EIC | eligible indirect compensation |
| SEC | Securities and Exchange Commission |
| SPARK | Society of Professional Asset-Managers and Record Keepers |

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United States Government Accountability Office
Washington, DC 20548

November 5, 2009

The Honorable George Miller
Chairman
Committee on Education and Labor
House of Representatives

Dear Mr. Chairman:

The Department of Labor (Labor) uses its Form 5500 as a tool to monitor and enforce plan sponsors' responsibilities under the Employee Retirement Income Security Act of 1974 (ERISA).[1] By filing the Form 5500, plan sponsors satisfy the requirement to file annual reports concerning, among other things, the financial condition and operation of plans. In 2004, Labor's ERISA Advisory Council Working Group reported that the Form 5500 Annual Return/Report (Form 5500), as it was then structured, did not reflect the way that the defined contribution plan fee structure works. At that time, only those fees that were billed explicitly and were paid directly from plan assets were deemed reportable.[2] The Advisory Council concluded that Form 5500s filed by defined contribution plans were of little use to policy makers, government enforcement personnel, plan sponsors, and participants in terms of understanding the cost of a plan, and recommended that Labor modify it so that all fees incurred either directly or indirectly by these plans would be reported. As a part of three regulatory initiatives to improve disclosures provided to various parties, Labor issued final regulations in November 2007, making changes to facilitate a transition to an electronic filing system and to update the annual reporting forms, effective for the 2009 plan year.[3] With these

[1]Under Title I of ERISA, the "administrator" or "plan administrator" is the plan official responsible for meeting certain reporting and disclosure obligations. However, for the purposes of this report, we use the term "plan sponsor" to encompass the responsibilities of the plan administrator and plan sponsor (i.e., the employer who sets up the plan).

[2]The Form 5500 includes information on a plan's sponsor and the number of participants, among other things. The form also provides more specific information, such as plan assets, liabilities, insurance, and financial transactions.

[3]A "plan year" is a 12-month period designated by a retirement plan for calculating vesting and distribution, among other things. The plan year can be the calendar year or an alternative period (e.g., July 1 to June 30). Filers have a normal deadline of 210 days after the end of the plan year to submit their Form 5500; therefore, a calendar year filer would have to file by July 31 of the next year.

regulations, Labor made changes to the reporting of service provider compensation on the Schedule C of the Form 5500.[4] Labor also has proposed regulations on two other initiatives that are awaiting review and approval by the current Secretary of Labor.[5]

Congress and others are concerned that Labor's rules for reporting compensation are more extensive than necessary and could result in duplicative and confusing reporting. In addition, questions have been raised by industry experts over whether the new changes impose significant costs on service providers as they track and disclose the additional information, and whether these costs will be passed on to plan participants. Given these concerns, GAO was asked to examine the new requirements in Labor's final regulations and form revision and to answer the following questions:

1. Do Labor's new requirements provide clear and understandable guidance to plan sponsors?

2. Will the new requirements provide useful information to Labor and others?

To determine whether Labor's new requirements provide clear and understandable guidance to plan sponsors, we interviewed nine plan sponsors. We randomly selected three plan sponsors from the Form 5500 database, and selected six plan sponsors referred by industry associations,[6] plan service providers, well-known industry experts, industry associations, researchers, and Labor. We also reviewed related documents from Labor, such as its compliance assistance and technical guidance information, and frequently asked questions (FAQ) from its Web site that are meant to aid employers in complying with the new regulations and forms revision. In addition, we reviewed ERISA and relevant

[4]Service providers are hired by plan sponsors to provide administrative services to the plan. Some plans hire a service provider, such as a mutual fund company, a bank, or an insurance company, that is able to provide an entire range of administrative services to a plan. Other plans receive asset management and recordkeeping services from a service provider, while providing other services with in-house staff.

[5]On January 20, 2009, the Obama Administration issued a White House memorandum that ordered all proposed and final regulations that had not been published in the *Federal Register* to be withdrawn for review and approval.

[6]The information and opinions we gathered from talking with plan sponsors is not representative of or generalizeable to the universe of plan sponsors.

regulations governing 401(k) plans, including Labor's proposed regulations, to understand current and proposed annual reporting requirements. We interviewed and collected documentation from those affected by the new Schedule C requirements, to get their views on whether these new requirements will provide useful information to Labor, plan sponsors, and others. We also interviewed and collected documentation from a variety of stakeholders, including plan sponsors, service providers, industry and consumer associations, attorneys, and Labor. We obtained these stakeholders' views on the new requirements and identified any challenges sponsors might face. We also collected and analyzed information on the Form 5500 from other sources, such as the reports and testimonies from ERISA Advisory Council Working Groups. Finally, we reviewed previous work done by GAO to provide an update on Labor's efforts regarding the Form 5500 and its regulatory initiatives.[7]

We conducted this performance audit from October 2008 through November 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# Background

## ERISA

ERISA, among other requirements, establishes the responsibilities of employee benefit plan decision makers (fiduciaries) and the requirements for disclosing and reporting plan fees. ERISA is designed to protect the rights and interests of participants and beneficiaries of employee benefit plans and to outline the responsibilities of the employers and administrators who sponsor and manage these plans. Under Titles I and IV of ERISA and the Internal Revenue Code (IRC), pension and other employee benefit plan administrators are required to file information annually on the financial condition and operations of the plan. The requirements for completing the Form 5500 vary according to the type of plan. If a company sponsors more than one plan, it must file a Form 5500

[7] GAO, *Private Pensions: Government Actions Could Improve the Timeliness and Content of Form 5500 Pension Information*, GAO-05-491 (Washington, D.C.: June 3, 2005).

for each plan. Additionally, ERISA and the IRC provide for the assessment or imposition of penalties by Labor and the Internal Revenue Service (IRS) for plan sponsors not submitting the required information when due.

There are various types of Form 5500 filers. Filers are classified as either single-employer plans, multiemployer plans, multiple-employer plans, or direct filing entities (DFE). In general, a separate Form 5500 must be filed for each plan or DFE. Single-employer plans are maintained by one employer or employee organization. Multiemployer plans are established pursuant to collectively bargained pension agreements negotiated between labor unions representing employees and two or more employers and are generally jointly administered by trustees from both labor and management. Multiple-employer plans are maintained by more than one employer and are typically established without collective bargaining agreements. DFEs are trusts, accounts, and other investment or insurance arrangements in which plans participate and that are required to or allowed to file the Form 5500.

## Form 5500 Annual Return/Report

The Form 5500 was intended, in part, to measure employers' compliance with ERISA's fiduciary and funding provisions, among other requirements.[8] It provides information about the financial condition of the plan, annual amounts contributed by participants, and the plan's investment income. The form also provides information on plan characteristics, such as plan type (defined benefit or defined contribution),[9] method of funding, and numbers of employees and participants as well as the number of employees who are excluded from the plan for various reasons.

The Form 5500 is the principal source of information about employer-sponsored pension and welfare benefit plans that is available to Labor, IRS, and the Pension Benefit Guaranty Corporation (PBGC), and is the

[8]The Form 5500 includes information on the plan's sponsor and the number of participants, among other things. The form also provides more specific information, such as plan assets, liabilities, insurance, and financial transactions. Filing this form satisfies the requirement for the plan administrator to file annual reports concerning, among other things, the financial condition and operation of plans. Labor uses the Form 5500 as a tool to monitor and enforce plan sponsors' responsibilities under ERISA.

[9]Traditional defined benefit plans generally provide a fixed level of monthly retirement income that is based on salary, years of service, and age at retirement, regardless of how the plans' investments perform. In contrast, benefits from defined contribution plans are based on the contributions to and the performance of the investments in individual accounts, which may fluctuate in value.

reporting vehicle for about 730,000 such plans. Accordingly, the Form 5500 constitutes an integral part of each agency's enforcement, research, and policy formulation programs. It is also a source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies. The form also serves as a primary means by which plan operations can be monitored by participants, beneficiaries, and the general public.

Labor, IRS, and PBGC jointly developed the Form 5500 so that employee benefit plans could satisfy (1) the provisions of the IRC that apply to tax-qualified pension plans and (2) the annual reporting requirements under ERISA. Labor enforces ERISA's reporting and disclosure provisions and fiduciary responsibility standards, which, among other things, concern the type and extent of information provided to the federal government and plan participants and ensure that employee benefit plans are operated solely in the interests of plan participants. IRS enforces standards that relate to such matters as how employees become eligible to participate in benefit plans; how they become eligible to earn rights to benefits; and how much, at a minimum, employers must contribute. PBGC insures the benefits of participants in defined benefit private pension plans.

## Labor's Regulatory Initiatives

Labor's regulatory initiatives to expand disclosure requirements cover the following three distinct areas: (1) disclosures by plan sponsors to assist participants in making informed investment decisions;[10] (2) disclosures by service providers to assist plan fiduciaries in assessing the reasonableness of provider compensation and potential conflicts of interest;[11] and (3) more efficient, expanded fee and compensation disclosures to the government and the public through a substantially revised, electronically filed Form 5500 Annual Return/Report.[12]

Labor implemented the third initiative on expanding fee and compensation disclosures on the Form 5500—issuing regulations revising the Form 5500 in November 2007—in an effort to facilitate the transition to an electronic

[10]See 73 Fed. Reg. 43013, proposed rules of July 23, 2008, on "Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans."

[11]See 72 Fed. Reg. 70987, proposed rules of December 13, 2007, on "Reasonable Contract or Arrangement Under Section 408(b)(2) – Fee Disclosure."

[12]See 72 Fed. Reg. 64709, final rules of November 16, 2007, on "Annual Reporting and Disclosure."

filing system; reduce and streamline annual reporting burdens; and update the annual reporting forms to reflect current issues, agency priorities, and new requirements under the Pension Protection Act of 2006.[13] According to officials at Labor, these changes were made to increase transparency regarding the fees and expenses paid by employee benefit plans. Labor also wanted to ensure that plan officials obtain the information they need to assess the compensation paid for services rendered to the plan, taking into consideration revenue-sharing arrangements among plan service providers and potential conflicts of interest.

## Fee/Compensation Reporting on the Form 5500

For the 2009 plan year Form 5500, the new Schedule C requires plan sponsors to classify the fees they pay service providers as either "direct" or "indirect" compensation. As shown in table 1, fees are separated into those paid directly by the plan to a service provider and those received by a service provider indirectly from another service provider.

**Table 1: Distinction between Direct and Indirect Compensation**

| Direct compensation | Indirect compensation |
|---|---|
| • Compensation received by a plan service provider directly from plan assets.<br>• Does not include anything the employer pays from corporate assets, since employer-paid fees do not reduce plan assets. | • Any payment received by a plan service provider from sources other than directly from the plan or plan sponsor, if received in connection with services provided to the plan (either monetary or nonmonetary) or in connection with the service provider's position with the plan, such as meals, entertainment, or free travel. |

Source: Department of Labor, Annual Reporting and Disclosure Revision of Annual Information Return/Reports; Final Rule and Notice, 72 Fed. Reg. 64709 (2007) codified at 29 C.F.R. § 2520.103-1.

Plan sponsors must also determine whether any indirect compensation is reportable (i.e., "ineligible" or "eligible" for exemption from Labor's reporting requirements, as shown in table 2). Most indirect compensation starts out as having to be reported on the Schedule C.

[13] The regulations also postponed the effective date of the electronic filing requirement under 29 C.F.R. § 2520.104a-2 to apply to plan years beginning on or after January 1, 2009. The form revisions are to be fully implemented as part of the switch under the ERISA Filing Acceptance System (also known as EFAST) to a wholly electronic filing system for the 2009 reporting year.

**Table 2: Types of Reportable Indirect Compensation and Criteria for Qualifying Indirect Compensation as "Eligible" for Exemption**

| | Definition | Reported on Schedule C |
|---|---|---|
| Eligible indirect compensation (EIC) | EIC includes fees or expense reimbursements charged to investment funds and reflected in the value of the investment or in the return on investment (e.g., finders' fees, "soft dollar" revenue, float revenue, and/or brokerage commissions). | If a fee falls into this category, no amount needs to be reported because these fees are eligible for exemption. An alternative reporting method can be used, which allows sponsors to report only that there was EIC paid and the entity that provided the required written disclosures.[a] |
| Ineligible indirect compensation | • Reportable gifts, meals, and entertainment.<br>• Fees paid to a recordkeeper by an investment provider on a per participant or per plan account basis. | Yes, along with the specific amount, because it is ineligible for exemption.<br>The service provider receiving the compensation does not have to provide an actual amount. It may simply provide a formula through which the compensation is determined. |

Source: Department of Labor, Department of the Treasury, Pension Benefit Guaranty Corporation, Revision of Annual Information Return/Reports, 72 Fed. Reg. 64731 (2007).

Note: Amounts charged against the fund for ordinary operating expenses, such as attorneys' fees, accountants' fees, and printers' fees, are not reportable indirect compensation for Schedule C purposes.

[a]Written disclosures for a bundled arrangement must separately disclose and describe each component of indirect compensation that would be required to be separately reported if the provider were not relying on this alternative reporting option.

However, indirect compensation can readily become "eligible" indirect compensation (EIC). For indirect compensation to be EIC, and thus not reported on the Schedule C, the plan sponsor must receive written materials from the service provider that describe and disclose the following information:

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.

When indirect compensation does qualify as "eligible," sponsors have the option of using an alternative reporting format that, according to Labor, is simpler than the format that must be used to report ineligible indirect compensation. With the alternative reporting format, plan sponsors only have to disclose the name, address, and employer identification number of these service providers.[14] Whether a plan sponsor receives the required written disclosures is the key to whether indirect compensation is reportable on the Schedule C.

According to Labor, reporting indirect compensation as EIC is an option that the sponsor may choose instead of reporting under the rules applicable to other indirect compensation. Indirect compensation does not qualify as EIC if a service provider does not provide the required disclosures to the plan sponsor. In this case, the plan sponsor is required to report the available information from the service provider on the Schedule C, such as the identity of the service provider and nature of the services provided. The plan sponsor is also required to list the service provider for failing to or refusing to provide necessary information. However, if the plan sponsor does receive information from the service provider upon request, the plan sponsor has the option of reporting the indirect compensation as EIC (i.e., reporting only that indirect compensation was paid and who provided the disclosure).

Many of the fees and expenses associated with mutual fund investments are not explicitly reported on the Form 5500. According to a 2004 report by Labor's ERISA Advisory Council Working Group on Plan Fees and Reporting on Form 5500, many 401(k)[15] and 403(b)[16] plans have moved toward using mutual funds as an investment option. With mutual funds, the plan service provider takes the investment management fees[17] and

[14]The alternative reporting option does not apply to all indirect compensation; it only applies to the indirect compensation that is eligible for that treatment. It has to be a particular type of compensation, with the most common example being compensation that reduces the value of the investment—for example, 12b-1 fees (fees related to marketing) that are paid to broker/dealers to sell the fund. The alternative reporting method is generally only available for service providers receiving indirect compensation exclusively. If a service provider receives both direct and indirect compensation, the alternative reporting option is not available and more in-depth information must be disclosed on the Schedule C.

[15]"401(k) plans" are private pension plans that allow workers to save for retirement by diverting a portion of their pretax income into an investment account that can grow tax-free until withdrawn in retirement.

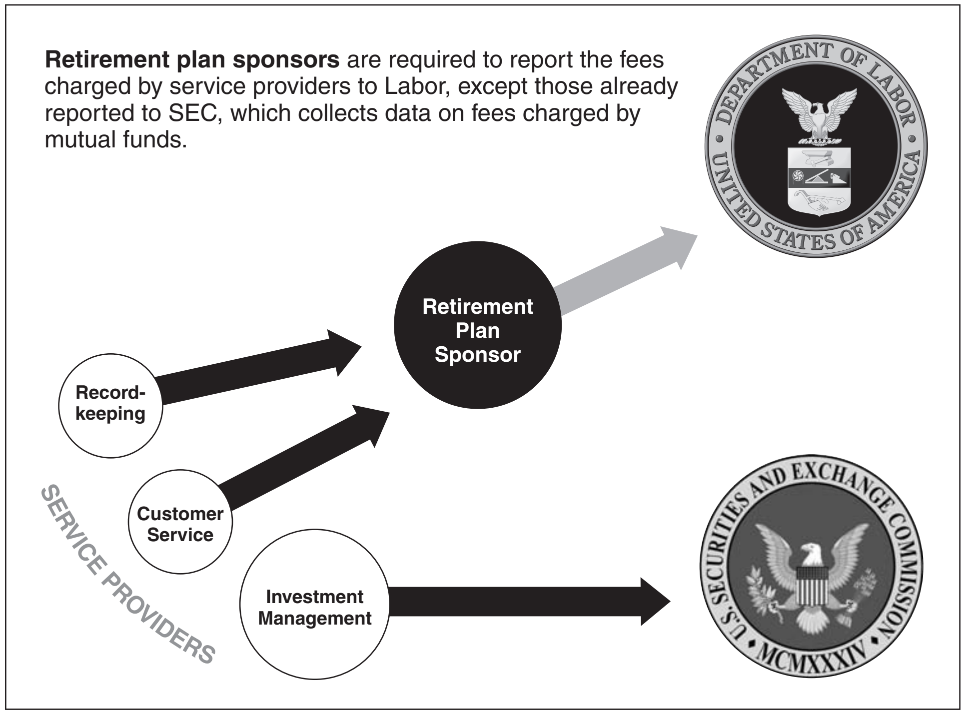
[16]"403(b) plans" are similar to 401(k) plans but are offered only to employees of hospitals, educational institutions, and certain nonprofit organizations.

[17]Companies that manage mutual funds or other investment products charge investment fees for all services related to operating the fund. Such practices are not limited to the mutual fund industry, but rather apply to any pooled investment vehicle where fees are intrinsic to the underlying investment and not explicitly billed or paid by the plan.

expenses of managing the mutual fund directly from the mutual fund earnings, and these fees are not explicitly reported to plan sponsors. Without data on mutual funds, the largest component of most 401(k) retirement plans, Labor is unable to fully assess the impact of service provider fees on investment returns. In our November 2006 report, we recommended that Congress consider a statutory change with explicit disclosure requirements for service providers.[18] Without such a change, we concluded, Labor will continue to lack comprehensive information on all fees being charged directly or indirectly to 401(k) plans. Figure 1 illustrates the disclosure of plan fee information from service providers to plan sponsors, which then report the fees to the federal government. The figure also shows that some fees are reported to the Securities and Exchange Commission (SEC), not to Labor.

[18]GAO, *Private Pensions: Changes Needed to Provide 401(k) Plan Participants and the Department of Labor Better Information on Fees*, GAO-07-21 (Washington, D.C.: Nov. 16, 2006).

**Figure 1: Disclosure of Plan Fee Information from Service Providers to Plan Sponsors, Which Then Report the Fees to the Federal Government**




Source: GAO analysis of Department of Labor regulations.

Additionally, many plan fiduciaries enter into bundled arrangements[19] with other plan service providers for recordkeeping or other administrative services that typically do not entail explicit charges to the plan. In a “bundled arrangement” plan, service providers such as recordkeepers and trustees are often compensated for their services to the plan (1) through

[19] A “bundled arrangement” is when a plan sponsor hires one service provider to provide a full range of services directly or through subcontracts to provide services to its employees’ retirement plan.

either subtransfer agent fees,[20] 12b-1 fees,[21] or other administrative fees[22] or (2) through what are called "revenue-sharing arrangements."[23] As a result, fees and expenses are not paid from plan assets, but rather from the expenses of one of the plan's investments (e.g., a mutual fund's operating expense, which is shared with the plan's service provider).

# Labor's New Reporting Requirements Remain Unclear to Sponsors, but Coordination with Other Regulatory Initiative May Help

## Sponsors Report That Labor's New Requirements Remain Unclear

Even though Labor has provided guidance on their recent changes to the Form 5500 Schedule C, plan sponsors and service providers reported that they were unclear about Labor's new reporting requirements. Specifically, plan sponsors and experts told us that they have questions regarding the distinction between eligible and ineligible indirect compensation, and several said that they were unclear about what types of compensation qualified as EIC. A recent survey of service providers also reports

[20]Subtransfer agent fees are paid by mutual funds to 401(k) providers who perform the recordkeeping function for 401(k) plans. They are charged against the mutual funds and thereby reduce the participants' investment returns and, ultimately, their benefits. The payments are intended to support transfer agent and shareholder servicing activities by the recordkeeper. These activities include, for example, keeping track of share ownership at the plan and participant account level, and conveying information about the mutual fund to the plan and participants.

[21]Fees related to marketing and compensating brokers to sell the fund are known as 12b-1 fees.

[22]Administrative fees are charged to administer the plan as a whole, and these fees can include trustee, audit, legal, investment consulting, and communication fees.

[23]"Revenue sharing" is a mutual fund distribution practice. These payments are paid from a plan's investments to other providers without going through the plan. A feature of these payments is that, while they are not paid from a plan's assets, the payments are "shared" by the plan's service providers, often without the knowledge of the plan sponsors, fiduciaries, and participants.

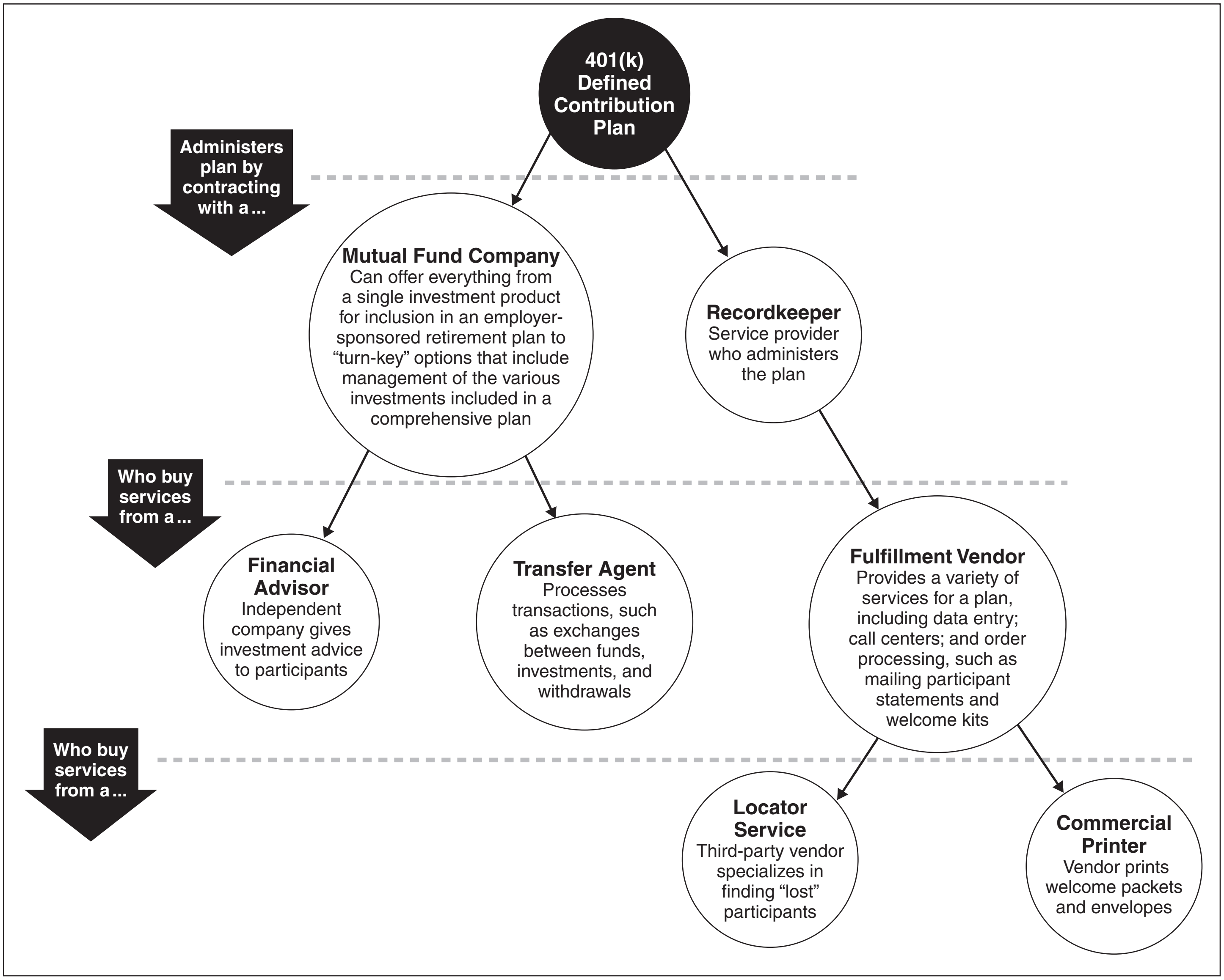
confusion regarding compliance. An industry association representing service providers surveyed its membership, asking if sponsors and service providers understand Labor's new Schedule C requirements enough to effectively comply.[24] Although only a small number of members (19) responded to the survey, 74 percent of the respondents (14) reported that Labor has not provided sufficient guidance for providers to accurately determine what elements of compensation qualify as EIC.

Plan sponsors and experts were also concerned about how much compensation should be disclosed. Figure 2 illustrates the potential difficulty. For example, a plan pays a recordkeeper direct compensation to administer the plan, which includes sending new participants a welcome packet about the plan. Part of the compensation that the recordkeeper receives goes toward paying a fulfillment vendor to make the welcome packets and send them to participants.[25] The fulfillment vendor, in turn, pays a printer to print and collate the packets. As a result, there are multiple layers of payments involved, and sponsors and experts were unsure of how much of the indirect compensation they should be required to disclose. They were also concerned that the compensation would be reported multiple times on the Schedule C. For example, amounts paid by the recordkeeper to vendors would already be included in the overall amount paid by the plan sponsor to the recordkeeper.

[24]The Society of Professional Asset-Managers and Record Keepers (SPARK) is a professional association servicing mutual fund companies, banks, insurance companies, investment advisors, third-party administration, recordkeepers, and benefit consulting firms in the retirement plan industry, including most major service providers. SPARK conducted a survey of its members in early 2009 regarding their opinions on the new reporting requirements for the Form 5500 Schedule C. The survey was completed by 19 of SPARK's 57 institutional members, all but 1 of which provide Form 5500 preparation services. The responding firms, however, collectively serve approximately 174,000 plans with nearly 34 million participants.

[25]A fulfillment vendor can provide a number of services for a plan, including customer service; call center; data entry; and order processing, such as mailing participant statements and welcome kits.

**Figure 2: Examples of the Layers of Compensation Paid to Entities for Services to a Defined Contribution Plan**




Source: GAO analysis of examples provided by the Groom Law Group.

Concerns have also been raised about how to report noncash compensation.[26] Sponsors and service providers said that they were uncertain about the new Schedule C requirement to report noncash compensation, which is also a type of indirect compensation. Sixty-three percent (12 of 19) of members who responded to the industry survey reported insufficient guidance on this issue. For example, one plan sponsor explained that he was not sure how he would handle, or whether he would even report, the noncash compensation benefit (food, entertainment, and making contacts) of attending a marketing event designed to facilitate future sales of ERISA plans. Respondents (service providers) in the industry survey were asked to imagine that their organization sponsored a similar event for customers and potential customers. Respondents were evenly split on how they would communicate the value of the benefit to attendees for purposes of Schedule C reporting. Some respondents believed the event would not be reportable, while others said they would provide its full value to all attendees and leave it to them to decide whether the event is reportable.

## Uncertainty Regarding the Reporting of Indirect Compensation May Result in Incomplete Data Being Reported to Labor

Because service providers may have difficulty determining what elements of compensation qualify as EIC, different interpretations and reporting practices may ensue and could result in inconsistent and incomplete data being reported to Labor. For example, some sponsors may interpret certain compensation as reportable, while others may not, leaving Labor with incomplete information from some plans. In addition, since amounts categorized as EIC will not be reported, Labor will have no way of using these data to determine whether the amounts being paid by plans are reasonable and will be unable to compare these types of compensation across plans. According to Labor, not having to report amounts categorized as EIC is intended to simplify the annual reporting process and reduce the burden for plans and service providers for the types of indirect compensation that commenters said would be difficult and potentially expensive to allocate to individual plans.

Industry experts and plan sponsors with whom we spoke said additional guidance on reporting indirect compensation may make it easier for plan sponsors to comply. Labor has posted a set of FAQs on its Web site regarding the changes that are specific to Schedule C reporting. However,

[26] Noncash compensation can be gifts, meals, or entertainment for the purpose of facilitating the sales or promotion of an ERISA-related plan.

industry officials with whom we spoke said that although these FAQs answered many questions, additional questions have stemmed from reading the FAQs that have not yet been addressed. Labor officials told us that they were reviewing and prioritizing the additional questions they have received to develop further guidance.

As filing deadlines for the 2009 plan year draw closer, sponsors and service providers have told us that they still have questions about the new Schedule C requirements, and may need more time to comply. Labor has already noted on its Web site that there is flexibility regarding reporting for the 2009 plan year, stating that as long as sponsors receive a statement from their service providers that, despite a good-faith effort, they were unable to provide the newly required information to them, sponsors will not be required to report those service providers on the Schedule C.

## Coordination with Other Regulatory Initiative Could Alleviate Compliance Burden

According to industry experts and plan sponsors with whom we spoke, the coordination of one of Labor's other initiatives on fee disclosure with the current Form 5500 requirements could make it easier for plan sponsors to comply. Specifically, sponsors and service providers stressed the importance of Labor coordinating the new Form 5500 requirements, which govern reporting at the end of a plan year, with the finalization of its proposed rule on "up-front" service provider disclosure to plan sponsors. Labor has requirements that govern the entering of a service agreement between a sponsor and service provider, referred to as the 408(b)(2) requirements, and has proposed changes to them that have not yet been finalized.[27] Consequently, the new Schedule C requirements, or "after-the-fact" disclosures," were finalized before the 408(b)(2) regulation, which governs "up-front" disclosures. Since plan sponsors report on the Schedule C an after-the-fact summary of the fees and expenses paid by their plans during the plan year, the information provided on this form is directly related to information about fees and expenses that service providers will be required to disclose to plan sponsors by the 408(b)(2) requirements "up

[27] On December 13, 2007, Labor published a proposed rule (72 Fed. Reg. 70987) to amend its current regulation under section 408(b)(2) of ERISA to clarify the information fiduciaries must receive and service providers must disclose for purposes of determining whether a contract or arrangement is "reasonable," as required by ERISA's statutory exemption for service arrangements. The regulation would require service providers to disclose, in writing, to plan fiduciaries of 401(k) plans, all services to be furnished; all direct and indirect compensation to be received; and any potential conflict of interest, such as certain third-party relationships, that could affect their objectivity under a service contract or arrangement.

front," at the beginning of a service relationship. In our discussions with Labor officials, they noted that the better scenario would have been publishing the finalized 408(b)(2) regulation before the new Form 5500 requirements and acknowledged the importance of coordinating the finalization of the proposed regulation with the Form 5500 requirements. The officials told us that the move to require electronic filing for the 2009 plan year led them to finalize the Schedule C requirements first. However, it is unclear when the 408(b)(2) regulation will be finalized, which is important given that the first Form 5500s will be filed under the new requirements in July 2010.

If the Schedule C requirements are not coordinated with the finalization of the proposed rule to change up-front disclosure, there could be competing sets of disclosure requirements for sponsors and service providers. Service providers had anticipated that the 408(b)(2) regulations would have already been finalized to coordinate with the changes to the Form 5500 to ensure they comply with both sets of rules at once. Without the coordination, service providers are in the position of potentially having to make expensive investments to update their data systems two separate times. In addition, coordinating the 408(b)(2) requirements with the Form 5500 requirements could help ensure that plan sponsors are meeting their fiduciary responsibilities when selecting or renewing a contract with a service provider.

## Labor Is Unclear about How It Will Use the New Information Reported on the Form 5500, and the Form 5500 May Continue to Not Provide Useful Fee Information to Labor and Others

Labor officials told us that they do not have specific plans for using the data received as a result of the new requirements, and we found that even with the changes, the Form 5500 may not be useful to Labor, sponsors, or others. Labor officials told us that they will wait to see how the newly required information is reported before determining its use. In addition, because plan sponsors will be required to list any service provider who fails to or refuses to provide the necessary information on the Schedule C, Labor could potentially pursue listed service providers for enforcement action. However, it is unclear whether Labor has any plans to devote additional resources to follow up on service providers. In fact, for the 2009 plan year, plan sponsors will not be required to list service providers who fail to provide information if the service provider provides a statement that they made a good-faith effort to make any necessary recordkeeping and information system changes in a timely fashion.

It is also unclear whether Labor has a plan to follow up with plan sponsors to ensure that they have received the newly required disclosures. Labor officials told us that the new requirements are meant to reinforce a fiduciary's obligation of monitoring service providers and plan fees and also are intended as an "exercise in discipline" for the sponsor, since the sponsor will have to create a financial record to submit it to Labor. According to these officials, this will ensure that sponsors receive the information they need about indirect compensation paid to service providers.

Labor's efforts are also meant to effect a behavioral change in plan sponsors and service providers. According to Labor officials, the intent is for plan sponsors to understand and then obtain the information they need to determine the reasonableness of the fees they are paying. Since service providers often prepare the Form 5500 on behalf of plan sponsors, the regulatory changes are also designed to notify service providers that compensation information should be provided to sponsors. Still, Labor and others are concerned that some service providers, who may not feel bound by Labor's reporting requirements, may neglect to list the indirect compensation they may have received.

Finally, the Form 5500 continues to have limited use for Labor, sponsors, and participants.

**Labor.** Despite Labor's efforts with the new Form 5500 requirements, information on asset-based fees is still not explicitly required to be reported on the form. As we have previously reported, the form does not explicitly list all of the fees paid from plan assets.[28] For example, plan sponsors were not required to report mutual fund investment fees to Labor, even though they received this information for each of the mutual funds they offered in the 401(k) plan in the form of a prospectus.[29] While prospectuses are provided to SEC, on a fund-by-fund basis, neither SEC nor Labor have readily available information to be able to link individual fund information to the various 401(k) plans to which the funds may be

[28]GAO-07-21.

[29]One 401(k) ratings and analytics firm believes that it is critical to separate out all the components of the expense ratio into the appropriate categories: for example, management fee, 12b-1, subtransfer agent, and shareholder servicing. The firm has devised a methodology to calculate a plan's total costs that company officials believe will enable a plan sponsor to estimate these costs and determine the impact on participant retirement outcomes. According to company officials, the end result will be a fully broken out list of all the fees in a 401(k) plan that allows comparison across plans and across different fee structures (bundled and unbundled).

offered as investment options.[30] Furthermore, prospectuses provide fees as expense ratios, which are used as an intermediate step in calculating net rates of return, and, as such, the dollar amount of deductions from plan assets are not explicitly stated.

Labor officials told us that asset-based fees are now required to be reported on the Schedule C. However, even with the changes made to the reporting of indirect compensation, plan sponsors may wind up only reporting the presence of such fees on the Schedule C along with the identity of the service provider. Because these fees are already reported to SEC, the service provider must either (1) provide the plan sponsor with a document that discloses the documents already sent to SEC, with references to the pages or sections of the documents that contain the required information, or (2) determine whether the amount of the fund's investment management fee that is allocable to the specific 401(k) plan is enough to be reportable, and then provide the dollar amount or a description of the formula used to calculate the amount of the compensation to the plan sponsor. The plan sponsor can then treat the asset-based fee or compensation as EIC and only report the identity of the service provider. Without information on all of the fees charged directly or indirectly to 401(k) plans, Labor is limited in its ability to identify fees that may be questionable.

Labor officials told us that the changes to the Form 5500 were not meant to result in a comprehensive database of plan fees, because Labor did not want to put an undue burden on plan sponsors to comply with the new Form 5500 requirements. Labor asserts the expansion of the Schedule C is already significant. In addition, Labor officials told us that because the Schedule C is only filled out by larger plans with more than 100 participants, the schedule is not a complete picture of the universe of plan fees.

[30]Mutual fund prospectuses are filed with SEC and are available to the public from SEC's Electronic Data Gathering, Analysis, and Retrieval System. The filings are not exclusive to those mutual funds offered as part of a 401(k) plan, but are an aggregate filing of fees associated with the funds, making it difficult for plan sponsors to determine their allocable share. Plan sponsors are not required to include prospectus fee disclosures with their Form 5500 filings. Furthermore, it is not an agency practice for SEC to provide prospectus information to Labor, nor would such a practice benefit Labor, unless the information was then consolidated with the corresponding Form 5500 filings for plans that offered the mutual fund.

**Sponsors.** The Form 5500 may also not be the best vehicle for sponsors to assess service provider fee reasonableness or to understand business arrangements between service providers, since the form is filed long after the plan sponsor has already engaged the provider and selected the investment options. For the most part, the form is filled out for plan sponsors by service providers, who know the compensation arrangements and how to calculate the fees charged. According to industry experts, determining the dollar amounts to attach to ineligible indirect compensation is a source of confusion, because although some indirect compensation is straightforward, the calculation of other compensation is left to the best judgment of the service provider. Also, service providers may also choose to disclose only the formulas they use to determine ineligible indirect compensation, making it difficult for sponsors to assess fees or understand business arrangements.

**Participants.** Participant groups told us that plan sponsors who use the Form 5500 to inform participants are likely to overwhelm participants with the volume and detail required as a result of Labor's new regulations. Both Labor and industry experts told us that the Schedule C is not designed to be used by participants because it does not provide them with an easy comparison of available investment options.

## Conclusions

Labor has recently made some effort to improve the Form 5500, specifically the Schedule C. However, the changes made seem unlikely to resolve the issues surrounding service provider disclosure to plan sponsors. Absent detailed guidance aimed at clarifying the indirect compensation reporting requirements, Labor is at risk of receiving inconsistent and incomparable information on the Schedule C. In addition, the new requirements currently give plan sponsors the option of not disclosing EIC on the Schedule C. If Labor allows certain indirect compensation to be deemed EIC, and therefore not to be reported, Labor will continue to have incomplete information on compensation received by service providers, and will be no better informed.

Similarly, as long as asset-based fees netted from an investment fund's performance are not required to be reported on the Form 5500, sponsors, participants, and Labor will not know the true costs of a plan. Requiring plan sponsors or administrators to report more complete information to Labor on fees—that is, those paid out of plan assets or by participants—puts the agency in a better position to effectively oversee defined contribution plans.

Despite Labor's intentions in changing the Form 5500 Schedule C, the way the regulations are currently written may not result in an increase in the amount of meaningful service provider compensation information reported to Labor. In addition, it is unclear whether plan sponsors will actually receive the information on service provider compensation that Labor believes is important for them to have. Because of the option to distinguish indirect compensation as either eligible or ineligible, service providers may choose to qualify their compensation as EIC and not provide their disclosures to plan sponsors.

Meanwhile, Labor has also proposed regulatory changes that could eliminate some of the confusion surrounding 408(b)(2) disclosure requirements. However, it is unclear whether the final regulations will be coordinated with the existing changes to the Form 5500 reporting requirements. Coordinating these initiatives may reduce the burden and the cost to service providers and clarify for plan sponsors the information they need for the service provider selection and renewal processes.

Finally, as we suggested in our November 2006 report, absent a statutory change with explicit requirements for service providers, Labor will continue to lack comprehensive information on all fees being charged directly or indirectly to 401(k) plans.

## Recommendations for Executive Action

To minimize the possibility that inconsistent and incomparable information will be reported on the Schedule C and to ensure that the data collected results in meaningful information for Labor, sponsors, and participants, we recommend that the Secretary of Labor take the following action:

- Provide additional guidance regarding the reporting of indirect compensation and require that all indirect compensation be disclosed on the Schedule C.

Furthermore, consistent with our previous recommendation, to ensure comparable disclosure among all types of service providers and ensure that all investment products' fees are fairly disclosed, we recommend that the Secretary of Labor take the following action:

- Require asset-based fees that are netted from an investment fund's performance (and, as such, are not paid with plan assets) be explicitly reported on the Form 5500.

To reduce the potential for additional costs and burden being placed on service providers, we recommend that the Secretary of Labor take the following action:

- Coordinate the implementation of the Form 5500 revisions with the publication of its final 408(b)(2) regulations, since the two initiatives are closely related.

## Agency Comments and Our Evaluation

We provided a draft of this report to the Department of Labor (Labor). We received written comments from the Assistant Secretary for Employee Benefits Security Administration, which we reproduced in appendix I. Labor generally agreed with our recommendations. Labor also provided technical comments, which we have incorporated in this report where appropriate.

Labor stated that it is committed to making the shift to the expanded Schedule C reporting requirements as smooth as possible, and that it has already engaged in substantial outreach on the new reporting requirements. Specifically, regarding our recommendation that Labor provide additional guidance on the reporting of indirect compensation, Labor stated that it has plans to continue its outreach efforts, including publishing additional Schedule C guidance. Regarding our recommendation that all indirect compensation be disclosed on the Schedule C and that asset-based fees be explicitly reported on the Form 5500, Labor explained that it had originally proposed that all indirect compensation charged against a plan's investments be required to be reported on the Schedule C, without providing an alternative reporting option. However, Labor provided an alternative reporting option for eligible indirect compensation to plan fiduciaries on the basis of comments received on the proposed rule. Labor stated that the alternative reporting option would provide the department with enough information to engage in effective oversight activities. Labor also stated that once Schedule C reporting begins (for most plans, July 2010 and later), it will be able to evaluate the data it receives, taking into consideration our recommendation. Although Labor stated in its comments that its eligible indirect compensation reporting requirements are intended to help ensure fiduciaries are collecting information and evaluating service provider indirect compensation, we believe that it is also important for the indirect compensation information to be reported to Labor. As we stated in our report, we continue to believe that Labor will not receive enough information to engage in effective oversight activities. Finally, Labor stated that it agreed with our recommendation to coordinate the implementation of the Form 5500 regulations with the publication of its final 408(b)(2) regulation, and that it will continue to coordinate the two initiatives.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution until 30 days after the date of this report. At that time, we will send copies of this report to the appropriate congressional committees, the Secretary of Labor, and other interested parties. In addition, the report will be available at no charge on GAO's Web site at http://www.gao.gov.

If you or your staff has any questions concerning this report, please contact me at (202) 512-7215 or bovbjergb@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix II.

Sincerely yours,

Barbara D. Bovbjerg
Director, Education, Workforce, and
Income Security Issues

# Appendix I: Comments from the Department of Labor

**U.S. Department of Labor**

Assistant Secretary for
Employee Benefits Security Administration
Washington, D.C. 20210

October 19, 2009

Ms. Barbara D. Bovbjerg
Director, Education, Workforce, and Income Security Issues
United States Government Accountability Office
Washington, DC 20548

Dear Ms. Bovbjerg:

Thank you for the opportunity to review the Government Accountability Office's (GAO) draft report entitled "Private Pensions: Additional Changes Could Improve Employee Benefit Plan Financial Reporting" (GAO-10-54). Your recommendations focus on new requirements for reporting information on service provider fees and other compensation on the Schedule C (Service Provider Information) of the Form 5500 Annual Return/Report of Employee Benefit Plan, generally effective for plan years beginning on or after January 1, 2009.

The Department of Labor (Department) is responsible for administering and enforcing the fiduciary, reporting, and disclosure provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). ERISA requires plan fiduciaries, when selecting or monitoring service providers, to act prudently and solely in the interest of the plan's participants and beneficiaries. Having information sufficient to enable the plan fiduciary to make informed decisions about the services and the reasonableness of the costs for those services is critical because excessive fees can undermine the retirement security of plan participants. Similarly, understanding how expenses affect participant accounts is of critical importance to plan participants and beneficiaries in choosing among investment alternatives.

The increasing use of charges against investment funds, revenue sharing among service providers, and other "indirect compensation" arrangements has presented challenges for many plan officials trying to understand and monitor service providers' compensation. In recognition of those challenges, the Department undertook separate, but related regulatory initiatives intended to help plan sponsors and participants. As noted in the GAO draft report, in addition to expanding indirect compensation reporting on Schedule C, the Department is engaged in rulemaking to amend the ERISA section 408(b)(2) regulation to require service providers to make up front fee and compensation disclosures to plan fiduciaries. The Department also published a proposed rule to improve the disclosure of fee information to pension plan participants by, among other things, requiring information on investment fees charged to individual accounts to be furnished to participants and beneficiaries in individual account plans.

Your draft report recommends that (1) the Department provide additional guidance regarding the reporting of indirect compensation and require that all indirect compensation be disclosed on the Schedule C; (2) coordinate the implementation of its new Form 5500 requirements with the publication of its 408(b)(2) regulation; and (3) require that asset-based fees that are netted from an investment fund's performance be explicitly reported on the Form 5500.

With respect to your first recommendation, the draft report noted that members of the regulated community have noted the possible confusion that might exist in technical applications of reporting on the new Schedule C revenue sharing and other indirect compensation received by service providers from sources other than directly from the plan or plan sponsor. The Department is committed to making the shift to these expanded Schedule C reporting requirements as smooth as possible. The Department has already engaged in substantial outreach on both the new EFAST2 system and the new reporting requirements. In addition to publishing Frequently Asked Questions on the 2009 Schedule C, the Department has participated in many public programs and seminars and is also offering a series of free webcasts on the new reporting requirements. The Department intends to continue its outreach efforts, including publishing additional Schedule C guidance on its website and updating existing educational materials.

As to your second recommendation that the Department coordinate the implementation of the Form 5500 revisions with the publication of its 408(b)(2) regulation, as GAO recognized, the Schedule C revisions are an integral part of the Department's multi-faceted initiative to improve the quality and comprehensibility of service provider fee and compensation information. We agree with GAO's recommendation and will continue to coordinate the initiatives.

Finally, the draft report recommended that, in order to ensure comparable disclosure among all types of service providers and ensure that all investment products' fees are fairly disclosed, the Department should modify the alternative reporting option for "eligible indirect compensation" and require asset-based fees that are netted from an investment fund's performance (and not paid directly by the plan) be explicitly reported on the Form 5500. GAO expressed concern that the alternative reporting option would preclude the Department from obtaining comprehensive data on indirect compensation received by service providers in connection with services provided to employee benefit plans.

As originally proposed, all indirect compensation charged against the plan's investments was required to be reported on the Schedule C, without providing an alternative reporting option. Comments from the regulated community objected to the requirement. They expressed concerns that the nature and complexity of the business and investment environment in which plans operate, including omnibus account structures, would make it extremely burdensome, costly, and potentially misleading to attempt to allocate indirect compensation at the per plan or per participant level. Commenters also observed some of the fee information relevant to the plan administrator in connection with evaluating investments, such as asset-based charges in mutual funds, is already required to be disclosed to the Securities and Exchange Commission.

Although the Form 5500 generally serves as a source of data for use by the government and private sector in assessing employee benefit, tax, economic trends, and policies, the revisions to the Schedule C were not designed with an eye toward creating a government data-base for evaluating and comparing indirect compensation arrangements in the pension plan market place. The Schedule C "eligible indirect compensation" reporting requirements were intended to help ensure fiduciaries were collecting information and evaluating service provider indirect compensation. Specifically, in attempting to strike a balance between the costs and benefits of improved disclosure of investment-related fees and expenses, the Department concluded that some of the concerns regarding the burden and complexity of allocating fees charged in an

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omnibus account structure could be addressed by establishing a separate reporting rule that relied on disclosures regarding those fees resulting from other regulations or business practices if those disclosures met the objectives underlying the Department's Schedule C proposal. The final Schedule C revisions thus included an alternative reporting option for "eligible indirect compensation." In the case of asset-based charges against plan investments, the alternative reporting option requires that the plan identify on the Schedule C the person from which the administrator receives certain required disclosures regarding that compensation.

The Department has previously expressed its opinion that in hiring and retaining service providers plan fiduciaries must engage in an objective process designed to elicit information necessary to assess the qualifications of the provider, the quality of services offered, and the reasonableness of the fees charged in light of the services provided. In addition, the process should be designed to avoid self-dealing, conflicts of interest, or other improper influence. The "alternative reporting option" for eligible indirect compensation was intended to emphasize and reinforce the obligation of a plan fiduciary to review plan expenses as part of the on-going obligation to monitor service provider arrangements. The Department also concluded that it would provide the Department with enough information to engage in effective oversight activities while addressing concerns about annual reporting burdens and costs, which are increasingly being passed on to plan participants and beneficiaries. Plans choosing the alternative reporting option would also bear the burden of maintaining records sufficient to demonstrate compliance with the conditions of the alternative reporting option.

In reaching those conclusions, the Department was mindful of the fact, noted in the GAO draft report, that the Schedule C is filed by only large funded plans and that only service providers that receive $5000 or more in compensation are covered. Thus, the fee information on Schedule C is by definition an incomplete data field. We also were sensitive to the Schedule C changes being part of a broader Form 5500 update, i.e., the changes to implement a mandatory electronic filing requirement for a new form processing system (EFAST2), new pension plan reporting requirements mandated by the Pension Protection Act (PPA), and a new Short Form 5500 to satisfy a separate PPA mandate to develop a new even more simplified report for small plans.

Nonetheless, we appreciate GAO's interest in enhancing service provider fee reporting to optimize the data available to Department and other enforcement agencies and research entities. We continually review the Form 5500 to see whether changes are needed. Once Schedule C reporting begins (for most plans July 2010 and later), we will be able to evaluate the data we receive, taking into account GAO's recommendation. Also, although we want to avoid using the Schedule C to accomplish fee disclosure objectives better dealt with in our 408(b)(2) fiduciary disclosure regulation or our participant level fee disclosure regulation, we will continue to explore ways to enhance reporting fee information in conjunction with those related projects.

Sincerely,

Phyllis C. Borzi

Phyllis C. Borzi
Assistant Secretary

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# Appendix II: GAO Contact and Staff Acknowledgments

## GAO Contact

Barbara Bovbjerg, (202) 512-7215 or bovbjergb@gao.gov

## Staff Acknowledgments

The following team members made key contributions to this report: Tamara Cross, Assistant Director; Monika Gomez, Analyst-in-Charge; Christopher Langford; James Bennett; Jessica Orr; Walter Vance; and Roger Thomas.

# Related GAO Products

*Private Pensions: Conflicts of Interest Can Affect Defined Benefit and Defined Contribution Plans.* GAO-09-503T. Washington, D.C.: March 24, 2009.

*Private Pensions: Fulfilling Fiduciary Obligations Can Present Challenges for 401(k) Plan Sponsors.* GAO-08-774. Washington, D.C.: July 16, 2008.

*Private Pensions: GAO Survey of 401(k) Plan Sponsor Practices (GAO-08-870SP, July 2008), an E-supplement to GAO-08-774.* GAO-08-870SP. Washington, D.C.: July 16, 2008.

*Private Pensions: Information That Sponsors and Participants Need to Understand 401(k) Plan Fees.* GAO-08-222T. Washington, D.C.: October 30, 2007.

*Private Pensions: 401(k) Plan Participants and Sponsors Need Better Information on Fees.* GAO-08-95T. Washington, D.C.: October 24, 2007.

*Defined Benefit Pensions: Conflicts of Interest Involving High Risk or Terminated Plans Pose Enforcement Challenges.* GAO-07-703. Washington, D.C.: June 28, 2007.

*Private Pensions: Increased Reliance on 401(k) Plans Calls for Better Information on Fees.* GAO-07-530T. Washington, D.C.: March 6, 2007.

*Private Pensions: Changes Needed to Provide 401(k) Plan Participants and the Department of Labor Better Information on Fees.* GAO-07-21. Washington, D.C.: November 16, 2006.

*Private Pensions: Government Actions Could Improve the Timeliness and Content of Form 5500 Pension Information.* GAO-05-491. Washington, D.C.: June 3, 2005.

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