



4245 North Fairfax Drive  
Suite 750  
Arlington, VA 22203  
P 703.516.9300 F 703.516.9308  
www.asppa.org

July 29, 2013

Mr. John J. Canary  
Director of Regulations and Interpretations  
Department of Labor  
Employee Benefit Security Administration  
200 Constitution Avenue, NW  
Suite N-5655  
Washington, D.C. 20210

**Re: Proposed Revisions to Schedule C (Form 5500)**

Dear Mr. Canary:

The American Society of Pension Professionals & Actuaries (“ASPPA”) respectfully requests that the Department of Labor (“DOL”) consider enhancements to Schedule C of the Form 5500 (“Schedule C”) that: (a) take advantage of the implementation of the regulations under Section 408(b)(2) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”); and (b) improve consistency in reporting information about persons receiving indirect compensation.

ASPPA is a national organization of more than 15,000 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement plan professionals of all disciplines including consultants, administrators, actuaries, accountants, and attorneys. Our large and broad-based membership gives ASPPA unique insight into current practical applications of ERISA and qualified retirement plans. ASPPA’s membership is diverse but united by a common dedication to the employer-based retirement plan system.

**Summary**

The following is a summary of ASPPA’s recommendations which are described in greater detail in the **Discussion** section which follows.

- I. **Simplify Reporting of Service Providers Receiving Indirect Compensation** - The DOL should modify Schedule C as shown in the attached sample format to provide that reporting in Part I is focused solely on information about service providers that receive indirect compensation, thereby eliminating any distinction between indirect compensation which is “eligible” for simplified reporting and indirect compensation which is not eligible for such reporting.
- II. **Modify Reporting of Service Providers Receiving Direct Compensation** - The DOL should modify Part II of Schedule C as shown in the attached sample format to provide

that information reported about service providers which receive \$5,000 or more of direct compensation be limited to the amount of direct compensation, the service codes associated with such compensation, and whether the service provider received any indirect compensation from the plan.

- III. **Change in the Time for the Reporting of Terminated Accountants and Enrolled Actuaries** - The DOL should update the instructions to Part III of Schedule C (*Termination Information on Accountants and Enrolled Actuaries*) to provide that the termination of a plan's accountant or enrolled actuary should be reported on Schedule C for the plan year in which the change is first reflected on either the Accountant's Opinion or the Actuarial Schedule (SB or MB).

ASPPA's proposed revisions to Schedule C (see enclosed sample format) and its instructions will benefit the DOL and other Schedule C filers and users in the following ways:

1. The proposal retains most of the disclosure rules currently in effect, which have enhanced plan sponsor awareness of all compensation (direct and indirect) that may be paid to a service provider.
2. The proposal eliminates the "eligible" classification as it currently applies to reporting of indirect compensation on Schedule C, thereby discarding reporting aspects that are the cause of much confusion and varied interpretations by preparers and filers.
3. The proposal allows filers to provide more useful information by identifying those persons who have attempted to fulfill their obligations under the ERISA Section 408(b)(2) regulations.
4. The proposal eliminates the need to report a service provider's failure to provide the appropriate disclosure of compensation on Schedule C because sponsors of both large and small plans have the ability to register a notice of such failure on the DOL's Website.<sup>1</sup>
5. The proposal simplifies service codes to eliminate duplications and promote more uniform application of classifications.
6. The proposal allows the DOL to compile data that is more useful for analytical purposes.

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<sup>1</sup> See, <http://www.dol.gov/ebsa/regs/feedisclosurefailurenotice.html>.

## Discussion

### I. Simplify Reporting of Service Providers Receiving Indirect Compensation

Beginning with 2009 plan year filings, Form 5500 series reports filed on behalf of large plans were required to provide information on Schedule C that was intended to increase transparency regarding compensation and expenses paid by such plans. The DOL's goal was to ensure that plan fiduciaries charged with the obligation to monitor service provider arrangements obtained the information needed to assess compensation for services rendered to the plan, taking into account revenue sharing arrangements among service providers.

It is generally acknowledged that this effort was hindered by the delay in implementing new compensation disclosure rules under ERISA Section 408(b)(2). Comprehensive disclosure rules under ERISA Section 408(b)(2) were subsequently promulgated effective July 1, 2012. These disclosures inform the plan administrator about possible compensation, fees, and expenses that may be incurred by the plan and its participants.

Schedule C currently requires the disclosure of all direct and indirect compensation actually paid by a plan. However, the DOL created a class of indirect compensation that was "eligible" for simplified reporting. Regardless of the class of indirect compensation, the recipient of such payments is required to provide after-the-fact confirmation of the compensation actually received from the plan so that it may be reported on Schedule C.

We now have three years of experience with the current Schedule C and can make the following observations:

1. The delivery of information to complete Schedule C by persons receiving indirect compensation during the plan year has improved. That said, no industry standard for reporting such information has emerged.
2. Line 1 of Schedule C currently requires only the disclosure of the name of the person who provided the disclosures of eligible indirect compensation. No information is provided about the person who actually received the compensation (as is required on line 2 of Schedule C), nor is it necessary to quantify the compensation, fee, or expense.
3. It has been the experience of ASPPA members who have reviewed disclosures from a variety of providers that there have been conflicting interpretations of the *Instructions for Schedule C* with regard to similar types of payments. For example, one disclosure might reflect certain compensation and expenses of a mutual fund as reportable on lines 2 and 3 of Schedule C, while another disclosure for basically the same type of payments suggests the payments are reportable on line 1 of Schedule C.

4. This uncertainty results in the same types of compensation being reported inconsistently, as most preparers are not inclined to challenge whether a disclosure should appear on line 1, 2, and/or 3 of Schedule C. Therefore, they typically report the information as it is provided to them. While this satisfies the plan's disclosure obligation, it provides the DOL (and other users of the Form 5500) with data that is less useful for analytical purposes.

ASPPA's proposed revisions modify the format of Schedule C (see enclosed sample format) and simplify the current reporting scheme by requiring identification in Part I of any person(s) who provided ERISA Section 408(b)(2) disclosures to the plan. It should be noted that:

1. ASPPA's proposal eliminates the need for Form 5550 filers to determine whether any indirect compensation is *eligible* for simplified reporting, thereby permitting more useful and consistent data collection. Line (a) of ASPPA's proposed Schedule C format recognizes that some entities (e.g., mutual funds) which may receive indirect compensation are not required to provide disclosures under ERISA Section 408(b)(2).
2. ASPPA's proposal mirrors the \$1,000 threshold for ERISA Section 408(b)(2) as the benchmark for reporting on line 3 of Part I of Schedule C.
3. ASPPA's proposal anticipates that reporting of a service provider in Part I of the sample format Schedule C is independent of the requirement to report (in Part II of the sample format Schedule C) any direct compensation paid to that service provider.
4. ASPPA's proposal allows plan sponsors to utilize ERISA Section 408(b)(2) disclosures as the basis for answering line (b) of the proposed Schedule C sample format, thereby simplifying data gathering efforts and reinforcing the significance of the ERISA Section 408(b)(2) disclosure requirement.
5. ASPPA's proposal eliminates the need to report service providers who fail or refuse to provide information to complete Schedule C (current form Part II, Line 4).

**ASPPA recommends** that the DOL should modify Schedule C to provide that reporting in Part I is focused solely on information about service providers that receive indirect compensation and eliminate any distinction between indirect compensation which is *eligible* for simplified reporting and indirect compensation which is not eligible for such reporting. Reporting of a service provider in Part I of Schedule C should be without regard to whether the service provider also received direct compensation reportable in Part II of Schedule C.

## **II. Modify Reporting of Service Providers Receiving Direct Compensation**

The current Schedule C requires the reporting of *Information on Other Service Providers Receiving Direct or Indirect Compensation* on line 2 of Part I. As previously noted, the

distinction between indirect compensation which is *eligible* for simplified reporting and the industry's response to the requirement to provide data to complete Schedule C has resulted in a variety of interpretations of the *Instructions for Schedule C* with regard to similar types of compensation payments. For example, one disclosure may reflect certain compensation and expenses of a mutual fund as reportable on lines 2 and 3 of Schedule C while another disclosure for basically the same type of compensation payments suggests the payment is reportable on line 1 of Schedule C.

ASPPA's proposal is designed to reduce or eliminate the opportunity for misinterpretation of the reporting rules. The proposal retains the reporting in Part II of the current Schedule C of persons receiving \$5,000 or more of direct compensation during the plan year. In addition, service providers that receive \$5,000 or more of direct compensation and that also receive indirect compensation (in any amount) must also be so identified. It should be noted that, as with the current Schedule C, the proposed revision of Schedule C anticipates that amounts reported in Part I of Schedule A of the Form 5500 are counted toward the \$5,000 threshold for identifying persons who must be reported in Part II of the revised Schedule C.

ASPPA recognizes that this approach may result in a person being reported in both Parts I and II of the sample format Schedule C. However, these new rules will result in Form 5500 filers having a more uniform interpretation of the reporting rules and, therefore, a more consistent reporting of identical (or similar) types of compensation. As a result, the DOL will have more accurate data for analytical purposes.

This streamlined approach to reporting direct and indirect compensation allows for a corresponding simplification of service codes because it is unnecessary to identify different types of indirect compensation. ASPPA's proposal includes a modified listing of service codes.

**ASPPA recommends** that the DOL should modify Schedule C to provide that information reported about service providers which receive \$5,000 or more of direct compensation be limited to the amount of direct compensation, the service codes associated with such compensation, and whether the service provider also received any indirect compensation from the plan.

### **III. Change in the Time for the Reporting of Terminated Accountants and Enrolled Actuaries**

ASPPA's proposed revisions to Schedule C anticipate the continued collection of data regarding terminated accountants and enrolled actuaries. However, the instructions regarding the reporting of such data should be revised to provide that any termination of these professionals be reported on Schedule C for the plan year in which the change is first reflected on either the Accountant's Opinion or the Actuarial Schedule (SB or MB).<sup>2</sup> For example, if ABC Accounting Firm ("ABC") issued the Accountant's Opinion for the 2013 plan year but XYZ Accounting Firm

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<sup>2</sup> Currently, the information is reported on Schedule C for the plan year during which the termination occurred. *See, Instructions for Schedule C.*

issues the Accountant's Opinion for the 2014 plan year, the information reported on Part III of Schedule C regarding the termination of ABC should be reported in the 2014 plan year filing (as opposed to being reported in the filing for the plan year during which ABC was terminated).

**ASPPA recommends** that the DOL should update the instructions to Part III of Schedule C (*Termination Information on Accountants and Enrolled Actuaries*) to provide that the termination of a plan's accountant or enrolled actuary should be reported on Schedule C for the plan year in which the change is first reflected on either the Accountant's Opinion or the Actuarial Schedule (SB or MB).

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These comments were prepared by ASPPA's Schedule C Task Force subcommittee of the Government Affairs Committee, Janice M. Wegesin, Chair. Please contact Craig P. Hoffman, General Counsel and Director of Regulatory Affairs, at (703) 516-9300 if you have any comments or questions on the matters discussed above. Thank you for your time and consideration.

Sincerely,

/s/

Brian H. Graff, Esq., APM  
Executive Director/CEO

/s/

Judy A. Miller, MSPA  
Chief of Actuarial Issues

/s/

Craig P. Hoffman, Esq., APM  
General Counsel

/s/

John R. Markley, FSPA, Co-Chair  
Gov't Affairs Committee

/s/

Ilene H. Ferenczy, Esq., APM, Co-Chair  
Gov't Affairs Committee

/s/

Robert M. Kaplan, CPC, QPA, Co-Chair  
Gov't Affairs Committee

cc:

Mr. Jeffery J. Turner  
Deputy Director of Regulations and Interpretations  
US Department of Labor  
200 Constitution Avenue NW  
Room 5669 North  
Washington, D.C. 20210-0001

Mr. Ian Dingwall  
Chief Account  
US Department of Labor  
200 Constitution Avenue NW  
Room N-5510  
Washington, D.C. 20210-0001

Mr. Scott C. Albert, QPA  
Chief, Division of Reporting Compliance  
Office of the Chief Accountant  
US Department of Labor  
200 Constitution Avenue NW, Ste 400  
Washington, D.C. 20210-0001

<b>SCHEDULE C (Form 5500)</b> Department of the Treasury  Internal Revenue Service  Department of Labor  Employee Benefits Security Administration  Pension Benefit Guaranty Corporation	<b>Service Provider Information</b>  This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA).  File as an attachment to Form 5500	OMB No. 1210-0110  <b>201X</b>  This Form is Open to Public Inspection.
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2012 or fiscal plan year	
<b>A Name of plan</b>	<b>B Three-digit plan number (PN)</b>
<b>C Plan sponsor's name as shown on line 2a of Form 5500</b>	<b>D Employer Identification Number (EIN)</b>

**Part I Information on Service Providers Receiving Indirect Compensation**  
(complete as many entries as needed)

**Information on Service Providers Receiving Indirect Compensation**  
(see instructions for definitions and conditions)

- a Check "Yes" or "No" to indicate whether the plan paid any indirect compensation (i.e., money or anything else of monetary value) to persons not required to provide disclosures under ERISA 408(b)(2). . . . .  Yes  No
- b Check "Yes" or "No" to indicate whether the responsible plan fiduciary received the required disclosures under ERISA 408(b)(2) from any service providers that may receive indirectly \$1,000 or more in total compensation (i.e., money or anything else of monetary value) in connection with services rendered to the plan or the person's position with the plan during the year . . . . .  Yes  No
- c If line b is "Yes," enter the (1) name and (2) EIN or address of each person who provided the required disclosures under ERISA 408(b)(2). Complete as many entries as needed.

**(c) Enter name and EIN or address of person receiving indirect compensation for which the required disclosures were provided**

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<b>SCHEDULE C (Form 5500)</b> Department of the Treasury  Internal Revenue Service Department of Labor  Employee Benefits Security Administration Pension Benefit Guaranty Corporation	<b>Service Provider Information</b>  This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA).  File as an attachment to Form 5500	OMB No. 1210-0110  <b>201X</b>  This Form is Open to Public Inspection.
	2012 or fiscal plan year	

<b>A Name of plan</b>	<b>B Three-digit plan number (PN)</b>
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**Part II Information on Service Providers Receiving Direct Compensation**  
(complete as many entries as needed)

**Information on Service Providers Receiving Direct Compensation**

- (i) List each person receiving direct payments of \$5,000 or more from the plan during the year.
- (ii) For direct payments of less than \$5,000, report only those persons who are also reported in Part I.

(a) Enter name and EIN or address (see instructions)

(b) Service Code(s)	(c) Is service provider required to provide disclosures under ERISA 408(b)(2)?	(d) Enter direct compensation paid by the plan.	(e) Did service provider receive indirect compensation?
	Yes X   No X		Yes X   No X

<b>SCHEDULE C (Form 5500)</b> Department of the Treasury  Internal Revenue Service  Department of Labor  Employee Benefits Security Administration  Pension Benefit Guaranty Corporation	<b>Service Provider Information</b>  This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA).  File as an attachment to Form 5500	OMB No. 1210-0110  <b>201X</b>  This Form is Open to Public Inspection.
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2012 or fiscal plan year

<b>A Name of plan</b>	<b>B Three-digit plan number (PN)</b>
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**Part III Termination Information on Accountants and Enrolled Actuaries (see instructions)**  
 (complete as many entries as needed)

<b>a Name:</b>	<b>b EIN:</b>
<b>c Position:</b>	
<b>d Address:</b>	<b>e Telephone:</b>

Explanation:

<i>Code</i>	<i>Service Provided</i>
10	Accounting (including auditing)
11	Actuarial
12	Claims processing – health and welfare only
13	Consulting
14	Custodial
15	Insurance agents and brokers
16	Insurance services
17	Investment management and advisory
18	Legal
19	Real estate brokerage
20	Recordkeeping / plan administration
21	Securities brokerage
22	Trustee
23	Valuation (appraisals, etc.)
24	Employee (plan sponsor)
25	Employee (plan)
26	Foreign entity (e.g., an agent or broker, bank, insurance company, etc. not operating within jurisdictional boundaries of the United States)
49	Other services
99	Other fee