

Department of Labor Issues Supplemental FAQs about the 2009 Form 5500 Schedule C Fee Disclosure Rules

November 9, 2009

On October 23, the U.S. Department of Labor (DOL) released its much-anticipated guidance on how to complete the new Schedule C to Form 5500. The new Schedule C must be used to report certain direct and indirect compensation received by service providers in connection with services provided to employee benefit plans, subject to the Employee Retirement Income Security Act of 1974, as amended (ERISA). As discussed in one of our previous LawFlashes, available at [http://www.morganlewis.com/pubs/EB_Form5500_ERISA408\(b\)\(2\)_LF_20dec07.pdf](http://www.morganlewis.com/pubs/EB_Form5500_ERISA408(b)(2)_LF_20dec07.pdf), the new Schedule C is applicable for plan years beginning in calendar year 2009 and represents major changes from the old schedule.

This new guidance takes the form of additional answers to frequently asked questions (FAQs), which supplement both the instructions to Schedule C and a set of FAQs released by the DOL in July 2008 (the 2008 FAQs). In general, the new FAQs clarify a number of technical issues and provide additional support for answers given in the 2008 FAQs.

Specifically, the new FAQs provide and clarify that:

- Promotional items (such as logo'd coffee mugs, calendars, greeting cards, and plaques) of insubstantial value are presumed not reportable.
- Reporting on Schedule C of a person's compensation is dependent upon the person's position or relationship with the plan.
- Mutual fund revenues (such as 12b-1 fees, sub-transfer fees, and shareholder services fees) paid through an agent of the mutual fund or other intermediary can still qualify as *eligible indirect compensation* reportable under the alternative reporting option under the schedule.
- The 2009 *good faith* reporting safe harbor, as provided for in 2008 FAQ #40, is only available where the service provider (i) makes a good faith effort to collect and provide the required information to the plan administrator, (ii) fails to collect all such information despite its efforts, and (iii) the service provider reports any and all such information it does collect for such reporting period, irrespective of the fact that such information may be incomplete.

The FAQs further clarify that the DOL expects plan administrators to reach out to the plan's

Washington, D.C.

Benjamin I. Delancy	202.739.5608	bdelancy@morganlewis.com
Stuart P. Kasiske	202.739.6368	skasiske@morganlewis.com
Daniel R. Kleinman	202.739.5143	dkleinman@morganlewis.com
Donald J. Myers	202.739.5666	dmyers@morganlewis.com
Michael B. Richman	202.739.5036	mrichman@morganlewis.com

About Morgan, Lewis & Bockius LLP

With 22 offices in the United States, Europe, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived startups—across all major industries. Our international team of attorneys, patent agents, employee benefits advisors, regulatory scientists, and other specialists—more than 3,000 professionals total—serves clients from locations in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, Minneapolis, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, and Washington, D.C. For more information about Morgan Lewis or its practices, please visit us online at www.morganlewis.com.

IRS Circular 230 Disclosure

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. For information about why we are required to include this legend, please see <http://www.morganlewis.com/circular230>.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered Attorney Advertising in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes.

© 2009 Morgan, Lewis & Bockius LLP. All Rights Reserved.