

Publications

DOL Issues New FAQs on Schedule C Reporting of Pharmacy-Related Compensation

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In November 2007, the Department of Labor (“DOL”) issued revised forms, instructions and reporting regulations in a major retooling of the Form 5500. At that time substantial changes to Schedule C were made to require plan administrators to report to the government indirect compensation earned by plan service providers through an intricate set of rules, effective beginning with the 2009 plan year. Over the last year and a half, DOL has issued two lists of frequently asked questions (“FAQs”) addressing Schedule C reporting issues, one in July of 2008 (http://www.dol.gov/ebsa/faqs/faq_scheduleC.html) and a second list in October of 2009 (<http://www.dol.gov/ebsa/faqs/faq-sch-C-supplement.html>) (“Supplemental FAQs”). Only a few of these FAQs address compensation paid in connection with health and welfare plans, and until now, there has been much discussion concerning the extent to which compensation earned by pharmacy benefit managers (“PBMs”) is reportable on Schedule C.

On February 4, 2010, the DOL added two FAQs to the supplemental FAQs issued last year; they specifically address whether certain direct and indirect compensation earned by PBMs is reportable for Schedule C purposes. While the guidance reiterates DOL’s previously-articulated position that PBMs generally would be considered plan service providers subject to Schedule C reporting, DOL nonetheless announced substantial, though potentially temporary, reporting relief for some forms of indirect compensation earned by PBMs, including rebate and discount revenue. See our attached memo discussing the FAQs.

You may also be interested to know that while DOL expects to shortly finalize its regulation under ERISA section 408(b)(2) requiring service providers to disclose comprehensive compensation information regarding both the direct and indirect compensation that they receive, the regulation apparently will not apply to welfare benefit plans, according to senior DOL officials. Instead, it appears that DOL has decided to pursue separate regulations under section 408(b)(2) for welfare plan service

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providers and may even hold hearings to develop evidence for these regulations. Please see the attached memo for further information.

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