



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.

PRIVATE PENSIONS

Additional Changes Could Improve Employee Benefit Plan Financial Reporting

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.