

# HICKS NOTES

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## DECEMBER YEAREND BRINGS RESPONSIBILITIES TO PLAN ADVISORS AND SPONSORS

As we prepare for another plan year, now is the time to perform your fiduciary duties under 408(b)(2) and to review your plan design. In addition, there are filing and contribution deadlines, mandatory testing, 1099's, and required distribution issues. This month's newsletter outlines duties and responsibilities that arise as we prepare for this plan yearend and next year's administration and design.

### FIDUCIARY DUTIES

All advisors and trustees must know who and how much advisors, consultants and administrators are paid and what services they are performing.

The new 408(b)(2) regulations require plan sponsors to do the following:

1. Assign individual responsible for identifying providers.
2. Identify providers subject to disclosure requirement.
3. Review the disclosures.
4. Benchmark against similar investments and fees.
5. Document your findings.

Is your administrator receiving additional compensation from your investments? How much are your participants paying out of their accounts? Anybody working with these plans must know and document these answers. Check out our [Hicks Legal LINK](#) for further info and help.

### WHAT TYPE OF ADVISOR ARE YOU

The trustee is required to practice due diligence in choosing who they work with in regards to their plan. Are you or your advisors operating under a 3(21) or a 3(38) fiduciary capacity? Depending on the level of advice an advisor is giving, they will be held to a fiduciary standard by law or by contract. A 3(21) helps the trustee fulfill his duties while a 3(38) takes over the entire function. A 3(38) must be an RIA, bank or insurance company. [Click here](#) for our website tab which further outlines these fiduciary distinctions.

### FISCAL CLIFF

Should Congress and the President not reach a deal, "revenue-seeking lawmakers" may look at limiting tax benefits on 401(k) plans. ASPPA, a leader in the pension industry, has launched the campaign **Save my 401(k)** in an attempt to protect 401(k) plans from potential tax reform. Visit [this LINK](#) for *What's at Stake* and *What to Do*.

## PLAN DESIGN

Is your plan working as it should? Have you had an enrollment meeting with your employees for the 2013 plan year? Has your employee make-up changed? Has your business's profits changed? Need a larger deduction? Now is the perfect time to review your current and future plan design.

We can add a 401(k) for a defined benefit plan sponsor who wants a larger deduction or amend the plan to lower next year's required contribution.

Safe Harbor alternatives or other design options can help the Top Heavy 401(k) plan.

If you or your clients are using a SEP or SIMPLE plan and have employees, clearly a 401(k) plan will be better. Let us show you how.

Be proactive and make 2013 changes now before it's too late. **CONTACT US FOR HELP!** [Click here.](#)

## ADMINISTRATIVE AND COMPLIANCE DEADLINES

Required Minimum Distributions for those over 70½ must be made by December 31st unless they turned 70½ this year, then it's April 1, 2013.

1099's will be prepared by either the TPA or the investment company. These must be sent by January 31, 2013. Do you have current addresses? What about those we can't find? There are missing participant programs, we can help.

Non-Safe Harbor 401(k) plans need ADP/ACP testing. Any excess contributions must be returned by March 15, 2013.

Employer Contributions are due by the time you file your tax returns. Need time? You can file an extension and defer those dates to September 15, 2013 for Corporations and October 15, 2013 for Sole Proprietors. All defined benefit contributions must be made by September 15<sup>th</sup>.

There are other NOTICE and FILING requirements including QDIA's, 404a, 5500, and other amendments. [Click on the link below](#) for our calendar of deadlines for the 2013 plan year.

### **2013 Compliance Calendar**

Call or email us with any questions, proposals or pension administration needs.