

HICKS NOTES

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DOL MAKES PUSH FOR COMPLIANCE IN 401(k) PLANS

According to the Department of Labor (DOL), 401(k) plans are not complying with the vast standards imposed by ERISA and other laws. 75% of plans audited last year resulted in fines, penalties or the plan sponsor being forced to make reimbursements for administrative errors. Since 2008, the DOL has added 1,000 enforcement personnel to continue 401(k) compliance audits.

A recent article on the Employee Benefits Legal Blog outlined the DOL's request for information received from one of their clients. The list is extensive. Many plan sponsors don't know they are responsible to maintain and have available records of not only the plan documents, but minutes of meetings with regards to RFPs of investment and service providers. Every sponsor needs to know and document, how much they pay in plan fees, to whom, and for what services they receive. The DOL is looking at anything and everything when they audit these plans. Here are some items they will request:

- They want to see a record of Plan documents, required amendments, proper filings of 5500's and W-2s and financial statements of the plan.
- For participants, they want to verify employees entered the plan when first eligible, were made aware of the plan provisions and investment options, and were informed of their rights and told where to get additional information.
- From an operational standpoint, the DOL wants to verify that contributions were made timely, loans were correctly calculated, processed and repaid, and distributions were paid in accordance with plan document. They will check allocation formulas, discrimination testing,

forfeiture allocations, and plan limits for accuracy. They will also make sure employer contributions, employee deferrals and loan repayments were calculated accurately and deposited in a timely manner.

- They want to see that the plan sponsor is performing their fiduciary responsibilities including their due diligence with regards to selecting investment and service providers while documenting the process for the decision. Remember, when working with other people's money, you are held to the highest standard of care for all actions and decisions. Document the process!

Failure to maintain these records and have them available may result in fines and penalties. For a link to this list, [click here](#).

While this may sound a little daunting, plan compliance will not be an issue if you circle yourself with qualified professionals who understand and do this work daily. A good investment advisor will handle the fiduciary side of things. They should bring you different investment choices that have been shopped for fees, returns and will provide added educational and informational value. A good plan administrator will handle the documents and the operational issues along with a good payroll and HR staff. For an article on the roles of these professionals, [click here](#). By having professionals in place monitoring the plan operation and responsibilities, a 401(k) plan can provide great benefits for long term employees and the employers who hire them.

For more information or a plan review, please contact us [here](#).

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