HICKS NOTES

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Legal and Pension Consultants
(800) 310-4975 | www.nhhicks.com

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Department of Labor and Internal Revenue Service Target Small Retirement Plans

We have seen an uptick in audits by government agencies that are focused on particular operational issues in retirement plans. These audits start with a letter requesting information. You can view the IRS or DOL letter. These letters are an extensive request for files going back many years. They ask for all plan documents as well as all amendments and supporting payroll documentation, tests and administrations. A good pension file will maintain administrative records for at least 12 years and all plan documents.

Once the request is filled, we are seeing the following areas of particular interest.

1. **Timely payroll deposits to 401(k) plans**: Generally, these deposits, employee 401(k) contributions and loan repayments, must be made no later than the 15th day of the month following the deduction. However, they are looking at when the earliest deposit was made and holding the employer to that standard for all deposits. It is always best to make the deposit at the same time the deduction is made or face scrutiny.

2. **Failure to follow the terms of the Plan Document**: The plan document outlines how the plan will operate. It is a minefield of operational issues that can trip up any employer. These include failure to auto-enroll a participant, misapplying the eligibility period to either keep participants out or allowing them in early, and not making timely matching or profit sharing contributions. Knowing what your plan says and following those provisions are a **must** in order to stay out of trouble.

3. **Administering the Plan properly**: This area is getting the most scrutiny. The issues include:
   - Determining eligibility for contributions and their deductibility as not to exceed plan limits;
   - Top heavy and ADP testing to ensure the appropriate Key and Highly Compensated employees are properly identified and the required contributions are correct; and
   - Make sure vesting is being properly applied at payouts and on reports.

   In addition, it is important that all loans be properly documents and payments made timely. Finally, make sure the appropriate safe harbor notices are given timely each year. Generally, this means they must be given between 30 and 90 days before the beginning of the next plan year.

4. **Fiduciary Issues**: Have you reviewed the agreements with your investment and service providers? How often? Are the fees your participants pay reasonable? Have you benchmarked returns and costs? This should be done annually and must be documented to prove your actions. Meeting notes and procedures should be kept in case of an audit.

5. **Defined Benefit Plans** are being scrutinized much more aggressively by the PBGC then in the past, in addition to the IRS and DOL. They appears to be questioning everything of all PBGC covered DB plans.

A review of your plan operations and working with the right people is imperative if you wish avoid audit sanctions. If you find a mistake before an audit, it can be fixed through various Voluntary Correction Programs with the DOL and IRS. Our Compliance Department is here and available to help in this area if you have a problem client. It is always better to find and correct the mistake yourself, then have it discovered under audit. The Feds are out there and they are coming for all plans. Need help, contact us here.