HICKS NOTES

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DEPARTMENT OF LABOR OUTLINES EXPECTATIONS PLAN FIDUCIARES

At a recent seminar, Jennifer Del Nero, assistant director for the DOL's Employee Benefits Security Administration (EBSA) in Atlanta, outlined four basic duties of Trustees and Plan Administrators. She stressed the importance of DOCUMENTING your actions with regards to these duties to prove you are compliant in the operation of your plan.

Act Solely in the Interests of Your Plan Participants and their Beneficiaries

Remember that you are running the plan to benefit your employees. In a 401(k) plan, they are contributing their own money. You can't use the money for your own benefit or gain any personal reward from running the plan. IRC 4975 outlines prohibited transactions and the exceptions to these rules. You need to treat each employee equally, fairly and be forthcoming with any information requests. There are numerous disclosures that need to be provided as well as access to education regarding the plan and its' investment choices. A good financial professional will help with these educational resources.

Be Prudent

The standard is the "The Prudent Man Investment Rule". Investorwords.com defines The fundamental principle for professional money management, stated by Judge Samuel Putnum in 1830: "Those with responsibility to invest money for others should act with prudence, discretion, intelligence, and regard for the safety of capital as well as income." Over time, state courts have added variations to this rule, but reasonable minds can differ on the application of this rule. Diversification is embedded, I believe in this rule. Again, by having a good financial planner that understands these standards can help protect Fiduciaries from their liability.

Pay Only Reasonable and Necessary Plan Expenses

When 408(b) regulations came out in 2012, the purpose was to give Trustees the information they need to compare service providers. The DOL is now requiring Trustees to follow these regulations and do the work needed to ensure their plans are not being overcharged. A recent article from the Pension Plan Fix-it Handbook does a nice job outlining your duties under these regulations. To view it click here. The DOL is now proposing more regulations that would require a guide to be produced to help clarify these responsibilities. Fiduciaries need to know who is getting paid, how much and what services they are providing. In addition, there is a duty to make sure the fees are reasonable by comparing them to others in the market. Finally, advisors need to be monitored to make sure they remain competitive.

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Follow the Terms of the Plan

The DOL does not want you exercising discretion when the plan is clear on a particular provision. There are specific rules regarding plan features such as loans, forfeitures and mandatory cash outs. Make sure you follow your particular plan provisions to keep out of trouble. Common mistakes found by the DOL include not making timely contributions and loan payments, calculating eligibility, and the communication and education of participants.

BOTTOM LINE

These new regulations are here to help plan sponsors fulfill their duties by making it easier to get pertinent information, so they can make better decisions for their participants and their beneficiaries. Hire good people to do your work at a reasonable fee and monitor their performance. Finally, document your actions with regards to how you operate the plan. Need help or have questions, contact us here.

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