

HICKS NOTES

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BEWARE OF THESE IRS AND DOL AUDIT TRAPS

Administering retirement plans is loaded with potential audit traps that everyone should be aware of. The two agencies tasked with audits are the IRS and the DOL and each audit is from a different perspective. Generally, the IRS seeks to review the plan from an internal control approach to the operation of the plan, while the DOL looks at process and documentation in an effort to protect the plan participants. Click for a review sample [IRS](#) and [DOL](#) audit letters.

IRS AUDITS - Here are a few common traps that many clients fall into when not working with professionals who can catch these IRS issues.

Not Following the Plan Document

While there is a tremendous amount of plan flexibility in plan design, once the document is created, it is incumbent to follow the terms of your particular plan. Is the plan a PPA document, have required amendments been timely adopted, and were notices given to participants? Are you applying employee eligibility correctly? Vesting? Top-heavy testing and plan limits are all reviewed when seeing if the administrator is following an up to date and executed plan document.

Does the Plan have Proper Participant Document?

Are the plan LOANS properly documented with promissory notes, security agreement and spousal consent? Are the notes being paid on time and properly documented? Are loans in default recorded and 1099-Rs issued? On DISTRIBUTIONS, the same documentation is reviewed. Proper notices, spousal consent forms should all be on file, signed and executed. Are you following proper procedure with respect to QDROs and spousal benefits under the plan? Is the withholding appropriate and forwarded to the IRS and/or state agencies? For a review of the various forms, click [here](#). Recently, IRS audits are focusing on whether or not participants have received their required minimum distributions from the plan. Check your plan document to see your plan's requirements.

Is the Plan Administered and Documented Properly?

There is the ADP test, Top-Heavy test and coverage tests that must be annually performed and documented. Are these tests on file? Were they passed? Are the Safe Harbor provisions being run and calculated properly? In addition, the definition of compensation is also an issue. Are you using the proper definition with regards to bonuses, commissions and overtime and cafeteria deductions? Better check your document for the definition of compensation you've adopted.

Has a Partial Plan Termination Occurred?

Another big trap is the partial plan termination rules. Have you had 20% or more of your participants terminate in one year? If so, they may be required to become 100% vested. Given the up and down nature of business these days, many clients will fall into this trap. Using a competent third party administrator is crucial to make sure you avoid these IRS traps.

DOL AUDITS - they are concerned with following their new disclosure and fiduciary regulations as well as a few administrative issues.

Is the Plan being Administered Properly?

On the administrative side, they want to make sure 401(k) contributions and loan repayments are deposited timely. They will ask for a register of deposits and hold the employer to the earliest deposit deadline of the bunch. All plans, except those covering only owners, are required to be covered by a fidelity bond. Click [here](#) to review your bonding requirements. ERISA In addition, a blackout notice must be given to participants when they will not have access to their funds to change investments, obtain loans or take plan distributions.

Are the Fiduciaries doing their Duties?

From the fiduciary perspective, the DOL wants to see minutes of meetings with financial and other plan advisors, and how the investment decisions are made. Has the trustee done their due diligence, at least annually, to REVIEW, BENCHMARK AND DOCUMENT the contracts with its various advisors? Are there hidden marketing, distribution and revenue sharing fees that can be reduced or used to offset plan costs? How much is each account being charged and is it reasonable?

Committee meeting minutes are critical to prove to the DOL that you are not asleep at the wheel and you are always keeping the participants best interest in mind. Incomplete minutes or gaps in the decision making process can raise issues with the DOL.

Have you reviewed your investment policy statement and are you following it? Like all auditors, they want to see paper. Do your duty and create the record.

In conclusion, as a whole these traps may seem daunting. But, by using people who work in this field every day, these pitfalls are easily avoided. Stay away from payroll providers and other bundled approaches to ensure you are paying for and getting the best investment, administration and legal advice.

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