

HICKS NOTES

NH HICKS Experience Counts

Legal and Pension Consultants

(800) 310-4975 | www.nhhicks.com

June 2017

By Tom Hicks, Attorney At Law

THE ONLY CONSTANT IS CHANGE, YET THE ISSUES REMAIN THE SAME

While many in the industry are touting the recent changes to retirement plans, the big issues remain the same.

Beginning **Friday, June 9th** the [new fiduciary rule](#) will take effect. This rule requires financial planners who work in the small plan market to execute a “Best Interest Contract” or BICE agreement. This rule is just an extension of the basic fiduciary duties previously outlined which require a plan sponsor to “**review, benchmark and document**” investment returns and fees paid by the plan and its participants. This fiduciary duty does not go away under the new rule. It remains the duty of plan sponsors to make sure they are getting a fair deal, but this new rule now puts the financial planner contractually on the hook to make sure it happens.

On the litigation front, while many new cases are working their way through the courts, the claims are all very similar. They focus on the prohibited transaction issues and the ERISA standards of LOYALTY and PRUDENCE. These issues include failure to monitor and shop investments, failure to get a fair deal on investment fees, and improper direct payments to plan providers which were not in the participant’s best interest. All of these issues were caused by a lack of “Fiduciary Diligence” on the part of the trustees and others. [Click here](#) to view more information. Technically, these duties have always been there, but now everybody is aware that diligence is required because of the case law learned from [Tibble](#).

In addition, the new regulation will put a greater burden on the named Trustees to truly understand who their service providers are, what services they are providing, how they are being compensated and whether it’s a prudent course of action. Financial planners who provide advice and services to retirement plans are now also on the hook to do the same because of the new contract they are required to sign.

Further, **beginning in 2018**, rollover advice to IRA holders will also become a fiduciary act by the investment advisor. Many argue a comparative analysis will be required when giving any IRA investment advice in 2018. The issue of advice versus education is an area where there is uncertainty, and everybody would be prudent to assume they are giving advice and use the higher standard.

The DOL has created [an FAQ](#) to help flush out what exactly is advice versus merely education.

Finally, **Technology** has changed the way we communicate and receive information. It is vital that plan sponsors communicate with service providers, advisors and plan participants. Part of this required diligence is employee communication through meetings, websites and comparative analysis. With changing technology, a good plan sponsor will build a communications model that assures the messages are being not only received, but understood and acted upon.

Resources are available on internet and should be used to help with all the required fiduciary duties. Here is a [link](#) to our website showing many investment providers that can be used to shop investment options and compare fees. Every good fiduciary should address the communication issues with their plan providers to make sure they are getting what they need for their participants and the plan’s administration. The technology and information are out there. Go find and utilize it.

In conclusion, while there appears to be a lot of change going on around us, the basic issues remain the same. Use change to make better, more prudent decisions for the plan’s administrative services, fees, and investments.

Join **our series of WEBINARS** in two weeks to learn more about how retirement plans can help your clients!! [Click here](#) to view the invitation.