NH HICKS

Legal and Pension Consultants

QUALIFIED PLANS IN TODAY'S ENVIRONMENT

Fiduciary & Legal Review

2019

NH HICKS

Legal and Pension Consultants
www.nhhicks.com

Who we are:

NH HICKS is a multi-generational company with one goal: To provide the best service, value and price in the retirement plan industry.

Each client is assigned an administrator and a consultant. Our administrators have over 250 years of combined experience. This provides administrative support by which we can ensure that all plan administration is performed in a timely manner, with a high degree of expertise. Our consultants assure a presence for one-on-one meetings to design and explain a plan that best fits a company's business and its retirement goals.

What we do:

NH HICKS specializes in quality pension plan administration with local service at a reasonable cost. We are a fee only third party pension administration and consulting firm that does not handle any investments or insurance. We offer flexibility through individually designed retirement plans and self-directed retirement accounts. Self-directed gives clients freedom to choose their own investments.

We currently administer over 1000 qualified retirement plans primarily throughout California, Oregon, Washington, Colorado, Utah and Idaho. Our goal is to provide excellent service to all clients by working closely with their tax and financial advisors.

Given the continuous stream of regulations, our firm and legal department are unsurpassed in experience and constantly updating and adapting to today's regulatory environment. Our annual plan review keeps our clients up-to-date with the best possible plan options along with keeping your plan in compliance with the latest IRS and DOL regulations.

www.nhhicks.com:

Our website is being updated daily with the newest regulations, common trends and articles from leaders in the financial industry. We have adapted to new technology, gone paperless, expanded our website and brought value through actively participating in numerous social media forums. You will also be able to find our complete staff biographies, email addresses, fees, forms, FAQ's and other vital information.

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PLAN DESIGN HIGHLIGHTS

FIDUCIARY & LEGAL ISSUES

- Litigation Updates – Tibble and Anthem
- The SECURE Act
- Significance of Fiduciary Status
- 3(16) vs. 3(21) vs. 3(38) Fiduciary
- New Fiduciary Regulations
- ERISA Fee Disclosure
- Investing in Real Estate
- Determination of Controlled Group
- Red Flag Issues
- Compliance Assistance
- Missing Participants
- State Sponsored Retirement Plans

HICKS NOTES

NH **HICKS** Experience Counts

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

June 2016

By Tom Hicks, Attorney At Law

SUMMER IS A GREAT TIME FOR A PLAN CHECK-UP

As the summer months approach and things slow down, now is a perfect time to be proactive and review your retirement plan and all its components. This month we provide areas of review and resources to help you and your clients accomplish this important task.

PLAN DOCUMENT: Every plan sponsor and fiduciary needs to make sure the plan is running properly. The document is the first line of defense. It should be reviewed to make sure it's been restated and the administration is being run according to the plan provisions. The IRS has created a checklist to help identify issues regarding documents. It can be viewed here.

Is the plan accomplishing the goals of the employer in providing benefits and tax breaks to those who need it the most? In the event of a plan audit, here is a link to our website and the sample IRS and DOL letters requesting information. Notice the extensive requests for documents and amendments.

ANNUAL ADMIINSTRATION: This is highly technical work and mistakes can be made in the administration process. Eligibility, vesting, accounting, loans and payments to and from the trust should be reviewed by an independent third party at least periodically. We all make mistakes, and if one is caught before an audit, there are various IRS and DOL programs in place that allow for self-correction.

The IRS has a plan checklist that outlines the requirements and issues to look for regarding the operation of these plans. This is helpful in that it gives insight into what the IRS is targeting should your plan be audited. To review, click here.

THE FIDUCIARY PROCESS: This is the "Hot Topic" of this year. There are new regulations and court cases regarding breaches of fiduciary duties and failure to exercise their duties. A thorough review of the decision making process is paramount to protecting everybody who works with these plans.

As an investment advisor, your job is to help in the drafting of the investment policy statement (IPS). This is the basis for the selection of investments. It needs to be written and should spell out the process by which funds are chosen. As a plan grows, it should be able to get cheaper funds because of the amount of assets. You cannot "set it and forget it" as the case of Tibble.

FEES: The 408(b)(2) regulations require that trustees understand the fees they and their participants are paying. Are they reasonable? Are they getting the proper value and service for what they are paying? Is anybody receiving "kickbacks" or other hidden fees, and are they being offset against administration costs? All of this is important because, in most 401(k) plans, the participant's accounts are being charged something. This annual review requires 3 things: REVIEW, BENCHMARK and DOCUMENTATION. For additional information, click here.

Are the participants getting the proper disclosures, statements and education they need? Ultimately, as a fiduciary, the plan sponsor's job is to put their participants first. They should review the information and educational materials provided to them. Annual meetings, website access to information, and other materials are important to fulfilling these duties. As a financial planner, it is your job to provide these services. The participants and fiduciaries depend on you. Don't forget to document the meeting and decision making process.

IN CONCLUSION: We have only scratched the surface of the various issues. The rules are being clarified through new regulations and court cases. We are providing a series of webinars next month where all of these issues are discussed further. For the invitation for these free webinars, click here.

As always, we are always available for questions, comment or proposals. Summer is here, now is the time!!

3(16) vs. 3(21) vs. 3(38) Fiduciary
What's the Difference?

"A retirement plan adviser can serve in with a 3(16), 3(21) or 3(38) fiduciary capacity, and in some cases, both capacities. The needs and desires of the plan sponsor typically dictate the specific arrangement, which is predicated upon the subject of risk mitigation versus risk avoidance."

3(16)
Named & acts as Plan Administrator
Oversees Management & Administration
Selection, evaluation & monitoring all providers
Evaluation of all plan fees
Delegate administration responsibilities
Oversee operation of Plan
Provide reporting & disclosure materials

3(21)
States in writing co-fiduciary status
Assists in drafting IPS
Helps design initial fund menu
Provides monitoring
Recommends changes
Recommends mapping strategies
Provides Documentation

3(38)
States in writing co-fiduciary status
Drafts IPS
Builds initial fun menu
Monitors menu
Makes changes
Determines mapping strategies
Provides Documentation

3(21) vs. 3(38) Fiduciary; What's the Difference? Gratke Wealth. David Gratke. 11-1-2011.
http://davidgratke.com/401k/321-vs-338-fiduciary-whats-the-difference/

HICKS NOTES

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April 2016 By Tom Hicks, Attorney At Law

FINAL FIDUCIARY RULE: WHAT YOU NEED TO KNOW

The Department of Labor (DOL) released on April 6, 2016 the final rule regarding investment advice and conflicts of interest in retirement plans, known as the FIDUCIARY RULE. I wrote about the pending rule last year in our May 2015 newsletter and changes are reflected in the final rule.

These rules answer the basic conundrum of how an investment advisor can be held as a fiduciary and still benefit from working with a retirement plan. This conflict of interest has plagued our industry for many years and this rule tries to clarify how advisors can work with these plans and still get paid. The DOL has issued a Fact Sheet that I've summarized and quoted below. Here's a basic primer on what you need to know:

Implementation Date: There is a one year open period, so firms only will be required to comply by April 10, 2017. In addition, the Best Interest Contract Exemption provides for a transition period from the April 2017 applicable date to January 1, 2018. Advisors working on 401(k) plans with less than 100 participants and under $50 million in assets will have to operate under the BIC exemption.

What constitutes Investment Advice: In order to be held as a fiduciary, the advice given must be considered a "recommendation" based on the entirety of the communication. "A recommendation is a communication that, based on its content, context and presentation, would reasonably be viewed as a suggestion that the advice recipient engage in or refrain from taking a particular course of action".

Covered Investment Advice includes "a recommendation to a plan, plan fiduciary, plan participant and beneficiary and IRA owner for a fee or other compensation, direct or indirect, as to the advisability of buying, holding, selling or exchanging securities or other investment property." This includes existing plan assets as well as rollovers into IRAs. It also included recommendations as to the management of securities investment policies or strategies, selection of account managers and methods as well as rollover advice. Mere education, "hire me" newsletter, marketing material and other communications that cannot be construed as investment advice are exempt under this rule.

Best Interest Contract Exemption: "In order to ensure retirement investors receive advice that is in their best interest while also allowing advisers to continue receiving commission-based compensation, the Department is issuing the Best Interest Contract Exemption (which some refer to as BIC or BICE)." In order for the exemption to exist, it "requires the financial institution to acknowledge fiduciary status for itself and its advisors. The financial institution and advisers must adhere to basic standards of impartial conduct, including giving prudent advice that is in the customer's best interest, avoiding making misleading statements, and receiving no more than reasonable compensation". The preamble of the regulation clarifies the advisor does not have to recommend the lowest cost product if another is more appropriate. "Best interest does not mean lowest priced product," Secretary Perez told reporters.

In addition the institution must make the appropriate disclosures about the conflicts of interest and the cost of such advice. They must commit to these costs via a written contract enforceable under other jurisdictions and ERISA. This will make it easier to sue in State court and lower the standards of proof, should an investor so decide.

There is language as to only requiring one contract with the client, not every participant. New contracts don't necessarily need to be re-executed and disclosure on account forms is fine as well as other technicalities towards the implementation of these rules. For a link to the DOL conflict of interest chart click here.

In conclusion, these rules will affect every investment firm and advisor that works with retirement plans and IRAs including rollovers. Knowing these rules and exercising prudence when dealing with retirement plans will be required or you will be held accountable. There will be more to come as these rules are flushed out and tested. Stay tuned…

DOL Announces Fiduciary Policy After Bombshell Ruling

401kspecialistmag.com/dol-announces-fiduciary-policy-after-bombshell-ruling/

John Sullivan

May 7, 2018

The Department of Labor will not pursue prohibited transactions claims against fiduciaries "who are working diligently and in good faith to comply with the impartial conduct standards."

It's the first release by the DOL in the aftermath of the bombshell ruling from the Fifth Circuit Court of Appeals that vacated the department's Conflict of Interest Rule, known colloquially as the fiduciary rule.

The latest announcement applies specifically to transactions that would have been exempted in the BIC Exemption and Principal Transactions Exemption. It added that it will not treat such fiduciaries (those acting diligently and in good faith) as having violated the applicable prohibited transaction rules.

It made the policy retroactive to June 9, 2017, and "until after regulations or exemptions or other administrative guidance has been issued."

"Of course, investment advice fiduciaries may also choose to rely upon other available exemptions to the extent applicable after the Fifth Circuit's decision, but the Department will not treat an adviser's failure to rely upon such other exemptions as resulting in a violation of the prohibited transaction rules if the adviser meets the terms of this enforcement policy," it said Monday in Field Assistance Bulletin No. 2018-02.

The Department is also "evaluating the need for other temporary or permanent prohibited

transaction relief for investment advice fiduciaries, including possible prospective and retroactive prohibited transaction relief. The Department will, of course, consider any applications for additional relief."

The document announces a temporary enforcement policy related to the DOL's rule defining who is a "fiduciary" under ERISA and the IRS Code, including the Best Interest Contract Exemption.

"At this point, however, the Department is aware that some financial institutions may be uncertain as to the breadth of the prohibited transaction exemptions that remain available for investment advice fiduciaries following the court's order."

The uncertainty about fiduciary obligations and the scope of exemptive relief could disrupt existing investment advice arrangements to the detriment of retirement plans, retirement investors, and financial institutions.

Further, some financial institutions have devoted significant resources to comply with the BIC Exemption and the Principal Transactions Exemption and may prefer to continue to rely upon the new compliance structures.

Based upon these concerns, the Department has concluded that financial institutions should be permitted to continue to rely upon the temporary enforcement policy, pending the Department's issuance of additional guidance.

TOPICS:401kDepartment of Laborfiduciaryregulationretirement

ERISA Fee Disclosures

408(b)(2) and 404(a)(5) are new ERISA regulations that require actions by the sponsors of all retirement plans with participant directed accounts. Each ruling has separate and distinct requirements. The purpose of these regulations is to ensure that plan fiduciaries (and plan participants who direct the investment of their individual accounts) have the information they need to make informed investment decisions.

Although much of the disclosure required by the new regulations is provided by investment companies or other service providers, plan fiduciaries will still need to educate plan participants about the fee disclosure and be prepared for questions from participants who will now see how much they are actually paying for certain services.

Here is a brief summary of these regulations:

- **408(b)(2) Disclosure to Plan Sponsors** – This regulation required "service providers" to provide plan fiduciaries with the following information in writing **by July 1, 2012:**

  1. A description of the services to be provided to the plan and/or plan participants (the services include those of registered investment advisors, brokerage firms, actuaries, accountants, and third party administrators);
  2. The fees and compensation deducted from participants accounts for those services.

  Once the plan sponsor has the disclosure, the next steps are to review it to determine whether the fees and services are reasonable and then document their findings.

  Failure to comply with these 408(b)(2) disclosure regulations constitutes a prohibited transaction subject to a 15% excise tax and exposing the plan fiduciary to personal liability for breach of fiduciary duty.

- **404(a)(5) Disclosure to Plan Participants** – **By August 30, 2012**, plan fiduciaries are required to make their initial disclosure of fees to all eligible employees (participating and nonparticipating), as well as to former employees and beneficiaries with account balances. Under 404(a)(5), plan fiduciaries are required to disclose the following:

  1. The information necessary to make informed decisions when selecting investments;
  2. An explanation of recordkeeping, administrative services and other expenses that are deducted from participant accounts;
  3. Fees for individual transactions, such as loan setup maintenance, and distributions, that are deducted from applicable participant's accounts.

  The first quarterly disclosure of fees actually charged to each participant's account was due on November 14, 2012.

For answers to questions about your fiduciary responsibilities under either the 408(b)(2) service-provider fee disclosure rules or 404(a) participant fee disclosure rules, go to nhhicks.com and click on Hicks Legal.

HICKS LEGAL
Fiduciary and Compliance Review Services

Why are Retirement Plan Fiduciaries turning to Independent Fiduciary Advisors?

ERISA imposes high standards upon fiduciaries. The courts refer to those duties as "the highest known to law". Retirement Plan fiduciaries may be personally liable if they know, or should have known, of a breach by another fiduciary. Pleading ignorance or inexperience will not be an adequate legal defense. Complying with the broadly expanded 408(b)(2) Regulations is a daunting task. ERISA encourages plan sponsors to hire "Prudent Experts".

To comply with the new 408(b)(2) regulation, a responsible plan fiduciary will develop procedures that will demonstrate that its arrangements with third-party service providers are reasonable. Documenting the process by which the required information is solicited, reviewed, and evaluated is the most effective means to achieve compliance. We provide individual consultation with a California Attorney to protect fiduciaries from this liability. We will meet with you to:

1. Identify an individual or committee that will be responsible for identifying covered service providers and soliciting and evaluating the required disclosures. The disclosures must be received "reasonably in advance" of the date the service provider contract or arrangement is entered into, extended, or renewed.

2. Implement a written policy or procedure to identify the duties of the responsible individual or committee, the required elements of disclosure (which differ depending on the type of covered service provider), and the process to be followed if the required disclosures are not provided, in whole or in part.

3. Document the responsible individual's or committee's review of the information disclosed and the report of its findings to the fiduciary with ultimate responsibility for entering into the service provider contract or arrangement. Document the process by which such fiduciary decision-making is made.

4. Provide "benchmarking" services to allow the responsible plan fiduciary to evaluate and compare the service provider's aggregate compensation with other comparable service providers and industry standards, and to otherwise assist in supporting the process by which the fiduciary determines and documents that a service provider's compensation is reasonable.

Procedural due diligence is especially important in evaluating the performance of investment options offered under a 401(k) or 403(b) plan where participants can direct the investment of their own accounts. Direct and indirect fees and other charges affect the value of participants' accounts, and the documentation of procedural diligence can provide an effective defense in the event of litigation claiming that the plan fiduciary has violated its duty to monitor fees and expenses.

Can a Plan Invest in Real Estate?

A Plan can invest in real estate provided that the document would allow for it. Any discussion must include the various issues involved. While a plan may invest in real estate, once the issues are flushed out, it should be apparent that it is not generally an appropriate investment for the small plan.

These issues are: Prohibited Transactions, UBTI, Fiduciary Issues, Valuation Problems and Tax issues.

The trustees must avoid creating a prohibited transaction with any real estate investment. Prohibited transactions are transactions between the plan and a disqualified person that are prohibited by law. Prohibited transactions generally include the following transactions:

- A transfer of plan income or assets to, or use of them by or for the benefit of, a disqualified person;
- Any act of a fiduciary by which he or she deals with plan income or assets in his or her own interest;
- The receipt of consideration by a fiduciary for his or her own account from any party dealing with the plan in a transaction that involves plan income or assets;
- Any of the following acts between the plan and a disqualified person:
  Selling, exchanging, or leasing property,
  Lending money or extending credit, and/or
  Furnishing goods, services, or facilities.

The term "disqualified person" means a person who is:

- A Fiduciary;
- A person providing services to the Plan;
- An employer, any of whose employees are covered by the Plan;
- An Employee organization any of whose members are covered by the Plan;
- An owner, direct or indirect, of 50 percent or more of a participating employer;
- A family member of a disqualified person. Family member, for this purpose, means a spouse, ancestor, lineal descendant, or spouse of a lineal descendant.

Often, the trustee wants to buy or sell a piece of real estate to the trust. They may want a condo or a house for a family member to live in. They may want to buy an office building for their office. They may want a piece of property that they may retire too and want to buy it out later. All of these would be prohibited transactions.

What is Unrelated Business Taxable Income (UBTI?)

Whether income is UBTI depends on the type of tax-exempt organization that generates the income. The UBTI rules focus on the purpose for which an organization is tax exempt and whether certain activities are contrary to that purpose. The purpose of a qualified trust is to provide retirement income through investment of contributions made to the Trust. Therefore, the primary purpose of a qualified trust is to generate investment income.

The qualified trust is generally exempt from taxation in income that is derived from investment activity. The purpose of this rule is to protect taxable entities from unfair business competition from tax-exempt organizations. See Tres. Reg. Section 1.513-1(b). The following income derived by the qualified trust would be exempt income:

1. Common investment income (dividends, interest, etc.);
2. Royalties;
3. Rents. Rents from real property (land, building, etc), and rents from personal property leased with such property, are generally exempt. ***An exception is if the rent on the personal property (such as equipment) is not incidental to the total rent. If the rent is based on profits or if equipment rental is more than 10% of total rent, it would be taxed as UBTI;***
4. Gains on sell of property;
5. Debit-financed property;
6. S-Corporation investments;
7. Common Trust funds;
8. Securities lending.

If the trust conducts an active trade or business, the income derived from that activity is taxed as UBTI. The term "trade or business" means activity which is carried on for the production of income from the sale of goods or the performance of services.

It would be argued by the IRS that by personally fixing up buildings, marketing or acting as a landlord would fall under UBTI.

Clearly, a real estate agent who is leasing rentals or trading property would fall under these rules.

The purchase and sale of property normally does not subject the plan to UBTI tax on the gains derived from the sale. ***When the sales of property are regularly carried on however, the plan may be to be engaging in a trade or business.*** Issues such as the frequency or volume of the sales, and whether the properties are divided or improved prior to sale, are relevant in making the decision if such activity constitutes a trade or business. In PLR 9127045, the IRS, considering these factors ruled that the sale of parcels did not constitute a trade or business.

Taxation of UBTI

UBTI earned by the qualified trust is taxed under the tax rates for estates and trusts, as prescribed by IRS Code Section 1(e). To compute the tax under the rate schedule, substitute "UBTI" for "taxable income". The minimum tax is 35%. See IRC Code Section 1(i)(2).

- **$1,000 exemption.** A deduction of $1,000 is allowed in arriving at UBTI. See IRS Code Section 512(b)(12). If the UBTI for the trust's taxable year is $1,000 or less, no tax applies.
- **Form 990-T**. Form 990-T must be filed by the trustee to pay the tax on UBTI. The return is due by the 15th day of the 4th month following the close of the trust year.

Valuation is always an issue. The law requires that "Fair Market Value" be used for all reporting and valuation purposes. Given that real estate is very illiquid, a fair market value is open to scrutiny. An independent appraisal can give some relief, but how often. Every year, every three years, this can be expensive and time consuming just for reporting purposes. Clearly, just carrying it at the purchase price is not adequate.

In addition, supposed a one person plan wants to take the real estate out as an in-kind distribution. What value do you use? Taxes need to be paid on that value and it will be open to interpretation. I've seen many plans stuck with just real estate waiting for it to sell so it may be distributed because they didn't have the cash to pay the taxes.

This leads to Fiduciary Issues. If there are other participants in the plan, payouts and balances are based on this valuation. Under value and you pay out too little, over value and you hurt other participants. In addition, liquidity has been a huge problem in these plans. Real estate can take years to sell, what do you do with those who have a "piece" of that land and want to retire?

Another fiduciary issue is the red flag reporting for owning more than 10% in any asset class. It's a question on the 5500 and often real estate exceeds this amount. By answering this yes, you red flag your plan for a DOL audit.

Often, the person wanting to invest in real estate says, "I know real estate; I'm in the real estate business". Sound like UBTI and what about the diversification requirements imposed by the "prudent man investment rule".

Finally, the tax issues need to be discussed. Real estate owned outside a plan is able to deduct expenses, depreciate its costs and is treated as capital gains. In a plan, when the real estate is sold, any gain is treated as ordinary income when it's distributed.

Bottom Line: The best way to invest in real estate is to purchase raw land for 100% cash from a third party. Hold it for appreciation, and then sell it to a third party. You still have valuation and fiduciary issues, but can eliminate the others.

Determination of Controlled Group and/or Affiliated Service Groups

To determine whether the companies are affiliated or controlled please supply: the name of all business owners, percentage and relationship, each entity type, number of employees, nature of the business nature and any business relationship to one another. Show if any of the businesses provide services to one another or mutual third parties and the percentage of the services provided. List any existing qualified retirement plans the businesses may sponsor.

Controlled Group [IRC Codes 414(b)(c) and 1563]

A Controlled Group exists for businesses with a parent-subsidiary or brother-sister relationship.

Parent-Subsidiary Controlled Group: A parent-subsidiary controlled group exists when one business (common parent) owns at least 80% of one or more other businesses (subsidiaries).

Brother-Sister Controlled Group: A brother-sister controlled group exists when five or fewer persons own 80% or more of the stock value or voting power of each corporation and the same individuals together own more than 50% of the stock value or voting power of each corporation, taking into account the ownership of each person only to the extent such ownership is identical with respect to each organization (e.g. if a common owner owns 30% of one business and 80% of another business, the owner's identical ownership in the two businesses is 30%).

Affiliated Service Group [IRC Code 414(m)]

An Affiliated Service Group (ASG) is a group of employers treated as a single entity because of a combination of ownership and services rendered. An ASG can fall into one of three categories: (1) A-Organization Groups (A-Org) consists of an Organization designated as a First Service Organization (FSO) and at least one A-Org, (2) B-Organization Groups (B-Org) consists of an FSO and at least one B-Org, or (3) Management Groups.

An FSO must be a "service organization". An organization is a service organization if capital is not a material income producing factor. As a general rule, the capital is a material income producing factor if a substantial portion of the income of the business is attributable to the employment of capital in the business (e.g. inventories, plant, machinery, or other equipment.) In a service organization, fees would come from commissions or compensation for personal services, such as health, law, architecture, accounting, performing arts, and consulting.

The A-Organization Groups must consist of an FSO and another service organization, which is known as the A-Org. The A-Org must (1) have ownership interest in the FSO and (2) the A-Org must regularly perform services for the FSO or must be regularly associated with the FSO in performing services for third parties.

The B-Organization Groups must consist of an FSO and another organization, which is known as the B-Org (B-Org does not have to be a service organization). The B-Org must meet all of the following three requirements: (1) a significant portion of its business must be the performance of services for a FSO (or an A-Org with respect to the FSO), (2) the services must be historically performed by employees in the service field of the FSO or the A-Org's, and (3) 10% or more of the interest in the organization must be held, in aggregate, by highly-compensated employees.

The Management Groups must consist of a recipient organization and a management organization. To be an affiliated service group, the management organization's principal business must be the performance of management functions, on a regular and continuing basis for the recipient organization. There does not need to be any common ownership between the management organization and the organization for which it provides service.

Compliance Division Programs

The Internal Revenue Service and Department of Labor offer a comprehensive system of correction programs to sponsors of 401(a), 403(b) and Simplified Employee Pension (SEP) plans. Each program is designed to correct specific problems.

DOL Delinquent Filer Program (DFVC):

- Failure to file Form 5500.
- The DOL fees for small plans (fewer than 100 participants) are $10 per day after the due date, not to exceed $750 per return, with a maximum of $1,500 for multiple late returns. The DOL fees for large Plans (100 or more participants) are $10 per day after the due date, not to exceed $2,000 per return, with a maximum of $4,000 for multiple returns.
- NHI will charge annual administration fees plus $500 for DOL submission.

IRS Penalty Relief for Late 5500-EZ:

- Failure to file Form 5500-EZ owner-only plans.
- The IRS fee is $500 per delinquent return up to $1,500 per plan.
- NHI will charge $250 for each missed year to prepare 5500-EZ and submission.

IRS Voluntary Correction Program (VCP):

- Failure to timely adopt plan documents or restatement.
- The IRS fees are based on the size of the plan.
- NHI will charge document fees plus $500.

IRS Self Correction Program (SCP):

- Operational Failures such as document amendments, certain loan problems, ADP/ACP tests, top-heavy, 415 limits, and minimum distributions.
- There is no IRS fee.
- NHI will charge a fee of $500.

DOL Voluntary Fiduciary Correction Program (VFCP):

- Late deposit of 401(k) or employer contributions.
- There is no DOL fee.
- NHI will charge a fee of $1,500 (The client could incur additional NHI fees depending on the severity of the violation and the amount of time required.)

Determination of Controlled Groups or Affiliated Services Groups:

- If research needs to be completed to determine whether the companies are affiliated and/or controlled, our fee is $500 for a letter. If we cannot determine whether the companies are affiliated and/or controlled, NHI will charge $2,000 to file for an IRS determination letter.

Plan Audit Services:

- Our fees are $200 per hour.

CalSavers Retirement Savings Program

Beginning on July 1, 2019, California private employers with 5 or more employees, who do not already sponsor a retirement plan, may voluntarily enroll in the CalSavers Retirement Savings Program (CalSavers). Employers that do not voluntarily enroll *must* enroll in CalSavers according to the following schedule:

100 or more employees	June 30, 2010
50 to 99 employees	June 30, 2021
5 to 49 employees	June 30, 2022

The key features of the CalSavers program are shown below:

- This is a workplace retirement savings program for employers with at least 5 employees that do not sponsor their own retirement plans ("Eligible Employers"). This may mean a 401(k) plan, a 403(b) plan, a SEP or SIMPLE plan, or a multiple employer (union) plan.
- CalSavers applies to private for-profit and non-profit employers, but not to federal or state governmental entities.
- CalSavers requires employees at least age 18 and receiving a Form W-2 from an eligible employer, to be automatically enrolled in the CalSavers program after a 30 day period, during which they may either opt out, or customize their contribution level and investment choices.
- The default is an employee contribution of 5% of their wages subject to income tax withholding, automatically increasing each year by 1% to a maximum contribution level of 8%. Employer contributions currently are prohibited.
- Eligible Employers who enroll in CalSavers will provide some basic employee roster information to CalSavers. CalSavers will then contact employees directly to notify them of the program and to instruct them about how to enroll or opt-out online. Those who enroll will have an online account which they can access in order to change their contribution levels or investment selections
- Once an Eligible Employer has enrolled in CalSavers, their subsequent obligations are limited to deducting and remitting each enrolled employee's contributions each pay period, and to adding new eligible employees within 30 days of hire (or of attaining eligibility by turning age 18, if later).
- Eligible Employers are shielded from fiduciary liability to employees that might otherwise arise regarding investment performance or other aspects of participation in the CalSavers program.
- There are employer penalties for noncompliance. The penalty is $250 per eligible employee for failure to comply after 90 days of receiving the CalSavers notification, and $500 per eligible employee if noncompliance extends to 180 days or more after the notice.

Here are some online resources for Eligible Employers:

- Employer checklist to help employers prepare for enrollment,
- CalSavers Program Disclosure Booklet providing details of the program, and
- Online FAQs.

NH HICKS

FEES FOR SERVICES

401(k) Profit Sharing Plans:

Installation/Documents (takeover no charge) ....$1150 + $10 per eligible participant
Administration ....$1350 + $30 per eligible participant

Defined Benefit Plans:

Installation/Documents (takeover no charge) ....$1350 + $10 per eligible participant
Administration including actuarial certification................................$2100 + $50 per eligible participant

DB/DC Combination Plans:

Installation/Documents (takeover no charge) ....$2700 + $20 per eligible participant
Administration including actuarial certification................................$3550 + $50 per eligible participant

*Additional Fees will be added for the installation and administration of Cash Balance Plans

Owner Only –401(k):

Installation/Documents (takeover no charge) $550
Administration (assets less than $250,000)....................................$300
Administration (assets $250,000 and more)...................................$550

Owner Only – Defined Benefit Plan:

Installation/Documents (takeover no charge) $1300
Administration including actuarial certification................................$1600

Owner Only – DB/DC Combination Plans:

Installation/Documents (takeover no charge) $1700
Administration including actuarial certification................................$2000

Special Transactions:

Defined Contribution Plans

Comparability allocation (multiple runs) $250
Amendments, trust accounting or 5500 audit consulting ....$125 per hour
Distributions or extensions (annual loan $35) ....$ 95
QDRO or RMD..$225

Defined Benefit Plans

PBGC Reporting..$225
Trust accounting or 5500 audit consulting.......................................$125 per hour
Distributions or amendments $225
Loans (annual loan $35) or Extensions...$ 95
PPA restatements ($850 owner-only; $1400 cash balance)............$1250

Our fees are offset by all third party payments we receive from investment companies.