

# HICKS NOTES

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## **SO MUCH HAPPENING: Issues and Opportunities in a Changing World**

In 30 years, I have never seen such a flurry of activity in both government oversight and market responses to these new rules. It seems the IRS and DOL are in a competition to see who can distribute more guidance.

In response, the market is touting new products and planning ideas. While it is impossible to go through every law change and what opportunities it presents in this newsletter, I am trying to organize this in a way that will make sense and give you a preview of what we will cover in our upcoming webinar.

There are two distinct areas of compliance and liability exposure. Fiduciary and administrative are really two completely different duties and analysis. Ultimately, the plan fiduciaries and named administrators, usually the employer, are responsible for both areas of compliance. However, many will hire outside parties to handle these plan functions.

The Compliance side covers the plan testing, limits, filings, and all administrative functions. This traditionally is the domain for "Third Party Administrator" or TPA, who typically get paid a fee for these administrative services.

The Fiduciary side deals with the money. Where is it invested? Who decided and what process did they use come to their decisions? This traditionally is the domain of the trustees (business owners) and their investment advisors and investment companies.

Bundled plan providers generally attempt to be experts in both areas, while unbundled providers stick to their individual area of expertise. Most TPAs have relationships with the various advisors and investment companies which allow for ease of administration.

Further, it is important to understand the functions running a plan.

- First is plan design. Is this a tax plan for the owners or an employee benefit plan without regards to the owners? Plan design will be an issue when using bundled or pooled employer plans (PEPs) as they tend to only offer a basic plan design.
- Next is enrollment and participant education. The investment companies are best equipped to handle these functions.
- Payroll is next as someone must take the contributions and get them to the investment company. This is where there may be some overlap. In unbundled scenario, the payroll department of employer or bookkeeper handles this function. In a payroll provider bundled plan, the payroll/ bundled provider handles this.
- Finally, is annual administration. This is an administrative compliance function required by both bundled and unbundled plans.

Clearly, now more than ever, you should work with competent compliance and planning experts. [Click here](#) to view our newsletter outlining the retirement plan players and the roles they play.

So, what's happened in the last 18 months?

**New Legislations.** We have essentially seen the passage of three major pieces of federal legislation that impact retirement planning.

[SECURE Act](#). A few key provisions include increasing the required minimum distribution age for retirement accounts to 72, allows long-term, part-time workers to participate in 401(k) plans, and extends [new plan startup](#) deadline.

The [CARES Act](#), designed to provide relief during the COVID-19 pandemic, waived most RMDs for 2020, created the coronavirus-related distributions for 2020, and expanded 401(k) loan options for those impacted by the pandemic.

The Consolidated Appropriations Act of 2021 was passed. As part of the bill, the COVID-Related Tax Relief Act of 2020 (COVIDTRA) was also passed, which was designed to bring expanded unemployment benefits, relief payments, business loans and new tax benefits to the millions of Americans struggling during the pandemic.

**Governmental Guidance** issued by different governmental agencies on different topics.

#### Department of Labor (DOL)

- [Missing participants & Cybersecurity](#): Two important fiduciary areas responsible by the plan sponsor.
- [Fiduciary investment advice](#) for retirement investors, employee benefit plans and investment advice providers in two documents.
- **“Fiduciary Rule,” PTE 2020-02 (Part 12): The requirement that investment advisers and broker-dealers to receive no more than reasonable compensation.**

#### Internal Revenue Service (IRS)

- [Coronavirus-related relief](#) for retirement plans and guidance for partial plan terminations.
- [Audit of plans](#) to examine worker classifications, RMDs in large DB plans and participant loans.
- [Operational Compliance List](#) is provided to help plan sponsors and practitioners achieve operational compliance.

#### New Plans and Plan Design Options

- [MEPs and PEPs](#)
- [Plan overviews](#) including 401(k), defined benefit and combination plans, SEPs, and SIMPLES.
- [CalSavers](#)
- [After-tax voluntary contributions and the Mega Roth](#)
- [ESOPs for small employers](#)

While we cannot discuss all the issues in this newsletter, you can join me at our upcoming June webinars as I discuss how to take advantage, what to watch out for, and the traps this new activity has created. Join us [here](#).