

NH HICKS

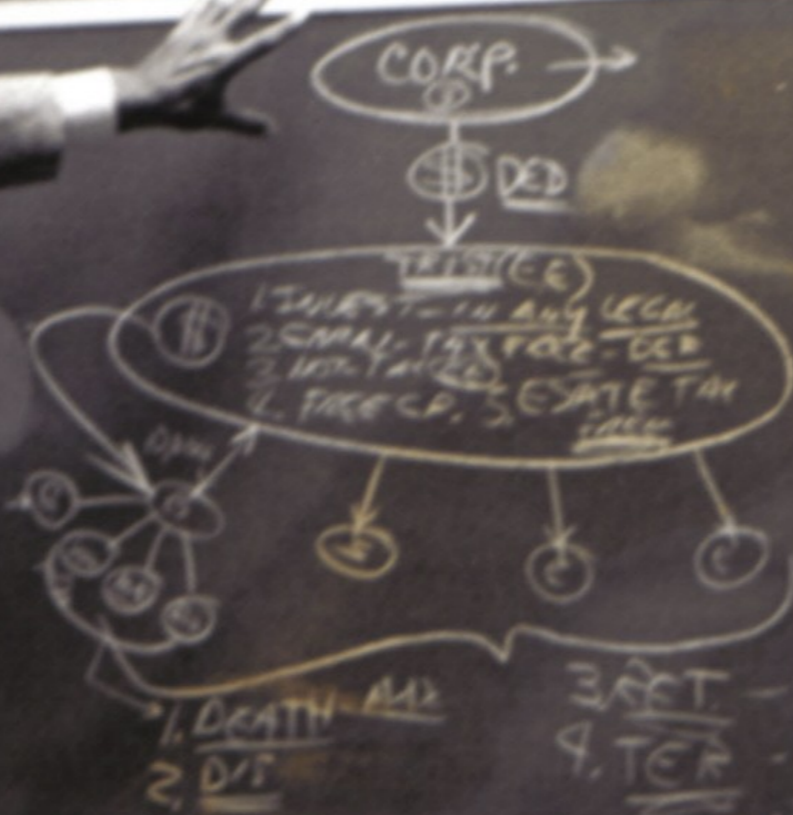
Legal and Pension Consultants

Qualified Plans in Today's Environment

Fiduciary & Legal Review

2019

Experience Counts



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Design Highlights

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

Significance of Fiduciary Status

The preamble to the proposed regulation explains:

“ERISA imposes a number of stringent duties on those who act as plan fiduciaries, including a duty of undivided loyalty, a duty to act for the exclusive purposes of providing plan benefits and defraying reasonable expenses of administering the plan, and a stringent duty of care grounded in the prudent man standard from trust law.”

Significance of Fiduciary Status

“Congress supplemented these general duties by categorically barring, subject to exemption, certain ‘prohibited’ transactions. Fiduciaries are personally liable for losses sustained by a plan that result from a violation of these rules.”

So fiduciaries are subject to standard of care, and are barred from engaging in prohibited transactions.

3(16) vs. 3(21) vs. 3(38) Fiduciary

3(16)	3(21)	3(38)
Named and acts as Plan Administrator	States in writing co-fiduciary status	States in writing co-fiduciary status
Oversees management & administration	Assists in drafting IPS	Drafts IPS
Selection, evaluation & monitoring all providers	Helps design initial fund menu	Builds initial fund menu
Evaluation of all plan fees	Provides monitoring	Monitors menu
Delegate administration responsibilities	Recommends changes	Makes changes
Oversee operation of Plan	Recommends mapping strategies	Determines mapping strategies
Provide reporting & disclosure materials	Provides documentation	Provides documentation

New Fiduciary Regulations

DOL Fiduciary Rule

- Released on April 6, 2016 by DOL
- Covering investment advice and conflicts of interest

Implementation Date

- June 9, 2017
- January 1, 2018 with BIC Exemption

What constitutes Investment Advice

- Recommendation
- Covered Investment Advice

Best Interest Contract Exemption

ERISA Fee Disclosure

408(b)(2) Regulations

Service Providers to Plan Sponsors

- A description of the services provided
- The fees and compensation deducted from participant accounts
- Deadline was July 1, 2012

Plan Sponsors determine if fees and services are reasonable

- Review
- Benchmark
- Document Findings

ERISA Fee Disclosure

404(a)(5) Regulations

Plan Sponsors to Provide Participants

- Information to select investments
- An explanation of fees deducted from their accounts
- Fees for future individual transactions
- Deadline was August 30, 2012

Investment Comparative Chart

- Must be distributed annually
- 2013 deadline extended to February 25, 2014

Can a Plan Invest in Real Estate?

- Prohibited Transactions
- Disqualified Person
- Unrelated Business Taxable Income (UBTI)
- Fiduciary Issues
- Valuation Problems
- Tax Issues
- Issues at Plan Termination

Compliance Assistance

- DOL Delinquent Filer Program (DFVC)
- IRS Penalty Relief for Late 5500-EZ
- IRS Voluntary Correction Program (VCP)
- IRS Self Correction Program (SCP) * amended in 2019
- DOL Voluntary Fiduciary Correction Program (VFCP)
- Determination of Controlled / Affiliated Services Groups
- Legal Opinions and Plan Audit Services

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Need More Information

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