

# HICKS NOTES

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Legal and Pension Consultants  
(800) 310-4975 | [www.nhhicks.com](http://www.nhhicks.com)

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By Tom Hicks, Attorney At Law

## EXERCISING FIDUCIARY DUTIES IN UNCERTAIN TIMES

We are living in extraordinary times with COVID-19 pandemic creating market volatility. Fiduciaries of retirement plans have special obligations and duties they need to be aware of.

In general, fiduciaries may include, but are not limited to, the plan's trustee, administrator, administrative and investment committees and the plan sponsor. The basic fiduciary duties of loyalty and prudence require that they take reasonable steps to protect the participants' interest, which includes areas of plan and investment communications, investment returns and options, and timely benefit payments. It is also imperative that plan fiduciaries document their process and decisions to protect them from liability.

Among the steps to be taken, fiduciaries should review their internal processes for meetings and communications. Are they continuing to meet with advisors and committees via Zoom or similar systems when face-to-face meetings are not possible? Are they documenting efforts to continue to meet especially given market volatility? By starting with themselves, they can make sure they are fulfilling their own duties first.

When working with their financial advisors, they should be asking and documenting the institutions response to COVID-19 and its possible disruptions. Will there be delays in trades, reporting, distributions, and other possible issues?

Now is a time to review and document plan investment options and pay particular attention to capital preservation options. Identify those participants who may be nearing retirement and give them the education and resources they may need to make prudent investment decisions.

The regularly scheduled enrollment and education meetings should continue to be held, either in person or through Zoom type arrangements. Do not forget to include the plan's financial planners. If the fiduciary does not schedule these meeting, they are not going to get the liability protection covered under ERISA §4040(c). The plan participants must be given enough information to make informed decisions.

In addition, the fiduciary should perform and document their basic duties to REVIEW, BENCHMARK AND DOCUMENT, all areas of the plan administration and its investments. These include, but are not limited to fee disclosures, investment options, returns and costs, annual

valuations and internal procedures for smooth and efficient administration of the plan.

Finally, regulatory bodies continue to provide additional relief with regards to these issues. While best not to have to rely or use this relief to be derelict in your duties, they will provide some defense should COVID-19 related problems arise.

Here is a list of areas for relief articles and links for more information and explanations.

### EBSA Disaster Relief Notice 2020-01

This DOL Notice addresses the following issues as impacted by the pandemic: (i) deadlines for providing participant disclosures and notices; (ii) procedures for plan fiduciaries to authorize loans and distributions, and the timing for adopting amendments under the CARES Act; (iii) delays in making deposits of participant contributions and loan repayments; (iv) failures to provide advance notice of a blackout period; (v) extension of certain Form 5500 filing deadlines, and; (6) relaxed enforcement of compliance with ERISA's fiduciary standards. [Read the entire notice here.](#)

### IRS Notice 2020-42

This notice provides temporary relief for participant elections that are required to be witnessed in the "physical presence" of a notary public or plan representative, including spousal consents. It provides relief to the challenges posed by the social distancing measures put in place due to the COVID-19 pandemic, and it provides plan administrator with additional flexibilities to use remote notarization and similar services for all of 2020. [Click here to read this notice.](#)

NH Hicks continues to provide up to date COVID-19 related information. Currently the following articles are available on our website:

- [Taxpayer Relief Due to COVID-19](#)
- [Key Takeaways for the CARES Act](#)
- [Suspending Safe Harbor Contributions Mid-Year](#)
- [Market Volatility Plays HAVOC with Defined Benefit Plan Funding](#)
- [IRS COVID-19 Filing and Payment Deadlines](#)

In conclusion: now more than ever, it is important to be performing the fiduciaries duties related to your retirement plan. Being proactive is always the best and should be done given the current market volatility. As always, we are here to help.