

# NH HICKS

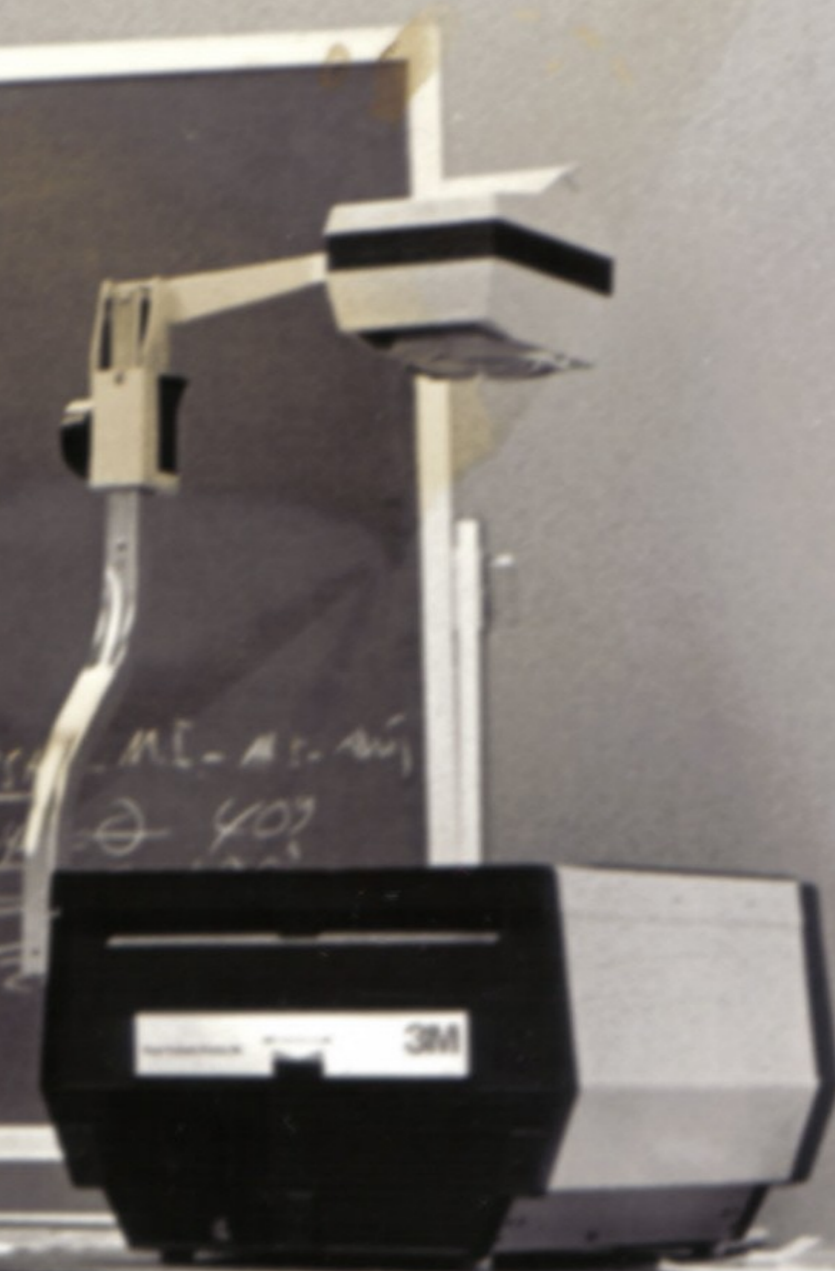
Legal and Pension Consultants

**Qualified Plans in Today's Environment**

**Fiduciary & Legal Review**

**2020**

Experience Counts



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# *Design Highlights*

- Litigation Updates – Tibble and Anthem
- Significance of Fiduciary Status
- 3(16) vs. 3(21) vs. 3(38) Fiduciary
- The SECURE Act
- New Plan Set Up Deadline
- Changes Due to COVID-19
- ERISA Fee Disclosure
- Investing in Real Estate
- Determination of Controlled Group
- Red Flag Issues
- Compliance Assistance
- Missing Participants

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

# *The SECURE Act*

Signed into law on December 20, 2019 with most provisions effective January 1, 2020.

Key provisions are:

- Increased RMD age to 72.
- Allows IRA contributions after 70½.
- Allows long-term, part-time employees to participate in 401(k) plans.
- Increases tax credits for start-up of new retirement plans.
- Permits parents to withdrawal up to \$5,000 for birth/adoption expenses.

# *New Plan Set Up Deadline*

## **SECURE Act**

- New Safe Harbor Plan
- Adding Safe Harbor Provisions
  - Safe Harbor Match
  - 3% Non-Elective Safe Harbor
  - 4% Non-Elective Safe Harbor
- New Profit Sharing and Defined Benefit Plans



# *DC Changes Due to Covid-19*

- CARES ACT
  - Coronavirus-Related Distributions
  - Coronavirus-Related Loans
  - Waiver of RMDs
- Suspending Safe Harbor Contributions
- Spousal Consent Relief

# *DB Changes Due to Covid-19*

- CARES ACT
  - Whose an “eligible” participant
  - Coronavirus-Related Loans
  - No Waiver of DB RMDs
  - Delay of 2020 Funding Obligations
- Freezing Defined Benefit Plan
- Spousal Consent Relief

# *Electronic Disclosure*

**As of April 16, 2020, Department of Labor allows electronic disclosure**

- Summary Annual Report
- Summary Plan Description
- Summary of Material Modifications
- Quarterly Benefit Statements
- Annual Defined Benefit Funding Notices
- Qualified Default Investment Alternative Notice

**The extended deadline is 60 days after the announced end of the COVID-19 National Emergency**

# *Partial Plan Termination*

## **Employee terminations during 2020 may cause a Partial Plan Termination**

- Significant reduction in participants within one plan year; generally more than 20%
- Employer initiated severances
- Does not include participants who die, become disabled, retirement or are furloughed.
- Affected participants become 100% vested.

# *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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