

NH HICKS

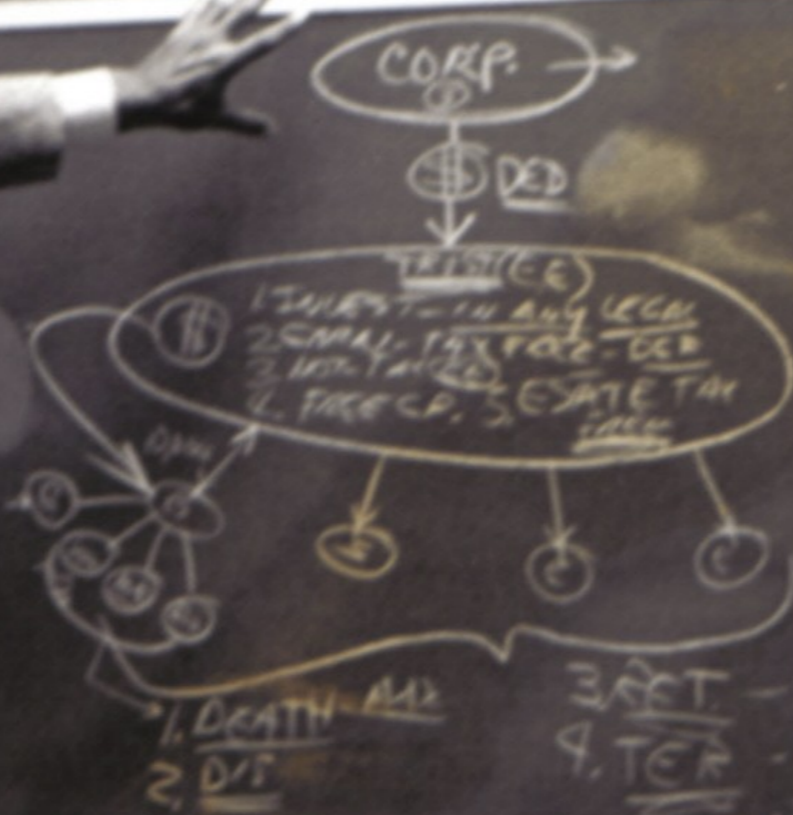
Legal and Pension Consultants

Qualified Plans in Today's Environment

Fiduciary & Legal Review

2021

Experience Counts



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Design Highlights

- Significance of Fiduciary Status
- Fiduciary Rules
- 3(16) vs. 3(21) vs. 3(38) Fiduciary
- Litigation Updates
- IRS and DOL Actions
- The SECURE Act I & II
- New Plan Set Up Deadline
- Tax Credit for New Plans
- ERISA Fee Disclosure
- Determination of Controlled Group
- Red Flag Issues
- Compliance Assistance
- Missing Participants
- MEPs/PEPs
- CalSavers

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

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

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.
- Calculated from January to December 2020 or from March 31, 2020 to March 31, 2021.
- 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

Investment Comparative Chart

- Must be distributed annually

Compliance Assistance

- DOL Delinquent Filer Program (DFVC)
- IRS Penalty Relief for Late 5500-EZ
- IRS Voluntary Correction Program (VCP)
- IRS Self Correction Program (SCP)
- 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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