

NH HICKS

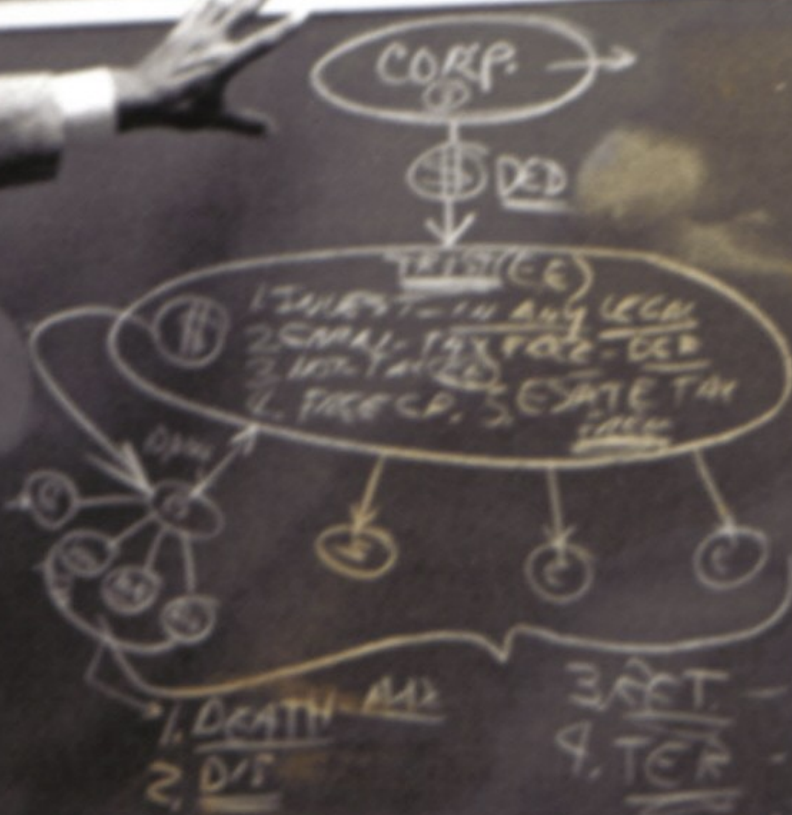
Legal and Pension Consultants

Qualified Plans in Today's Environment

Fiduciary & Legal Review

2021

Experience Counts



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Design Highlights

- Litigation Updates – Tibble and Anthem
- Significance of Fiduciary Status
- Fiduciary Rules
- 3(16) vs. 3(21) vs. 3(38) Fiduciary
- IRS and DOL Actions
- SAS 136
- 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 |

SAS 136

1. Maintain Plan Documents
2. Properly Administer the Plan
3. Determine Necessity of Plan Audit
4. Provide Auditor with 5500 draft

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

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

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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