the dana report

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ABOUT THE FIRMS

Dana Consulting Group, Ltd. and Jennings Law Firm, Ltd. were established to provide employers with a single source of comprehensive legal and consulting services relating to retirement plan and employee benefit matters.

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TAX CUTS AND JOBS ACT OF 2017

President Trump signed the tax cut bill on December 22nd and certain (albeit minor) changes were made to the qualified retirement plan rules:

- Conversions of pre-tax accounts to Roth accounts can no longer be reversed. There was a limited opportunity to unwind a conversion after the fact which beginning in 2018 can no longer be done.
- Participants with outstanding loans that default when the participants terminate employment can avoid the default by depositing personal funds into his/her personal IRA equal to the amount of the defaulted loan. Under former law the IRA deposit needed to be completed within 60 days after the default. Beginning in 2018 the participant has until the due date (plus extensions) of his/her personal return to make the IRA deposit.
- Hardship withdrawals attributable to repairing damage caused to the participant's personal residence only qualify now if the damage is the result of a federally declared disaster.

Our Comments: In light of what was being proposed early on, these changes are a relief. The new rules regarding defaulted loans will not impact the retirement plan itself, so we expect no changes to how plans administer defaulted loans. Finally, narrowing the qualifying event for hardship withdrawals for personal residence damage should have limited impact on participants. A conforming amendment may be needed to plan documents that allow hardship withdrawals and we will monitor that.

FITNESS TRACKER MEETS RETIREMENT SAVINGS TRACKER

Bank of America (BOA) has applied for a patent for an app that would create a personalized retirement score that could be updated with data from a customer's fitness tracker. As envisioned in the patent application, the app would receive health data from users - such as age, medical treatment history and fitness activities - and update their projected retirement savings needs based on how that health data affects their life expectancy. Being an attorney, your author can see all sorts of issues with merging health and financial data in one app, but issues can always be resolved. Plenty of studies have correlated increased physical activity with longer life spans, and so this may be yet another way to encourage people to exercise more, as well as save more. BOA was granted 279 patents in 2016 which means this app may never come to market but who knows....

TONTINES - OLD MEETS NEW

An interesting article came across our desk recently about an old financial product that could provide a solution to a current financial dilemma. Tontine refers to a financial product that combines an annuity and a lottery. Named after Lorenzo de Toni, a 17th century Italian banker, Tontine allows people to share investments and divide up the money based on survival - as participants pass away, their share is redistributed to surviving members. No, this was not apparently a Ponzi scheme. It is an old concept with a long history and was once popular in the US. France still allows it.

So what does this have to do with retirement benefits? With many defined benefit plans severely underfunded - Example: public pensions - variations in the Tontine principle could be used to create retirement income products that provide lifetime income stream, generate higher returns, and guarantee that pension would always be funded. According to one "expert" it could also provide a basis where employers bear no investment or actuarial risk. Don't expect Tontines to develop any following in the private pension system in the US any time soon (ERISA would impose too many obstacles) but public pensions that are exempt from ERISA could find this approach appealing.

CORPORATE WELLNESS PROGRAMS

Corporate wellness programs are intended to improve your fitness and make you feel better. They have ballooned at large companies, going beyond once-a-year biometric screenings to year-round all-encompassing programs. One program offered by FS Investments has a trainer who wipes cold goo over your stomach and then waives an ultrasound wand in order to calculate your body fat within one-tenth of one percent. [Your author decided he would not want to take the test since he would probably not like the results.]

So are these sponsoring companies getting much for their money? Multiple studies conducted by the RAND Corporation say no, and apparently the programs cost considerably more than whatever benefits they are providing. And this is the case even if a lot of employees are utilizing them, which RAND says they are not. One problem seems to be trying to measure a link between the benefit and the program. One RAND researcher indicated the evidence of a link is very weak. That does not mean there is no link; just that RAND has not figured out how to measure it.

IMPACT INVESTING

We recently came across an article about what is apparently now being called impact investing. This used to be called socially targeted investing but the new term encompasses any kind of non-financial factors that fiduciaries use when making investment decisions. For example, other factors taken into account include environmental or corporate governance matters. At the very least this is pertinent to retirement plan and charitable foundation fiduciaries.

There are some fund companies who offer 401(k) fund options that rely on investment factors other than just making money. And so fiduciaries and their financial advisors do need to be sensitive to the legal issues of this investing strategy. If you would like a copy of this article, please call Lee T. Jennings at (630) 802-7644.

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