

# 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.

If you know someone who would like to receive *the dana report*, click the link below.



## → FIDUCIARY CHECKLIST

We have put up on our website at [www.danaconsulting.com](http://www.danaconsulting.com) under the Advisor Services tab a sample fiduciary checklist prepared by T. Rowe Price. Like all of these kinds of documents, it is just a template but provides a good starting point for advisors to use to develop their service model.

**Our Comment:** We have seen sample investment policy statements on the internet that range from pretty worthless to overkill. The worst thing somebody can do is adopt one of these documents and then just "throw it in the file." If you are advisor who services retirement plans and would like assistance with your service model, give Lee T. Jennings in our office a call at (630) 802-7644.

## → DETERMINATION LETTERS FOR RETIREMENT PLAN DOCUMENTS

The IRS announced in 2016 that it would no longer issue determination letters for what are called "individually designed" plan documents (IDPs) except in certain limited situations. This is very significant since a determination letter is the only thing that stands between the plan sponsor and plan disqualification if an IRS agent does not like your plan document. Most retirement plans use documents that have been approved in advance by the IRS. These pre-approved documents come in two general formats: proto-type and volume submitter.

The IRS eliminated the determination letter program for IDPs due to budget constraints. So what does this mean for the company that uses an IDP? It basically means the IRS will not review your document after initial qualification and you run the risk that, on audit, an IRS agent would propose plan disqualification if your document does not contain what the agent believes is a crucial plan provision.

There are law firms out there that are now offering to issue legal opinions that they claim will replace a determination letter. This is not true. The benefit of the determination letter is that the IRS cannot disqualify your plan if you hold a determination letter. The agent will require the document problem to be fixed, but plan disqualification is off the table. That is VERY important. A legal opinion is nice but the IRS is in no way bound by it. If the agent does not like your document, don't think the legal opinion is going to stop the IRS.

**Our Comment:** The IRS has been pushing plan sponsors for

our comment. The IRS has been pushing plan sponsors for years to adopt pre-approved documents. The "problem" is that many plan documents cannot be shoehorned into such a pre-approved document and an IDP was the only option. IDP documents work fine; they are just more expensive to draft and obtain determination letters. Plan disqualification is such a draconian penalty that relying on a law firm opinion is really not the answer. We hope the IRS sees what a problem they have created and figures out a way to fix it. However, the fact of the matter is that the IRS simply does not have the manpower to be issuing these IDP determination letters anymore and Congress has shown little inclination to give them the money to hire anybody. If you (or your client) uses an IDP, we are happy to discuss your situation in more detail.



## ILLINOIS SECURE CHOICE SAVERS PROGRAM UPDATE

Illinois has delayed rollout of the Illinois Secure Choice Savers Program to 2018 (from its original June 2017). One of the big unknowns is what investment vehicles the state will offer to participants. Given the sorry state of the Illinois public pension system (2nd worse in the US, after New Jersey), this is a significant issue. To give our readers a sense of what Illinois thinks are good investments, the Chicago Transit Authority recently admitted to losing millions of dollars in bonds issued by a Sioux tribe that were purportedly issued to fund community development but were actually a slush fund between individuals and the tribe. The CTA claims they were trying to engage in some "social responsible investing."



## IRS TO REVISE LIFE EXPECTANCY TABLES

The IRS is proposing to revise its life expectancy tables for qualified retirement plans to reflect that Americans are living longer. From the perspective of the plan sponsor of a defined benefit plan (and perhaps cash balance plan), longer life spans translate into higher contribution costs and higher lump sums for participants. Not surprisingly, the IRS proposal is controversial and meeting significant resistance. If adopted the new tables would become effective in 2018 but a lot of people we talk to in the actuarial community believe the proposal will be revoked or at least delayed. Apparently the Trump Administration has not as yet weighed in on this.



## 401(k) SALES CHAMPION MARKETING PROGRAM

We have long maintained that a dedicated financial advisor is key to a successful 401(k) plan. To assist our financial advisor

partners be as successful as they can, we offer the 401(k)

Sales Champion Workshop. This is a web-based marketing program designed exclusively for financial advisors who service clients in the retirement plan industry. The workshop has been updated with several new enhancements.

If you are interested in looking at the workshop, please visit our website at [www.danaconsulting.com](http://www.danaconsulting.com), and click the tab on the left column of the Home Page.

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