the dana report

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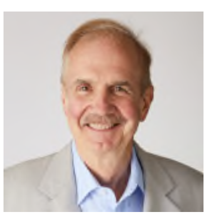
ABOUT THE FIRMS



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

IRS EXPANDS CARES RELIEF FOR RETIREMENT PLANS

The IRS recently issued Notice 2020-50 expanding the list of events qualifying for enhanced distributions and loans. The notice also provides guidance on how participants will report receipt of qualifying distributions on their personal income tax returns.

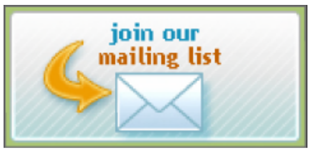
The notice expands the criteria necessary to grant enhanced distributions and loans to include adverse financial consequences experienced by a spouse or household member, being quarantined, being unable to work due to lack of child care.

Employers are not required to offer CARES Act enhanced distributions/loans or to expand qualifying criteria to those described in Notice 2020-50. Also a participant who receives any distribution or loan from a plan and qualifies for the preferential tax treatment provided under the CARES Act can claim that preferential treatment even if the plan does not offer the enhanced access.

Participants who receive a qualifying distribution and intend to claim the preferential tax treatment will do that on their personal returns. There is no requirement the plan provide any kind of notice to the participant. Participants will need to be sure to discuss this with their personal tax return preparers.

retirement plan and employee benefit matters.

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



IRS PROVIDES EXPANDED RMD ROLLOVER RELIEF

The IRS appears to be in a very generous mood. After issuing Notice 2020-50 (see above article) the IRS issued Notice 2020-51 providing a blanket extension to rollover any RMD taken from an individual account plan or IRA until August 31. We have prepared a firm memorandum summarizing the IRS's relief that can be downloaded from our website (www.danaconsulting.com) under the **Education Center** tab. See also our Red Alert button.

PANDEMIC TO FORCE MILLIONS OF RETIREES INTO POVERTY??

Teresa Ghilarducci is director of The New School Retirement Equity Lab (ReLab). She is a long-time critic of 401(k) and other defined contribution plan arrangements. She has posted a report concluding the Covid-19 pandemic will force at least 3 million older Americans in "extreme deprivation", which will come on top of the millions that are already going to fall into poverty due to America's "broken retirement system." She uses her findings to call (once again) for the creation of a universal pension system for all workers that will prevent future generations from ever experiencing poverty. Her report can be downloaded from her website www.teresaghilarducci.org.

Our Comment: Her goal of a universal pension system sounds great but she does not say exactly how this system will be funded. Social Security, while not a universal system, is severely underfunded and Congress has shown absolutely no appetite for reforming it. If Social Security's funding problems are not going to get fixed, who can really think a new universal system will be sufficiently funded?

IS THERE A RETIREMENT PLAN CRISIS?

Countering Mr. Ghilarducci's views above is Mr. Andrew Biggs, former deputy commissioner in the Social Security Administration. In an interview with 401(k) Specialist, a publication tracking the retirement plan industry primarily from the investment side, Mr. Biggs takes a far more optimistic view. Mr. Biggs makes the following points in the interview:

- Poverty rates among older Americans are lower than among working-age Americans and have been going down over the past 30 years.

- Since 1979, the average retiree household income has risen by close to 90% above inflation, which is twice the growth of wages for working-age households. [He says Federal Reserve surveys, and Gallup polls, back up these figures.

- While 401(k) plans may not be perfect, there have been more improvements in the past ten years and we have seen with Social Security reform in the past 30 years.

- State-sponsored IRAs are a mistake. First he says there is no need for them. He says these plans are targeted at workers in the bottom 20% of earnings and, according to Congressional Budget Office figures, Social Security replaces 85% or more of their pre-retirement income. Second, the lowest paid workers have more urgent demands than retirement savings like paying rent, buying food, etc.

He points out that there is scarcely a government-run retirement program anywhere in the US that is well funded. It is well known that if government-run plans were subject to the minimum funding rules that apply to private sector plans, he says "they'd be shut down." He scoffs at the view expressed by Teresa Ghilarducci that the "answer" is expanding Social Security and creating yet another government-run plan to replace 401(k) plans.

One of our partners, Supporting Strategies, has been diving into the application and instructions to figure out how an application needs to be properly completed and returned. If you think you need assistance with your own application, feel free to contact Dee Johnson at Supporting Strategies at 847-232-8659.

One of the vexing questions is which retirement plan contributions qualify as an acceptable use of loan proceeds. For example, while qualifying wages for any employee is capped at $100,000, apparently retirement plan contributions based on wages over the $100,000 threshold do qualify. Moreover, apparently some contributions for 2019 can be paid now and qualify.

ESTABLISHING A RETIREMENT PLAN IN 2020

Many new businesses are unlikely to establish a retirement plan in 2020 but some might. Here are some things to think about.

The Good -

The SECURE Act was enacted into law in December 2019 (seems like a lifetime ago). One of its provisions gives employers establishing new plans in 2020 (and beyond) a tax credit of $250 for each NHCE who is eligible for the plan, up to a maximum credit of $5,000. Start-up costs are also eligible for the credit, which includes plan document and administration fees. If the plan utilizes an automatic enrollment feature, there is an additional $500 credit.

The Bad -

If you (or your client) does decide to set up a new 401(k) plan this year a BIG question will be who do assist you run that plan. Ary Rosenbaum is an ERISA attorney who has practiced in the retirement plan arena for decades. His advice is to steer clear of your payroll company. We have written periodically in the dana report about the hazards of giving your plan to a payroll company. Mr. Rosenbaum has also written periodically about this. His more recent article says that while a lot has changed in the 401(k) business over the past ten years, what has not changed is that turning over your 401(k) plan to a payroll company was a bad idea then and remains a bad idea now. He makes several points:

- Payroll has little to do with running 401(k) plans. About the only things the two do have in common is taking money out of a paycheck and depositing it into an employee's account. A lot of the problems we experience with our clients' plans arise out of payroll data. Who are the owners? Are children of owners on the payroll but have last names? Who are the officers? Payroll companies do not tend to know any of this and if the client does not tell them (and how are they supposed to know what the payroll company needs to know?), the payroll company conducts the testing based on bad data.

- Mr. Rosenbaum says in his years of experience, payroll companies do a bad job with keeping their clients' plans in compliance with the complicated rules governing retirement plans. He says this has traditionally been the case and has never gotten better. He says most plans he is engaged to correct for errors, most have originated with payroll companies.

- A big part of our engagement with clients is service. Mr. Rosenbaum also says in his experience this is another major problem with payroll companies. They rely heaving on calling centers with representatives reading from scripts. They know little about your plan and are in no position to give meaningful advice. The representative you talked to today will not be the same person you talk to next time.

- Payroll companies tends to be unsophisticated ab out plan design, as well as not being pro-active about testing matters. Most salesmen for payroll companies

> recommend vanilla plan designs since they understand that. They do not tend to understand cross-testing or cash balance plans. And if they do not offer something, they are not going to recommend it.

Payroll company plans generally do not offer a financial advisor and, per Mr. Rosenbaum, that can be very dangerous for the plan sponsor. The payroll company offers the fund lineup but the plan sponsor has to pick the funds used. Picking funds is a fiduciary duty and payroll companies go to great lengths to avoid providing any fiduciary function. Read your service agreement and see who is on the hook. Also, if a particular fund falls out of favor, is the payroll company going to point that out? Mr. Rosenbaum again says Read Your Service Agreement.