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 REGULATIONS UPDATE

Don't expect any big news on the fiduciary rule until this autumn at the earliest, according to attorneys and insiders watching this issue. The financial advice regulation has been in limbo since President Trump ordered a re-evaluation back in February 2017. Many of the rule's key provisions have been delayed to July 2019. The DOL has been tight-lipped about how long its review will take and industry professionals say not to expect anything soon, Fall 2018 at the earliest. This also applies to the SEC who is also trying to develop its own rule on the matter.

5 THINGS TO KNOW ABOUT THE NEW TAX LAW

Athena Private Wealth is a partner of our firm that specializes in personal and business wealth management. They have prepared an interesting e-book on the new tax law that we think our readers would find interesting. If you would like the e-book please contact Dan Alberth at Athena at (847) 299-8877 or visit their website at http://athenaprivatewealth.com.

ILLINOIS SECURE CHOICE SAVINGS PLAN UPDATE

We gave an update in our February newsletter about the roll out of the Illinois Secure Choice Savings Plan. We noted in that newsletter article that we contacted the Treasurer's office but nobody called us back. Somebody finally called us and this is what she said.

1. The pilot program will start in May. This is voluntary and intended to encourage employers to sign up. The state wants to use the pilot program to work out the kinks.
2. Mandatory enrollment will start in the autumn and penalties will start being assessed for non-compliance in 2019.
3. Illinois Form 941 has a section for employers to identify if they are subject to the new plan and, if so, whether or not they have a qualified plan.
4. The state intends a broad-based marketing program.

We briefly discussed the ERISA preemption issue with the Treasurer's office representative who contacted us, and she said the state is rolling out the program one way or another.

Our Comment: It is difficult to envision this program being a success and actually enabling employees to save for retirement. [See our next article about the Illinois public pension system, as well as our February newsletter.] If you are a financial advisor, CPA or other advisor to companies that are going to be subject to this new plan, please give us a call. This new plan will start showing up in newspaper articles and your clients will be calling you for information.

ILLINOIS FLOATS $107 BILLION BOND SALE

In our last issue of the dana report we ran an article about a proposal being floated by the Illinois legislature personnel and pensions committee to borrow an eye-popping $107 billion to bail out the state's $129 billion unfunded pension system. The proposal is based on the pension fund's investing the money in the stock market and earning more than the interest on the underlying debt. See our February newsletter about how that has played out in the past.

Since our February newsletter, the legislature held a hearing to get some more information. Appearing to support the proposal was Mr. Runham Feng, an actuary and math teacher at the U of I. Professor Feng said by borrowing $107 billion, the state would actually save $103 billion. Feng said the state would need to make $8.5 billion annual payments over 27 years and in his words "if properly managed" the whole problem goes away. When asked about how the interest payments and investment income compare, Feng said he expects the state can earn 7% to 7.6% annually on the investments and pay only 5.5% on the underlying debt - so how can you go wrong.

Municipal bond investors apparently think a lot can go wrong with a bond sale of this magnitude. Eric Friedland of Lord Abbott who is an expert on at least New Jersey debt said these "types of deals are not typically positively received by the ratings agencies..." He characterized the proposal as "credit negative." Richard Ciccarone, another expert on municipal debt, says the proposal "absolutely increases default risk. There's no cushion." Maybe they need to call Professor Feng.

Final note: We reported in the February newsletter that Illinois has the second worse funded state pension system (with New Jersey #1) but apparently since then Illinois is back on top.

OUTSOURCING FIDUCIARY DUTIES

Several fund companies offer a variety of services to their retirement plan clients, including taking over various fiduciary services. We caution plan sponsors about "outsourcing" fiduciary services since you may not be getting what you think. Case in point: certain fund companies will now take over serving as trustee of your plan. Their "hook" is that they take that burden off of the plan sponsor's owners who are typically designated as trustee now. We recently reviewed one fund company's trustee agreement and two things popped out: (a) the fund company is serving as a "nondiscretionary" trustee and (b) the plan sponsor pays the fund company's legal fees in any lawsuit that may arise. On the first point, ERISA imposes affirmative duties on the trustee but the fund company's status as a nondiscretionary trustee means they are not responsible for any of those affirmative duties; i.e., somebody else is retaining the trustee's duties to carry out these affirmative duties. If that "somebody else" is the owner, the owner is not avoiding any potential liability. On the second point, the plan sponsor pays all of the fund company's legal fees even if the plan sponsor wins the lawsuit.

Our comment: We are not suggesting that it never makes sense to outsource various responsibilities. Sometimes it not only makes sense but is a good idea. However, you need to understand what you are outsourcing and verify whether you really accomplishing what you think you are accomplishing.

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