

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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STATUS OF FIDUCIARY REGULATION

The federal Fifth Circuit Court of Appeals has overturned the Labor Dept's fiduciary regulations and the Dept failed to request the entire panel of judges to review. Thus unless the Dept appeals the case directly to the US Supreme Court (and that appears unlikely as of this writing), the Labor Dept's regulation is dead. Stepping into the void now is the SEC who has issued its own set of proposed regulations that would apply to all advisors, not just those serving ERISA plans. We have prepared a brief overview of the new regulations that you can find on our website (www.danaconsulting.com) under the Advisors tab.



ESG INVESTMENTS

The Labor Dept has released new guidance regarding economically targeted investments by fiduciaries in ERISA employee benefit plans. The guidance is in the form of a Field Assistance Bulletin (FAB) and clarifies the Dept's earlier views that fiduciaries may NOT sacrifice returns or assume greater risks to promote environment, social or social governance (ESG) policy goals when making investment decisions. ERISA fiduciaries must always put the economic interests of the plan to provide benefits first and must avoid too readily treating ESG issues as economically relevant to any particular investment choice. Additionally, the Dept clarified that investment policy statements are not required to expressly address ESG factors. If you would like a copy of the FAB, please call Lee T. Jennings in our office (630) 802-7644.



ANOTHER LAWSUIT AGAINST FIDELITY

We have written in the past about practices employed by Fidelity Investments that relate to retirement plans that use their investment funds. Fidelity has been exonerated in some of these suits on the basis the company was not a fiduciary of the plan. That, however, does not mean they were looking out for the participants of these retirement plans. We came across another lawsuit that illustrates how advisors and plan sponsors need to keep aware of what is going on. This case involved Delta Airlines retirement plan, Fidelity and Financial Engines, an online financial advice provider commonly known as a robo-adviser. There were Fidelity brokerage accounts and part of the lawsuit involved who hired who, and who was getting paid what. Robo-advisers have been touted as a low-

cost option to give participants financial advice but the Delta participants claim they were offered high-cost funds and were paying inflated financial fees.

A judge in Colorado has just granted class action status to 60,000 Oracle Corp workers in their lawsuit against how the company managed its 401(k) plan. The lawsuit alleges that the company drained more than \$40 million from the plan through a bad deal with Fidelity's record keeping dept.



FIDELITY RAISES FEES ON PLANS USING VANGUARD FUNDS

Fidelity Investments will be charging new retirement plans (either startups or takeovers) an additional .05% fee on assets invested in Vanguard funds, including their popular suite of index-based target date funds. According to a Fidelity spokesperson, working with Vanguard "imposes unique additional requirements that generate extra costs for Fidelity." Due to the sheer volume of business between the two firms, this fee could result in substantial additional revenue for Fidelity. A Vanguard representative indicated that the firm was taken "completely by surprise" by the new fee.



PROFESSIONAL GROUPS

While this is likely no surprise, a survey by Planadvisor magazine, a publication serving financial advisors in the retirement plan industry, shows that when it comes to retirement savings, owners of professional service firms main objectives are maximizing retirement savings and reducing income taxes. For certain professionals, sheltering personal assets from liability is also a top (if not the top) priority.

Most TPA firms know all of the buzzwords like "cross-testing" and "combo plans" but if you really have a discussion with them, you may see what they really know about advance design is whatever the software tells them. We interview our share of TPA administrators and too often they cannot tell us what the software is really telling them. That can be crucial. The software is powerful and can do the testing, but the software can only do what it is told to do. If the administrator does not really understand advanced plan design, the software really cannot make up for that. If you have clients that need advanced plan design, you need to partner with a TPA firm that KNOWS advanced design. We at Dana Consulting Group design the plan first, then let the software confirm whether we need to tweak it.

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