the dana report

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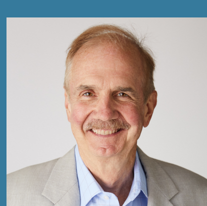
In This Issue

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

RETROACTIVE ADOPTION OF 3% SAFE HARBOR CONTRIBUTION

Several changes have been made to the rules governing safe harbor contributions to 401(k) plans and one of them poses a potentially BIG pitfall. Plan sponsors of 401(k) plans can now wait until the end of the plan year to elect to make a 3% safe harbor contribution. In fact, a retroactive election to the immediately prior year can be made if the 3% safe harbor contribution is increased to 4%.

A big question which the IRS has declined to answer is whether a new 401(k) plan can be set up before year end and a 3% safe harbor contribution elected for that initial year.

The SECURE Act changed the rules and now permits a 3% safe harbor contribution to be elected at least 30 days before the end of the plan year. Also, under the SECURE Act, the 30-day advanced notice for 3% safe harbor contributions has been repealed. What was not repealed is the rule under Treasury regulations that in the initial year of a 401(k) plan, the new plan must be established at least three months before the end of that initial year (October 1 in the case of a calendar year).

Some commentators have speculated a new 401(k) plan can be established as late as November 30 (if a calendar year plan) and a 3% safe harbor contribution elected for that year. Our own view is that a new plan must still be established at least three months before the end of the plan year to make a safe harbor contribution. It seems to us the IRS had to be aware this question would come up. For what ever reason, the Service declined to say one way or another. In the absence of express approval by the IRS (which is unlikely at this late date), we caution plan sponsors about trying this approach. NOTE: There are still options to make the testing work out retirement plan and employee benefit matters.

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

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2020 TAX PLANNING SHOULD START NOW

We have posted to our website (www.danaconsulting.com) an article from the October issue of the Journal of Accountancy, the publication of the AICPA, the trade association of CPAs. The article points out that 2020 year-end tax planning (and 2021 planning as well) should start now while there is still time to minimize your 2020 taxes. There are ideas there not only for CPAs but also for financial advisors to ponder and discuss with their clients. The article is located under the **Advisor Services** tab.

WHAT'S NEXT AFTER EMPOWER'S PURCHASE OF MM'S RETIREMENT BUSINESS

For those to track the retirement plan industry, we have all heard that Empower (a 401(k) plan platform) purchased the retirement plan business of Mass Mutual. InvestmentNews, a publication that tracks the investment side of the retirement plan industry, recently weighed in on their view.

It is relatively easy to make money on a 401(k) plan's investments. The fund menu and the website are already there...sort of. The record keeping and compliance side, however, is the challenge - or just part of the challenge. It is in fact so much of a challenge that one-by-one a large number of former vendors have thrown in their respective towels. The banks used to be players and then they weren't. Many insurance companies were players and then they weren't. Many private companies were players and then they weren't either. Even some of the large TPA firms tried their hand at it and then exited, going back to what they do best - being a TPA.

So why do so many companies, and some of them very large companies with very deep pockets, insist on trying their hands? Per InvestmentNews, because there is so much money to be made on the investments. [According to PlanAdviser magazine, total DC plan investments total just over $8.2 TRILLION.] But the costs (and risks) that come with trying to bundle it all together just seem insurmountable.

Our take is what Clint Eastwood said in Magnum Force: A man's got to know his limitations. In our experience, the fund companies that focus on the investments are surviving and they leave the rest of maintaining the plan to somebody else.

Firms like DCG do not sell investments or give investment advice, so we make our money on keeping plans in compliance and providing expert advice and plan design. We do what we know best and thrive.

ADP TOTALSOURCE MEP TARGETED FOR EXCESS FEE LAWSUIT

Schlichter Bogard & Denton is a law firm who has made a living out of suing 401(k) plan sponsors over things like excess fees. So their recent lawsuit against ADP's TotalSource 401(k) plan should come as no surprise. The plan is big and ADP is a deep pocket. What is a little different here is that the ADP 401(k) plan is a "multiple employer plan" (MEP for short) and is so big, the law firm maintains it should have been able to negotiate better fees than it did due to its incredible leverage in the market place.

The lawsuit brings up some interesting facts. For example, ADP was paying the MEP's record keeper an average of $359.70 per participant. And by 2018, those fees had increased to over $388.77 per participant, and this was during a period of overall declining plan fees. By way of comparison, Nike's 401(k) plan paid about $21 per participant, Chevron about $26 per participant and ConocoPhillips about $33 per participant.

One of the big benefits the MEPs promise to prospective clients is lower fees. They say they can bundle all of the plans into one box and achieve incredible scales of efficiency. We have taken over our share of ADP plans and one thing that has always surprised us is you cannot really tell what the costs are. ADP just won't tell you.

One a related front, Fidelity has settled a lawsuit over what it charges the 401(k) plan of its own employees. Fidelity was sued by a group of former employees for charging excess fees to its own employees in its 401(k) plans. One of the allegations was that Fidelity loaded the plan with its own funds (called proprietary funds) and charged additional fees on those.

THE WORKING WOMAN'S RETIREMENT PLAN CHECKLIST

We have often written in the Dana Report that women face unique financial challenges that can require unique solutions, and we have suggested to financial advisors that they develop tailored solutions to help women achieve their financial goals.

The Women's Institute For A Secure Retirement (WISER for short) is an organization dedicated to providing women with tools to help them make informed financial decisions. Their website is www.wiserwomen.org. We saved a great checklist they created called "The Working Woman's Retirement Plan Checklist" that identifies things to know and questions to ask by women before making important financial decisions. Survey after survey have shown that Americans need and want good financial advice in making these decisions. Financial advisors, particularly those advise 401(k) plans and their participants, are uniquely positioned to offer this important service.

The checklist can be downloaded from our website (www.danaconsulting.com) under the **Advisor Services** tab.

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