

the dana report

October 2019 Issue

A publication of Dana Consulting Group, Ltd.

In This Issue

[NEW HARDSHIP DISTRIBUTION RULES](#)

[WHAT SHOULD PLAN SPONSORS UNDERSTAND BETTER?](#)

[HOW MUCH DO YOU NEED TO RETIRE?](#)

[IRS GUIDANCE ON TAXATION OF DISTRIBUTIONS](#)

[ANOTHER PROPRIETARY FUND LAWSUIT](#)

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.



➔ NEW HARDSHIP DISTRIBUTION RULES

There have been significant changes to the rules governing hardship withdrawals from 401(k) plans since 2017. [See our firm memo under the *Education Center* tab of our website: www.danaconsulting.com] With a couple of exceptions, our recommendation to clients has been to decline adopting the changes since they make taking hardship withdrawals easier and (at least in our view) these in-service withdrawals should be discouraged.

However (and this is a big However), effective in plan years beginning on or after January 1, 2020, a plan CANNOT suspend an employee's 401(k) contributions following a hardship withdrawal. So employers who do permit hardship withdrawals from their 401(k) plans MUST review their payroll processes (and perhaps talk to their payroll companies) BEFORE January to ensure this change is properly implemented. This rule ONLY applies to hardship withdrawals taken after the beginning of the 2020 plan year.

Another housekeeping matter is to check with the fund company where your plan is custodialized to see what they are doing. Many of these fund companies are creating default elections that the plan has to overrule. For example, if your plan does not wish to have liberalized hardship withdrawals you need to make sure the fund company knows that.

We strongly recommend our clients and partners review our firm memo. If you would like to discuss the other changes to these rules which are, for the most, part discretionary, please give us a call.

➔ WHAT SHOULD PLAN SPONSORS UNDERSTAND BETTER?

A survey of financial advisors who service the retirement plan industry thought their clients should better understand:

- The amount of time the advisor spends servicing their plan.
- There is no way to totally eliminate fiduciary liability (despite what the fund companies selling their fiduciary insurance would tell you).
- Advisors and recordkeeping platforms do not do the same thing.
- The amount of time it takes to make a plan cost efficient.
- How retirement plan costs actually work.

- Fees are only one part of a plan sponsor's fiduciary duty (and not the most important)
- The most important benchmark is participant outcomes - retirement readiness.
- Furnishing your service providers (like TPA) correct data is really important.
- Do not hire/fire your service providers to just to save money.
- Regular meetings are important.
- Automatic enrollment works, provided the plan sponsor can manage it.
- Plan sponsors know their own business, they don't have a clue about ours.

Our Comment: This list is just a sample from an article we are saving to our website (www.danaconsulting.com) under the *Advisor Services* tab. We recommend any person providing a personal service read it. Service providers sometimes do not do a good job communicating what they actually do. There is a fine line between educating your client about what you do for them and grandstanding.

→ HOW MUCH DO YOU NEED TO RETIRE?

A survey by Schwab Retirement Services of 1,000 401(k) plan participants indicates respondents think they need \$1.7 million in investable assets to retire. The survey also indicated that for most respondents, their 401(k) accounts represents the lion share of their investable assets. Outside of their 401(k) plans, most respondents indicated they are most likely to use a bank savings account to prepare for retirement.

→ IRS GUIDANCE ON TAXATION OF DISTRIBUTIONS

The IRS recently issued a revenue ruling discussing the taxation of a retirement plan distribution that was not cashed by the participant. See Rev. Rul. 2019-19.

The facts of the ruling indicated the plan sent the check to the participant who failed to cash it. The ruling indicated the participant was nevertheless taxed on the distribution and withholding was required, and a Form 1099R should be issued. The ruling expressly assumes the participant received the check and just decided not to cash it, and this seems to be the basis of the ruling. The problem with this assumption is that in real life, the plan is unlikely to know the participant actually received the check and is doubly unlikely to know why the participant failed to cash the check. In real life, plans don't tend to send distribution checks by a verified delivery method and we have never heard of a plan that follows up and asks "Why didn't you cash the check?"

Comment: The Service obviously thought this was a subject that needed guidance on. Revenue rulings are guidance that can be relied on by everybody, so the Service intends retirement plans to be using this ruling in the administration of the plan. The problem is the basis of the ruling is an assumption that is unlikely to occur too often. It will be interesting to see if IRS agents bring up this ruling when they are looking at uncashed checks in the courts of audits of retirement plans.



ANOTHER PROPRIETARY FUND LAWSUIT

Proprietary funds are vendors' own funds that are offered in a 401(k) plan. There have been several lawsuits against fund vendors who load their customers' plan with their own funds. A lawsuit was recently settled by Eaton Vance that involved its own 401(k) plan. The lawsuit alleged that 35 of the plan's 45 funds were Eaton Vance funds. Additionally, the plan offered a managed account option and all of those funds were Eaton Vance funds. One of our concerns is that if there is no financial advisor assisting the plan sponsor with monitoring the fund lineup, can the plan expect the vendor to properly evaluate the performance of its own funds?

Dana Consulting Group, Ltd. & Jennings Law Firm, Ltd.,
1539 Gamon Road, Wheaton, IL 60189

[SafeUnsubscribe™ {recipient's email}](#).

[Forward this email](#) | [Update Profile](#) | [About our service provider](#)

Sent by djennings@danaconsulting.com in collaboration with



Try email marketing for free today!