Defined Contribution in Review

2Q20 Defined Contribution in Review

DEFINED CONTRIBUTION

Janus Henderson
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What's Inside?

Our quarterly Top DC Trends and Developments is designed to help CEOs, CFOs, treasurers, human resource and benefits professionals and investment committees stay abreast of recent events that could have an impact on plans or plan participants. Inside you will find the following information:

Quarterly Highlights: A summary of plans and sponsors making the news

Participants' Corner: Timely insights about the retirement readiness of plan participants

Legislative Review: A summary of new and pending legislation

Regulatory Review: News from the Department of Labor and other regulatory bodies

Legal Review: An update on high-profile ERISA cases

Global Headlines: A brief synopsis regarding global retirement issues

We hope you will find the information helpful, and we are happy to answer any questions you may have.

Janus Henderson
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Quarterly Highlights

Quarterly Highlights

Owner of Family-Run Company Takes a Personal Approach

- The owner and founder of IFP Group, a company that specializes in hydraulics, robotics and electronics in the mobile and industrial markets, meets annually with each participant to discuss the company 401(k) plan
- The plan started in 1979 and provides a profit-sharing contribution that has averaged 7% since inception and a 25% match on the first 8% of salary an employee defers
- Six years ago the company hired a 3(38) fiduciary that also provides one-on-one meetings for employees who want advice; education is also provided, with Social Security and Medicare being the best-attended sessions

Quarterly Highlights

Liebherr USA Reaches 95% Participation Rate

- Liebherr USA, one of the world's largest crane companies, wanted to help two groups of employees save more for retirement: (1) those who were not deferring enough to receive the full 100% match up to 6% of salary and (2) participants deferring less than 10% of salary
- The company instituted a reenrollment program for all employees deferring less than 6% combined with an auto-escalation program with a cap of 10%
- The company also held workshops to help employees use the record-keeper's online savings tools; four weeks following the workshops, digital engagement increased 38% over the same period in the previous year

Quarterly Highlights

MGM Promotes Emergency Savings Account

- MGM Studios of Beverly Hills noticed an increase in small loans; often, the loan would not be paid back
- To offer an alternative, MGM rebranded their 401(k) plan's after-tax contribution feature as an in-plan emergency savings account
- Presently, 54 of the plan's 664 participants are contributing to the account, an increase of 18 participants since the rebranding
- The plan permits in-service distributions from the account once every 12 months; taxes are due on the earnings in addition to a 10% penalty if the participant is under age 59½

Quarterly Highlights

Local Chamber of Commerce Establishes an ARP

- Shortly after the Department of Labor (DOL) issued new rules that allow businesses to join an Association Retirement Plan (ARP), the Chamber of Commerce in Southington, Connecticut, was the first chamber in their state to establish a program
- Within the community and surrounding towns, there are 700 small business defined contribution (DC) plans with $2.5 billion in assets and 38,000 participants; only about 40 of the 700 businesses are chamber members
- The program is appropriate for both start-up and established plans; the chamber expects that the average plan size will be approximately $2 million

Quarterly Highlights

Unum Offers Employees Student Loan Help

- Company officials at Unum estimate that approximately 2,000 to 2,500 employees hold student loan debt for themselves or a family member
- To help employees manage these liabilities, the company implemented its record-keeper's Student Debt Tool, which enables borrowers to view their aggregate federal and private loans on a single portal while offering suggestions for consolidation and refinancing
- Unum recently allowed employees to direct unused paid time off to make additional payments towards student loans; the maximum number of hours that may be transferred is 40

Quarterly Highlights

Asset Manager Helps Employees Pay Off Student Loans

- The Boston, Massachusetts-based asset manager Natixis introduced a new program to help employees pay off their student loans
- When an employee is hired, new employee information is sent to a third-party student loan service provider that then contacts the employee to obtain information about their student loans
- The company contributes $83.33 monthly ($1,000 per year) up to a lifetime benefit of $10,000 for each employee
- About 17% of the company's population is enrolled in the program

Quarterly Highlights

Best Buy Gets Creative to Engage Participants

- The company began offering:
  - Immediate plan eligibility
  - E-statements unless a participant opts out
  - Activation of an open-enrollment campaign to correspond with National Retirement Security Week that targets non-participants; last year's campaign resulted in 3,400 new enrollees
- The company also offered a gift card award to participants without a beneficiary on file to make a designation; 20% took action

Participants’ Corner

Participants' Corner

Participants Move to Capital Preservation in March

- According to data from Alight Solutions, the asset classes that took in the most money in March were capital preservation options such as stable value (64% of inflows) and money market (24%)
- The asset classes that lost the most assets were target-date funds (48%), large U.S. equity funds (29%) and international equity funds (6%)
- Trading within 401(k) plans reached record levels in March; there were 18 above-normal days of trading activity – the most above-normal days in a month in the more than 20 years that Aright has tracked this data

Participants' Corner

Target-Date Investors Near Retirement Showed Signs of Panic

- According to data obtained by Morningstar, investors that are within 15 years of retirement pulled approximately $9 billion from their target-date investments, while younger participants stayed the course
  - For the first quarter of 2020, target-date funds in the 2020, 2025, 2030 and 2035 vintages reported net outflows year to date; all but the 2020 vintage had flat or net inflows after the first two months of 2020
- Despite the market setback in early 2020, target-date fund assets are still higher than they were in late 2018 thanks in part to ongoing contributions and strong returns in 2019

Participants' Corner

About 22% of Plan Sponsors Are Suspending Their Match

- Among 152 sponsors surveyed by the Plan Sponsor Council of America, 22% of companies with more than 1,000 participants are suspending their 2020 matching contributions
- Additionally, among companies with more than 5,000 participants, 68% are adopting the coronavirus-related distribution and 47% will increase their loan limits under the Coronavirus Aid, Relief, and Economic Security (CARES) Act
- Among companies with fewer than 200 participants, 28% are permitting the coronavirus-related distribution and 17% are increasing their loan limits

Participants' Corner

Callan Surveys Record-Keepers in Response to CARES Act

- Callan has found that among 15 DC record-keepers, one-third have added the capability for coronavirus-related distributions across all plan sizes and required plan sponsors to opt out if they did not want this provision; the balance of the record-keepers require plan sponsors to opt in
- 64% of record-keepers had already instituted DC plan loan deferment provisions and 53% have automatically waived the 2020 required minimum distribution

Participants' Corner

Study Finds Some MEPs Costlier than Similar-Sized Plans

- A study by Boston College Law School investigated costs associated with multiple employer plans (MEPs) using data from 2016 Form 5500 filings
- The study found that pooled-employer plans had an average administrative fee of 86 basis points compared to 32 basis points for single-employer plans; among the five largest pooled-employer plans, total plan costs ranged between 69 basis points and 124 basis points
- The largest pooled-employer plan, which had $3.4 billion in assets and covered 194,000 participants, had administrative costs of 46 basis points and estimated total costs of 112 basis points
    - For comparison, among single-employer plans greater than $1 billion, the median total plan costs were 27 basis points

Participants' Corner

ICI Research: Leakage May Be Overstated

- Researchers at the Investment Company Institute (ICI) released a new analysis that found previous industry estimates for "leakage" may have been overstated
  - Leakage refers to early distributions not used for retirement purposes
- According to their paper "Decoding Retirement: A Detailed Look at Retirement Distributions Reported on Tax Returns," leakage should apply only to early distributions that are subject to the 10% premature distribution penalty
- This penalty is waived for lifetime pension payments and other exceptions, including death and disability
- About half of all distributions for individuals age 55 and younger were exempt from the penalty

Participants' Corner

Divorce Tied to Early Retirement Withdrawals

- Economists at the University of Michigan and the University of Delaware found that divorced households were 9.5% more likely to access their retirement accounts and 11.8% less likely to continue contributing than comparable households
  - For comparison, losing a job was associated with a 3.5% increase in the likelihood of accessing a retirement account
- The researchers found individuals buying a home or making other large purchases were not more likely to access their retirement accounts; in fact, individuals who made large purchases were more likely to contribute to a retirement account

Participants' Corner

The Impact of COVID-19 on Women Investors

- Transamerica fielded a study shortly after several states issued stay-at-home orders to assess the retirement outlook of women compared to men
- Among the survey's key findings:
  - One in four (25%) of women say their confidence in their ability to retire comfortably has declined in light of COVID-19 compared to 21% for men
  - As a result of the pandemic, 16% of women have taken or plan to take an early withdrawal from their retirement account compared to 28% of men; of note is that 24% of women do not have savings in a qualified plan compared to 12% of men
  - About half (56%) of women and 60% of men have experienced impacts to their own employment situation as a result of the virus; women are somewhat less likely to have reduced hours, reduced salary or be laid off

Participants’ Corner

Automatic Features May Have Reached Maturity

- The Defined Contribution Institutional Investment Association recently concluded a survey of 175 plan sponsors to gauge adoption of automatic-adoption features; 57% of plan sponsors have plans over $200 million
- From 2016 to 2019, auto-enrollment and auto-escalation adoption increased to 69% from 60% and 50%, respectively
- Of the plans that have not adopted automatic design features, very few (7%) are considering it for the future
- The survey found that only 20% of plans make “periodic” reenrollments, suggesting that it is used as a remedy rather than strategic tool

Participants' Corner

Study Finds That Fixed Income Options May Be Too Few

- A survey conducted by NAPA and PSCA, and sponsored by Janus Henderson, found that the ratio of equity to fixed income options in DC plans is approximately three to one
- The survey, fielded among plan sponsors and retirement advisors, also found that plans had an average of 3.7 fixed income options, the most popular being stable value/money market (84%), intermediate/core (74%) and multi-sector income (56%)
- While 72% of retirement advisors rely on the Morningstar Style Boxes to help determine equity options, only 40% use a similar methodology for fixed income

Legislative Review

Legislative Review

HEROES Act Provides Additional Retirement Relief

- The House of Representatives has passed the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act
- This legislation would suspend required minimum distributions for 2019 and extend the 60-day rollover period until November 30, 2020
- In addition, the coronavirus-related distributions would be extended to money purchase pension plans

Legislative Review

SAVERS Act Introduced in House of Representatives

- Representative Patrick McHenry (R-NC) has introduced the Securing Additional Value for Every Retirement Saves (SAVERS) Act that would increase contribution limits by 300% or at least to an amount equal to the employee's compensation
- The bill would also triple the contribution limits for IRAs

Legislative Review

New Mexico Rolls Out Two State-Run Programs

- New Mexico has announced that it will provide two state-run programs: (1) a marketplace and (2) an auto-enrollment Roth IRA
- The marketplace is scheduled to be rolled out by July 1, 2021, and provide businesses access to private-sector retirement products that have been vetted by the state; participation in the program is voluntary
- The auto-enrollment Roth IRA is scheduled to be operative by January 2, 2022; this program will also be voluntary
  - The fees will be capped at 1% of plan assets, and employer contributions will not be allowed

Regulatory Review

Legislative Review

3Q20 Compliance Calendar

July	August	September

• **July 28:** SMM or SPD furnished to participants, if amendments adopted for 2019 plan year
• **July 31:** Form 5500 and Form 8955-SSA for 2019 plan year unless extended
  • Form 5558 to extend Forms 5500 and 8955-SSA
  • Annual benefit statement for plans not offering participant-directed investments
	• **August 14:** 2Q20 benefit for participant-directed plans and participant fee disclosure	• **September 15:** Minimum funding contribution deadline for money purchase plans
		• **September 30:** Summary annual report for 2019 plan year unless Form 5500 deadline extended
		  • Form 5330 excise tax return for excess 2018 ADP/ACP contributions if due date extended by Form 5558

SMM: Summary of Material Modifications
SPD: Summary Plan Description
ADP: Actual Deferral Percentage
ACP: Actual Contribution Percentage

Regulatory Review

IRS Extends Deadline to Roll Over Unwanted RMDs

- On June 23, 2020, the IRS issued Notice 2020-51, which extends the deadline to roll over any required minimum distributions (RMDs) 60 days following the distribution or August 31, 2020, whichever is later
- Additionally, the one-rollover-per-year rule will not apply for purposes of rolling over unwanted RMDs in 2020
- This notice was issued in response to individuals who took their RMD early in 2020 before the CARES Act suspended these distributions for 2020

Regulatory Review

Deadlines Extended for Plan Sponsors Impacted by COVID-19

- The EBSA (Employee Benefits Security Administration) Disaster Relief Notice 2020-01 has extended the deadline by which plan sponsors and administrators must provide notice and make disclosures to participants, deposit contributions, and authorize and complete plan loans and distributions
- Provided the delay was "solely on the basis of a failure attributable to the COVID-19 outbreak" and the employer "reasonably, prudently, and in the interest of employees complies as soon as administratively practicable," no enforcement action will be taken
- The relief applies to all interruptions that occurred during the period beginning March 1, 2020, and ending on the 60th day following the announced end of the national emergency

Regulatory Review

IRS Issues Guidance Changes to Safe Harbor Plans

- The IRS has issued Notice 2020-52, which clarifies that safe harbor 401(k) plans that reduce or suspend contributions for highly compensated employees only are still considered a safe harbor plan
  - In these cases, however, notice must still be provided
- Further, plans may immediately suspend their nonelective safe harbor contribution as long as notice is provided no later than August 31, 2020, rather than the amendment becoming effective at the end of the customary 30-day notice period
  - This provision applies to nonelective contributions and nonmatching contributions

Regulatory Review

IRS Permits Remote Witnessing of Participant Elections

- For plans that require participant elections to be witnessed by a notary public or plan representative, Notice 2020-42 allows plans to use live audio-video technology
- This temporary relief applies retroactively to January 1, 2020, and extends through December 31, 2020

Regulatory Review

IRS Issues CARES Act Clarifications

- In Notice 2020-50, the IRS clarified that eligibility for a coronavirus-related distribution includes those who have experienced a reduction in pay, rescission of job offers and delayed start dates
  - In addition, plan participants qualify if spouses or dependents suffer “adverse financial consequences”
- The Notice further clarifies that the distribution and loan provisions of the CARES Act are optional; however, participants who meet the eligibility requirements can claim the income tax benefits even if the plan does not adopt these provisions
- Finally, the Notice reaffirms that plan administrators may rely on participant self-certification to certify that they meet eligibility requirements

Regulatory Review

Electronic Delivery Regulations Finalized

- The DOL has issued final regulations that allow plan sponsors the option of satisfying participant disclosure requirements through electronic delivery
- The highlights of the program are:
  - Participants can be defaulted into the electronic delivery program but must be given the opportunity to opt out
  - An initial paper notice must be provided to the participant that explains the program and verifies the email address that is on file
  - Participants receive an email or text (called a "notice of internet availability") alerting them that an important disclosure is available and how to access the document online (alternatively, the information can be contained in the body of the email)
  - The plan sponsor must have procedures for handling invalid email addresses

Regulatory Review

DOL Offers Guidance on Private Equity Investments

- The DOL has issued an Information Letter that addresses the use of private equity investments within DC plans
- Most notably, the guidance did not include private equity as a “stand-alone” option but rather as part of a multi-asset vehicle, such as a target-date fund, risk-based fund or balanced fund
- Five factors were identified for fiduciaries to consider, including the evaluation of risks and benefits, requisite fiduciary expertise to evaluate private equity, valuation and liquidity, plan features and participant demographics and plan participant disclosures

Regulatory Review

DOL Issued Proposed Regulations on ESG Investments

- The DOL has issued proposed regulations in response to the increasing interest among plan sponsors regarding ESG investing
- The proposed regulations state that ERISA fiduciaries "must never sacrifice investment returns, take on additional investment risk or pay higher fees to promote non-pecuniary benefits or goals"
- ESG factors may be considered if "they present economic risks or opportunities as material economic considerations under generally accepted investment theories"
- Sponsors who wish to rely on the "all things being equal" test must document the "basis for concluding why a distinguishable feature was not found and why the selected investment was chosen"

Legal Review

Legal Review

Lawsuit Filed for Adding CITs to a 401(k) Plan

- A lawsuit has been filed against a plan sponsor and service provider for adding "untested" collective investment trusts (CITs) to a plan lineup
- In the case involving Schneider Electric, the plaintiffs claim that the plan inappropriately replaced its target-date funds with the record-keeper's proprietary CITs that had no track record
- The plaintiffs also allege a "quid pro quo" arrangement whereby after the plan sponsor switched the plan's target-date funds, the expenses charged by the record-keeper for administration of the company's pension plan were reduced by 38% in 2017 and 79% in 2018 compared to the expenses paid in 2016

Legal Review

Cyber Theft Lawsuit Against Plan Sponsor to Proceed

- On May 27, 2020, the Eastern District Court of Pennsylvania ruled that a case against a plan sponsor by its 401(k) service providers may proceed
- Originally, the courts found the plan's service providers, a TPA and a custodian, breached their fiduciary responsibility for processing fraudulent withdrawals totaling more than $400,000
- The service providers, in turn, have brought suit against the plan sponsors, claiming that the company's "own carelessness" regarding information security led to the breach and, therefore, the company should also be liable for damages

Legal Review

Abbott Laboratories Facing Cyber Theft Claim

- In Barnett v. Abbott Laboratories, a participant has brought a suit claiming the company breached its fiduciary responsibility for failing to assess and monitor the cyber security of its plan record-keeper
- According to the lawsuit, unauthorized individuals withdrew $245,000 from a participant's account in which:
  - No email notifications were sent to the participant confirming the withdrawal; the only notification was done through mail
  - A call center phone representative allegedly disclosed the participant's address to the imposter
  - A new password was sent to the imposter, using a phone number that was not on file as used by the participant

Legal Review

First Lawsuit Brought Resulting from COVID-19

- A construction company in Rhode Island has been sued by plaintiffs claiming unnecessary delays in processing a rollover, leading to substantially lower distribution amounts following the 2020 market correction
- The company's plan is a non-self-directed profit sharing 401(k) in which plan assets are valued annually on December 31; the plan document does provide a clause whereby an alternative valuation date may be used in "extraordinary circumstances"
- According to the lawsuit, distributions were requested in early 2020 and not processed before the company decided to value the plan on April 30, 2020, resulting in lower amounts than if the distributions been processed in a timely fashion

Legal Review

Emory University Settles Excessive Fee Lawsuit

- Parties in the Emory University fiduciary breach have agreed to a $16.75 million settlement, the second-largest settlement involving a higher education institution (MIT settled for $18.1 million)
- In addition, university officials have agreed to the following actions:
  - Conduct an RFP for recordkeeping services
  - Prohibit record-keepers from using participant information to market IRA, insurance and wealth management services
  - Hire an independent consultant
  - Communicate plan changes to plan participants

Legal Review

Court Issues Split Decision in Banner Health Case

- In a suit involving excessive fees and improper investments, the court found that the company breached its fiduciary duties by failing to negotiate more favorable recordkeeping pricing; however, the court calculated damages of approximately $2 million, far less than the damages sought
- The court also ruled in favor of the company, stating that the fiduciaries had "a process that involved both an advisor and legal representation, that there was a review of fund options and performance and decisions were discussed and documented"

Legal Review

401(k) Contributions Excluded from Bankruptcy Calculations

- In overturning the lower court, the Sixth Circuit Court ruled that a 401(k) participant who was making salary deferrals prior to filing for bankruptcy would not have to include future deferrals of the same dollar amount as “projected disposable income”
- Projected disposal income is the amount used to calculate payments petitioners make to unsecured creditors

Global Headlines

Global Headlines

WillisTowersWatson Surveys Company Responses to COVID-19

- According to a new survey of 177 companies across the UK by WillisTowersWatson, the highest benefit priorities of the balance of 2020 are financial well-being and mental health
- With respect to COVID-19:
  - 20% of companies have or plan to make changes to their benefits
  - 25% have made it easier for employees to reduce their retirement contributions
  - 60% are planning to enhance their well-being programs
  - 75% have promoted existing financial resources such as Employee Assistance Programs (EAP)

Global Headlines

Global Survey Finds Retirement Unattainable

- A global survey conducted by Transamerica and Aegon of 14,400 workers and 1,600 retirees across 15 countries found that while respondents claim to replace 68% of their income in retirement, only 32% feel they are on track to meet this goal
- Regarding financial literacy, only 30% of respondents were able to correctly answer questions regarding compounding interest, inflation and risk diversification

Global Headlines

Millennials Prioritize Performance Over Ethics

- A study administered by Calastone found that over half of millennials prioritize long-term performance and fees when choosing investments, while less than one-third prioritize ESG issues
- While 40% of millennials consider investing a priority, higher-agenda items included traveling (69%), social media (61%) and video games (58%)
- Approximately half of the 3,000 respondents say they have a limited understanding of investments, which may be inhibiting their ability to invest

Global Headlines

Women Feel Patronized by Finance Industry

- A study conducted by WealthiHer Network among 2,500 women in the UK found that 36% of respondents have felt patronized by the industry and 28% said that the use of jargon has reduced understanding and trust
- Just under half (45%) feel that there should be more female representation in the industry in both leadership and advisory roles
- A key takeaway of the study was that female relationship managers may better understand the unique challenges faced by women investors

Global Headlines

Norway Enacts Automatic Rollover Law

- Norway has enacted a new law that will automatically consolidate DC balances with prior employers into a participant's current employer's plan
  - The consolidation will occur automatically unless the participant opts out
- Additional provisions of the new law stipulate:
  - Employees whose employment ends before 12 months of service with an employer will retain contributions made by the employer to their plan
  - Employees may choose a different pension provider than the one chosen by their current employer; the employee will pay the administrative expenses but be reimbursed by their employer

Defined Contribution Capabilities

Defined Contribution Capabilities

- 45+ years of industry experience
- Retirement excellence and leadership
- Three highly specialized investment managers: Janus Henderson, Intech ® and Perkins®

- $29.2 billion in DC assets under management as of 3/31/20
- Products utilized by the top 25 DC record-keepers in the industry
- Availability on over 200 recordkeeping platforms

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