Janus Henderson INVESTORS

Top DC Trends and Developments

3Q22 edition

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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 up-to-date on recent events that could have an impact on plans or plan participants.

Inside you will find the following information:

- **Quarterly highlights:** Best practices for plan sponsors
- **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

Quarterly highlights

Quarterly highlights

Douglas County law enforcement receives a major contribution boost

- Following a benchmarking exercise focused on law enforcement professionals in the surrounding areas, Douglas County in Colorado revamped its plan's contribution rates
- The law enforcement 401(a) plan's employer and mandatory employee contributions were increased from 8% to 10% and the county's 457 plan added a new 3% matching contribution; in aggregate, Douglas County officers can now save up to 26% of their pay annually
- Following the new matching contribution, the 457 plan's participation rate increased from 30% to 65% for all county employees and is up to 80% for law enforcement professionals

Quarterly highlights

Matching contribution evolves at CareerSource in central Florida

- The Orlando-based nonprofit, which educates, trains, and coordinates job placements for local, high-demand industries, has evolved its 403(b) plan's contribution design since 2018
  - Initially the plan had a 50% match of pay up to 6%, plus a 3% nonelective contribution
  - In 2018, the nonelective contribution was eliminated but the match was increased to 100% of pay up to 6%
  - In 2021, the 6% match was increased to 8% and company officials are eyeing another possible increase to 10%
- The participation rate is 93% and the average deferral rate is 6.8%; nearly 50% of participants defer enough to receive the full 8% match

Quarterly highlights

Sacramento Credit Union sets bar for fiduciary governance

- Sacramento Credit Union has consistently maintained a strong fiduciary governance culture for its $16.6M 401(k) plan since the 1990s; the investment committee meets quarterly, is regularly fully attended by all members, and views new legislation as an opportunity to update the plan design
- The plan also has a 6% auto-enrollment default and employer matching contribution of 50% up to 6% of pay plus a 5% discretionary profit-sharing contribution
- Employees who opt out are personally contacted by human resources professionals to ensure they understand the importance of long-term saving and the benefit of receiving a matching contribution

Quarterly highlights

Rite-Solutions uses 401(k) as key recruiting tool

- Initially employing mostly former U.S. military members who were eligible for full pension benefits from the government, Rite-Solutions' success has resulted in an expanded workforce that now includes several younger, non-former miliary employees; for these employees, the company's 401(k) plan will be their primary retirement savings vehicle
- To use the 401(k) as a recruitment and retention tool, the company increased its auto-enrollment from 3% to 6% and increased the matching contribution to 100% up to 6% of pay
  - Almost three-quarters of participants are 100% invested in a single target-date fund
- The plan also hired a local third-party administrator (TPA) and 3(38) investment manager, and changed auditors following an extensive due diligence process

Quarterly highlights

Senior executives take-hands on approach at Holt of California

- Holt of California is an exclusive provider of Caterpillar equipment and operates multiple locations in California's central valley; approximately one-third of company employees are represented by a union
- On an annual basis, the CFO, employee benefits manager, and the plan's service providers conduct "The Roadshow" to provide employees with information about the company's plan and cover various retirement and financial wellness topics
- For nonunion employees, the plan provides an auto-enrollment default rate of 4% and auto-escalation of 2% per year up to a ceiling of 12%; auto-enrollment does not apply to union employees
- The plan's investment committee consists of the CEO, CFO, benefits manager, assistant human resources manager, and employee representatives

Quarterly highlights

Peer-to-peer learning, wellness benefits take center stage of ASM Research

- As part of ASM Research's financial education program, two presentations were delivered by employees about budgeting and saving; the employees created their own PowerPoint presentations, and the sessions were well received by their peers
- Other financial wellness offerings include a special fund that offers grants for emergency expenses, a tuition rewards program, and a partnership with an outside vendor that provides student loan refinancing
- In addition, all employees are automatically enrolled in the plan at 6% contribution rate, including part-time workers and interns, and to accommodate Muslim employees, a Shariah-compliant fund was added to the 401(k) menu

Quarterly highlights

After-tax contributions introduced at Marvell Technology

- Marvell Technology recently introduced after-tax contributions to its $1B 401(k) plan in addition to offering an automated conversion feature of after-tax contributions to the plan’s Roth account on a per-pay-basis; over 68% of participants making after-tax contributions are presently using this feature
- For simplicity, the plan’s match was recently changed from 100% of 4% plus 50% on the next 2% to 100% up to 5% of pay; the timing of the matching contribution was also switched from annually to quarterly
- Other recent enhancements include the addition of a managed account program and a change in the plan’s qualified default investment alternative (QDIA) that resulted in annual savings of $125,000

Quarterly highlights

91% participant rate reached without auto-enrollment at ad agency

- The Minneapolis-based employee-owned advertising agency Broadhead Enterprises boasts a 91% participation rate despite not automatically enrolling participants; company officials attribute the plan’s strong participation metric to ongoing employee education and outreach
- The company offers a “Benefit Connect Stipend” of $150 per month that may be used for a variety of purposes such as funding a 529 plan or a health savings account, or paying for parking; about 25% of employees use the stipend toward student loan repayments

Quarterly highlights

Key takeaways for plan sponsors

- Benchmarking exercises should be specific; compare plans to industry peers and if possible, to similar organizations within the vicinity
- Employer contribution formulas can evolve over time to reflect changing company circumstances
- Auto-escalation is traditionally set at 1% for most organizations but 2% may be more appropriate for higher-income participants nearing retirement
- A hands-on approach by senior management is critical to driving employee appreciation and participation of defined contribution plans
- Peer-to-peer learning is a powerful tool to drive employee engagement

Participants' corner

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Participants' corner

Study finds misalignment between participant behavior and TDF glide paths

- A new study by Morningstar, "Right on Target? Plan Sponsors May Not Always Consider Participants' Behavior or Needs When Selecting Target-Date Glide Paths," found most plans are using TDFs with a "through" glide path when participants are likely to roll their balance to an IRA at retirement
- In addition, despite large differences in salaries and likely retirement ages among participants, plan sponsors in different sectors tended to use similar glide paths
- Lastly, plan sponsors that still offered a traditional pension were the most likely to adjust their glide path accordingly, choosing a "through" option

Participants' corner

Rollovers may be costing plan participants billions

- An issue brief by the Pew Charitable Trust, "Small Differences in Mutual Fund Fees Can Cut Billions from Americans' Retirement Savings," found that participants who opt for a rollover, rather than leave their money in a 401(k) plan, may be paying considerably higher fees for the same manager
- According to the brief, in 2018 plan participants rolled $516.7B from employer-sponsored retirement plans to traditional IRAs; over a hypothetical 25-year retirement period, these former participants are expected to experience an aggregate reduction in savings of $45.5B
- The lost savings are due to the difference in pricing between mutual funds available to institutional investors such as 401(k) plans, and those available to individual investors who use IRAs

Participants' corner

Small increases in deferrals make big difference on income replacement

- In a new study, "The Vanguard Participant Saving Rate Index," researchers assessed whether Vanguard defined contribution plan participants were saving optimally in their current workplace retirement plan
- The analysis found that 7 out of 10 participants were saving enough (combination of employee and employer contributions) to replace 65% of their pre-retirement income
- Modest increases of deferrals by 1%, 2%, or 3%, however, would allow 7 out of 10 participants to replace 75% of their pre-retirement income

Participants' corner

Fidelity: plan sponsor activity and engagement set to heighten

- In Fidelity's 13th Plan Sponsor Attitudes Study, 93% of respondents planned to make changes to their plan's investment lineup. Among the changes under consideration:
  - Expand the number of sustainable or ESG funds (27%)
  - Increase the number of investment options (27%)
  - Adopt a managed account program (26%)
- Interestingly, although advisor satisfaction reached its highest level in five years (76%), sponsors actively seeking a new advisor also increased from 34% in 2021 to 47% in 2022. The top reasons for seeking a new advisor included:
  - Need for better employee communication and education
  - Desire to offer a superior investment lineup
  - More effective in dealing with record-keeper service issues

Participants' corner

Inflation cited as top hurdle to a comfortable retirement

- In a nationwide survey of 401(k) participants, Schwab Retirement Plan Services found that workers ranked inflation (45%) as the biggest hurdle to a comfortable retirement, ahead of keeping up with monthly payments (35%), stock market volatility (33%), and unexpected expenses (33%)
- According to the findings, workers are cutting spending by reducing the number of purchases they make (34%), buying cheaper products (24%), and paying off debt more slowly (21%)
- Schwab found that plan participants are most interested in receiving professional help for:
  - Investing 401(k) accounts (43%)
  - Calculating how much to save for retirement (42%)
  - Creating an income stream in retirement (38%)

Participants’ corner

EBRI: unmarried women have lower levels of retirement confidence

- According to the EBRI’s 32nd annual Retirement Confidence Survey, unmarried female workers and retirees had lower retirement confidence than their married counterparts
- In an issue brief, lower levels of confidence among unmarried women compared to their married counterparts were attributable to:
  - Lower levels of income and assets
  - Less likely to have done a retirement needs analysis or use a professional advisor
  - Lower levels of perceived financial knowledge
  - Higher priority assigned to current needs of family members versus retirement savings
  - Less likely to have an adequate emergency fund

Participants' corner

PLANSPONSOR announces best-in-class 401(k) plans

- PLANSPONSOR recently announced its best-in-class 401(k) plan winners based on a proprietary scoring methodology that uses more than 30 practices related to plan design, oversight, and governance
- Among the 22 plans named best-in-class:
  - 100% used auto-enrollment
  - 97% offered a Roth option
  - 84% set the auto-enrollment default rate greater than 3%
  - 83% reviewed investments quarterly
  - 80% levelized fees
  - 53% used re-enrollment

Participants' corner

Key takeaways for plan sponsors

- Review your target-date fund's glide path to ensure it meets the needs of plan participants
- Frame additional savings opportunities as "a penny more for each dollar earned" rather than in percentages
- Have an agreed upon philosophy regarding terminated participants and the preferences of remaining in the plan or rolling to another plan or IRA
- Distribute targeted communications that reach unmarried, female plan participants
- Consider adding a managed account option even if your plan already provides a target-date fund

Legislative review

Legislative review

SECURE 2.0 legislation may pass by year-end

- SECURE 2.0 is shorthand for three bills currently being considered by Congress. These bills include:
  - The Securing a Strong Retirement Act of 2021 which the House of Representatives passed by a 414-5 vote in March 2022
  - The RISE & SHINE Act of 2022 which the Senate Health, Education, Labor, and Pension (HELP) Committee passed unanimously in June 2022
  - The EARN Act of 2022 which the Senate Finance Committee passed unanimously in June 2022
- Members of Congress are expected to negotiate a combined non-bipartisan version for passage in the House and Senate after the November mid-term elections

Legislative review

Temporary waiver of required minimum distributions proposed in the House

- Rep. Warren Davidson (R-OH) introduced a bill that would provide for a suspension of required minimum distributions (RMDs) from retirement plans and IRAs for the 2022 calendar year
- If enacted, individuals who have already taken a required distribution for the calendar year would be eligible to roll over the distribution
- Similar relief was granted in 2020 under the Cares Act

Legislative review

Senate bill would limit ESG investing in retirement plans

- The Maximize Americans’ Retirement Security Act, introduced by Sen. Mike Braun (R-IN), would require that fiduciaries make investment decisions solely based on pecuniary (financial) factors
- If fiduciaries cannot distinguish between investments based on pecuniary factors alone, they may consider non-pecuniary factors provided documentation requirements behind the decision are satisfied

Legislative review

Key takeaways for plan sponsors

- Discuss with your service providers how, if at all, SECURE 2.0 may impact your workplace retirement programs
- If RMDs are suspended for 2022, consider how you would communicate this change to terminated participants

Regulatory review

Regulatory review

DOL proposes amending the QPAM exemption

- A QPAM (qualified professional asset manager) is a bank, insurance company, broker-dealer, or registered investment advisor that satisfies certain requirements including acknowledgment of its fiduciary status; the exemption allows QPAMs to engage in transactions on behalf of the plan that would otherwise be prohibited
- The proposed rules would increase the minimum size, recordkeeping, and administrative requirements to meet the QPAM requirements

Regulatory review

DOL updates guidance on audit independence rules

- In Interpretive Bulletin 2022-02, which addresses the rules about audit independence that applies to retirement plans governed by ERISA, the DOL clarified two issues:
  - A direct ownership interest in the publicly traded securities of the plan sponsor prior to the initial audit engagement for the plan no longer disqualifies the auditor from performing a plan audit
  - The definition of “office” has been updated for purposes of determining who is a “member” of the firm

Regulatory review

IRS provides three-year extension for some amendments

- In IRS Notice 2022-33 the deadline was extended to December 31, 2025, to amend plans for the SECURE Act for non-governmental qualified plans and 403(b) plans
  - Additionally, for governmental qualified plans and 403(b) plans maintained by public schools, the deadline is 90 days after the close of the third regular legislative session for the body responsible for the amendment that begins after December 31, 2023
- With respect to the CARES Act, the Notice extends the deadline solely with respect to the 2020 waiver of required minimum distributions, following the deadlines explained above

Regulatory review

Key takeaways for plan sponsors

- Plan sponsors may wish to check with service providers to see whether the proposed QPAM and auditor rules are applicable to their organizations
- Note that the extended amendment deadline for the CARES Act does not apply to coronavirus-related loans or hardship distribution provisions that may have been adopted by some plan sponsors

Legal review

Legal review

Alleged $751K theft from Colgate-Palmolive plan

- A new lawsuit has been filed in the U.S. District Court for the Southern District of New York naming defendants as Colgate-Palmolive, the record-keeper and custodian for their roles in operating the company's defined contribution plan
- According to the allegations, an impostor contacted the record-keeper in January 2020, falsely identified herself as the plaintiff and requested to update the contact information that was on file with the plan
- A temporary PIN was mailed to the participant's address on file but was intercepted and used to make an unauthorized distribution; the plaintiff states that the plan did not notify the participant that a temporary PIN had been requested or to confirm that the participant had requested the temporary PIN

Legal review

Seventh Circuit upholds dismissal in case against Oshkosh Corp.

- On August 29, 2022, the Seventh Circuit Court of Appeals upheld the district court's decision to dismiss the excessive fee and underperformance case against Oshkosh Corporation
- Plan sponsors may take some comfort that this ruling comes shortly after the Sixth Circuit's decision that upheld the dismissal of two similar lawsuits (*Smith v. CommonSpirit Health* and *Forman v. TriHealth Inc.*)
- In both cases, the courts held that use of actively managed investments was not imprudent simply because they were more expensive than passively managed alternatives

Legal review

Second Circuit finds that 401(k) accounts were subject to garnishment

- In the case of the *United States v. Shkreli*, the Second Circuit Court of Appeals found that a participant's 401(k) plans were subject to garnishment but remanded them to the district court issues related to the 10% penalty on early distributions
- In this case, a participant was convicted of conspiracy to commit wire fraud and conspiracy to commit securities fraud, and ordered to pay over $10M; the government applied for a writ of garnishment seeking access to the participant's two 401(k) accounts
- Both the district and appellate courts concluded that the Mandatory Victims Restitution Act (MVRA) superseded ERISA's anti-alienation provisions

Legal review

Key takeaways for plan sponsors

- Ask service providers for additional information about their cybersecurity practices and how plan and participant information is protected
- According to recent rulings in the Sixth and Seventh Circuits, using actively managed funds rather than passively managed funds does not constitute a breach of fiduciary responsibility; plan sponsors must consider more than simply cost when evaluating plan investments

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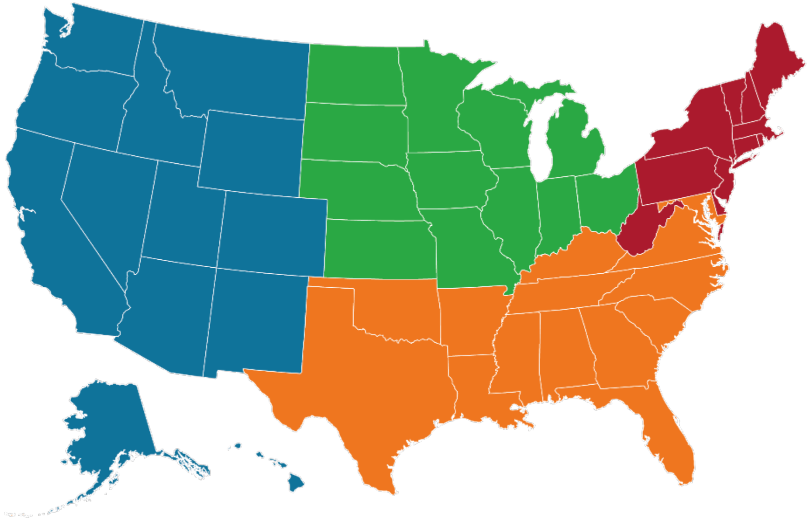

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