

TOP DC TRENDS AND DEVELOPMENTS

4Q21 DEFINED CONTRIBUTION IN REVIEW



At Janus Henderson, we seek to benefit clients through the connections we make. This includes the flow of ideas between investment teams, the insights we offer to inform clients and our engagement with companies to make a positive difference.

This is central to what active management stands for and to the outperformance we seek to deliver to clients.

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We connect our clients with insights and knowledge that empower them to make better investment and business decisions.





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: 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.





Pensions & Investments Names its Excellence and Innovation Award Winners

Organization	Winner
Southern Company	Robert Beideman
Lockheed Martin Investment Management Company	Paul Colonna
Illinois State Board of Investments	Johara Farhadieh
RWJBarnabas Health	Algretta Hatcher
Illinois State Universities Retirement System	Suzanne Mayer
Crate and Barrel Holdings	Jeremy Yonan

Southern Company Adopts Step-by-Step Approach to Financial Well-Being

- The Southern Company's five-week financial wellness campaign was launched in April to coincide with National Financial Literacy Month
- This year's campaign, called myMoney Challenge, introduced new topics each week and participants were given a choice of action steps or "challenges" such as reading articles or watching videos. They were then quizzed and became eligible for a gift card contest
- Although the number of participants decreased compared to last year's campaign, 2021 participants were more engaged:
 - Page views were 41,663, up from 25,675 in 2020
 - More than half (53%) completed a weekly challenge, up from 28% in 2020
 - Participants spent an average of 9:54 minutes on the website, up from 6:09 in 2020



Lockheed Martin Revamps its DC Plans

- Lockheed Martin recently revamped the investment lineups of its seven Defined Contribution plans; eight stand-alone options that accounted for less than 10% of total assets were removed while an active core-plus bond fund was added
- Changes were also made to the company's customized target-date series as global equity, defensive equity and private real estate investments were added
- To communicate the changes, a 22-page brochure was sent to active employees; approximately two-thirds responded by resetting the amounts of future contributions or "affirmatively declaring that they want them to stay unchanged"

State of Illinois Deferred Compensation Plan Adopts Auto-Enrollment

- Taking advantage of a new 2019 state law, the Illinois State Board of Investments implemented an auto-enrollment policy for employees hired after July 1, 2020
- During the first 12 months of auto-enrollment, 92% of eligible employees those who were auto-enrolled and chose their own deferral rates participated
 - Among this group, 88% were auto-enrolled at the 3% default rate
- In addition, the plan merged its money market option (accounting for 1.4% of the plan's asset allocation) into the plan's stable value fund

Customized Intranet Site Yields Impressive Results

- New Jersey-based RWJBarabas Health recently launched an intranet site that is personalized to meet the needs of three distinct employee groups:
 - avoiders (stay at the 3% default rate)
 - Iate boomers (catching up on saving and seeking answers to critical questions)
 - motivated savers (participants under age 50 juggling multiple competing priorities)
- The site includes quizzes, articles, videos and fun facts that are specific to each group
- During the first 100 days of the campaign, 2,025 participants increased their contributions, up 54% from the 1,314 participants who increased their contributions during the same period in 2020; in addition, the average contribution rate jumped to 14% from 9% before the campaign started



Guaranteed Income Added to University's Target-Date Funds

- The Illinois State Universities Retirement System introduced a target-date fund default option for its 401(a) plan that automatically transfers assets into a lifetime income option once the participant reaches age 50
 - As of September 30, 2021, approximately 92% of participants were invested in the target-date fund and accounted for 82% of all assets in the \$3.7B plan
- The system also reduced the number of investment options from 29 to 16 while adding a few stand-alone options including a high-yield bond fund, multisector bond fund, equity-based ESG fund and a fixed income-based ESG fund
- In February 2021, the system launched a deferred compensation plan that has the same investment options as the 401(a) plan

Crate and Barrel Restructures 401(k), Adding a Dynamic QDIA

- Crate and Barrel made several changes to its 401(k) plan, including a new target-date series that automatically switches to a managed account when participants reach age 45
 - The number of employees using the managed account increased from 136 in June 2019 to 3,249 in December 2020
- Among other changes, the plan reduced the number of active loans from three to one, added three ESG funds to the investment lineup and eliminated revenue sharing in favor of per capita fees
- Participants may choose how they prefer to receive plan communications, and those that achieve certain financial goals receive a discretionary wellness credit



Study Finds Participant Interest in a Social Security "Bridge" Option

- A new paper from the Center for Retirement Research at Boston College found that approximately one-third of survey respondents would be interested in delaying their Social Security benefits, and instead take an equivalent monthly amount from their employer-sponsored retirement plan
- In "Would 401(k) Participants Use a Social Security 'Bridge' Option?" the researchers also found that participants were willing to allocate a greater percentage of their balance to the bridge option if framed as an insurance rather than investment decision and if the plan incorporated the bridge option as a default



Research Compares the Impact of Default Rates and Matching Contributions

- In a new working paper, "The Impact of Employer Defaults and Match Rates on Retirement Savings," researchers Dennis Liu, David Blanchett and Michael Finke found that the default employee contribution rate had a greater impact on saving behaviors than employer matches
- The research found that in plans with low defaults and higher employer matching contributions, higher-income participants tended to move away from the default rate and increase their deferrals, creating a savings disparity between high- and lowincome employees
- On the other hand, when participants were defaulted at higher rates, many opted to stay the course, which helped close the savings gap between high- and low-income participants

Participants and Sponsors Agree on the Importance of Retirement Income

- A survey of plan participants and plan sponsors by Nationwide found that 88% of participants and sponsors agree that income in retirement is vital to financial security
- Despite recognizing the importance of retirement income, 50% are concerned about being able to manage expenses and lifestyle choices and 48% are concerned about outliving their savings
- Because of these concerns, 81% of sponsors believe employees want guaranteed lifetime income options in their workplace retirement plan and 41% report not currently having these options but would consider them

403(b) Plans Make Strides Despite Pandemic

- According to the Plan Sponsor Council of America's annual 403(b) survey, plan participation in 2020 was 77.2%, up from 76.6% in 2019, and 72% in 2018
- The increase in participation coincided with a continued emphasis on automatic enrollment as nearly 30% of organizations said they use this feature, a 50% increase from only five years ago
- Other key findings include:
 - More than half (56.3%) of plans with auto-enrollment also have auto-escalation
 - About half (49.5%) of plans offer Roth after-tax contributions, up from 46.8% in 2019
 - The availability of investment advice for participants increased to 41.6% in 2020, up from 36.7% in 2019



Transamerica Reports that COVID Undermines Women's Retirement Security

- A report from Transamerica, "Life in the COVID-19 Pandemic: Women's Health, Finances, and Retirement Outlook," found that 51% of women indicated that their financial situation has been negatively impacted by the pandemic
- Specific areas of financial stress include:
 - 42% of women workers experienced one or more impacts to their employment as a result of the pandemic
 - 60% made adjustments due to pandemic-related financial strain
 - 38% are having trouble making ends meet
 - \$4,000 was the median amount of emergency savings
- The report offers suggestions including creating a financial plan, being proactive about staying employable and safeguarding health



Pandemic Has Changed Many Americans' Plans for Retirement

- According to new research from Northwestern Mutual, 35% of Americans have changed their plans for retirement as a direct result of the pandemic
- Almost a quarter (24%) plan to retire later than expected; the most cited reasons were:
 - Wanting to work and save money given additional flexibility with their workplace (55%)
 - Concerns about rising costs like health care (50%)
 - Having to dip into retirement savings (24%)
 - Taking care of a friend or relative (14%)
- Approximately 11% reported plans to retire sooner than expected; the most cited reasons were:
 - Wanting to spend more time with loved ones (42%)
 - Focusing on hobbies and interests outside of work (33%)
 - Realizing their personal mission is more important than saving more (29%)
 - Work situation has changed (28%)



Surprising Findings Regarding 401(k) Participant Student Loan Debt

- According to an analysis of Fidelity's Student Debt Tool, nearly one-in-three baby boomer and Generation X plan participants who have student loans also have an outstanding 401(k) loan – a much higher percentage than millennials or Generation Z participants
- The analysis also found that baby boomers have an average loan balance of \$58,300, almost twice the average loan balance of Generation Z
 - The higher amount is attributable to a combination of factors including career changes that require additional education and loans taken out to finance a child's or grandchild's education

Managed Accounts and Target-Date Funds are Complements, Not Substitutes

- Using a data set of over 2 million Empower participants, researchers found that roughly 80% of participants who use a managed account would have been self-directed investors if their plan did not offer a managed account option
- These findings suggest that participants do not consider managed accounts to be a substitute for target-date funds, but rather a complement
- The research also found that the average balance and income of managed account users were \$103,000 and \$79,000, respectively; conversely, the average balance and income of target-date fund users was \$61,000 and \$70,000, respectively

Callan: Almost 50% of Institutional Investors Incorporate ESG

- A survey of 114 U.S. Institutional Investors revealed that 49% have incorporated ESG into their decision-making process, up 7% from the previous year's survey and more than double the percentage in 2013
 - In addition, 40% of respondents who have not yet incorporated ESG were considering doing so, up from 33% in 2020 and 12% in 2019
- Public plans (63%), foundations (57%) and endowments (50%) reported the highest level of ESG use
- Among DC plans, 13% offer a dedicated ESG option, with an average allocation of 1.2% of plan assets

Fidelity New Year's Resolution Survey Finds Optimism About the Future

- In a survey of over 3,000 U.S. adults, 60% of respondents feel optimistic about the future despite the unknown, 72% are confident they will be in a better financial position in 2022 and 68% are considering a financial resolution for the new year
 - The top three financial resolutions were to save more money (43%), pay down debt (41%) and spend less money (31%)
 - In addition to financial resolutions, respondents are also planning to proactively address their physical health, mental health and overall well-being
- Respondents also reported that their top three financial concerns for 2022 are:
 - Inflation and the rising cost of food and other day-to-day essentials (43%)
 - Unexpected expenses (43%)
 - The COVID-19 pandemic's impact on the economy (36%)





Build Back Better Dies in the Senate

- After passing in the House of Representatives by a vote of 220 to 212, the Build Back Better Act failed to gain sufficient support in the U.S. Senate to become law
- Retirement plan provisions contained in the bill included:
 - Beginning in 2022, the elimination of "back-door" Roth IRA conversions and in-plan Roth conversions of after-tax amounts
 - Beginning in 2029, limitations would apply to high-income taxpayers with large account balances
 - Beginning in 2032, prohibit all Roth conversions for taxpayers with taxable income at \$400,000 (\$450,000 married filing jointly)

RISE Act Received Unanimous Support from House Committee

- The U.S. House Committee on Education and Labor voted unanimously to advance the Retirement Improvement and Savings Enhancement (RISE) Act (H.R. 5891)
- The RISE Act contains provisions that overlap with Securing a Strong Retirement Act (SECURE 2.0) that was passed unanimously by the House Ways and Means Committee in May 2021
- Specific provisions in the RISE Act include building an online, searchable retirement lost and found database to help employees locate retirement savings as they move from job to job, allow 403(b) retirement plans to participate in MEPs and PEPs, and ensure more part-time workers are offered the opportunity to join retirement savings plans
- The RISE Act and SECURE 2.0 will be merged before receiving consideration by the full House of Representatives



Natural Disaster Retirement Bill Introduced

- U.S. Representatives Mike Thompson (D-CA) and Mike Kelly (R-PA) introduced the Disaster Retirement Savings Act of 2021 that would allow penalty-free distributions of up to \$100,000 immediately upon the President's issuance of a federal disaster declaration
- Congress often acts after a disaster is declared to provide relief, but not soon enough, and survivors are uncertain whether the relief would be forthcoming, according to the bill's sponsors



1Q22 Compliance Calendar

January

February

- January 31: Deadline for mailing IRS Forms 1099-R to participants for distributions made in the prior year
- **February 14:** Deadline for participant-directed plans to provide participants with the quarterly benefit/disclosure statement
- February 28: Deadline for filing Form 1099-R with the IRS if not filed electronically, to report distributions made in the previous year

March

- March 15: Employer contributions due for S-corporations and partnerships with December 31 fiscal year end with no corporate tax extension
- March 15: Deadline for distributing ADP/ACP refunds without incurring a 10% excise tax for plans with an Eligible Automatic Contribution Agreement
- March 31: Deadline to file IRS Form 1099-R (electronically)



Retirement Plan Limits for Tax Year 2022

	2022	2021
Elective Deferral Limit	\$20,500	\$19,500
Annual Defined Contribution Limit	\$61,000	\$58,000
Annual Compensation Limit	\$305,000	\$290,000
Catch-Up Contribution Limit	\$6,500	\$6,500
Highly Compensated Employees	\$135,000	\$130,000
SIMPLE Employee Deferrals	\$14,000	\$13,500
SIMPLE Catch-Up Deferral	\$3,000	\$3,000
Social Security Wage Base	\$147,000	\$142,800

EBSA Restores Over \$2.4B to Employee Benefit Plans and Participants

- In fiscal year 2021, the Employee Benefits Security Administration recovered over \$2.4B for plans, participants and beneficiaries
- The breakdown of total monetary recoveries was:
 - Enforcement actions (\$1.9B)
 - Voluntary Fiduciary Correction Program (\$34M)
 - Abandoned Plan Program (\$50.8M)
 - Informal complaint resolution (\$499.5M)
- In addition, 1,072 civil investigations were closed, with 741 cases closed with results and 70 cases referred to litigation



DOL Issues Proposed ESG Regulation

- On October 13, 2021, the DOL issued a proposed regulation regarding ESG and proxy voting rights for ERISA fiduciaries. The highlights of the proposed rule include:
 - Removal of the "pecuniary factors" concept and provides clarification that ESG factors may be relevant in assessing the risk-return potential of investments
 - The addition of three ESG factors as examples of potential material facts that may be included in a fiduciary's analysis (climate change, governance and workplace practices)
 - Modification of the tie-breaker rules allowing fiduciaries to consider collateral benefits if competing alternatives "equally serve the financial interests of the plan"
 - Elimination of the prohibition of QDIAs that consider ESG factors

Extension Provided for Investment Advice Exemption

- On October 25, 2021, the DOL issued Field Assistance Bulletin 2021-02 announcing a new temporary enforcement policy:
 - For the period December 21, 2021, through January 31, 2022, the DOL will not pursue prohibited transaction claims against investment advice fiduciaries who are working diligently and in good faith to comply with the Impartial Conduct Standards for transactions that are exempted in PTE 2020-02
 - The DOL will not enforce the specific document and disclosure requirement for rollovers in PTE 2020-02 through June 30, 2022

Review of Retirement Plan Amendment Deadlines

- Plan sponsors should ensure that their plans were properly amended by December 31, 2021, to incorporate the final hardship distribution regulations and any discretionary changes that were made during the 2021 plan year
- Employers who maintain pre-approved plans will have until July 31, 2022, to restate their plans as part of the "remedial amendment cycle 3"
- Although the SECURE Act and CARES Act changes are already in effect, sponsors will not be required to amend their plans until the end of 2022 (2024 for governmental plans)

IRS Adds New FAQs to Its COVID-19 Guidance

- On October 28, 2021, the IRS added two new FAQs to its official guidance regarding COVID-19 pandemic relief for retirement plans, including 401(k) plans
- The FAQs clarify that if an individual receives a distribution from a retirement plan due to separation of service but is later rehired for COVID-19 related reasons, there will not be negative consequences for plans that normally do not permit distributions for employed individuals



New IRS Snapshot on Deemed Distributions

- The IRS issued a new snapshot related to the failures that cause a participant loan to be deemed a distribution for tax purposes
- The most common cause of a deemed distribution occurs when a participant does not make a payment and thus, defaults. The IRS reminds plan sponsors that deemed distributions may also occur when:
 - The loan amount exceeds the maximum statutory limits
 - Payment schedules do not meet the time or payment requirements
 - The loan is not subject to legally enforceable agreements

REGULATORY REVIEW

New Audit Standards Take Effect for Most Retirement Plans

- The AICPA's Statement on Accounting Standards No. 136 (SAS 136) is in effect for periods ending on or after December 15, 2021
- These new standards are a result of, at least in part, a recent study finding that nearly four out of 10 retirement plan audits contained major deficiencies leading to a rejection of IRS Form 5500
- The goals of the new standards are:
 - Give readers of the audit report a better understanding of the scope of the audit
 - Clarify the responsibilities of the plan sponsor and auditor
 - Require greater levels of written communication to those charged with plan governance





Oral Arguments Heard in Hughes v. Northwestern University

- The Supreme Court heard oral arguments in the excessive fee lawsuit involving Northwestern University; the plaintiffs allege that the university breached its fiduciary responsibility by paying excessive recordkeeping fees and offered mutual funds with excessive investment management fees
- This case was dismissed by the District Court and affirmed by the Seventh Circuit; the Supreme Court will decide whether the plaintiffs' case should have been dismissed by the lower courts



Seventh Circuit Upholds Use of Arbitration Agreements

- In the case of Smith v. Board of Directors of Triad Manufacturing, the Seventh Circuit held that plans may incorporate a mandatory arbitration and class-waiver provision into the plan document
- At the same time, however, the court ruled that these provisions are not enforceable if they attempt to limit rights to relief that ERISA provides, which in this case was the removal and replacement of various plan fiduciaries



One Target-Date Fund Case Settles While a New Managed Account Case Arises

- Walgreens has agreed to pay \$13.75M into a settlement fund for a class of approximately 195,000 current and former participants of the company's 401(k) plan
 - According to the allegations, Walgreens selected a target-date fund with a history of poor investment performance, despite a market "teeming with better performing alternatives"
 - In addition to the monetary settlement, Walgreens agreed to replace the target-date fund and for a period of three years, use an investment advisor for ongoing plan monitoring
- A new lawsuit has been filed against GKN North American Services and its board of directors alleging that the 401(k)'s managed account service "funneled participants' retirement savings into proprietary, overpriced investment products that provided kickbacks to the service provider"

Excessive Fee Lawsuit Falls Short and Is Dismissed

- The U.S. District Court for the Southern District of Ohio dismissed an excessive fee class action lawsuit against TriHealth Inc.
- The court found that while the plaintiffs alleged the administrative fees were higher than 90% of comparable plans, they did not describe the services which comparable plans received in exchange for less costly fees
- Additionally, while the plaintiffs alleged that lower cost share classes were available, the underperformance of 0.5% to 2.0% over a three-year period was found to be too small and the period too short to raise a plausible breach of fiduciary duty

Big Four Accounting Firms Focus of New Lawsuits

- A new excessive fee lawsuit has been brought against Deloitte LLP alleging that administrative fees were between \$65 and \$70 per participant in the 401(k) and upward of \$200 per participant in the profit sharing plan; the plaintiffs contend that Deloitte should have been able to negotiate fees in the "\$20 range"
- In a new lawsuit filed against KMPG LLP, in addition to excessive recordkeeping fees, the plaintiffs allege that the firm failed to select funds that cost no more than the average expense ratios for similarly sized plans



Using a 401(k) Solely for Credit Protection Backfires

- A California resident who received a civil judgment against him for over \$600,000 established an LLC, started a 401(k) plan for the LLC, rolled his IRAs into the LLC's 401(k) plan, and subsequently terminated the LLC to try to shield his IRA assets
- While acknowledging the nuanced differences in creditor protection afforded IRAs and 401(k)s, the court found that the newly established 401(k) was not intended to be used for retirement, and therefore, the money rolled over from the IRAs was subject to the judgment





UK Moves Forward with Shorter, Simpler Benefit Statements

- The UK's Department for Work and Pensions (DWP) is moving forward with a requirement that calls for shorter, simpler annual benefit statements for members of DC auto-enrollment plans
- The simpler statement should not exceed one double-sided sheet of paper and only include:
 - Plan details
 - Current balances
 - Projected balance at retirement
 - Steps to increase projected balances at retirement
 - Where to go for more information
- The regulations become effective April 6, 2022



National Employment Savings Trust (NEST) Targets Retirement Savings for Self-Employed Professionals

- The £22 billion defined contribution multiemployer plan announced efforts to collaborate with fintech providers to pilot new ways to improve retirement saving outcomes for selfemployed professionals
- According to NEST, roughly 4.3 million UK residents are self-employed but only 16% are actively saving into a workplace or personal retirement plan compared to 88% of workers eligible for auto-enrollment through their employer
- The pilot will test various saving solutions and "nudges" that will be incorporated into online tools already used by self-employed professionals for managing their finances

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Banking Regulator Finalizes Climate Change Guidance in Australia

- Australia's banking regulator has released its final guidance for banks, insurers and pension funds to manage financial risks associated with climate change
- The Australian Prudential Regulation Authority (APRA) said the principle-based guide is aligned with recommendations from the Financial Stability Board Task Force on Climaterelated Financial Disclosures set up by the G20 countries



Australia's Rest Super Retirement Fund to Consider Crypto

- Australian superannuation fund Rest Super has announced its intention to consider investments in cryptocurrencies
 - The fund has more than \$46.8B in assets under management and approximately 1.8 million members
- Related, Australian Super stated that "we don't see cryptocurrency as investible for our members" while Queensland Investment Corporation expects superannuation of crypto to be a "trickle, rather than a flood"



Thai Regulator Proposes New Mandatory Retirement Program

- Thailand's securities regulator has proposed a new National Pension Fund that would provide broader coverage for private sector employees
- In general, if a company already has a Provident Fund, the National Pension Fund will not be necessary, but there are some exceptions:
 - Employees not participating in the Provident Fund will need to be included in the National Pension Fund
 - Contribution rates of the Provident Fund must be at least equal to the required contribution rates under the National Pension Fund

JANUS HENDERSON DEFINED CONTRIBUTION CAPABILITIES



DEFINED CONTRIBUTION CAPABILITIES

- 45+ years of industry experience, retirement excellence and leadership
- \$\$33.9 billion in DC assets under management as of 6/30/21
- Products utilized by the top 25 DC record-keepers in the industry
- Availability on over 200 recordkeeping platforms
- We offer our investments in vehicles appropriate for retirement plans, including zero-revenue sharing mutual fund share classes, subadvised portfolios and through a suite of Collective Investment Trust products

Note: Not all record-keepers provide quarterly DC AUM data, therefore AUM data is based on the most recently available information





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