TOP DC TRENDS AND DEVELOPMENTS

3Q21 DEFINED CONTRIBUTION IN REVIEW

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

We're invested in connecting.

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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:** 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.

QUARTERLY HIGHLIGHTS

QUARTERLY HIGHLIGHTS

PLANSPONSOR Announces 2021 Sponsors of the Year

Plan Sponsor	Category
Sony Corporation of America	Corporate 401(k) >$1B
Akin Gump Strauss Hauer & Feld LLP	Corporate 401(k) >$300M - $1B
Crate and Barrel Holdings	Corporate 401(k) >$150M - $300M
Members 1st Federal Credit Union	Corporate 401(k) >$50M - $150M
COFCO International USA	Corporate 401(k) >$25M - $50M
The Dime Bank	Corporate 401(k) <$25M
Howard University	Nonprofit Defined Contribution (DC)
Harris County School District	Public Defined Contribution (DC)

QUARTERLY HIGHLIGHTS

Sony Uses Metrics to Develop Participant Education Offerings

- A dedicated participant engagement team at Sony evaluates recent educational initiatives and uses the findings to determine what initiatives should be launched in the future
  - Online initiatives are assessed by evaluating open rates and webinar attendance; feedback is also gathered from participants about recently attended programs and future topics of interest
  - Using this information, the participant engagement team builds an education calendar annually
- Sony promotes their record-keeper's Visualize Retirement education which helps participants consider non-financial retirement issues such as where to live and how to spend their time
- To assist employees obtaining or refinancing student loans, Sony has partnered with tuition.io and SoFi

QUARTERLY HIGHLIGHTS

Akin Gump Targets a 70% Income Replacement Ratio

- To help achieve a 70% income replacement ratio, the Dallas, TX-based international law firm increased its auto-enrollment from 3% to 5% and its auto-escalation ceiling from 10% to 15%
  - The law firm reenrolls all eligible employees annually and experiences an average opt-out rate of approximately 30%
- In addition to a 7.5% profit sharing contribution, salary deferrals up to the $19,500 maximum contribution (plus the $6,000 catch-up) receive a 10% match
- Akin Gump works with third-party wellness provider, Aduro, which assesses participant physical, mental, financial and social well-being; additionally, the plan's record-keeper also provides a financial wellness assessment that addresses emergency funds and debt management
- Approximately $20M of employee student loan debt has been refinanced through the law firm's partnership with SoFi

QUARTERLY HIGHLIGHTS

Crate and Barrel Adopts Dynamic QDIA

- As part of their 401(k) revamp, Crate and Barrel has implemented a dynamic QDIA – using target-date funds for participants under age 45 and automatically transitioning to a managed account program for participants aged 45 and older
  - In the first year of adoption, the number of managed account users increased from 136 to 3,249
- The plan also auto-enrolls all full- and part-time employees and reenrolls nonparticipating employees on an annual basis
- Other recent plan design enhancements included adding ESG-themed investment options, implementation of fee-leveling and reducing the number of permissible outstanding loans from three to one
- Crate and Barrel did temporarily suspend the company match in 2020 but it was soon after reinstated once the business's cash flows stabilized

QUARTERLY HIGHLIGHTS

Members 1st Credit Union Transitions to a Defined Contribution Plan

- When the Mechanicsburg, PA-based credit union decided to terminate its defined benefit plan, several enhancements were made to the 401(k) plan, including a match of 200% up to 5% of compensation, auto-enrollment beginning at 5% and a 1% auto-escalation up to 10%
  - The credit union benchmarks the plan's investment fees each quarter and the administrative, advisory and all-in fees on an annual basis; the plan also employs a level fee pricing structure
- During 2021, Members 1st plans offered three new financial wellness initiatives that encouraged participants to review their beneficiary designation, provided additional education about Health Savings Accounts and promoted catch-up contributions for participants aged 50 and older
  - Future initiatives will focus on mental health and targeted communications for specific demographics

QUARTERLY HIGHLIGHTS

Generous Match Drives Participation at COFCO International

- COFCO International USA, an agriculture supply-chain company, offers participants a qualified nonelective 3% contribution and a $0.50 match on all employee contributions with no cap
  - These features, plus a 6% auto-enrollment feature, have helped COFCO obtain a 93% participation rate and 15% average deferral rate
- The company recently instituted several investment committee best practices including establishing a committee charter, offering committee members annual fiduciary training and adopting an Investment Policy Statement (IPS)
- The plan only uses funds with zero-revenue sharing as the company pays all recordkeeping and administrative fees directly
- Recently, socially responsible funds were added to the core lineup and a managed account option was introduced to plan participants

QUARTERLY HIGHLIGHTS

The Dime Bank Revamps Plan with Flexible Distribution Options

- When the PA-based bank revamped its plan, it changed the plan document to allow retired employees the opportunity to take partial distributions and installment payments
  - Other enhancements included a 1% auto-escalation feature up to 15% and a new menu of zero-revenue sharing mutual funds
- The Dime Bank boasts a 98% participation rate compared to its peer group average of 70%, and when combining deferrals and employer contributions, 60% of The Dime Bank's employees are saving 15% or more of their compensation
- The plan's advisor provides one-on-one education and furnishes each employee a "report card" that assesses the participant's deferral rate and whether their investment options are age appropriate and properly diversified

QUARTERLY HIGHLIGHTS

Howard University Consolidates 403(b) Options

- Howard University recently reduced its number of 403(b) record-keepers from three to one and reduced the number of investment options from 150 to approximately 25
  - The participation rate grew from 62% to 92% during the two-year period following the changes, without the benefit of auto-enrollment
- For eligible employees, the 403(b) provides a 6% nonelective employer contribution and a 50% match up to 4% of compensation; for example, an employee who defers 4% receives a total of 12% (employer plus employee) contribution
  - Both the nonelective and matching contributions are immediately vested
- According to a recent analysis, participants in the plan are on track to replace an average of 79% of income in retirement (including Social Security)

QUARTERLY HIGHLIGHTS

Harris County School District Tackles Employee Financial Wellness

- Offices at the Harris County School District, based in Georgia, noticed recurring hardship and loan distributions from its 403(b) plan participants; in response, the school district partnered with financial wellness provider Mentoro
- Once participants registered on Mentoro's website and completed a financial profile, they will receive a personalized financial wellness score and action plan; participants can earn points to improve their score, such as increasing 403(b) contributions or starting an emergency fund
- Within six months following the launch, about half of employees were enrolled; over the course of one year, 21% saw their retirement income projection improve and 10% reported being less distracted by financial stress
- The school district also recently adopted auto-enrollment and intends to add auto-escalation and reenrollment into the plan's target-date funds

PARTICIPANTS’ CORNER

PARTICIPANTS' CORNER

Study Finds 81% of Participants Have Logged Into Their Account

- The "DC Participant Planscape," an annual Cogent Syndicated study from Escalent, reported that within the last 12 months, 81% of participants have logged into their accounts, with most signing in to check balances or review investment options
- The study also found generational differences:
  - Millennials and Generation X were most likely to welcome easy-to-use trading platforms, short educational videos, better mobile capabilities, real-life stories and inspirational savings tips
  - Baby Boomers preferred traditional online features such as calculators, retirement income worksheets, simplified plan investment options and market updates
  - All generations listed live Q&A features, debt guidance, debt trackers and personalized education as benefits they would be interested in

PARTICIPANTS' CORNER

Empower Suggests Plan Sponsors Should Eliminate Jargon

- A new report by Empower, "Boosting the Effectiveness of Retirement Plan Communications," concluded that participants are more likely to act if they receive direct language rather than industry jargon; 44% of respondents reported that commonly used financial terms make them hesitant to talk about money
- Specific examples outlined in the report include:
  - "Investment balance" vs. "asset allocation"
  - "Personal retirement account" vs. "IRA"
  - "Complete financial picture" vs. "holistic financial view"
  - "Certified financial advisor" vs. "fiduciary advisor"

PARTICIPANTS' CORNER

Equity Funds Continue to Dominate 401(k) Lineups

- The BrightScope/Investment Company Institute "Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2018" found that the average number of investment options in 401(k) plans is 28, of which 13 were equity funds, three were fixed income funds and eight were target-date funds
- Among large plans (>$1B), mutual funds were the most common investment vehicle, holding 43% of assets; however, CITs were close behind, with 33%
  - For plans with under $100M, CITs held about 6% of the assets
- More than 95% of plans with more than $10M and 82% of plans with less than $1M offered index funds

PARTICIPANTS' CORNER

Generation Z Displaying Strong Saving Habits

- According to the Transamerica Retirement Survey, among those presently saving for retirement, Generation Z workers started saving at age 19, while millennials started at age 25, Generation X at age 30 and Baby Boomers at age 35
- Among the Generation Z cohort, more than 70% of workers between the ages of 18 and 23 are saving for retirement and the median balance is about $26,000
- The researchers suggest that Generation Z likely received more encouragement than previous cohorts as their parents (Generation X) were likely more familiar with defined contribution plans; furthermore, younger adults are likely to have greater doubts about the long-term viability of Social Security and Medicare than older generations

PARTICIPANTS' CORNER

DCIIA Offers Tips for Plan Sponsors Considering ESG

- A new whitepaper from the Defined Contribution Institutional Investment Association (DCIIA), "Incorporating ESG in DC Plans: A Resource for Plan Sponsors," offers several practical considerations for investment committees that may be interested in incorporating ESG investing into their plan
- The suggestions include:
  - Define "sustainability" and clarify investment beliefs
  - Determine the appropriate path to integration across all investments, adding sustainable funds or offering a self-directed brokerage window
  - Assess sustainable funds in a manner consistent with non-sustainable funds
  - Consult with legal counsel
  - Maintain clear documentation

PARTICIPANTS' CORNER

Morningstar Examines Auto Features from an Ethics Perspective

- In "The Ethics of Automatic Enrollment," Morningstar asked 1,390 U.S. adults to rate retirement programs that incorporated opt-in, auto-enrollment and auto-escalation
- The three primary findings from the research are:
  - People care more about the quality of the programs (i.e., match, investment options, etc.) than how they are enrolled into the program (i.e., opt-in versus auto-enrollment)
  - People found auto features less ethical but more effective compared to opt-in
  - While auto features scored lower than opt-in from an ethics perspective, they still generated a neutral to positive sentiment

PARTICIPANTS' CORNER

Both Fear and Encouragement Messaging Found to Increase Engagement

- The Defined Contribution Institutional Investment Association (DCIIA) conducted a survey of over 1,000 individuals to assess how different types of messaging was related to engagement
- In the survey, half the respondents received an "encouraging" message and half received a "cautionary" message
  - Encouraging: Great news—you are on track to reach 71% of your retirement income goal
  - Cautionary: Caution—you are on track to have a 29% retirement income shortfall
- Respondents were then asked how the information provided would change their engagement behavior with their employer's retirement plan
- Controlling for demographic variables, both groups were found to increase their engagement behavior although the fear group's engagement was slightly higher than the encouragement group

PARTICIPANTS' CORNER

Employee Financial Stress Costs Companies Nearly $5B a Week

- According to the results from BrightPlan's annual Wellness Barometer Survey, financially stressed employees reported an average of 15.3 hours of reduced productivity and engagement each week, leading to an estimated weekly loss of $4.7B
- The survey found that employees gave employers high marks for their COVID-19 response, particularly human resources, with 93% of respondents reporting that the trust in human resources has increased or stayed the same
- Some demographics, however, were more negatively impacted by the COVID-19 pandemic; women and people of color reported worsened mental health, lower engagement at work and worsened work/life balance compared to men and whites

PARTICIPANTS' CORNER

Vanguard Finds Target-Date Funds Not Always Used as Intended

- In an analysis of its own 401(k) plan participants, Vanguard reported in "How America Saves: 2021" that 67% of participants are invested in a single target-date fund
  - In contrast, 27% are invested in a target-date fund plus other funds available in the plan's core line-up, 2% are invested in two or more target-date funds and 4% are invested in two or more target-date funds plus other funds
- While there may be legitimate reasons for why participants are not using target-date funds as a single investment (i.e., maintaining a large cash position for an upcoming expense), it is more likely that participants do not realize that the target-date fund itself is already diversified

PARTICIPANTS' CORNER

Retirement Means Different Things to Different People

- In an unscientific exercise conducted by researchers at Morningstar, volunteers were asked to write down the first three words that came to mind when they thought about retirement; the responses were then used to construct word clouds
- For young adults (ages18 to 25), the most prominent words were “old,” “money” and “relax”
- For older adults (ages 50 and older), “old” and “money” were much less prominent; however, the most prominent words were “relax,” “travel” and “happiness”
  - These results were similar for individuals aged 60 and older
- The exercise serves as a reminder for investment professionals that retirement means different things to different people, and as individuals age, their views regarding retirement are likely to shift

LEGISLATIVE REVIEW

LEGISLATIVE REVIEW

House Ways and Means Votes to Make Significant Changes to Retirement Programs

- In a 24-19 vote, the House Ways and Means committee approved the Build Back Better Act, a reconciliation bill that has significant implications for various retirement programs
- Specifically, the legislation will:
  - Implement contribution limits and new RMD requirements for IRA and defined contribution (DC) balances in excess of $10M
  - Eliminate after-tax contributions to IRAs and DC plans, and restrict conversions to taxpayers with adjusted gross income greater than $450,000 (married) and $400,000 (single)
  - Require employers without an employer-sponsored retirement plan to automatically enroll employees in an IRA or other arrangement at 6% of compensation, increasing annually to 10% of compensation
  - Modify the Saver's Credit to create a refundable tax credit that would be contributed directly to a Roth IRA

LEGISLATIVE REVIEW

Women's Retirement Protection Act of 2021 Reintroduced

- Senator Patty Murray (D-WA) has reintroduced legislation designed to help close the gender-based retirement savings gap and bolster women's financial security overall
- Specific aspects of the legislation would:
  - Expand protections to prevent one spouse from making decisions that might undermine a couple's retirement resources without the other's consent or knowledge
  - Ensure more part-time workers are covered by employer-sponsored retirement plans
  - Provide grants to community organizations that would provide information and tools about retirement and savings to women who are of working or retirement age
  - Help low-income women and survivors of domestic abuse obtain qualified domestic relations orders (QDROs) to ensure the appropriate division of retirement assets following a divorce or separation

LEGISLATIVE REVIEW

New Proposal Would Establish Universal Saving Accounts

- The Portable Retirement and Investment Account Act of 2021, introduced by representative Jim Hines (D-CT) and Senator Mark Warner (D-VA), would establish a savings account for each person soon after receiving a Social Security number
- Employees will be able to direct their employer to make contributions via payroll direct deposit, but only if the employee is not covered by the employer's plan or the employer does not offer a plan
- The account will be invested similarly to the Federal Thrift Plan and will be eligible to be rolled over into an IRA once the balance reaches $15,000

LEGISLATIVE REVIEW

Senators Propose Revamping the Saver's Credit

- Six Democratic Senators have introduced the Encouraging Americans to Save Act of 2021
- The legislation would restructure the existing non-refundable Saver's Credit into a refundable, government matching contribution of up to $1,000 a year for middle- and moderate-income workers who save through a DC plan or an IRA
- The proposal includes a COVID-19 recovery bonus credit that provides up to $5,000 in additional government matching contributions for the first $10,000 saved during the five-year period beginning in 2022

REGULATORY REVIEW

REGULATORY REVIEW

4Q21 Compliance Calendar

October

- **October 1:** Start of period to disseminate annual notices to participants, including the 401(k) safe harbor, automatic contribution arrangement (ACA), qualified automatic contribution arrangement (QACA) safe harbor and qualified default investment alternative (QDIA)
- **October 15:** IRS deadline for filing Form 5500 after a plan files Form 558 to request an extension

November

- **November 14:** Deadline for participant-directed DC plans to provide participants with quarterly benefit/disclosure statements for fees charged during the third quarter

December

- **December 1:** Deadline for 401(k) safe harbor, QDIA and automatic enrollment annual notices and to elect safe harbor status for the current plan year with nonelective contributions
- **December 15:** Deadline for providing summary annual notice reports to participants if filing Form 5500 was extended
- **December 31:** Deadline for RMDs, correcting a failed ADP/ACP test, adoption of discretionary plan amendments, and removal or adoption of safe harbor status for the following year

REGULATORY REVIEW

DOL Clarifies Lifetime Income Disclosure Requirement

- The SECURE Act, enacted in 2019, requires plans to provide lifetime income illustrations (LIIs) to participants at least annually
- On September 18, 2020, the Department of Labor (DOL) issued an interim final rule (IFR) which describes how plan administrators must calculate the estimated lifetime income stream; however, questions arose regarding the application date
- In response, on July 16, 2021, the DOL issued a series of Frequently Asked Questions (FAQs) clarifying that:
  - Self-directed plans can incorporate their first lifetime income illustration on any quarterly statement up to the second calendar quarter of 2022 (ending June 30, 2022)
  - Plans that do not allow participants to self-direct their investments must provide lifetime income illustrations on the statement for the first plan year ending on or after September 19, 2021; for most plans, the deadline is effectively October 15, 2022

REGULATORY REVIEW

IRS Provides Updates on Plan Amendments and Restatements

- On September 1, 2021, the IRS issued Revenue Procedure 2021-38, which states that the new deadline for employers using a pre-approved document to adopt interim amendments is the end of the second calendar year following the calendar year in which the new law became effective
- Separately, plan sponsors using a pre-approved document are scheduled to complete the Cycle 3 restatement by no later than July 31, 2022; there are two new restatement requirements for employers that use a fully discretionary matching contribution formula:
  - Employers must provide the plan administrator or trustee with written instructions describing how the match formula will be allocated to participants, the computation period to which the matching formula applies and, if applicable, a description of each business location or classification subject to a separate formula
  - Employers must provide plan participants with a summary of those instructions outlining the matching formula, period used to calculate the match and when the match will be deposited

REGULATORY REVIEW

Changes to Annual Reporting Requirements Proposed

- On September 14, 2021, the DOL and IRS proposed revisions to the Form 5500 annual report to implement changes reflecting the SECURE Act of 2019
- Specific highlights of the proposal include:
  - Clarification that multiple sponsors who wish to file a single Form 5500 as a “group of plans” must have the same administrator, named fiduciaries, trusts, plan year, investments and may not hold employer securities; additionally, large plans participating in a “group of plans” would be subject to a separate, plan-level audit
  - For reporting purposes, pooled employer plans (PEPs) would be treated the same multiple employer plans (MEPs); a new Schedule MEP would ask about the type of MEP, the name of administrator, participating employer information and the total annual contribution and aggregate account balances for each participating employer
  - The proposal would redefine “small plans” for filing and audit purposes: only participants with account balances, rather than eligible participants, would be counted

REGULATORY REVIEW

The Employee Plans Compliance Resolution System Gets a Refresh

- On July 15, 2021, the IRS issued Revenue Procedure 2021-30, which supersedes the previous 2019 Revenue Procedure regarding the Employee Plans Compliance Resolution System (EPCRS)
- The highlights of the changes include:
  - The deadline to self-correct or document a significant operational failure has been extended to the last day of the third plan year following the plan year of the failure (previously the deadline was two years) and ADP/ACP failures may be corrected up until the last day of the fourth year following the failure (previously three years)
  - The ability to fix a failure to enroll a participant in a 401(k) without the mandatory qualified nonelective contribution (QNEC) equal to 50% of the missed deferral has been extended retroactively from January 1, 2021, to December 31, 2023 (previously the provision expired on December 31, 2020)
  - The ability to make an anonymous submission to the Voluntary Correction Program (VCP) will end in 2021; beginning next year, the IRS will institute an “anonymous, no-fee VCP pre-submission conference” in which the IRS will provide non-binding feedback

REGULATORY REVIEW

Physical Presence Relief for Elections and Contents Extended

- The IRS issued Notice 2021-40, which extends the temporary relief from the “physical presence requirement” previously granted to certain 401(k) plan elections and contents through June 30, 2022
- Generally, under ERISA, participants making certain distribution elections or providing spousal consent must have their signatures witnessed by a plan representative or notary public; provisions that provided a video conference alternative issued during the beginning of the COVID-19 pandemic expired on June 30, 2021

REGULATORY REVIEW

New IRS Snapshots on 403(b) Plans

- Two new IRS snapshots highlight the IRS's continued focus on 403(b) plan compliance; while snapshots are not new regulations, they do provide additional helpful information regarding areas the regulators find concerning
- The first snapshot reviews the universal availability requirement, which provides that, for non-church plans, all employees must be provided the opportunity to participate unless the employee belongs to a certain group that may be excluded
  - A common group that may be excluded is employees who work fewer than 20 hours a week; the snapshot stated that employers are erroneously excluding all part-time employees
- The second snapshot deals with applying the 415(c) limits; generally, the limit is applied separately if a 403(b) participant also participates in another qualified DC plan
- However, a single 415(c) must be applied if the participant is deemed to be in control of the other DC plan (i.e., if the 403(b) participant also has self-employment income and decides to open a 401(k) plan)

REGULATORY REVIEW

GAO Finds that Participants Do Not Understand Fee Disclosures

- According to a new study by the Government Accountability Office (GAO), 45% of participants are not able to use the information provided in fee disclosures to determine the cost of their investments and 41% of participants incorrectly believe that they do not pay any fees
- In the study, the GAO noted best practices implemented in other countries such as presenting the most important information first or offering an online calculator that allows participants to compare fees across different plan investments
- The GAO recommends adding fee benchmarks and ticker information to the disclosures to help participants better understand the costs incurred

REGULATORY REVIEW

SPARK Institute Offers Sponsors Fraud Best Practices

- On July 21, 2021, the SPARK Institute released its "Industry Best Practice Fraud Controls," which offers seven steps plan sponsors, participants and record-keepers can employ to minimize the potential for security breaches
- Separately, the DOL's Employee Benefits Security Administration updated its audit inquiries and will ask plan sponsors to produce "all documents related to any cybersecurity or information security programs that apply to the data of the plan, whether those programs are applied by the sponsor of the plan or by any service provider of the plan"

LEGAL REVIEW

LEGAL REVIEW

Supreme Court to Hear Northwestern University Case

- In the case of *Hughes v. Northwestern University*, the plaintiffs alleged that the sponsor's 403(b) plan breached the duty of prudence by paying excessive recordkeeping fees and offering mutual funds with excessive investment management fees
  - The district court granted the defendant's motion to dismiss, and the Seventh Circuit affirmed
- The Supreme Court will weigh in for the first time on fiduciary breaches resulting from allegedly excessive 401(k) fees
  - A decision is likely during the first half of 2022

LEGAL REVIEW

Three Excessive Fee Lawsuits to Proceed

- A U.S. district court ruled that the case against L Brands may proceed, finding, among other issues, that the plan sponsor paid the same administrative fees throughout the class period despite significant growth in plan assets
- In the case involving Centerra Group, a U.S. district court found plausible evidence that a fiduciary breach occurred when the plan consultant replaced 11 actively managed funds with five CITs managed by an affiliate; in this case, the plaintiffs contend that the CITs had no track record and plan assets were used to seed the CITs to bolster their marketability
- The NYU excessive fee case was revived when the Second Circuit vacated the district court's dismissal of the plaintiffs' inappropriate share-class claim; the Second Circuit did not agree with the lower court's findings that retail shares offered greater liquidity than institutional shares and the percentage of retail shares was not sufficient to taint the entire plan

LEGAL REVIEW

Three Excessive Fee Cases Dismissed

- A U.S. district court dismissed an excessive fee case against Nvidia, concluding that a revenue sharing structure provided an “obvious” explanation for why a higher share class was used
- In the case against CommonSpirit in which the plaintiffs claimed passive funds should have been offered, the court found that active and passive funds are not ideal comparisons; additionally, even if the two are viable comparisons, there is no reason to infer a breach occurred because the active mangers underperformed the benchmark by less than 1%
- Finally, in a case involving Oshkosh Corporation, the court dismissed claims of a fiduciary breach for using actively managed funds rather than passively managed alternatives, in part, because the plaintiff conceded he had no knowledge of the sponsor’s investment selection and monitoring process

LEGAL REVIEW

Updates on the American Airlines and Banner Health Cases

- The Fifth Circuit Court of Appeals upheld a lower court's decision to dismiss a fiduciary breach suit against American Airlines in which the plaintiff claimed that the plan should have offered a stable value fund rather than the money market fund provided by the American Airlines Credit Union
  - The decision was made, at least in part, because when a stable value option was later added to the plan, the plaintiffs did not transfer any funds to the new option; therefore, the court concluded that the plaintiffs would not have been likely to invest in the stable value option had the opportunity been available
- In the case of *Ramos v. Banner Health,* the 10th Circuit Court of Appeals upheld the district court's nominal judgement (approximately \$3M versus the \$85M in alleged plan losses) for excessive costs
  - Separately, the court calculated attorney fees for the plaintiffs at approximately \$1M (versus the \$5M requested)

LEGAL REVIEW

Two Decisions Regarding 401(k) Plans and Bankruptcy Proceedings

- The U.S. Sixth Circuit Court of Appeals upheld a lower court's ruling that Chapter 13 bankruptcy may not protect 401(k) contributions from creditors if the participant was not already making the contributions six months prior to the bankruptcy
- A U.S. Bankruptcy Court ruled that inherited 401(k)s do receive creditor protection under ERISA if the funds are still in the plan at the time of the bankruptcy filing
  - The court cautioned, however, that the protection for inherited 401(k) accounts is lost if the debtor withdraws the account before filing for bankruptcy

GLOBAL HEADLINES

GLOBAL HEADLINES

Uber to Launch DC Plan for UK Drivers

- Uber will launch a DC plan after the UK's Supreme Court held that drivers should be considered workers and not self-employed
- Under the ruling, drivers are still able to choose when they work but will be entitled to new benefits such as holiday pay and a retirement plan
- NOW: Pensions, the £2.5B multi-employer pension plan, was chosen to manage the assets of the new arrangement
- Uber will contribute 3% while drivers will contribute 5% if they earn above the minimum threshold of £120 and up to a maximum threshold of £967

GLOBAL HEADLINES

New Climate Reporting Regulation In Effect for UK Pensions

- The Occupational Pension Schemes Regulations took effect on October 1, 2021, for pension plans (including collective DC plans) with assets over £5B
  - The regulations will apply to plans with assets over £1B beginning October 1, 2022
- Under the new regulations, plan trustees must incorporate climate-related risks and opportunities into the management of the pension plan and publicly report their activities within seven months following the plan year end

GLOBAL HEADLINES

Canadian Life: Retirement Confidence Varies Based on Gender

- A new study by Canadian Life of 4,001 UK adults found that 64% of men were confident that they would be able to retire as planned, compared to 53% of women; additionally, 58% of men do not anticipate financial concerns during retirement, compared to 45% of women
- The study suggests that the pension gender gap is twice that of the gender pay gap and is exacerbated by women missing out on auto-enrollment because of part-time employment
- Several recommendations were offered including the elimination of the £10,000 compensation eligibility threshold to make auto-enrollment more inclusive

GLOBAL HEADLINES

Three-Quarters of Canadian Sponsors Report Meeting Plan Goals

- According to a survey by Fidelity, approximately three-quarters (72%) of Canadian plan sponsors believe their retirement savings plan is meeting its goals for 2021, up from 66% in 2020
- The survey found that 68% of sponsors feel their employees are saving enough for retirement, up from 59% in 2020, 86% believe at least some employees are delaying retirement due to a shortfall and 60% believe the COVID-19 pandemic has had an impact on employees' retirement decisions
- The survey also found that 88% plan to make changes to their investment menus and 82% are making changes to their plan design

GLOBAL HEADLINES

Changes to Australia’s Superannuation Approved

- Australian Parliament has passed the Your Future, Your Super Bill, which makes several changes to the superannuation program, including:
  - A performance test of default investments; poor performance over an extended period would prohibit the addition to new members until performance improves
  - If employees do not select a fund to receive superannuation funds at the start of a new job, the employer will pay contributions to the employee’s previous fund, rather than the employer’s default fund
  - Individuals ages 65 and 66 are allowed to make up to three years of non-concessional superannuation contributions
  - Increased the maximum number of allowable members in self-managed superannuation funds from four to six

DEFINED CONTRIBUTION CAPABILITIES AND RESOURCES

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.

CONDUCT A DC FIXED INCOME DIAGNOSTIC

Correlation Matrix

Trailing 5 Years

	1	2	3	4	5	6	7	8	9	10	11
Fixed Income Example, 1											
BBgBarc Global Aggregate TR USD, 2	0.81										
BBgBarc US Agg Bond TR USD, 3	0.70	0.77									
BBgBarc US Govt/Credit 1-5 Yr TR USD, 4	0.56	0.66	0.92								
BBgBarc US Universal TR USD, 5	0.86	0.81	0.96	0.86							
ICE BofA US High Yield TR USD, 6	0.81	0.41	0.21	0.07	0.46						
JPM EMBI Global TR USD, 7	0.94	0.65	0.48	0.34	0.69	0.86					
US Treasury, 8	0.26	0.53	0.85	0.85	0.68	-0.29	0.00				
US Agg, 9	0.70	0.77	1.00	0.92	0.96	0.21	0.48	0.85			
US High Yield, 10	0.81	0.41	0.21	0.07	0.46	1.00	0.86	-0.29	0.21		
S&P 500, 11	0.53	0.24	0.01	-0.12	0.21	0.77	0.57	-0.38	0.01	0.77	

Fixed Income Diagnostic Scorecard

Performance of client portfolio compared to US Treasury and US High Yield benchmarks

	US Treasury Benchmark Scenario Returns	Client Portfolio Scenario Returns	US High Yield Benchmark Scenario Returns
Risk-Off Scenarios • Bottom Quintile S&P Return Months • Trailing 5 Years • Average Return	0.8%	-0.5%	-2.0%
Spread Widening Scenarios • Top Quintile Spread Widening Months • Trailing 5 Years • Average Return	1.4%	-0.2%	-2.1%
Rising Rates Scenarios • Top Quintile Rising Rate Months • Trailing 5 Years • Average Return	-1.0%	-0.4%	0.7%
Risk-On Scenarios • Top Quintile S&P Return Months • Trailing 5 Years • Average Return	-0.2%	1.0%	2.5%

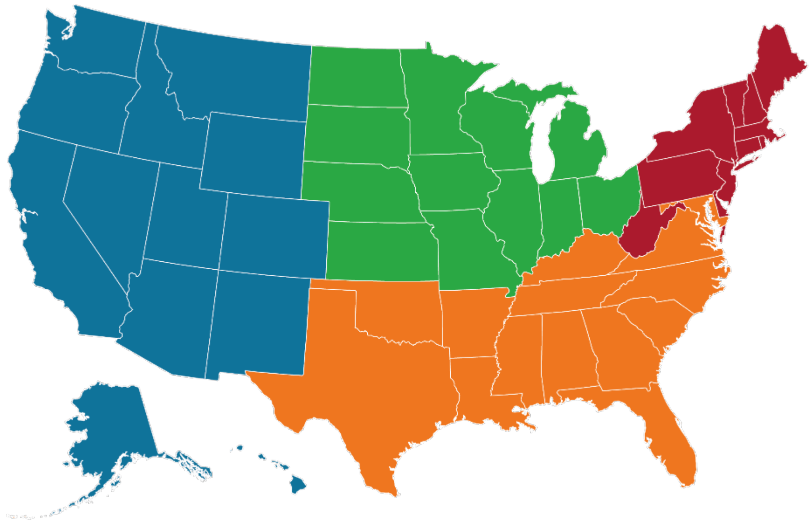
Fixed income securities are subject to interest rate, inflation, credit and default risk. The bond market is volatile. As interest rates rise, bond prices usually fall, and vice versa. The return of principal is not guaranteed, and prices may decline if an issuer fails to make timely payments or its credit strength weakens.

High-yield or “junk” bonds involve a greater risk of default and price volatility and can experience sudden and sharp price swings.

REGIONAL AND NATIONAL RESOURCES

Experience In:

- Fiduciary Responsibility
- Wealth Management
- Industry Trends
- Legislative and Regulatory Updates



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Matt Sommer is Head of Janus Henderson Investors' Defined Contribution and Wealth Advisor Services Team. This team provides clients insights regarding a number of topics including regulatory and legislative trends, practitioner best practices, and financial and retirement planning strategies. Prior to joining Janus in 2010, Dr. Sommer spent 17 years at Morgan Stanley Wealth Management and its predecessors, Citi Global Wealth Management and Smith Barney, during which time his roles included director of financial planning and director of retirement planning.

Dr. Sommer received his bachelor's degree in finance from the University of Rhode Island and an MBA with a concentration in finance from Pace University, Lubin School of Business. He received a doctorate degree (dissertation: Three Essays Investigating the Bequest Intentions and Expectations of Older Adults) from Kansas State University. His doctoral candidacy research was selected for publication in the Journal of Financial Planning and the Journal of Personal Finance. Dr. Sommer is a frequent guest on CNBC and Bloomberg TV and has been extensively quoted in various industry publications including the Wall Street Journal, Barron's and Investment News. He has 28 years of financial industry experience.

Important information

A retirement account should be considered a long-term investment. Retirement accounts generally have expenses and account fees, which may impact the value of the account. Non-qualified withdrawals may be subject to taxes and penalties. For more detailed information about taxes, consult a tax attorney or accountant for advice.

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