Defined Contribution in Review

A Quarterly Briefing for Plan Sponsors: 4Q16

What's Inside?

Our **Defined Contribution in Review** 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 plan or plan participants. Inside you will find the following information:

Quarterly Highlights: A summary of plans and sponsors making the news
Plan Sponsors' Corner: Timely insights about plan sponsors' retirement readiness
Legislative Review: A summary of new and pending legislation
Regulatory Review: News out of the Department of Labor and other regulatory bodies
Legal Review: An update on high-profile ERISA cases
Defined Contribution Capabilities: Janus Capital's defined contribution capabilities

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

Quarterly Highlights

Pensions & Investments Announces the 2016 Excellence & Innovation Awards[1]

Award Recipient	Employer	Initiative
Katie Nedl	BlackRock	Released an interactive video
Neil Saxton	Health Employees Superannuation Trust Australia (HESTA)	Leveraged mobile device technology
Dana Hammonds	NFL Players Association (NFLPA)	Revised financial education program including new “rookie” offering
Sheila Rowally	Saudi Arabian Oil Co.	Built a new DC plan to offer Shariah-compliant investment options[2]
Erika Kirchner	Bertelsmann	Introduced a second QDIA for older employees
Shirley Zabiegala	Nestle USA	Launched a financial wellness program to create a customized curriculum for participants

[1] For additional information on the Excellence and Innovation Awards, please visit pionline.com
[2] Shariah is defined as the Muslim or Islamic law that regulates many aspects of a Muslim's life including the type of investments allowed.

BlackRock Uses Interactive Video to Reach Younger Employees

- Despite an already robust 97% 401(k) participation rate, BlackRock developed an interactive video[3] aimed at reaching younger employees – Generation X and Generation Y – who represent about 91% of its workforce

- The video offered responses depending upon the participants' answers:

  - Employees saving the maximum amount, or who were taking advantage of the full match, were congratulated

  - Participants who hadn't reached those goals were encouraged to increase their contributions and shown illustrations of how additional savings can make a significant difference over time

- Additionally, participants were allowed to make changes to their accounts, such as adding auto-escalation, directly from the video

[3] For additional information, please visit BlackRock.com

Australian Plan Sponsor Uses Technology for Communication, Convenience and Cost

- Health Employees Superannuation Trust Australia (HESTA) launched a digital-based communication campaign[4] using data analytics to reach specific audiences
- Members received a digital membership card that could be downloaded to a smartphone via an app; 52.5% of members who engaged with HESTA did so using a mobile device
  - Because many members work shifts, they prefer to access information when it is convenient to them
- Producing the digital cards cost considerably less than the ongoing delivery of physical cards to HESTA's 800,000 members

[4] For additional information, please visit *hesta.com.au*

NFL Players Association (NFLPA) Revises Financial Education Program

- While the National Football League Players Association (NFLPA) has been providing financial education since 2009, the program[5] has been recently revised to focus more intensely on the individual needs of specific groups: early career, mid-career, late career and former players

- The newest effort is a microsite called *Bank On It* for rookie players

  - Players are asked to take a pledge to create and use a budget, manage credit by reviewing credit reports and scores and continue educating themselves on financial wellness, credit, debt and budgeting

  - The site provides videotaped comments from former players extolling the importance of financial literacy

[5] For additional information, please visit nflpa.com

Saudi Arabian Oil Company Creates New Plan Without Compromising Their Religious Principles

- Prior to the launch of a new plan[6], employees of Saudi Arabian Oil Company had access to a Defined Contribution plan, but assets were invested very conservatively and earned money market rates of return;
  - The plan was also not compliant with Shariah investment principles, so many employees did not contribute despite a 10% match[7]
- In October 2015, the company introduced a new plan, Idikhar, that offered seven investment options including three Shariah-based options;
  - Also included were conservative, moderate and growth model portfolios
- To promote the new plan, the company employed 30 wealth managers to contact participants in person, via phone and online

[6] For additional information, please visit *pionline.com*
[7]Shariah is defined as the Muslim or Islamic law that regulates many aspects of a Muslim's life including the type of investments allowed.

Bertelsmann Adopts a Second QDIA for Older Employees

- Participants who were defaulted into Bertelsmann's target-date fund as the plan's primary qualified default investment alternative (QDIA) are now defaulted into a managed account QDIA upon reaching age 45[8]
- An opt-out provision is available, but when 701 employees were defaulted into the managed account QDIA, 553 didn't opt out, and of that group, 96% stayed with the managed account
- It took the company 18 months to review the concept, and several more months before the new plan design took effect

[8] For additional information, please visit *bertelsmann.com*

New Financial Wellness Program At Nestle USA Provides Customized Education

- Nestle USA recently launched a new financial wellness program called the Smart$aving Academy[9]
  - It mimics a college curriculum with a mixture of webcasts and workshops that focus on fundamental retirement planning issues as well as more detailed strategies for employees approaching retirement
- The goal is to create a customized financial wellness program rather than a one-size-fits-all program, using multiple data metrics from the company's three 401(k) plans
- The Academy features an online financial assessment that enables participants to identify opportunities for improvement, create an individualized plan and participate in one-on-one retirement sessions to receive financial guidance

[9] For additional information, please visit *nestleusa.com*

Plan Sponsors' Corner

TIAA: Employee Engagement Can Help Drive Plan Success

- According to surveys conducted by TIAA, employees need and want help from their employer:
  - 50% would like their employer to provide advice on retirement planning
  - 75% would like to receive financial advice in the future
  - 62% would prefer to access a lifetime income option offered by their employer
- TIAA offers three suggestions for plan sponsors to consider:
  - Target messages: Deliver the right information at the right time
  - Leverage technology: Provide information through a variety of channels
  - Offer advice and education: Drive decision-making and action by providing personalized advice and guidance as part of your retirement plan

Retirement Income Solutions Lacking in the Marketplace

- Corporate Insight and Institutional Investor Institute for Defined Contribution Plans surveyed more than 150 plan sponsors, each with total plan assets of $500M or more, about retirement income solutions[10]
- Key findings of the survey include:
  - 16% of sponsors have a retirement income solution in place; of those who do not, the top three reasons include no one-size-fits-all solution, too expensive for the participant and waiting on in-plan safe harbor
  - 25% have considered a managed account with payout option while the same amount of sponsors (roughly 18%) have considered an in-plan annuity, out-of-plan annuity, combination of in- and out-of-plan annuities or something else
  - Only 4% have surveyed their participants about their interest in a retirement income solution

[10] To read the full survey, please visit *corporateinsight.com*

Nearly Three-Quarters of Retirees Experience Financial Shock

- The Society of Actuaries' *2015 Risks and Processes of Retirement Survey*[11] found that 72% of retirees experienced at least one financial shock, and for one-third of them, it depleted their savings by 25%
- 20% of pre-retirees and 30% of retirees said that if an emergency were to arise, they could spend up to $25,000 without jeopardizing their retirement security
- Half of both pre-retirees and retirees have not consulted with a financial advisor; only 15% of pre-retirees and 20% of retirees consult with an advisor at least once a year

[11] To read the full survey, please visit soa.org

Ascensus Launches New Resource That Provides Trends on Retirement, College and Health Savings

- Ascensus has launched a new online resource[12] that reveals savings trends for retirement, college and health from data collected across its platform
- Among the retirement savings trends:
  - Plans with auto-enrollment see an average participation rate of 78%, nine percent higher than participation in plans without auto-enrollment
  - Plans that combine automatic enrollment and automatic increase have an average participation rate of 81%
  - 90% of new clients onboarded in 2015 opted to enroll employees online
  - 29% of participants who used the Ascensus online retirement calculator started saving immediately following its use at a 9% deferral rate

[12] To learn more, please visit ascensus.com

Schwab Survey Finds Major Differences in How Male and Female Millennials View Retirement

- In a nationwide survey[13] of people 25 to 35 years old, who participate in a 401(k), when asked what concerns them more – being healthy enough to enjoy retirement or having enough money to enjoy retirement – 54% of millennial men and 30% of millennial women say being healthy is the greater concern; 46% of men and 70% of women say having enough money is the greater concern
- The data also shows that more than half of millennial men (55%) believe they are saving enough to retire when they want to, compared to 42% of women
- 61% of millennial women and 44% of millennial men surveyed feel they don't know what their best 401(k) investment options are, while 75% of millennial women and 59% of millennial men wish they had an easier way to know how to choose their 401(k) investments

[13] To read the full survey, please visit pressroom.aboutschwab.com

Plan Sponsor Council of America (PSCA) Releases Results of 59th Annual Survey of Profit Sharing and 401(k) Plans

- The Plan Sponsor Council of America (PSCA) survey[14] reflects the 2015 plan-year experiences of 614 DC plan sponsors and found:
  - The average deferral for all eligible participants was 6.8%
  - The average company contribution to 401(k) plans was 3.8% while the average contribution in combination 401(k) profit sharing plans was 5.4%
  - 66% of companies retained an independent investment advisor and, of those, 59% pay a fixed fee and 35% pay a percentage of assets
  - The majority of plan expenses are paid by the company with the exception of recordkeeping and investment consultant fees
  - Plans offered an average of 19 funds, and the number has remained steady over the last 5 years
  - 34% of respondents offered investment advice

[14] To read the full survey, please visit psca.org

Mercer Outlines a 2017 Top Priorities Checklist for DC Plan Sponsors

- Mercer recently released a report[15] entitled, *Top Priorities Checklist for DC Plan Sponsors Moving into 2017*, that lists 10 recommendations including:
  - Creating a strategy to address and mitigate cybersecurity issues
  - Monitoring the impact of the DOL fiduciary rule
  - Re-evaluating target-date funds, managed account programs and retirement income solutions
  - Recognizing that employees need help beyond saving for retirement
  - Revisiting plan's fee structure relative to the services received

[15] To read the full report, please visit mercer.com

New Study Shows the Current State of Retirement Unreadiness

- A survey[16] recently conducted by Transamerica Center for Retirement Studies' entitled, *A Compendium of Findings About American Workers*, offers a trend analysis on more than 50 broad measures of the retirement outlook of American workers, ranging from access to employer-sponsored retirement benefits, savings rates and planning related activities
- Specific findings include:
  - Only 15% are "very" confident and 47% are "somewhat" confident that they will be able to fully retire with a comfortable lifestyle
  - The top three retirement concerns are "outliving my savings" (51%), "Social Security will be reduced or cease to exist" (47%) and "declining health that requires long-term care" (45%)
  - 22% of baby boomers have less than $50,000 saved
  - The majority of workers (54%) plan to work past age 65 or do not plan to retire (13%)

[16] To read the full survey, please visit transamericacenter.org

Legislative Review

Government Accountability Office (GAO) Suggests Plan Design Features Hinder Positive Retirement Outcomes

- The Government Accountability Office (GAO) recently examined the policies of 80 401(k) plans and found:
  - 41% do not permit those younger than 21 to participate
  - 24% require participants to be employed on the last day of the year to receive that year's matching contribution
  - 71% had vesting policies that require people to be employed for specific periods of time before their company matches are vested
- The GAO is suggesting that Congress look into the minimum age required to participate in 401(k) plans and plans' use of a last-day policy
- Additionally, the GAO is asking the Treasury Department to "re-evaluate existing vesting policies to assess if current policies are appropriate for today's mobile workforce"

California Establishes State-Run Retirement Program

- On September 29, 2016, Governor Jerry Brown signed into law the California Secure Choice Retirement Savings Program (Senate Bill 1234)[17]
- This program requires non-governmental employers with five or more employees to establish an automatic retirement savings arrangement that sends payroll deductions to a state-run program, unless employers offer a tax-qualified retirement plan
- Under the program, eligible employees are automatically enrolled at 3% of pay, unless they opt out or specify a different contribution rate

[17] To learn more about the program, please visit treasurer.ca.gov

New York City Unveils Retirement Program

- In October 2016, the New York City Comptroller unveiled a new city-run retirement plan for private-sector workers, called the "NYC Nest Egg," The program[18] includes three parts:
    - A voluntary 401(k) marketplace where employers can shop for a set of screened, easy-to-use prototype plans
    - A voluntary, publicly sponsored turnkey multi-employer pension (MEP)
    - A mandatory automatic enrollment Roth IRA program for employers that do not select a plan on their own or through the NYC marketplace; employees would have the ability to opt out

[18] To learn more about the program, please visit comptroller.nyc.gov

Regulatory Review

First Quarter Compliance Calendar

January	February	March
January 31: ▪ Deadline for determination letter submission for individual designed documents for sponsors whose employer identification number (EIN) ends in 1 or 6 ▪ Deadline for sending Form 1099-R to participants	**February 28:** ▪ Deadline for filing Form 1099-R with IRS (Deadline for electronic filing is March 31)	**March 15:** ▪ Deadline for processing corrective distributions for failed ADP/ACP tests without the 10% excise tax ▪ Deadline for filing a S corporation tax return and contribution deadline for deductibility **March 31:** ▪ Deadline for electronic filing of Form 1099-R

Retirement Plan Limits for Tax Year 2017

	2017	2016	2015
401(k) Elective Deferrals	$18,000	$18,000	$18,000
Defined Contribution Limit	$54,000	$53,000	$53,000
Annual Compensation Limit	$270,000	$265,000	$265,000
Catch-Up Contribution Limit	$6,000	$6,000	$6,000
Highly Compensated Employee	$120,000	$120,000	$120,000
403(b)/457 Elective Deferrals	$18,000	$18,000	$18,000
Social Security Wage Base	$127,200	$118,500	$118,500

Department of Labor (DOL) Expands State-Run Retirement Program Safe Harbor to Include Political Subdivisions

- On December 19, 2016, the Department of Labor (DOL) issued final regulations on retirement savings programs for private sector employees established by qualified political subdivisions
- A qualified political subdivision is a governmental body that:
  - Has authority under state law to require employers' participation
  - Has a population equal to or greater than the population of the least populous state
  - Is not within a state that has enacted a mandatory state-based savings program for private-sector employees
  - Implements and administers a retirement plan for its own employees

Prime Money Market Fund Exodus Slowing

- According to the Fitch Ratings Money Fund Reform Dashboard, the mass exodus from prime institutional money market funds slowed down to $3 billion the week following the implementation of money market reforms on October 14, 2016
- Since October 27, 2015, however, these funds lost approximately $861 billion in assets, primarily to government money funds, indicating investor discomfort with liquidity fees and redemption gates, as well as a floating NAV
- As of October 21, 2016, the yield spread between institutional prime and government funds was 0.18%

DOL Releases Advance Copies of 2016 Form 5500

- On November 1, 2016, advance informational copies of the 2016 Form 5500 annual return/report and related instructions were released; these forms cannot be used to file a 5500 return
- Although they appear on the form, plan sponsors should not:
  - Enter the preparer's information at the bottom of Page 1 of the Form 5500
  - Enter the preparer's information at the bottom of Page 1 of Form 5500-SF, as well as Lines 14a-d in Part VII (Trust Information) and Lines 15a-b, 16a-b, 17a-b, 18 and 19 in Part IX (IRS Compliance Questions) of that form
  - Complete questions on Schedules H and I, Line 4o, and Lines 6a through 6d
  - Complete questions on Schedule R, Part VII (IRS Compliance Questions)
- Additionally, the new maximum penalty for a plan administrator who fails to file a complete or accurate Form 5500 has been increased from $1,100 to $2,063 a day

IRS Provides Relief to Hurricane Matthew Victims

- The IRS has streamlined the hardship distribution and loan rules for Hurricane Matthew victims and their families, allowing people to access their money more quickly with a minimum amount of red tape
- In addition, the 6-month ban on 401(k) and 403(b) contributions that normally affects employees who take a hardship distribution will not apply
- Ordinary income taxes and the 10% premature distribution penalty rules will still apply
- To qualify for this relief, distributions must be made by March 15, 2017

IRS Announces Tighter Examination Processes

- On November 21, 2016, the IRS announced new processes for its retirement plan audits specific to the timing of “Informational Document Requests” (IDRs)
- Previously, the IRS would follow up on its initial notification of an examination with a series of IDRs and a response date; the response date was able to be reasonably negotiated after being initially set, depending on the circumstances of the plan, the employer and the examiner’s own schedule
- According to the announcement, the initial IDRs will now generally come with the first audit notification letter and examiners will have much less discretion when and under what circumstances to allow extensions to comply with IDRs

IRS Updates Retirement Plan Correction Program

- On September 29, 2016, the IRS released Revenue Procedure 2016-51 updating the Employee Plans Compliance Resolution System
  - This Revenue Procedure replaces Rev. Proc. 2013-12 and incorporates changes described in Rev. Proc. 2015-27 and Rev. Proc. 2015-28
- Some of the key changes include:
  - Determination letter applications are no longer required to be submitted as part of corrections that include plan amendments
  - Fees associated with the Voluntary Correction Program are now user fees
  - The method used to determine Audit Closing Agreement Program sanctions has been revised and will no longer be a negotiated percentage of the Maximum Amount Payable but will be determined by the IRS on a "facts and circumstances" basis

ERISA Advisory Council Makes Recommendations on Cybersecurity

- On November 10, 2016, the ERISA Advisory Council issued an executive summary from a report it is writing regarding cybersecurity. The executive summary contained two recommendations:
    - Make the council's report and its appendices available via the DOL's website as soon as administratively feasible in order to provide plan sponsors, fiduciaries and service providers with useful information on developing and maintaining a robust cyber risk management program
    - Provide information to the employee benefit plan community of plan sponsors, fiduciaries and service providers to educate them on cybersecurity risks and potential approaches for managing these risks
- The full report is expected to be completed in 2017

DOL To Consider Expansion of QDIAs

- The DOL's Employee Benefits Security Administration (EBSA) said it will consider whether, and to what extent, regulatory amendments are appropriate to facilitate the use of lifetime income products and features as, or as part of, Qualified Default Investment Alternatives (QDIAs)
- The EBSA said it will launch its review with a request for information

Legal Review

Edison 401(k) Case Revived by Ninth Circuit

- On December 16, 2016, a full panel of appellate court judges of the U.S. Court of Appeals for the Ninth Circuit found that the participants in Edison's 401(k) plan didn't forfeit their failure-to-monitor claims in relation to funds added to the plan outside the six-year limitation period under ERISA
  - This decision overrules an April 2016 three-judge panel finding that the plaintiffs' rights had been forfeited
- The case is now remanded back to Los Angeles federal court, where a judge will hear the original claims, minus arguments, concerning the statute of limitations

Starwood Hotels & Resorts the Latest to Face Excessive Fee Allegations

- On December 16, 2016, a lawsuit was filed in federal court in California seeking class treatment for more than 40,000 participants
- According to the allegations, participants who invested in index funds paid seven times more than what a reasonable fee would be, and by not including a stable-value investment, participants lost $18 million
- In total, the lawsuit seeks to recover more than $25 million in alleged losses suffered by participants due to excessive fees and Starwood's investment strategy

Chevron Excessive Fee Case Dismissed

- The U.S. District Court for the Northern District of California granted the defendant's motion to dismiss a class action lawsuit brought against the fiduciaries of Chevron's $19 billion 401(k) plan. Since the dismissal, the employees have filed an amended complaint that is currently being challenged by the company
- The allegations include:
  - Failure to offer a stable-value fund in place of, or in addition to, a money market fund
  - Providing funds with unreasonably high management fees
  - Entering into a revenue-sharing agreement with the plan's record keeper, that resulted in unreasonably high administrative fees
  - Delaying the removal of an underperforming fund as an investment option

New Twist on Excessive Fee Cases

- An excessive fee lawsuit has been filed by employees of a plan sponsor in the Eastern District of Michigan against a record keeper who made investment advice available to participants through a computer-based, third-party company
- The complaint alleges that the record keeper, as a precondition to making the advice available on their platform, required the advice provider to overcharge participants and pay the record keeper a “kickback”
- Further, the complaint alleges that the record keeper offered no additional services or benefits to plan participants in return for this “kickback”
- Finally, the complaint alleges that in 2015, participants paid $5.8 million in fees for the advice service, of that 31% was received by the record keeper

Stock Drop Suit Filed Against Exxon Mobil

- A plaintiff claims Exxon breached its fiduciary duty when it knew, or should have known, the stock had become artificially inflated in value due to fraud and misrepresentation, thus making Exxon stock an imprudent investment under ERISA
  - At issue was Exxon’s accounting of its oil and gas reserves
- As required by the new pleading standards set forth by the Supreme Court in Fifth Third Bancorp v. Dudenhoeffer, the plaintiff offered actions the fiduciaries could have taken not believed to do more harm than good, including:
  - The company could have halted new purchases
  - Exxon could have issued corrective disclosures to cure the fraud
  - Used a low-cost hedging product that would have buffered some of losses the company stock would suffer when the truth came to light

Plan Administrator Fined For Failing to Furnish Documents

- In late 2015, a trial court ruled that a 401(k) plan administrator violated ERISA when it failed to furnish a copy of a custodial agreement and other documents between the plan sponsor and a trust company in response to a participant's request
- Using its discretion, the court imposed penalties totaling $15,959 in late 2016
- The plan administrator was a relatively small employer with little plan experience, and closer attention to detail may have helped avoid some of these problems

Defined Contribution Capabilities

Janus Capital's Defined Contribution Capabilities

$24.0 Billion in DC Assets Under Management*

Products utilized by the **top 25 DC record keepers** in the industry

Availability on **over 200** recordkeeping platforms

- 45+ years of industry experience
- Pioneering investment solutions for retirees and plan sponsors
- Key DC Offerings
  - Fundamental Fixed Income
  - U.S. Equities
  - Global/International Equities
  - Alternatives

**AUM as of 9/30/2016*

Janus Capital Group Inc. is a global asset manager offering individual investors and institutional clients complementary asset management disciplines.

For more information contact us.

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