

Defined Contribution in Review

Special COVID-19 Edition

FOR INSTITUTIONAL INVESTOR USE ONLY / NOT FOR PUBLIC VIEWING OR DISTRIBUTION

Janus Henderson
—KNOWLEDGE. SHARED—



DEFINED
CONTRIBUTION

What's Inside?

Given the recent COVID-19 coronavirus crisis, we are abridging this quarter's edition of Top DC Trends and Developments to provide you information that is most relevant during these difficult times. Inside you will find two sections:

Coronavirus Topics: Timely insights regarding the coronavirus's impact on plan sponsors and participants

Other Important Developments: A brief summary of other events that have occurred within the last 90 days that can have a long-term impact

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

| Coronavirus Topics

Coronavirus Topics

Coronavirus Aid, Relief and Economic Security (CARES) Act Provides Access to Retirement Plans

- + Eligible retirement plans may provide one or more “coronavirus-related distributions” to a participant up to \$100,000
- + A coronavirus-related distribution is one taken between January 1, 2020, and December 31, 2020, to an individual:
 - + Who is diagnosed with COVID-19
 - + Whose spouse or dependent is diagnosed with COVID-19
 - + Who has incurred adverse financial consequences as a result of quarantine, job loss or work-hour reductions; being unable to work due to a lack of child care; closure or reduced operating hours of an owned or operating business
- + Plan administrators may rely on a participant’s self-certification that he or she satisfies one of the above conditions

Coronavirus Topics

Tax Treatment of “Coronavirus-Related Distributions”

- + Coronavirus distributions are exempt from the 10% premature distribution penalty and mandatory 20% withholding rule
- + The distribution is permitted to be repaid to the plan over a three-year period starting on the date the distribution is received
- + If the participant chooses not to repay the distribution, the distribution will be subject to income taxes proportionally over a three-year period beginning in the year the distribution is made

Coronavirus Topics

Plan Loans Have Been Expanded for “Qualified Individuals”

- + For the 180-day period following the enactment of the CARES Act, plans may permit a “qualified individual” to obtain a loan from the plan in an amount up to the lesser of \$100,000 or 100% of the individual’s vested balance
 - + A qualified individual is any person who satisfies any one of the three criteria for a coronavirus distribution
- + All loan repayments due between the CARES Act’s enactment and December 31, 2020, may be suspended for one year for qualified individuals
- + Plan sponsors may immediately implement the coronavirus-related distribution and expanded loan provisions; the deadline to amend plans is the last day of the plan year beginning on or after January 1, 2022

Coronavirus Topics

CARES Act Suspends RMDs for 2020

- + Required minimum distributions from defined contribution plans and IRAs have been suspended for 2020
- + A special provision also suspends minimum distributions for individuals who turned age 70½ in 2019 and whose required beginning date is April 1, 2020; both the 2019 and 2020 minimum distributions are suspended for these individuals

Coronavirus Topics

Suspending Employer Contributions Without Termination

- + A temporary suspension of employer contributions may be implemented without terminating or permanently ending contribution obligations
- + For non-safe harbor plans, it is not necessary to amend a plan with only employer discretionary contributions. If the plan has a fixed match or nonelective contribution, the sponsor should pass a corporate resolution suspending or reducing contributions, notify participants and adopt a discretionary formula
- + For safe harbor plans, suspension of contributions is permitted if the employer either: (1) suffers an “economic loss” or (2) includes a statement in the safe harbor notice that contributions may be suspended or reduced; employee notification is required and discrimination testing must be done for the entire year

Coronavirus Topics

Furloughed Employees Still Considered “Active” Participants

- + Unlike terminated employees, employees who are furloughed are considered active participants for purposes of qualified retirement plans
- + Furloughed employees may take an in-service distribution only if provided by the plan document
- + Those employees who are furloughed may have difficulty repaying outstanding loans; plan sponsors might consider amending their plan to allow loan payment through nonpayroll mechanisms (check, ACH, etc.) and include a “cure period”
 - + The maximum cure period is the last day of the quarter following the quarter in which a payment was missed
- + Plans that require 1,000 hours of service for employer contribution eligibility may need to revisit their discrimination tests as furloughed employees may fail to meet this requirement

Coronavirus Topics

Plan Sponsors Need to Be Aware of Partial Terminations

- + If a plan sponsor elects to continue their plans but are laying off employees, a partial termination may occur
- + A partial termination is based on the facts and circumstances test, but the IRS rule of thumb is that a partial termination is deemed to occur if more than 20% of plan participants are involuntarily terminated
- + In these cases, only affected participants are required to be 100% vested

Coronavirus Topics

Investment Fees May Increase Due to Market Drop

- + Over the last several years, many plan sponsors have introduced lower share class mutual funds or alternative vehicles, such as collective investment trusts or separately managed accounts
- + Some of these options may have a required minimum asset threshold, which may have been breached during the first quarter
- + Plan sponsors may wish to review their service provider agreements and if necessary obtain an exception to minimum asset requirements during the current crisis

Coronavirus Topics

Fears Lead to Spike in 401(k) Trading

- + According to Alight Solutions, during the month of February 0.046% of 401(k) balances were traded daily, the highest level since August 2011
 - + On February 28, net trading activity was 15.8 times the average daily level, which surpassed the previous high of 11.8 times set in February 2018
- + Asset classes with the most trading outflows in February were large U.S. equity funds, target-date funds and mid-cap U.S. equity funds; asset classes with the most trading inflows were bond funds, stable value funds and money market funds

Coronavirus Topics

Janus Henderson Offers Tips to Investment Committees

A new paper by Janus Henderson offers investment committee members tips for fulfilling their fiduciary responsibilities during the present crisis. Among the specific recommendations are:

- + Have a committee meeting during the first quarter, even if one is not scheduled
- + Ask service providers for data regarding participant behaviors, including reducing or suspending deferrals, accessing hardship distributions and loan withdrawals and transferring balances from equity to fixed income or cash
- + Follow the plan's Investment Policy Statement, especially as it relates to managers who suffer poor absolute returns during the first quarter
- + Assess the depth and breadth of fixed income options. Offering more than a capital preservation and U.S. intermediary fund is critical to allow participants the opportunity to build a diversified portfolio

| Other Key Developments

Other Key Developments

Supreme Court Rules on “Actual Knowledge” Case

- + In the case of Intel v. Sulyma, the Supreme Court unanimously decided that a plan participant who received written disclosures about the plan’s investments but does not remember reading them does not necessarily have “actual knowledge” of the disclosures
- + At issue was applying ERISA’s three-year statute of limitation rule for participants to bring suits alleging a breach of fiduciary duty; in particular, when the three-year period begins
- + The court explained that actual knowledge could be inferred in a number of ways, including electronic records showing a participant viewed the disclosures and evidence that participants took action in response to the information contained in the disclosures

Other Key Developments

High Court Passes on Brotherston, Remands Jander

- + In the case of Brotherston, the Supreme Court denied the defendant's petition to address two fundamental questions:
 - + Which party has the responsibility to prove the cause of a loss?
 - + Is it appropriate to compare active managers to passive benchmarks?
- + In the case of Jander, the lower courts originally found that IBM imprudently managed company stock investments in one of its retirement plans, violating the guidelines set forth in the Supreme Court's 2014 decision in Firth Third Bancorp v. Dudenhoeffer
 - + The high court vacated the decision and remanded the case back to the appellate court

Other Key Developments

Estee Lauder Cybersecurity Case Goes to Settlement

- + A notice has been filed explaining that the parties involved in a cybersecurity lawsuit involving the Estee Lauder 401(k) plan and its service providers will be settled over the next several weeks
- + At issue was a third party's unauthorized withdrawals of \$99,000 from a plan participant's 401(k); the lawsuit alleges that the plan sponsor and service provider breached their fiduciary duties by failing to safeguard the participant's retirement savings

Other Key Developments

Judge Finds that CalSavers Not Preempted by ERISA

- + A lawsuit against California's state-run auto IRA program has been dismissed by a federal judge
- + The judgement found:
 - + The state-created board that runs the program is not an employer under ERISA
 - + The responsibilities of participating employers are ministerial
 - + The program does not interfere with nonparticipating employers that have adopted a qualified retirement plan

Other Key Developments

Whistleblower Sounds the Alarm on VCP Changes

- + An IRS whistleblower has alerted the American Retirement Association of potential changes to the Voluntary Correction Program (VCP)
- + According to the information obtained, the changes would result in a substantial increase in the number of cases referred to the IRS's examination unit. Specifically, cases would be referred if:
 - Information requested by the IRS is not submitted within 21 days
 - The taxpayer withdraws a VCP case
 - The taxpayer disagrees with how the compliance failure should be corrected
- + Finally, the new rules would apply to cases already submitted to the VCP

Other Key Developments

IRS Issues Warning Regarding Signed Documents

- + In Chief Counsel Memorandum (CCM) 2019-002, agents have been advised to pursue plan disqualification if a signed plan document cannot be produced by the taxpayer
- + This CCM was sought to limit the impact of a 2018 Tax Court case in which the plan sponsor was found to have signed documents after weighting such issues as:
 - + The employer's facility was flooded
 - + The employer's accountants, computers and files were seized by the U.S. Department of Labor
 - + Testimony was heard that timely plan amendments were signed

Other Key Developments

Deadline Extended for 403(b) Plans

- + The IRS is extending the last day of the initial remedial amendment period for 403(b) plans from March 31, 2020, to June 30, 2020
- + Plan sponsors now have until June 30, 2020, to update their pre-approved and individually designed 403(b) documents

Other Key Developments

Proposed Legislation Would Permit CITs in 403(b) Plans

- + U.S. Representative Jimmy Panetta (D-CA) has introduced the Public Service Retirement Fairness Act, which would permit collective investment trusts (CITs) inside of 403(b) plans
- + Currently, only annuities and mutual funds are permissible investments

Other Key Developments

Bill Would Treat Child Care Expenses as Elective Deferrals

- + U.S. Representatives Ann Wagner (R-MO) and Hakeem Jeffries (D-NY) have introduced the Investing in Your Family's Future Act, which would treat child care payments as elective deferrals for the purposes of employer matching contributions
- + Qualified child care payments are those services necessary for gaining employment and would count toward the annual 402(g) limit
- + The legislation also provides safe harbors with respect to nondiscrimination rules

| Defined Contribution Capabilities

Defined Contribution Capabilities

Other Resources

- + 45+ years of industry experience
 - + Retirement excellence and leadership
 - + Three highly specialized investment managers:
Janus Henderson, Intech® and Perkins®
- 
- + \$35.9 billion in DC assets under management as of 12/31/19
 - + Products utilized by the top 25 DC record-keepers in the industry
 - + Availability on over 200 recordkeeping platforms

Defined Contribution Capabilities

Continuing Education

- + Janus Henderson offers accredited continuing education (CE) seminars for financial advisors, CPAs, human resources professionals and other retirement and financial industry participants
- + Each seminar qualifies for one credit hour of CE credit
- + Live, in-person, on-demand and webcast options available
- + Available for CFP®, CIMA®, CIMC®, CPWA®, CRPC®, CRPS®, CRC®, AIF®, C(k)P, CPA®, HR and CEBS designations

The information contained herein is provided for informational purposes only and should not be construed as legal or tax advice. Your circumstances may change over time so it may be appropriate for you to evaluate tax strategy with the assistance of a professional tax advisor. Federal and state tax laws and regulations are complex and subject to change. Laws of a particular state or laws that may be applicable to a particular situation may have an impact on the applicability, accuracy, or completeness of the information contained in this document. Janus Henderson does not have information related to and does not review or verify your financial or tax situation. Janus Henderson is not liable for your financial advisor's or your use of, or any position taken in reliance on, such information.

In preparing this document, Janus Henderson has relied upon and assumed, without independent verification, the accuracy and completeness of all information available from public sources.

Important information

Janus Henderson, Intech, Perkins, Knowledge Labs™ and Knowledge. Shared® are trademarks of Janus Henderson Group plc or one of its subsidiaries. © Janus Henderson Group plc.

FOR MORE INFORMATION CONTACT JANUS HENDERSON INVESTORS

151 Detroit Street, Denver, CO 80206 | www.janushenderson.com

C-0320-30370 06-30-21

366-15-430370 04-20

Janus Henderson
— INVESTORS —