

Dear valued clients and friends –

We are pleased to provide you with the latest developments and alerts related to retirement plans and our practice. In an effort to best serve you and keep you up to date on important developments, we will provide you with communications throughout the year. We hope you find them beneficial.

DOL ISSUES NEW FIDUCIARY RULES

The Department of Labor (DOL) has issued final regulations that expand the definition of a plan fiduciary and the types of retirement accounts to which fiduciary standards apply. The new rules will significantly affect the provision of investment advice to both retirement plans and individual retirement accounts.

[Read more](#)

PLAN RESTATEMENTS: RELIEF AVAILABLE FOR LATE AMENDERS

While the deadline for timely amendment of defined contribution plan documents expired on April 30 of this year, there is a program available for plan sponsors who missed the due date for the Pension Protection Act (PPA) restatement. Plan sponsors who amend their plan within the period ending April 30, 2017 will have their IRS fee reduced to 50% of the normal sanction for late amenders. The normal fee is based on the number of participants from the last Form 5500 filing, as follows:

1-20	\$ 500
21-50	\$ 750
51-100	\$ 1,500
101-1,000	\$ 5,000
1,001-10,000	\$10,000
More than 10,000	\$15,000

Failure to timely amend a plan document during PPA restatement period means that the plan is currently out of compliance and needs to be requalified. If a plan is determined to be out of compliance upon IRS examination, the plan sponsor would face significantly greater costs than these voluntary compliance fees. Please contact us with any questions about the PPA restatements or plan document requalification.

IRS WITHDRAWS PROPOSED REGULATIONS IMPACTING CROSS-TESTED PLANS

In our last newsletter, we noted proposed regulations that would have curtailed the use of “cross-testing” in profit sharing plans to demonstrate nondiscrimination. The ability to base allocations with this age advantaged method has existed for over twenty-five years. The proposed changes were added to regulations intended to clarify rules applicable to defined benefit plans and came as a surprise to the pension industry.

Based on overwhelming opposition to the new rules and fear that affected employers would terminate their plans, the IRS took the unusual step, in Announcement 2016-16, of withdrawing that portion of the proposed regulation prior to the end of the comment period. The ability to use cross-tested allocation designs is preserved, at least for the foreseeable future.

COMPLIANCE SPOTLIGHT: MAINTAINING PROPER HARDSHIP AND LOAN DOCUMENTATION

One of the challenges facing retirement plan sponsors is their role in helping plan participants who have an immediate need to access their retirement accounts. Plans can allow for “hardship” withdrawals for participants who demonstrate an “immediate and heavy” financial need. Plan administrators must evaluate and document hardship claims, and the IRS has identified this as a problem area on examination. The IRS recently issued an Alert on hardship withdrawal practices that serves as a valuable guide for proper administrative procedures. [Read more](#)

403(b) PLANS: ACCOUNTING FOR PART-TIME EMPLOYEES

One of the requirements for sponsoring a qualified 403(b) retirement plan is that the plan offer “[universal availability](#).” Essentially, this means that all employees must be offered plan participation, and 403(b) plans cannot exclude groups or classes of employees from participation as is allowed under 401(k) plans. The IRS has been active in examining plans that may have employees who are excluded from participation in keeping with industry practices. Common examples would be hospitals with on-call nurses that are considered part-time, or colleges that engage adjunct professors on a contractual basis.

While exclusion of employee classes is not allowed, 403(b) plans are able to exclude employees who normally work less than 20 hours a week. The IRS found that many employers were either undercounting hours or not counting hours at all, often because these classifications were erroneously considered not to be employees of the institution. Failure to offer plan participation to an employee who exceeds the 20 hours per week requires restoration of contributions to affected employees (both employee and employer contributions), which could be substantial for a large excluded class.

In the case of adjunct professors, the preamble to the Affordable Care Act (ACA) provides a method for counting hours that the IRS has deemed reasonable on audit. The employer would credit:

- 2.25 hours per week for each hour of teaching or classroom time, plus
- one hour per week for each additional hour outside the classroom performing required duties.

403(b) plan sponsors should review classes of employees or individuals who are not being offered participation and apply a “reasonable” standard to count hours. Unless these employees are certain to qualify under the 20-hour exclusion, they may need to be included in the plan.

STRATEGIC PARTNERS

We have partnered with several quality organizations to provide a full range of services to our retirement plan sponsor clients. These services include payroll, investment advice, fiduciary benchmarking, financial planning, insurance and estate planning. We have carefully chosen our referral partners and our clients have had excellent experiences from their interactions with these professionals. Please contact us with any needs you may have.

WINDES

AUDIT | TAX | ADVISORY

With more than a century of combined experience in the employee benefits field, our professionals have the expertise and access to leading-edge resources that uniquely qualify us to provide our clients with complete administrative services that ensure the successful operation of their employee benefit programs. In addition, we work closely with existing advisors to provide the teamwork needed for successful administration of their clients' retirement programs.

Our professionals are members of the American Society of Pension Professionals and Actuaries and the National Institute of Pension Administrators and have earned nationally recognized professional designations.

The Windes Employee Benefit Services group is composed of the following individuals who are dedicated to providing your organizations with complete administrative and consulting services:

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