Employee Benefit News

Spring 2017

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 Fiduciary Rule Delayed

The long-delayed final rules governing fiduciary conflicts of interests were set to take effect on April 10, 2017. Following a presidential executive memorandum to review the regulations, the Department of Labor (DOL) has proposed delaying the applicability date for the new regulations by sixty days.

We wrote about this far-reaching regulation when the rules were finalized last year in the article "DOL issues New Fiduciary Rules." Because the rules affect how financial institutions and their employees advise and interact with clients, there has been an enormous amount of effort and expense expended in anticipation of the regulation being implemented this year. Many of the provisions of the regulations have already been incorporated into how financial companies conduct business, which may make fully rescinding the new rules difficult for the new administration. The DOL has recently issued rules regarding relief from enforcement of the new regulations during the review period.

The DOL, which had yet to have a new secretary in place as of this writing, will need to provide clear direction on these rules to create certainty in the retirement financial marketplace. We will provide an update in the next edition of Employee Benefit News.

New Disability Claims Procedures for ERISA Plans

Many employers provide income for employees who suffer a disability that render them unable to work for some period of time. The evaluation and processing of disability claims must comply with new regulations issued by the Department of Labor. To read more, see the article "New Disability Claims Procedures for ERISA Plans."

Forfeiture Rule Changes

Earlier this year, the IRS issued proposed regulations to allow plans to use forfeited balances to fund fully vested sources of contributions. These rule changes, if finalized, will provide employers increased flexibility to use forfeited balances to offset required safe harbor and corrective contributions to 401(k) plans.

The rules prior to these proposed changes restricted the use of forfeited amounts to the sources from which they were generated. This created situations where there was no way to use accumulated funds to offset required contributions. For example:

> *Plan XYZ is a 401(k) plan with a 3% non-elective safe harbor contribution feature. The sponsor also makes profit-sharing contributions in some years (which are subject to a vesting schedule) but has decided not to make such contributions in the current year. Four terminated employees received distributions during the plan year, and three of them had less than six years of service, which resulted in the forfeiture of their non-vested balances. Under the existing rules, the employer cannot use the forfeited amounts to offset any fully vested contribution source, such as the safe harbor contribution. Because there is no profit-sharing contribution for the year, the forfeiture balance would have to be allocated to eligible participants or used to pay plan expenses.*

The proposed regulations allow forfeitures to be used to fund automatically vested contribution sources, including safe harbor non-elective and matching contributions, qualified non-elective contributions (QNECs) and qualified matching contributions (QMACs). The IRS has confirmed that using the forfeiture to fund these sources will not compromise their function to correct plan non-discrimination issues, so long as they are characterized as non-forfeitable when utilized.

Proposed regulations are effective for taxable years following the year they are finalized. However, these proposed regulations can be relied on for plan years after 2016. While plan sponsors can apply the rule currently, an amendment will be required to most pre-approved documents to remove the plan restrictions on the use of forfeitures.

Compliance Spotlight: Rehired Employees

The plan document sets out eligibility provisions for the various types of contributions allowed by the plan. An employee will qualify for the plan, work for a period of time, then retire or terminate employment with a subsequent distribution of benefits. But how does the plan deal with individuals who return to employment? The answer depends on several factors, including how long they were employed and how long they have been absent.

- Participants who left employment with any vested balance re-enter the plan immediately upon rehire:

  > *Robert left employment on October 15, 2015 with 60% vesting. He was rehired on January 15, 2017 and enters the plan on the same day. All his prior service counts for vesting purposes.*

- The treatment of participants with no vested balance at termination of employment depends on how long they have been gone. If the former employee incurs at least five "breaks in service" then he or she is treated as a new employee. A break in service is defined in the plan document, but is typically a plan year with less than 500 hours of service. If a non-vested former participant is rehired within the five-year period, he or she would enter the plan upon re-employment:

Katy worked for a year before quitting in early 2012 to go back to school and had no vested balance at termination. She is rehired on January 1, 2017 and incurred five breaks in service (2012-2017). She is considered a new employee and must satisfy the plan's eligibility requirements a second time before re-entering the plan. If she had been hired in early 2016, she would have immediately re-entered the plan.

- An employee who satisfies the plan's eligibility requirements before termination would enter the plan on his or her rehire date, or the employee's original plan entry date, if later:

Steve was hired on May 4, 2015 and left employment the next February, working over 1000 hours. He is rehired in September of 2016. Because he previously satisfied the plan's eligibility requirements, he immediately enters the plan upon rehire.

- Employees who separate before satisfying the plan's service requirements must have their prior service counted upon re-employment in determining subsequent eligibility.

It is important to indicate any rehired employees on the census information you send to us. It is sometimes difficult to track former employees, especially if they have name changes since their last employment or if we are not provided social security numbers. Sponsors of 401(k) and 403(b) plans should be especially careful with rehires as their immediate re-entry into the plan may require new election forms and notices. Please contact us with any questions on rehired employees.

403(b) Plans: IRS Announces New Document Window

A new era has finally arrived for 403(b) documents with the announcement of the adoption period for pre-approved plan documents. The IRS has issued Revenue Procedure 2017-18, which sets March 31, 2020 as the date by which plan sponsors must restate their plans to a pre-approved document.

After the first regulations in forty-three years were issued in 2007, nonprofit plan sponsors were provided a December 31, 2009 deadline to adopt a written plan document incorporating the new regulations. While all 403(b) plans were required to adopt a plan by that date, there was no IRS approval program for the plan documents. The documents were considered valid on a "good faith compliance" basis and could consist of more than one document, including language that might be contained in the group annuity contract.

In 2013, the IRS announced a pre-approved document program for 403(b) plans similar to that available to 401(k) plan sponsors. A significant difference is that there is no avenue for an individually designed plan to gain IRS approval; only pre-approved plans will have reliance that their provisions are compliant in the eyes of the government. Document providers filed their documents for approval by the IRS in 2015 and the IRS approval letters are being issued currently.

The new Revenue Procedure establishes a Remedial Amendment Period (RAP) for retroactive changes to the plan document back to January 1, 2010. A restated plan document can correct for any document errors over a ten-year period to bring the plan into compliance. To gain reliance on the plan approval letter, the document must contain all of the plan provisions for each change back to the beginning of the RAP.

All 403(b) plans will be required to restate their documents onto a pre-approved plan (such as the plan sponsored by Windes) by March of 2020. Once the RAP is concluded, 403(b) plans and 401(k) plans will be on a level playing field with respect to compliance requirements and correction methods. With the similar treatment, 403(b) plans will be subject to the same scrutiny by plan regulators upon examination. Please contact us with any questions about your plan document.

Welcome Fernando Rincon

It is with great pleasure that we announce the addition of Fernando Rincon to our staff as a junior administrator. Fernando has four years' experience in the retirement industry, most recently at Transamerica. He is an Orange County native, attended Cal State Fullerton, and we are excited to welcome him to the EBS team at Windes.

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:

Richard L. Green, CPC, ERPA, QPA, QKA, APA	Partner
James R. Howe, CPC, MSPA, APA	Partner
Therese S. Cheevers, ERPA, APA	Senior Manager
Connie Lee, CPC, QPA, QKA	Manager

Marybeth Herbage	Diana Miller
Krystal Landrum	Fernando Rincon
Joel Leonor	

Headquarters
111 West Ocean Boulevard
Twenty-Second Floor
Long Beach, CA 90802
562.435.1191

Orange County Office
18201 Von Karman Avenue
Suite 1060
Irvine, CA 92612
949.271.2600

Los Angeles Office
601 South Figueroa Street
Suite 4950
Los Angeles, CA 90017
213.239.9745

www.windes.com