

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 UPDATE

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At the time of publication of the last edition of Employee Benefit News, the Department of Labor (DOL) had just announced a delay of the new fiduciary rules on conflicts of interest. Since April, incoming DOL secretary Alexander Acosta was confirmed, and a new transition period was announced for the implementation of the new rules, and then further extended through July 1, 2019. The DOL indicated that the rules are still being reviewed during the transition period, and the House recently passed a bill completely repealing the new fiduciary rules. While the implementation of these regulations have been in flux, the financial services industry has made substantial changes in their operations and fee arrangements to comply with the rules that were originally to take effect in April. We will provide further updates as developments occur and hopefully stabilize.

## COMPLIANCE SPOTLIGHT: HARDSHIP SUBSTANTIATION

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One of the more difficult tasks confronting plan administrators is the determination of eligibility for hardship distributions, which allow plan participants to access their retirement accounts for financial hardship. The IRS has provided new guidelines to help simplify the process of substantiating hardship claims. The following article describes the new guidelines and how they will be applied. To read more, see the article [“New IRS Guidelines for Hardship Distributions.”](#)

## PLAN AMENDMENT REQUIRED TO USE FORFEITURES TO FUND SAFE HARBOR CONTRIBUTIONS

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As detailed in the Spring 2017 edition of Employee Benefits News, earlier this year the IRS issued proposed regulations that allow unallocated forfeitures in a plan to be used toward the funding of safe harbor contributions. Prior to the new rules, forfeitures could only be used to offset the sources of contributions subject to vesting. The proposed rules allow forfeited balances to offset fully vested safe harbor contribution sources. Plans are permitted to rely on the proposed regulations before they become finalized as long as the plan is amended to comply with the regulations by the end of 2017. Windes will be sending an amendment to our clients for those plans affected by this change.

# TAX RETURN FILING DEADLINE CHANGES IMPACT CONTRIBUTION DUE DATES

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Effective with 2016 tax returns, the due dates (regular and/or extended) have changed for Partnerships and certain C Corporations. These changes also affect the due date of employer contributions to a qualified plan for deduction purposes. The due dates are earlier or later than prior years depending on the type of entity. Partnership and C Corporation plan sponsors should contact their accountants to confirm the funding and filing deadline.

## 403(b) PLANS VS. 401(k) PLANS – WHICH IS THE RIGHT CHOICE FOR NONPROFITS?

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Since 1997, nonprofit entities have been able to establish either a 403(b) plan or a 401(k) plan for their employees. There are distinct differences between these two types of plans that employers should consider before deciding which plan is best suited for their organization.

One distinct advantage 403(b) plans have over 401(k) programs is that employee salary deferral contributions are not subject to nondiscrimination testing. Section 401(k) plan salary deferrals must be tested on an annual basis to determine whether the contributions favored the highly paid employees, based on standards defined under the Internal Revenue Code (IRC). The Section 403(b) plan exemption from testing allows highly paid participants to make contributions during the year without concern that any of their salary deferrals will be returned to them due to failed nondiscrimination testing. This is an important consideration in many nonprofit organizations where there may be a small number of highly paid employees that would have a negative impact on nondiscrimination testing in a Section 401(k) plan.

In exchange for being exempted from nondiscrimination testing, Section 403(b) plans must allow for “universal availability,” which opens up the plan to practically all of the organization’s employees. An important advantage of Section 401(k) plans is the ability to exclude certain classes of employees and to impose eligibility requirements on new employees. Nonprofits with high turnover or with a segment of employee populations they want to exclude from benefits would likely find more flexibility in a Section 401(k) arrangement.

Some Section 403(b) plans sponsored by a nonprofit organization can qualify for an exemption from the regulations and rules of the Employee Retirement Income Security Act (ERISA), including the annual Form 5500 filing requirements. Section 401(k) plans are not exempt from the regulations and rules of ERISA.

Another key differentiator between these plans is their funding vehicles and investment options. Section 403(b) plans are invested through variable annuity contracts or custodial accounts that invest in mutual funds, which have traditionally been serviced through large insurance companies. Section 401(k) plans are open to any type of investment vehicle, although they are predominantly invested in mutual funds. Section 401(k) plan funding vehicles range from individual brokerage accounts to annuity contracts to pooled investment accounts.

The chart on the next page summarizes the key differences between the two plans and is only a brief summary of the differences in these plans authorized by two distinct sections of the IRC.

## Comparison of 401(k) and 403(b) Plans

Feature	401(k) Plan	403(b) Plan
<b>Eligible Employers</b>	All non-governmental employers	501(c)(3) tax-exempt and public educational organizations
<b>Eligible Employees</b>	May impose age 21 and up to one year of service requirement. Can exclude non discriminatory classification of employees if plan meets coverage requirements	All employees must be eligible for elective deferrals, with limited exceptions. Can impose eligibility requirements on employer contributions
<b>Employee Contribution Limits (2017)</b>	\$18,000 plus \$6,000 catch up (age 50)	Same limit, with a special catch-up for 15 years of service with certain employers
<b>Roth Contributions</b>	Allowed	Allowed
<b>Employer Contribution Limits (2017)</b>	100% of compensation up to \$54,000, including salary deferrals	Same
<b>Non Discrimination Testing</b>		
<b>Employee Deferrals</b>	ADP test	Not applicable
<b>Employer Contributions</b>	ACP test (match), nondiscrimination testing on non-match contributions	Same
<b>ERISA</b>	Applies	Plans with only elective deferrals, multiple vendors and limited employer involvement may be exempt
<b>Deferrals from Post Severance Compensation</b>	Generally limited to compensation for services rendered, paid within 2.5 months after separation from service	Same, but employer nonmatching contributions can be made up to 5 years after severance based on compensation in last year
<b>In-Service Withdrawal Provisions</b>	Allowed due to hardship, after a certain age or fixed years of service	Same for annuity contracts, but custodial contracts restrict distribution until age 59.5 or disability
<b>Plan Termination</b>	Allowed, successor plan rules apply	Same, but some older contracts considered in control of employee may pose practical issues
<b>Investment Options</b>	Any investment option allowed under ERISA	Annuity contracts or custodial accounts invested in mutual funds

# STRATEGIC PARTNERS

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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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