

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.

AUTOMATIC CONTRIBUTION ARRANGEMENTS CAN BOOST PLAN PARTICIPATION

An increasingly popular 401(k) plan feature is to provide for automatic enrollment of participants who fail to make a salary deferral election. These are sometimes referred to as “negative” election plans, and the affected participants have contributions made from their payroll to the plan at a set rate until they elect a different amount. The typical effect of this feature is to raise the average contributions for the employees, which helps the nondiscrimination testing results and overall performance of the plan.

There are several types of automatic contribution arrangements and the attached article details their features. [Read more](#)

YEAR-END LEGISLATION RESTORES PLAN FILING DEADLINE

In the last edition of Employee Benefit News, we reported on the change to various filing deadlines enacted by a legislation passed last summer. Thanks to lobbying efforts by employee benefit plan groups, the Fixing Surface Transportation Act (FAST) of 2015 restored the Form 5500 filing date to its original due date. The extended due date for plan returns will continue to be 9 ½ months after the plan year end.

PROPOSED REGULATIONS COULD IMPACT CROSS-TESTED PLANS

In January, the IRS proposed regulations that primarily addressed issues pertaining to closed defined benefit plans. Included in the proposal is a significant change to the nondiscrimination testing rules used by cross-tested profit sharing plans. If finalized, this rule change would have a dramatic effect on these plans, potentially requiring a re-design and amendment and generally raising the amounts due to employees.

The rules applicable to these plans have been in place, with modifications along the way, for more than twenty-five years. A typical plan cross-tested design places each employee in his or her own group or classification for nondiscrimination testing purposes. The benefits provided to each highly compensated employee are compared to the non-highly compensated and the contributions must be sufficient to pass the nondiscrimination standards. The proposed regulations would not allow such a classification and instead would require groupings of employees under standard business criteria such as job categories or nature of compensation (hourly vs. salaried). This would have the effect of making the plan designs less flexible and to require more contributions to employees to receive the same results for owners.

Proposed regulations are often floated as a kind of trial balloon by the IRS. The public will have time to weigh in on the regulations and our professional organizations will be sure to illustrate the burden this will place on sponsors of plans employing these designs. We will provide updates on this issue in future editions.

SOCIAL SECURITY DECISION DUE BY MAY

While outside our traditional qualified retirement plans topics, there is an issue that anyone of retirement age should be aware of related to Social Security benefits. The decision as to when to begin taking Social Security benefits should not be made casually. There are over 300 benefit combinations, and each situation should be analyzed for the best possible outcome. Variables include the level of individual and spousal income and benefits, the relative age of the individual and spouse, marital status, survivor status and others. Benefits can begin to be claimed at age 62 and maximize when deferred to age 70.

One popular way to initiate benefits has been the “file and suspend” strategy. In some circumstances, this has allowed married couples to maximize their overall benefits beyond what was available to each of them individually. The rules allowing this strategy were changed last year, and the window to take advantage of these expiring provisions is rapidly approaching. Those individuals age 66 or older have until April 29, 2016 to pursue the “file and suspend” strategy.

Regardless of whether you qualify for this particular option, if you are at or near qualification for Social Security benefits, you should have a careful analysis performed to provide you with the best option for your situation. We can refer you to experts in Social Security optimization to provide you with this valuable information.

COMPLIANCE SPOTLIGHT: DOL ISSUES OPINION ON AUDIT QUALITY

Generally, plans that cover over 100 participants are required to attach an independent audit report as part of their annual Form 5500 filing. Last year, the Department of Labor (DOL) issued its report on audit quality. The DOL subsequently sent an email to all plan administrators of plans subject to the audit requirement highlighting the report’s findings and emphasizing the importance of obtaining a quality audit from a CPA firm that specializes in conducting these types of plan audits.

The DOL noted that in 2011, there were 81,162 audits attached to Form 5500 filings performed by 7,330 different CPA firms. Their review found that 39% of the audits contained “major deficiencies” in keeping with professional auditing standards. The DOL found a clear link between the number of employee benefit plan audits performed and the quality of the audit work, and the deficiencies were concentrated in firms that performed the fewest audits. The DOL report further noted that the current level of professional peer review has not resulted in improved audit quality.

While the email from the DOL seemed to implicate a problem with the audit as filed, there is no increased risk of an investigation for most plans. The report is an indication, however, of how the DOL views the importance of an accurate audit, and they have emphasized the following attributes of firms that provided the highest quality audit reports:

- Firms that performed a higher number of audits had an increased quality of audit reports.
- Firms that were members of the American Institute of Certified Public Accountants’ (AICPA) Employee Benefit Plan Audit Quality Center tended to produce audits with fewer deficiencies.
- Firms with training specific to employee benefit plan audits contributed to better audit work and fewer deficiencies.

Plan sponsors required to attach an audit report should carefully choose their CPA firm and inquire as to their experience with these specialized engagements. Questions should include:

- Are employee benefit plan audits a focused practice area in your firm?
- How many ERISA audits do you perform each year?
- Are you a member of the AICPA EBP Audit Quality Center?
- Do you have a training program in the employee benefit plan area for your staff?

The Windes ERISA audit practice conducts over 60 such audits a year and has been a member of the audit quality center since its inception. We have extensive experience and training in this area and have dedicated staff that maintain a practice focus in ERISA audits. Please contact us with any questions or concerns about your plan.

The full DOL report can be found at the following link: www.dol.gov/ebsa/pdf/2014AuditReport.pdf.

403(b) PLANS: SPECIAL CATCH-UP RULES

Section 403(b) plans have a special catch-up feature that can allow long-term employees the ability to make additional contributions in the latter part of their careers. The calculation of the special catch-up is complicated and must take into account prior contributions over an extended period of time.

The expanded contribution limits are available to employees with more than 15 years of service with a “qualified organization.” This is defined as:

- An educational organization
- A hospital
- A home health service agency
- A health and welfare agency
- A church or convention of churches

A participant who qualifies for the special catch-up under Code section 402(g)(7) is allowed an additional deferral of up to \$3,000 per year. This increase is on top of the regular catch-up limit for individuals over age 50. This means that an individual who qualifies for both catch-ups would have a 2016 elective deferral limit of **\$27,000** (the 401(k) limit of \$18,000, plus the regular catch-up limit of \$6,000, **plus** the special catch-up limit of \$3,000).

Service is only counted with one qualified organization and its predecessor. The amount of the special catch-up is limited to a lifetime \$15,000 and is reduced by a formula that takes into account years of service and prior elective deferrals.

The special catch-up limit is unique to 403(b) plans and can be a boon to a qualified individual who desires to maximize his or her retirement benefits. The calculation of the limit does require that records on qualified individuals be maintained beyond the normal 10-year retention period. Please contact us with any questions about how this feature affects your 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:

| | |
|--------------------------------------|----------------|
| Richard L. Green, CPC, QPA, QKA, APA | Partner |
| James R. Howe, CPC, MSPA, APA | Partner |
| Therese S. Cheevers, APA | Senior Manager |
| Dolores M. Hernandez | Senior Manager |
| Connie Lee, CPC, QPA, QKA | Manager |
| <hr/> | |
| Marybeth Herbage | Philena Merry |
| Lisa Johnson | Diana Miller |
| 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