

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.

## TAX REFORM PENDING IN CONGRESS

---

As of this writing, the House and Senate have each passed their versions of tax reform. It appears that the proposed changes to qualified plan limitations have not been realized in either version. There are other provisions in both the House and Senate bills that could affect the retirement plan system. We will provide a full analysis when (and if) the final legislation is signed into law.

## IRS ANNOUNCES COST OF LIVING ADJUSTMENTS (COLA) FOR 2018

---

The IRS has announced cost of living adjustments (COLA) applicable to qualified plans for 2018.

The limit on elective deferrals to 401(k), 403(b) and 457(b) plans will increase from \$18,000 to \$18,500. Catch-up contributions will remain limited to \$6,000.

The limitation on contributions to participants (including elective deferrals but excluding catch-up contributions) increases from \$54,000 to \$55,000. The limit on the annual retirement benefit under a defined benefit plan is raised from \$215,000 to \$220,000.

The annual compensation that can be considered for retirement plan purposes increases from \$270,000 to \$275,000. The threshold for determining a highly compensated employee remains at \$120,000 paid in the prior year. [Click here](#) for our updated summary of the retirement plan limits.

## QDROS: HOW TO DIVIDE RETIREMENT ASSETS UPON DIVORCE

---

When qualified plan benefits are the subject of a negotiated divorce settlement, an order detailing the division of the retirement accounts must be drafted to comply with the plan and approved by a court. The “Qualified Domestic Relations Order” establishes the right of a participant’s spouse or dependents under the plan to receive benefits. [Click here](#) to read more about the plan requirements for dealing with divorce settlements.

# COMPLIANCE SPOTLIGHT: IRS ANNOUNCES COMPLIANCE PRIORITIES FOR 2018

---

In September, the Tax Exempt/Government Entity division of the IRS announced their 2018 compliance program. Their “compliance strategies” for examining retirement plans during the next year target plans with the following attributes:

- **Mergers/Consolidations.** Plans with transferred assets due to a merger or acquisition.
- **Discrimination.** Plans that have failed the “gateway” test or the ADP (elective deferrals) or ACP (matching) nondiscrimination tests.
- **Disclosure.** Plans that fail to provide timely notices to employees, including a safe harbor notice.
- **Safe Harbor.** Plans that failed to provide the required safe harbor contribution to all eligible participants.
- **Coverage.** Plans that failed to satisfy minimum age and/or service requirements, met the requirements in their document, but failed in operation of the plan, or plans that allowed ineligible employees to participate.
- **Distributions.** Plans that failed to make required minimum distributions, plans that permitted improper hardship withdrawals or that distribute an incorrect benefit amount.
- **Contributions.** Plans that made erroneous allocations of contributions or improper use of forfeitures due to utilization of an incorrect definition of compensation. Also, plans that failed to make matching contributions per the plan terms.
- **Trust Investments.** Small plans that failed to properly value all assets at fair market value and/or failed to properly register plans in the name of the trust.
- **Compensation.** Plans that failed to properly allocate contributions and forfeitures due to using an incorrect definition of compensation.
- **Elective Deferrals.** Plans that failed to withhold the proper amount of elective deferrals per participant elections.
- **Nonprofit Plans.** 403(b) plans will be examined for compliance with Universal Availability and plans with participants that have utilized the special 15-year catch-up contribution. Also, Section 457(b) plans with excess deferrals.

In addition to the above issues, the IRS indicated that they will extensively use “Compliance Checks” targeting 403(b) and 457(b) plans, plans with partial terminations and plans with non-participant loans. These information requests require only a mailed-in response but can result in an expanded audit. If you have any concerns over your plan’s compliance with any of these audit issues, please contact our office.

# 403(B) PLANS: REQUIRED NONDISCRIMINATION TESTING

---

One of the benefits of a qualified Section 403(b) retirement plan is that elective deferrals are not subject to nondiscrimination testing. All employer contributions, on the other hand, must demonstrate that contributions do not discriminate in favor of highly compensated employees (HCE).

To test for nondiscrimination, contributions or benefits (divided into pay) of the highly paid group are compared to those of the non-HCEs. The averages for each group must not favor the HCEs beyond a specified range. The allowable range is defined by the type of plan and the HCE concentration (HCE vs. total eligible employees).

Plans can be designed to avoid nondiscrimination testing. For example, a plan that does not cover any HCEs, or that allocates employer contributions to all participants directly in proportion to compensation would be deemed to be automatically nondiscriminatory.

403(b) plan sponsors that match elective deferrals are generally required to test the matching contributions via the actual contribution percentage test (ACP). Matching contributions are divided into pay to determine the contribution ratio for each employee. Employees who do not receive a match would be included in the testing with a ratio of zero. The average of the HCE and non-HCEs are compared. If the non-HCE group is not within the specified allowable range below the HCE group (generally less than 1.25%), then a correction is required. The correction methods involve either distributing or forfeiting matching contributions from HCEs or providing an additional employer contribution to the non-HCEs. Plans with an employer match can adopt safe harbor provisions to avoid testing.

Employer contributions other than matches are subject to a different nondiscrimination test. Plans using an allocation method that is not in proportion to pay (such as a discretionary amount to each individual) must pass general nondiscrimination testing. This is a complicated area with many variables and options, but these plan designs can be very beneficial to an organization's key employees.

The plan's compensation definition may also require annual nondiscrimination testing. There are safe harbor definitions of compensation that are automatically nondiscriminatory, such as W-2 compensation, and other all-inclusive definitions. Plans that want to eliminate a portion of compensation, such as bonuses or overtime, must perform a test under Section 414(s) of the IRC. The non-excluded pay is divided into total pay to determine the "exclusion ratio" for the HCE and non-HCE groups. The average ratio for the HCE group cannot be more than a small amount above the non-HCE average, which has informally been defined as 3%.

Another area that may involve nondiscrimination is the "benefits, rights and features" of the plan. This can include the ability to take a loan from the plan, distribution alternatives, or investment options. Anything available under the plan cannot be preferential to HCEs. For example, if the right to self-direct investments or even the availability of a specific investment is restricted under the plan to accounts of a certain size, then the feature must be tested to ensure that it does not predominantly favor HCEs.

Nondiscrimination is an important consideration for plan sponsors, and failure of the nondiscrimination standards can lead to plan disqualification. Please contact us with any questions about your plan's compliance with these requirements.

# 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	Senior 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 4050  
Los Angeles, CA 90017  
213.239.9745