



2017 Year in Review

Part II: Retirement Plans

Most major tax acts bring with them significant changes to qualified retirement plans. With a few exceptions discussed below, that did not occur in the recently passed Tax Cuts and Jobs Act. Nonetheless, here are the changes that were made to retirement plans by the new tax law, together with other significant retirement plan developments that occurred in 2017 and developments that take effect in 2018.

- **Tax Cuts and Jobs Act of 2017: Changes to Employee Benefits**

The Tax Cuts and Jobs Act made several specific changes to hardship distributions:

- Earnings now may be withdrawn in addition to deferrals.
- Qualified nonelective contributions and qualified matching contributions may be eligible for withdrawal.
- No suspension of deferrals will be required as a result of taking a hardship distribution.
- A participant no longer has to take a loan (if available) from his or her 401(k) or 403(b) plan before taking a hardship withdrawal.

Before 2018, an individual could elect to retroactively change the character of contributions to a traditional IRA or Roth IRA. Effective January 1, 2018, amounts rolled over to a Roth IRA from other retirement plans, such as a 401(k) or 403(b) plan, can no longer be recharacterized.

- **COLA and Other Benefit and Contribution Increases for 2018**

Here is a link to our earlier Haynes Benefits alert that discusses the 2018 IRS limits.

[2018 Cost-of-Living Adjustments for Retirement Plans](#)

On Feb. 6, 2018, the IRS announced that the Tax Cuts and Jobs Act of 2017 would have no effect on these tax year 2018 dollar limitations for retirement plans.

- **IRS Required Amendments for 2017**

The IRS announced its Required Amendments List for 2017 for Qualified Plans in [Notice 2017-72](#).

The required amendments for 2017 concern only Cash Balance, Hybrid and Defined Benefit Plans. The amendment deadline generally is December 31, 2019.

The Required Amendments List for 2016 (announced in [Notice 2016-80](#)) generally requires amendment to occur by December 31, 2018. The only amendment listed pertains solely to collectively bargained defined benefit plans. It addresses changes to restrictions on accelerated distributions from underfunded single-employer plans in employer bankruptcy under Section 436 of the Internal Revenue Code.

- **Restatement of 403(b) Plans**

On January 13, 2017, in [Rev. Proc. 2017-18](#), the IRS in effect provided that 403(b) plan documents and related adoption agreements must be restated sometime during a three-year remedial amendment period from **April 1, 2017 to March 31, 2020** in order for the plan to continue to maintain its tax qualified status as to form.

- **DOL Announces Delay in Enforcement for Fiduciary Duty Rule**

Enforcement of the Fiduciary Duty Rule, which affects retirement plan financial advisers, was again delayed. The Rule was to be effective January 1, 2018. It will now become effective July 1, 2019.

In the interim, the DOL issued guidance that, during the extended transition period, financial institutions and advisers must comply with "impartial conduct standards," which require financial institutions to:

- (1) Give advice that is in the "best interest" of the retirement investor. The best interest standard has two components, prudence and loyalty:
 - Under the prudence standard, the advice must meet a professional standard of care, as specified in the text of the exemption; and
 - Under the loyalty standard, the advice must be based on the best interest of the customer, rather than the competing financial interest of the adviser or firm;
- (2) Charge no more than reasonable compensation; and

(3) Make no misleading statements about an investment transaction, compensation, and conflicts of interest.

- **DOL Delays Effective Date of Changes to Rules for Disability Claims**

On November 24, 2017, the DOL announced that the effective date for final regulations for disability claims for retirement benefits would be delayed. The effective date is now April 1, 2018 instead of January 1, 2018.

The [final regulations](#), which were published December 16, 2016, make significant changes to claims procedures when there is an adverse determination for disability claims for retirement benefits.

- **Voluntary Correction Program Fees**

Effective January 2, 2018, the IRS changed its fees associated with applications for correction under Voluntary Correction Program of the Employee Plans Compliance Resolution System.

Fees are now based upon the amount of plan assets instead of the number of participants.

The fee is \$1,500 for plans with \$500,000 or less in assets; \$3,000 for plans with up to \$10 million in assets, and \$3,500 for plans with more than \$10 million in assets.

Stay tuned for Part III of this series, which will provide a review of 2017 in the human resources arena.

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