

(484) 574-8782

# Torrillo & Associates

Benefit Plan Audit Specialists

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## Tax Cuts & Jobs Act – Impact on Retirement Plans



Below are the key retirement plan provisions under the [Tax Cuts & Jobs Act](#), per Thomson Reuters Tax & Accounting, Checkpoint Special Study on Pension and Benefit Changes in the “Tax Cuts and Jobs Act.” These are [consistent with previous expectations.](#)

## Extended Rollover Period for Rollover of Plan Loan Offset Amounts

If an employee stops making payments on a retirement plan loan before the loan is repaid, a deemed distribution of the outstanding loan balance generally occurs. Such a distribution is generally taxed as though an actual distribution occurred, including being subject to a 10% early distribution tax, if applicable. A deemed distribution isn’t eligible for rollover to another eligible retirement plan.

Under pre-Act law, a plan may also provide that, in certain circumstances (for example, if an employee terminates employment), an employee’s obligation to repay a loan is accelerated and, if the loan is not repaid, the loan is cancelled and the amount in employee’s account balance is offset by the amount of the unpaid loan balance, referred to as a loan offset. A loan offset is treated as an actual distribution from the plan equal to the unpaid loan balance (rather than a deemed distribution), and (unlike a deemed distribution) the amount of the distribution is eligible for tax free rollover to another eligible retirement plan within 60 days. However, the plan is not required to offer a direct rollover with respect to a plan loan offset amount that is an

eligible rollover distribution, and the plan loan offset amount is generally not subject to 20% income tax withholding.

*New law.* For plan loan offset amounts which are treated as distributed in tax years beginning after Dec. 31, 2017, the Act provides that the period during which a qualified plan loan offset amount may be contributed to an eligible retirement plan as a rollover contribution would be extended from 60 days after the date of the offset to the due date (including extensions) for filing the Federal income tax return for the tax year in which the plan loan offset occurs—that is, the tax year in which the amount is treated as distributed from the plan. A qualified plan loan offset amount is a plan loan offset amount that is treated as distributed from a qualified retirement plan, a Code Sec. 403(b) plan, or a governmental Code Sec. 457(b) plan solely by reason of the termination of the plan or the failure to meet the repayment terms of the loan because of the employee's separation from service, whether due to layoff, cessation of business, termination of employment, or otherwise. A loan offset amount under the Act (as before) is the amount by which an employee's account balance under the plan is reduced to repay a loan from the plan. (Code Sec. 402(c), as amended by Act Sec. 13613)

## **Relief from Early Withdrawal Tax for “Qualified 2016 Disaster Distributions”**

A distribution from a qualified retirement plan, a tax-sheltered annuity plan, an eligible deferred compensation plan of a state or local government employer, or an IRA generally is included in income for the year distributed. In addition, unless an exception applies, distribution from a qualified retirement plan, a Code Sec. 403(b) plan, or an IRA received before age 59½ is subject to a 10% additional tax under Code Sec. 72(t) (the “early withdrawal tax”) on the amount includible in income.

In general, a distribution from an eligible retirement plan

may be rolled over to another eligible retirement plan within 60 days, in which case the amount rolled over generally is not includible in income. The 60-day requirement can be waived by IRS in certain situations.

*New law.* The Act provides an exception to the retirement plan 10% early withdrawal tax for up to \$100,000 of “qualified 2016 disaster distributions.” (Act Sec. 11028(b)) These distributions are defined as distributions from an “eligible retirement plan” made (a) on or after January 1, 2016, and before January 1, 2018, to an individual whose principal place of abode at any time during calendar year 2016 was located in a 2016 disaster area, and who has sustained an economic loss by reason of the events that gave rise to the Presidential disaster declaration. An “eligible retirement plan” means a qualified retirement plan, a Code Sec. 403(b) plan, or an IRA.

Income attributable to a qualified 2016 disaster distribution can, under the Act, be included in income ratably over three years (Act Sec. 11028(b)(1)(E)), and the amount of a qualified 2016 disaster distribution can be recontributed to an eligible retirement plan within three years.

The Act also provides that a plan amendment made pursuant to the above disaster relief provisions may be retroactively effective if certain requirements are met, including that it be made on or before the last day of the first plan year beginning after December 31, 2018 (December 31, 2020 for a governmental plan), or a later date prescribed by IRS. (Act Sec. 11028(b)(1)(F)(2)(B))

## **Repeal of the Rule Allowing Recharacterization of IRA Contributions**

Under pre-Act law, if an individual makes a contribution to an IRA (traditional or Roth) for a tax year, the individual is allowed to recharacterize the contribution as a contribution to the other type of IRA (traditional or Roth) by making a

trustee-to-trustee transfer to the other type of IRA before the due date for the individual's income tax return for that year. In the case of a recharacterization, the contribution will be treated as having been made to the transferee IRA (and not the original, transferor IRA) as of the date of the original contribution. Both regular contributions and conversion contributions to a Roth IRA can be recharacterized as having been made to a traditional IRA.

*New law.* For tax years beginning after Dec. 31, 2017, the rule that allows a contribution to one type of IRA to be recharacterized as a contribution to the other type of IRA does not apply to a conversion contribution to a Roth IRA. Thus, recharacterization cannot be used to unwind a Roth conversion. (Code Sec. 408A(d), as amended by Act Sec. 13611)

## **Length of Service Award Programs for Public Safety Volunteers**

Under pre-Act law, any plan that solely provides length of service awards to bona fide volunteers or their beneficiaries, on account of qualified services performed by the volunteers, is not treated as a plan of deferred compensation for purposes of the Code Sec. 457 rules. Qualified services are fire fighting and prevention services, emergency medical services, and ambulance services, including services performed by dispatchers, mechanics, ambulance drivers, and certified instructors. The exception applies only if the aggregate amount of length of service awards accruing for a bona fide volunteer with respect to any year of service does not exceed \$3,000.

*New law.* For tax years beginning after December 31, 2017, the Act increases the aggregate amount of length of service awards that may accrue for a bona fide volunteer with respect to any year of service, from \$3,000 to \$6,000, and adjusts that amount to reflect changes in cost-of-living. Also, if the plan is a defined benefit plan, the limit applies to the actuarial



present value of the aggregate amount of length of service awards accruing with respect to any year of service. Actuarial present value is calculated using reasonable actuarial assumptions and methods, assuming payment will be made under the most valuable form of payment under the plan, with payment commencing at the later of the earliest age at which unreduced benefits are payable under the plan, or the participant's age at the time of the calculation. (Code Sec. 457(e), as amended by Act Sec. 13612).



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## Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in

10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional states that have passed firm mobility.

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