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Internal Revenue Service

2013 Cost of Living Adjustments Announced

On October18, 2012 the Internal Revenue Service published Information Release 2012-77. http://www.irs.gov/uac/2013-Pension-Plan-Limitations The 2013 dollar limits are as follows:

Limit	2013	2012
Defined Benefit Plans The maximum dollar limitation for annual benefits under defined benefit plans under Internal Revenue Code (IRC) Section 415(b)(1)(A). EGTRRA amended this limitation for annual benefits to the lesser of $160,000 (as adjusted for inflation) or 100% of the participant's average compensation for his high 3 years.	**$205,000**	$200,000
Defined Contribution Plan 415 dollar limit The dollar limitation for annual additions under defined contribution plans under IRC Section 415(c)(1)(A). EGTRRA amended this limitation on annual additions, which is the lesser of $40,000 (as adjusted for inflation) or 100% of compensation.	**$51,000**	$50,000
401(k)/403(b)/Existing SARSEP Elective Deferral limit The limitation on cumulative elective deferrals to a 401(k), 403(b) tax deferred annuity, simplified employee pension, and SIMPLE retirement plan in a tax year, as coordinated under IRC Section 402(g)(1).	**$17,500**	$17,000
457 Deferral Limits The limitation on deferrals to 457 plans under IRC Section 457(e)(15). EGTRRA amended this contributions limitation under an eligible 457 deferred compensation plan to be the lesser of 100% of includible compensation or the year's applicable dollar limit.	**$17,500**	$17,000

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Limit	2013	2012
403(b) Catch-up limit		
The maximum available 402(g) elective deferral limit plus the special catch-up election for employees participating in a 403(b) tax deferred annuity who have had at least 15 years of service with an educational organization, hospital, home health agency, health and welfare service agency, church or convention or association of churches. *Note: The additional 403(b) special catch-up of up to $3,000 per year cannot exceed cumulatively $15,000 over the lifetime of the 403(b) participant.*	**$20,500**	$20,000
457 Catch-up limit		
The special catch-up election for employees participating in an eligible 457 deferred compensation who have elected the special catch-up available in the three years prior to the year of normal retirement age. *Note: The participant in a governmental 457(b) plan may make catch-up contributions in a year equal to the greater of (a) the amount permitted under the age 50+ catch-up rule, or (b) the amount permitted under the normal retirement age catch-up rule.*	**$35,000**	$34,000
Age 50+ Catch-up Limits		
The special catch-up available under Internal Revenue Code (IRC) Section 414(v) for individuals at least 50 years old in 2013 and make eligible pre-tax contributions to 401(k), 403(b), and governmental 457 plans.	**$5,500**	$5,500
The special catch-up is available for individuals who are at least 50 years old in 2013 and make eligible pre-tax contributions to a SIMPLE plan.	**$2,500**	$2,500
Definition of Key Employee		
The compensation threshold used for determining key employees under IRS Section 416(i)(1)(A)(i).	**$165,000**	$165,000
Definition of Highly Compensated Employees		
The compensation threshold used for determining highly compensated employees under IRC Section 414(q)(1)(B).	**$115,000**	$115,000
Compensation Limit		
The annual limit of compensation that may be taken into account for contribution purposes in accordance with IRC Section 401(a)(17) (nongovernmental plan sponsors).	**$255,000**	$250,000
The annual limit of compensation that may be taken into account for contribution purposes in accordance with IRC Section 401(a)(17) (governmental plan sponsors).	**$380,000**	$375,000

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Limit	2013	2012
Adjusted Gross Income Limit for Saver's Credit The highest adjusted gross income (based on federal income tax filing status) taken into account for eligibility for the Saver's Credit.	**$59,000 (joint)** **$29,500 (single)** **$44,250 (head of household)**	$57,500 (joint) $28,750 (single) $43,125 (head of household)
SIMPLE Retirement Accounts Compensation taken into account that an employee may elect to defer under a SIMPLE retirement plan described in IRC Section 408(p)(2).	**$12,000**	$11,500
Compensation for SEPs Compensation taken into account to determine eligibility for simplified employee pensions (SEPs).	**$550**	$550

On October 16, 2012, the Social Security Administration released its cost of living information for 2013 http://www.ssa.gov/pressoffice/factsheets/colafacts2013.pdf :

Taxable Wage Base	2013	2012
Maximum amount of earnings subject to payroll tax.	**$113,700**	$110,100

IRS Posts Hurricane Sandy Disaster Relief Information

Information on the Hurricane Sandy disaster can be found on http://www.irs.gov/uac/Tax-Relief-in-Disaster-Situations .

IRS Releases Phone Forum Presentation on *Correction Methods for 401(k) Plan Failures*

The IRS recently released the presentation for the September 7, 2012 phone forum on the Voluntary Correction Program (VCP) *Correction Methods for 401(k) Plan Failures*. http://www.irs.gov/pub/irs-tege/epcrs_401k_phoneforum_presentation.pdf As set forth in the highlights, the correction methods are consistent with the following core correction principles contained in Section 6 of Rev. Proc. 2008-50 [http://www.irs.gov/irb/2008-35_IRB/ar10.html]:

- Full correction includes all taxable years, whether or not the taxable year is closed.
- The correction method should restore the plan and its participants to the position they would have been in had the failure not occurred.
- The correction should be reasonable and appropriate for the failure. Note that in addition to the correction methods outlined in Appendices A and B of Rev. Proc. 2008-50, which are deemed to be reasonable, other correction methods may be acceptable depending on the facts of the particular submission.

The presentation includes explanations of the appropriate correction methods for the following failures, including detailed examples:

1. Employer eligibility failure.
2. Exclusion of eligible employees.

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3. Failure to provide safe harbor notice.
4. Premature inclusion of employees.
5. Failure to implement deferral elections.
6. Automatic enrollment failures.
7. Catch-up contribution failures.
8. Roth failures.
9. Deferrals computed on improper compensation base.
10. Earnings.
11. ADP/ACP testing failures.
12. IRC 402(g) limit violations.
13. Hardship withdrawals and plan loan failures.
14. Late remittance of deferrals.

EP Team Audit (EPTA) Program - EPTA Compliance Trends & Tips - 403(b) Tax-Sheltered Annuity Plan, 457 Plan and Governmental Plan Trends

On October 22, 2012, the Employee Plans Team Audit (EPTA) Program published a comprehensive review of issues identified upon audit - *EPTA Compliance Trends & Tips - 403(b) Tax-Sheltered Annuity Plan, 457 Plan and Governmental Plan Trends*. http://www.irs.gov/Retirement-Plans/EP-Team-Audit-%28EPTA%29-Program---EPTA-Compliance-Trends-&-Tips---403%28b%29-Tax-Sheltered-Annuity-Plan,-457-Plan-and-Governmental-Plan-Trends

Problems identified are listed below. The explanation includes detailed findings and resources available for correction.

- Failure to properly apply universal availability to participants.
- Failure to properly track and limit 15 year rule contributions and combine with age 50 Catch-up Feature.
- Failure to have a written plan document (effective 1-1-2010).
- Failure to follow controlled group rules.
- Failure to follow unforeseeable emergency 457 plan distribution rules.
- Failure to limit contributions under IRC Section 415.
- Failure to comply with the IRC Section 403(b) post severance contribution requirements.
- Failure to comply with IRC Section 457(b) catch-up limitations.
- Failure to comply with IRC Section 457(b) permissive service credit transfer rules.

Department of Labor

Inspector General Examines ERISA Audit Process

On September 28, 2012, the Department of Labor Office of Inspector General - Office of Audit published *Changes Are Still Needed in the ERISA Audit Process to Increase Protections for Employee Benefit Plan Participants* **[**Report Number: 09-12-002-12-121]. http://www.oig.dol.gov/public/reports/oa/2012/09-12-002-12-121.pdf

Despite efforts made by the Employee Benefits Security Administration (EBSA) to improve oversight and audit quality, the report concludes that protections for participants and beneficiaries in retirement plans have weakened due to the use by plan administrators of limited scope audits.

According to the report, EBSA improvements that could have been made within existing law include the following:

1. existing authority could be used to clarify and strengthen limited scope audit regulations and formally evaluated recommendations by the ERISA Advisory Council for improving limited scope audits;

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2. better use of available enforcement tools over independent qualified public accountants (IQPAs), even though EBSA lacked the legal authority to prevent IQPAs from conducting substandard audits;

3. improve procedures in its reviews of IQPAs to ensure that audits met professional standards; and

4. complete a statistically valid reassessment of overall employee benefit plan audit quality since it had not completed one since 2004, and as a result cannot statistically demonstrate if audit quality has improved since that time.

The primary recommendation asks the Assistant Secretary for EBSA to continue to seek repeal of the limited scope audit exemption and obtain authority over plan auditors. Interim recommendations include the following:

1. use existing authority to clarify and strengthen limited scope audit regulations and evaluate the ERISA Council recommendations,

2. make better use of available enforcement tools over IQPAs,

3. improve procedures in audit quality reviews, and

4. perform a reassessment of audit quality.

Before It's Too Late October Newsletter Warns About the Perils of Early Withdrawals from Retirement Accounts

The October 9, 2012 and October 22, 2012 editions of *Before It's Too Late: A Retirement Security Update From Assistant Secretary Phyllis C. Borzi* have been published. http://www.dol.gov/ebsa/newsletter/archive.htm

In the first monthly newsletter, Borzi cautions participants to restrain from taking a loan, hardship withdrawal or cash out upon job separation until retirement.

> *However, unless there is a real emergency, I would urge you to keep your retirement savings off-limits.*
>
> *In addition to cheating yourself out of thousands or even tens of thousands of dollars of compound interest accumulation, you will have to pay penalties. If you are younger than 59 1/2 years old and withdraw from your 401(k), you will pay a 10% penalty, along with state and federal taxes.*
>
> *A 2009 Government Accountability Office report [http://www.gao.gov/products/GAO-09-715] found that cash outs at job separation can have the greatest impact on an individual participant's savings. Participants who voluntarily cashed out their entire 401(k) account balance at job separation rather than leaving it with the employer or rolling it over to another 401(k) account or IRA experienced the largest reductions in the amount of retirement savings that accumulate over their working careers.*
>
> *Let time and compound interest work for you! Keep track of your accounts, monitor the fees and expenses you are paying, and periodically reassess your retirement goals – but don't cash out your accounts before you are ready to retire.*

In the most recent newsletter, Borzi notes that October 21-27 was National Save for Retirement Week. She recommends that "busy people can stop and do a quick assessment of where they are in their retirement planning, and to make changes if needed."

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Further resources listed include the following:

Read the text of the Senate Resolution
Watch a video about why Savings Matters
Top 10 Ways to Prepare for Retirement
Learn more about your 401(k) fee disclosures

Phyllis Borzi Receives Letter Urging Correction Program for Fee Disclosure Issues with Service Providers

In a letter sent to Phyllis Borzi, Assistant Secretary of Labor, Employee Benefits Security Administration, dated October 16, 2012, Attorneys Bruce L. Ashton, Bradford P. Campbell and C. Frederick Reish recommended the creation of a voluntary correction program for service providers that have failed to meet the disclosure requirements of 408(b)(2). http://www.drinkerbiddle.com/Templates/AjaxHandlers/PdfAttachment.ashx?FileName=%2FTemplates%2Fmedia%2Ffiles%2FPress%2520Releases%2F2012%2F408b2-Correction-Progrram-Letter-to-Phyllis-Borzi.pdf.

According to the letter, which detailed a suggested correction program, regulatory compliance by service providers would be promoted by:

> *providing an incentive for service providers to correct their errors with reduced penalties, while simultaneously allowing the regulatory agencies to leverage their resources to pursue intentional violations, increasing overall compliance and enforcement results and better protecting plan participants.*

General Accounting Office

More Information and Oversight of Multiple Employer Plans Needed

A report prepared by the General Accounting Office (GAO) to the Chairman, Committee on Health, Education, Labor, and Pensions, U.S. Senate *Federal Agencies Should Collect Data and Coordinate Oversight of Multiple Employer Plans (MEPs)* was released September 13, 2012. http://www.gao.gov/products/GAO-12-665 The report examines the characteristics of private sector MEPs, how IRS and DOL regulate MEPs, and the advantages and disadvantages of MEPs as well as how their perceived advantages are used to market them.

Since small businesses cover fewer workers in employer-sponsored retirement plan than larger employers, would participation rates be improved if small businesses offered MEPs? The theory is that lowering administrative costs by economies provided by MEPs would increase sponsorship of retirement plans by small businesses.

The highlights summary makes the following recommendations:

1. The Secretary of Labor should direct the EBSA to take the lead in gathering useful oversight information about the employers that participate in MEPs. A likely source for collection of this data would be the Form 5500, as it is the primary source of private pension data for government oversight activities.

2. The Secretary of Labor should instruct the Assistant Secretary of EBSA and the Secretary of the Treasury should instruct the Commissioner of Internal Revenue to formalize their coordination with regard to the statutory interpretations reflected in Labor's advisory opinions related to MEPs. Furthermore, the agencies should coordinate to develop compliance-related guidance on the establishment and operation of MEPs under ERISA and the IRC.

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