Retirement News for Employers

Fall 2012 Edition - December 13, 2012

Hurricane Sandy relief

- Phone forum on plan loans and hardship distributions to Sandy victims (December 11, 2012)
- Chart – summarizes how retirement plans can give loans and hardship distributions to victims
- FAQs – answer who is eligible for the relief, tax on hardship distributions from plans and IRA withdrawals
- Help for victims of Hurricane Sandy– YouTube videos, podcasts, news releases and guidance

Plan operations

- Plan loans – calculate the maximum amount a participant can borrow if you have more than one plan that permits loans
- Internal controls are essential – review your plan annually to avoid mistakes
- Fixing plan mistakes – what to do if you deposit salary deferrals late
- Mark Your Calendar – important dates in the upcoming months for your retirement plan

IRAs and IRA plans

- SIMPLE IRA plans – you can't make both matching and nonelective contributions
- IRA year-end reminders – review your IRAs and contribution limits, excess contributions and required minimum distributions
- Required minimum distribution comparison chart – highlights some of the RMD rules for IRAs, and IRA-based and defined contribution plans

Forms and publications

- Forms W-2 and W-3 – make sure the retirement plan information is correct
- Due date chart – lists due dates for Forms 5500, 945, 5329, 1099-R and others
- 2012 Forms 5500 and 5500-SF (information only) and their instructions
- *Lots of Benefits* when you set up or participate in an employee retirement plan, Publication 4118 (Rev. 7-2012)
- *Choose a Retirement Plan* – Publication 4484 (Rev. 11-2012)
- *Retirement Plan Distributions: Exceptions to 10% Additional Tax* – Publication 5036 (Rev. 10-2012)

New on the Web

- IRS.gov redesigned – find us by clicking on the "Information For…" drop-down (upper right) and selecting "Retirement Plans"
- 2013 COLA limits for retirement plans and IRAs
- Lifetime annuity guidance – highlights of recent phone forum on how plans can offer annuity options for retirees
- Missing participants or beneficiaries – recent changes to the letter forwarding program
- Watch "A Taxing Matter - Retirement" – select presentation on left pane, scroll to the bottom of the page and select "Audit"
- DOL Corner – updated information for retirement plans

Hurricane Sandy Relief – Retirement Plan Loans & Distributions

The IRS has streamlined rules that apply to loans and hardship distributions from employer-sponsored retirement plans to help victims of Hurricane Sandy and their families (Announcement 2012-44). Benefit practitioners, plan sponsors and employers are encouraged to inform plan participants of these streamlined rules.

Eligibility

Who	An employee or former employee whose: • principal residence, • parent, grandparent, child or grandchild's principal residence, • place of employment, or • parent, grandparent, child or grandchild's place of employment was located in the Hurricane Sandy disaster area.
Disaster area	Areas in Connecticut, New Jersey, New York or Rhode Island declared federal disaster areas. See Tax Relief in Disaster Situations for a list of eligible localities.
Date measured	Employee or relative's residence or place of employment must have been in the disaster area on October 26, 2012.
Dates affected	The streamlined rules apply to loans and hardship distributions made October 26, 2012 - February 1, 2013.
Verification	Plan administrators may rely on an employee's representation as to the need for and amount of a hardship distribution unless they have actual knowledge to the contrary.

Loans

Amount	Maximum amount of plan loans.
Eligible plans	Any qualified plan, 403(b) or governmental 457(b) plan that: • can make plan loans, or • could make plan loans but plan document doesn't have plan loan provisions.
No loan provision in plan	A plan that does not currently provide loans may allow Sandy-related loans.
Plan amendment dates	If plan sponsors make a Sandy-related plan loan when the loan wasn't permitted by the terms of the plan, they must amend their plans to allow plan loan provisions by the end of the first plan year beginning after December 31, 2012.
Documentation	The plan administrator may temporarily disregard procedural requirements that otherwise apply to plan loans, but should obtain any required documentation for the loan as soon as practical.
Spousal consent	Spousal consent rules apply. However, plan administrators don't have to obtain a death certificate prior to making the loan if they make reasonable attempts to obtain it as soon as practical.

Hardship distributions

Amount	Any amount eligible for a hardship distribution.
Eligible hardship	Any Sandy-related need is an immediate and heavy financial need (or an unforeseeable emergency for 457(b) plans) eligible for a hardship distribution.
6-month ban on contributions	No need to stop elective deferral contributions for six months after receiving a Sandy-related hardship distribution even if required by the plan's terms.
Eligible plans	Any qualified plan, 403(b) or 457(b) plan that could make hardship distributions if the plan document contained hardship distribution provisions. Defined benefit or money purchase plans are generally ineligible.
No hardship provision in plan	A plan that does not currently provide hardship distributions may allow Sandy-related distributions.
Plan amendment dates	If plan sponsors make a Sandy-related hardship distribution when it wasn't permitted by the terms of the plan, they must amend their plans to add hardship distribution provisions by the end of the first plan year beginning after December 31, 2012.
Documentation	The plan administrator may temporarily disregard procedural requirements, but should attempt to gather any documentation required by the plan's terms as soon as practical.
Spousal consent	Spousal consent rules apply. Plan administrators may overlook a requirement to obtain a death certificate if they make reasonable attempts to obtain it as soon as practical.
Tax treatment	Generally, hardship distributions are subject to income taxes and a 10% additional tax on early distributions.

Related resources:

- Retirement Topics - Loans
- Retirement Topics - Hardship Distributions
- Disaster Relief for Retirement Plans and IRAs
- Retirement Plans Can Make Loans, Hardship Distributions to Sandy Victims
- FAQs - Hurricane Sandy Relief - Retirement Plan Loans & Distributions

Hurricane Sandy Relief FAQs – Retirement Plan Loans & Distributions

1. **Are Sandy-related hardship distributions from qualified plans and IRAs includible in gross income?**

   Yes, these distributions are includible in gross income except to the extent they consist of already-taxed amounts or qualified distributions from designated Roth accounts or Roth IRAs.

2. **Does the 10% additional tax on early withdrawals apply to Sandy-related hardship distributions?**

   Yes, the 10% additional tax under Internal Revenue Code Section 72(t) applies to Sandy-related hardship distributions unless it is eligible for an exception to the tax. See the chart of exceptions to the 10% additional tax.

3. **Is a plan participant required to obtain a plan loan before requesting a Sandy-related hardship distribution from a qualified plan?**

   It depends on plan terms. A plan is not required to add loan provisions in order to make Sandy-related hardship distributions. Generally, a participant must take available plan loans before being eligible for a hardship distribution of elective deferrals from a 401(k) plan, but if requiring such loans would be impractical under the circumstances, Sandy-related hardship distributions may be made from the plan between October 26, 2012, and February 1, 2013, without requiring such loans.

4. **Can an individual take Sandy-related hardship distributions from a traditional or Roth IRA?**

   Generally, an individual can take withdrawals from a traditional or Roth IRA at any time and for any purpose. A withdrawal from an IRA is includible in gross income except to the extent it consists of already-taxed amounts or is a qualified distribution from a Roth IRA. The 10% additional tax on early withdrawals may also apply unless an exception to the tax is available.

5. **Which locations qualify for the Hurricane Sandy relief in Announcement 2012-44?**

   See Help for Victims of Hurricane Sandy for a list of counties and Tribal Nations eligible for relief.

6. **Are there any special reporting requirements for Sandy-related hardship distributions?**

   No, there are no special distribution codes for Sandy-related distributions.

7. **For a plan that already provides for loans and hardships and wants to take advantage of the relief outlined in Announcement 2012-44, will the plan sponsor need to amend the plan?**

   No, a plan that currently provides for loans and hardship distributions does not need to adopt an amendment in order to make Sandy-related loans or distributions under Announcement 2012-44.

8. **Can an individual who is taking substantially equal periodic payments (SEPPs) from an IRA take additional amounts from the same IRA to cover Sandy-related expenses without being subject to the 10% additional tax?**

   No. The additional amount is subject to the 10% additional tax unless an exception applies. Also, if the individual is under 59½ or has not been receiving the SEPPs for 5 years, the 10% additional tax will apply to all the SEPPs already taken from the IRA (unless the individual has died or become disabled).

Related resource:

- Hurricane Sandy Relief - Retirement Plan Loans and Distributions

Loan Limits Apply to All Plans

My company has both a 401(k) and a defined benefit plan. If both plans allow participant loans, what is the maximum amount a participant can borrow from each plan?

To determine the maximum amount a participant can borrow from the plans, you must consider all of the following:

- both plans, as well as the plans of any related employer, as a single plan for loan purposes (Internal Revenue Code Sections 72(p)(2)(D) and 414(b),(c) and (m))
- the plans' limit on loans (statutory or a lesser amount)
- the participant's prior loans from the plans, if any, and the outstanding balance on these loans if the plans allow multiple loans
- whether there is adequate collateral for the loan

Maximum amount for a single loan
A plan can either use the statutory limit for all plan loans (IRC Section 72(p)(2)(A)) or a lower limit.

- **Statutory maximum**
  All of a participant's loans from a plan are limited to the **lesser** of:
  - $50,000, reduced by:
    - the highest outstanding balance of loans during the 12 months ending the day before the new loan, minus
    - the outstanding balance of loans on the day of the new loan; or

  - the greater of:
    - one-half the participant's vested plan account balance (the present value of the participant's vested accrued benefit for defined benefit plans),
    - or $10,000.

  Example 1
  Bob's vested account balance in his 401(k) plan is $120,000 and the present value of his vested accrued benefit in the same employer's defined benefit plan is $100,000. Bob, who is unmarried, hasn't previously taken any loans from these plans. Bob's maximum loan limit is the lesser of:

  1. $50,000; or
  2. the greater of:
     - $110,000 (½ of ($120,000 + $100,000)), or
     - $10,000.

     Bob can get a loan of up to $50,000.
  - **Lower limit set by a plan's terms**
    A plan may limit a participant's loan to an amount less than the statutory maximum.

    Example 2
    Using the same facts as in example 1, except the plans have a maximum loan limit of the lesser of $40,000 or ½ of a participant's vested account balance (the present value of the participant's vested accrued benefit for the defined benefit plan), Bob can get a maximum loan of $40,000.

  Maximum amount for multiple loans
  If a plan allows participants to take multiple loans, all of a participant's loans must not exceed the maximum loan amount (statutory or as set by the plan's terms).

    Example 3
    Jane's vested account balance in her 401(k) plan is $60,000 and the present value of her vested accrued benefit in the same employer's defined benefit plan is $120,000. Both plans use the statutory maximum for loans. Ten months ago, Jane, an unmarried participant, took a $15,000 loan from the defined benefit plan and still owes $5,000 on that loan. Her maximum limit for all loans (new plus any outstanding) is the lesser of:

1. $40,000 ($50,000 – ($15,000 - $5,000)); or
2. the greater of:
   - $90,000 (½ of ($60,000 + $120,000)); or
   - $10,000.

Because Jane's outstanding balance of her first loan is $5,000, Jane can take a new loan of up to $35,000 (the lesser of 1 or 2 above minus her first loan's outstanding balance ($40,000 – $5,000)). Review the Collateral section below if Jane wants to borrow the entire $35,000 from her 401(k) plan.

Collateral
Each plan must have adequate collateral for a loan from the plan. Additionally, if the plan is subject to:

- ERISA, the plan can't use more than 50% of the participant's vested account balance (present value of the vested accrued benefit in a defined benefit plan) in that plan as collateral for loans from that plan (DOL Reg. Section 2550.408b-1(f)); and

- survivor annuity requirements, the plan must obtain spousal consent for any plan loan to a married participant if more than $5,000 of the account balance (present value of the accrued benefit in a defined benefit plan) is used as security for the loan (Treas. Regs. Section 1.401(a)-20).

Example 4 – additional collateral
Using the same facts as in example 3, if Jane wanted to borrow $35,000 from only her 401(k) plan, which is subject to ERISA, the plan sponsor would have to request additional collateral for $5,000 of the loan because $35,000 is $5,000 more than 50% of Jane's vested account balance in the 401(k) plan (50% x $60,000 = $30,000). Alternatively, Jane can borrow up to $30,000 from her 401(k) plan and $5,000 from her defined benefit plan without having to provide additional collateral.

Example 5 – spousal consent
Using the same facts as in example 3, if Jane is married and she wants to borrow $10,000 from her defined benefit plan and $25,000 from her 401(k) plan, she wouldn't have to provide additional collateral because the amount she wants to borrow from the 401(k) plan doesn't exceed 50% of her vested account balance in that plan and the amount she wants to borrow from her defined benefit plan doesn't exceed 50% of the present value of her vested accrued benefit. Assuming the 401(k) plan isn't subject to survivor annuity requirements (few are), no spousal consent is required for the loan from that plan. However, Jane would have to obtain spousal consent for her loan from the defined benefit plan because she wants to borrow more than $5,000 from a plan that is subject to the survivor annuity requirements.

Additional resources:
- FAQs: Loans
- Retirement Plan Topics - Loans
- Plan Loan Failures and Deemed Distribution

Internal Controls are Essential in Retirement Plans

Monika Templeman, Director of EP Examinations, responds to questions and offers insights on retirement plan topics uncovered during audits. You may provide feedback or suggest future topics by emailing her at: RetirementPlanComments@irs.gov.

"An ounce of prevention is worth a pound of cure" definitely applies to keeping retirement plans tax-qualified. Effective internal controls and annual reviews of your plan are essential "ingredients" to prevent costly mistakes that can jeopardize the plan's tax-favored status. Unfortunately, retirement plan examinations and voluntary correction submissions often reveal that plans don't have needed internal controls in place or they aren't administered properly.

Benefits to having strong internal controls

Having effective practices and procedures to prevent compliance problems is a basic requirement to be eligible to use the Self-Correction Program. You can self-correct insignificant operational errors at any time and preserve the tax-favored status of the plan without having to pay any fees.

When auditing a retirement plan, the agent begins by evaluating the plan's internal controls to determine whether to perform a focused or expanded audit. In addition, if the agent finds plan errors, the strength of internal controls is a factor in the negotiation of the sanction amount under Audit CAP. The agent will make every effort to ensure that the plan has internal controls in place when the audit concludes.

Please note that hiring a service provider doesn't relieve you of the responsibility of keeping your plan in compliance. Problems typically occur when there's a communication gap between you and the plan administrator about what the plan document provides and what documentation is needed to ensure compliance.

Common mistakes that we see during plan audits resulting from communication problems between the plan sponsor and administrator

Failure to timely amend the plan or to follow the terms of the plan

It's common during examinations that an employer can't locate documentation to prove the plan was timely amended for current law. This results in an Audit Closing Agreement under Audit Cap. If the error had been discovered through an annual review of the plan document before the plan was audited, the plan sponsor could have filed a much less expensive voluntary correction submission to bring the plan current with all law changes (self-correction isn't available for document failures).

When you change your plan document, you should also make corresponding changes to the summary plan description and communicate the changes to plan participants. It's also important to share changes made to the plan with all persons who provide service to the plan. For example, if the plan's definition of compensation is changed, you should communicate this change with anyone involved in determining deferral amounts, performing nondiscrimination tests or allocating contributions.

Failure to review in-service, termination, and loan distribution forms to make sure they follow the plan terms

Many plan vendors use the same distribution forms for all of the plans they administer despite the fact that individual plans may have different distribution options and requirements. Using a generic form can lead to incorrect distributions and incorrect tax reporting.

Failure to count all eligible employees in testing

Plan sponsors often fail to share information with the plan administrator on all employees:

- eligible to make an elective deferral, including those terminated during the year, or
- of a related company with common ownership interests.

These employees may be eligible to participate in the plan and, therefore, may need to be included in the various tests.

Free tools

The tools on our website can help you strengthen your plan's internal controls. We have checklists that ask questions relating to common errors found in certain types of plans. If you answer "no" to any of the questions, you should investigate further to see if you have an error in your plan. If you sponsor a 401(k) plan, use our 401(k) questionnaire, which contains more questions that may help determine if there are errors in your plan. We also have Fix-It Guides for a number of plan types with tips on how to find, fix and avoid common plan errors. The Trends and Tips pages list recurring errors by plan type and issue, and include errors we found in large case (EPTA) exams.

The tips in this article and the related links are the ingredients we have available for your retirement plan "ounce of prevention" recipe. So, if you haven't done so already, please check out our user-friendly tools on the Information for Retirement Plans Web pages.

Late Deposit of Salary Deferrals - Fixing Common Plan Mistakes

Employers with 401(k) plans are responsible for depositing their employees' salary deferrals to the plan's trust on the earliest date that the deferrals can reasonably be segregated from the employer's general assets.

The earliest date is based on individual facts and circumstances. If your plan has fewer than 100 participants, your deposit is considered timely if it's made within 7 business days after you withhold the salary deferrals even if you were able to deposit them earlier. If you don't deposit the salary deferrals within 7 business days after you receive or withhold them, then your individual facts and circumstances will determine whether your deposit was considered timely. For larger plans (100 participants or more), the determination of whether the deposit was timely is based on the individual employer's facts and circumstances.

Regardless of your individual facts and circumstances, you must deposit the salary deferrals no later than 15 business days in the month following the month in which the amounts would otherwise have been payable to your employees in cash. If your facts and circumstances show that you could have made the deposit on an earlier date, then you must have deposited your salary deferrals by that earlier date for them to be considered timely.

The problem

Failing to timely deposit withheld salary deferrals to the plan is a plan error.

Consequences of not segregating and depositing salary deferrals timely

- Failing to timely deposit salary deferrals:
  - is a fiduciary violation and could subject your plan to the Department of Labor's civil penalties.
  - could violate your plan's terms and jeopardize your plan's tax-exempt status

- Failing to segregate salary deferrals from your general assets and timely forwarding them to the plan's trust allows you prohibited use of plan assets. This can result in you engaging in a prohibited transaction for which you can be assessed excise tax.

The fix - correction programs available to correct this mistake

- **DOL's Voluntary Fiduciary Correction Program**
  You can correct the fiduciary violation for failing to timely deposit salary deferrals using the DOL's Voluntary Fiduciary Correction Program. VFCP isn't available if your plan is under a DOL investigation or an IRS examination.

- **DOL's prohibited tax class exemption in conjunction with VFCP**
  You may also be eligible to take advantage of the prohibited tax class exemption in conjunction with VFCP if you:
  - deposited the salary deferrals to the plan's trust within 180 days from the date the amounts would otherwise have been payable to the employees in cash;
  - satisfied all VFCP requirements;
  - received a no-action letter for your VFCP application; and
  - notified all interested persons in writing within 60 days of submitting your VFCP application. There is an exception to this notice requirement if:
    - your excise tax liability would have been $100 or less;
    - you contributed the amount of your excise tax liability to the plan; and
    - you allocated this amount to participants and beneficiaries according to the plan's terms for allocating plan earnings.

  If the transaction qualifies for the prohibited transactions class exemption, then you won't be liable for excise tax under IRC Section 4975.
- **IRS Employee Plans Compliance Resolution System**
  If your plan's tax-exempt status is in jeopardy, then you can use the IRS Employee Plans Compliance Resolution System.

- If your plan is **not** under IRS examination and meets the other eligibility requirements, you can use either the self-correction or voluntary correction programs.
- If your plan **is** under examination, you can still self-correct if the failure is insignificant, or you can resolve the issue in a closing agreement through Audit CAP.

DOL and IRS correction programs are not interchangeable

The goal of the DOL's VFCP is to ensure that the employer isn't subject to DOL's civil penalties. The goal of the IRS's correction programs, including VCP, is to ensure that the plan doesn't lose tax benefits arising from its qualified status. It is critical that you know what your objectives are before deciding which program you want to use. Also, you may use both the DOL and IRS programs if you have a dual objective of avoiding the imposition of DOL's civil penalties and the IRS's revocation of your plan's qualified status.

The fix - correcting the mistake

- *Salary deferrals never deposited* - If you failed to deposit salary deferrals to the plan, then you must make corrective contributions in the amount of the salary deferrals you should have timely deposited adjusted for earnings. The adjustment for earnings is measured from the earliest date you could have segregated the salary deferrals from your general assets to the date you actually make the corrective contributions.

- *Late deposit* - If you deposited the salary deferrals, but not timely, then to correct this mistake, you must contribute the earnings on the late deposited salary deferrals. Earnings are what the late deposited deferrals would have earned measured from the earliest date you could have segregated them from your general assets to the date you actually deposited them to the plan.

Differences in the earning adjustment under DOL and IRS programs

The general premise of both the DOL VFCP and IRS correction programs is to restore the plan to the position it would have been had you timely deposited the salary deferrals. However, the earnings calculation in both programs could be different.

- *DOL's VFCP* - earnings are determined using the greater of:
  - lost earnings (earnings that the plan would have earned if you had timely deposited the salary deferrals), or
  - restoration of profits (the profit you earned that is directly attributable to your investment of the salary deferrals that weren't timely deposited).

  You can use DOL's online calculator when using VFCP to calculate earnings.
- *IRS correction program* - earnings are generally determined based on what the plan would have earned had you timely deposited the salary deferrals. The IRS correction programs do, however, allow you to use reasonable estimates (including the DOL's online calculator) to calculate the earnings on the late deposited salary deferrals if either:
  - it's possible to make a precise calculation but:
    - the probable difference between the approximate and the precise restoration of participants' benefits is insignificant, **and**
    - the administrative cost of determining precise restoration would significantly exceed the probable difference, or

  - it's not possible to make a precise calculation (for example, where it's impossible to obtain plan data).

Making sure it doesn't happen again

Establish a procedure for depositing elective deferrals with or after each payroll date, or according to the terms in your plan document. If you have instances when your deferral deposits are later than the normal timely deposit (because of vacations or other disruptions, for example), keep a record of why those deposits were late. Coordinate with your payroll provider and others who provide service to your plan to determine the earliest date you can reasonably make deferral deposits. The date and related deposit procedures should match your plan document provisions, if any, dealing with this issue. If you have a change in the person in charge of making these deposits, make certain the new person understands when he or she must make these deposits.

Keep in mind that despite all of your good efforts, mistakes happen. In that case, the IRS can help you correct the problem so that you retain the benefits of your qualified plan.

Mark Your Calendar

Operating a retirement plan can be time-consuming. To help you, we've listed some important dates in the upcoming months. Please note that most of these deadlines are for calendar-year plans (non-calendar-year plans must adjust the dates):

December 31:

- Distribute 2011 401(k) excess contributions and excess aggregate contributions (both adjusted for 2011 income and losses) without jeopardizing the plan's tax-qualified status.
- Revoke a single-employer defined benefit plan sponsor's previous election to use a funding balance to offset minimum required contributions for the 2012 plan year, to the extent the election exceeded the full minimum required contribution for the year (This deadline only applies to plans with valuation dates as of the first day of the plan year.)
- Elect to reduce January 1, 2012, funding balances to avoid or lift benefit restrictions under IRC Section 436 for single-employer defined benefit plans.
- Elect to restore any single-employer defined benefit plan's funding balances if a reduction that was made before applying MAP-21 rates is no longer necessary (if the original election was made on or before September 30, 2012 – see Notice 2012-61).
- Recertify a single-employer defined benefit plan's 2012 AFTAP if it had previously been certified using pre-MAP-21 rates on or before September 30, 2012, if the sponsor's decision to apply the MAP-21 rates prospectively would otherwise cause a "material" change in the AFTAP (see Notice 2012-61).

January 15: Make the 2012 fourth quarter contributions for defined benefit plans.

January 31:

- File Form 945, *Annual Return of Withheld Federal Income Tax*. If you made deposits timely in full payment of the taxes for 2012, you may file Form 945 by February 11, 2013.
- Trustees and custodians must issue Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, to recipients of 2012 retirement plan distributions.
- Amend for recent law changes and submit the plan for a determination letter, if desired, for Cycle B individually designed plans.

Visit the Retirement Plans Web page for a complete list of upcoming Employee Plans Educational Events/Conferences.

SIMPLE IRA Plan Employer Contribution

The only employer contribution you can make to your SIMPLE IRA plan is either:

- a matching contribution capped at 3% of compensation, or
- a 2% nonelective contribution.

You can't make both.

Matching contribution
You can choose to make a matching contribution for each employee's salary deferrals on a dollar-for-dollar basis up to 3% of the employee's compensation. In this instance, compensation **is not limited** by the annual compensation limit, but you can't exceed the 3% cap.

Less than 3% match - You can reduce the 3% matching contribution for a particular year, but only if:

- you don't reduce it below 1%, and
- you don't reduce it more than twice in the 5-year period ending with that year.

2% nonelective contribution
Instead of the matching contribution, you can choose to contribute 2% of each eligible employee's compensation regardless of whether or how much the employee defers. For nonelective contributions, an employee's compensation **is limited** to the annual compensation limit ($250,000 in 2012 and $255,000 in 2013).

Notice
You must annually:

- choose whether to make:
  - the matching contribution (and the match limit), or
  - the nonelective contribution, and

- notify all employees of your choice before the election period.

Regardless of your business structure, you must use the same contribution formula for all employees (including yourself).

Changing the contribution type or percentage
You can't amend or terminate a SIMPLE IRA plan mid-year. Once you've notified your employees of the type and percentage of employer contributions you'll make for a year, you can't change your mind. For example, if you notify your employees you'll make the 2% nonelective contribution for the upcoming year, you can't then decide to make the 3% matching contribution for that year. Likewise, if you've notified your employees that you'll make the matching contribution with a 3% cap, you can't reduce the cap to 2%.

Additional resources:

- SIMPLE IRA Plans - FAQs
- Notice 98-4, SIMPLE IRA Plan Guidance
- Publication 560, *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*
- Publication 4334, *SIMPLE IRA Plans for Small Businesses*
- SIMPLE IRA Plan Fix-It Guide

IRA Year- End Reminders

Whether you are still working or retired, you should periodically review your IRAs. Here are few things to remember.

Contribution limits
If you're still working, review the 2012 IRA contribution and deduction limits to make sure you are taking full advantage of the opportunity to save for your retirement. You can make 2012 IRA contributions until April 15, 2013.

Excess contributions
If you exceed the 2012 IRA contribution limit, you may withdraw excess contributions from your account by the due date of your tax return (including extensions). Otherwise, you must pay a 6% tax each year on the excess amounts left in your account.

Required minimum distributions
If you are age 70½ or older this year, you must take a 2012 required minimum distribution by December 31, 2012 (by April 1, 2013, if you turned 70½ in 2012). You can calculate the amount of your IRA required minimum distribution by using our Worksheets. You must calculate the required minimum distribution separately for each IRA that you own other than any Roth IRAs, but you can withdraw the total amount from one or more of your non-Roth IRAs. Remember that you face a 50% excise tax on any required minimum distribution that you fail to take on time.

Additional resources:

- IRA Web pages
- FAQs: IRAs
- FAQs: Required minimum distributions
- Publication 590, *Individual Retirement Arrangements (IRAs)*

RMD Comparison Chart (IRAs vs. Defined Contribution Plans)

This chart highlights some of the basic RMD rules as applied to IRAs and defined contribution plans (e.g., 401(k), profit-sharing, and 403(b) plans).

Required Minimum Distributions for Account Owners		
	IRAs including SEP, SIMPLE and SARSEP IRAs	**Defined Contribution Plans**
When do I take my first RMD (the required beginning date)?	You must take your first RMD by April 1 of the year following the year in which you turn 70½, regardless of whether you are still employed.	April 1 of the year following the later of the year you turn 70 ½ or the year you retire (if allowed by your plan). If you are a 5% owner, you must start RMDs by April 1 of the year following the year you turn 70½.
When do I reach age 70½?	You reach age 70½ on the date that is 6 calendar months after the date of your 70th birthday. **Example**: Your 70th birthday was June 30, 2010. You reached age 70½ on December 30, 2010. You must take your first RMD (for 2010) by April 1, 2011. **Example**: Your 70th birthday was July 1, 2010. You reached age 70½ on January 1, 2011. You do not have an RMD for 2010. You must take your first RMD (for 2011) by April 1, 2012.	Same as IRA rule
What is the deadline for taking subsequent RMDs after the first RMD?	After the first RMD, you must take subsequent RMDs by December 31 of each year beginning with the calendar year containing your required beginning date. **Example**: You turn 70½ on July 15, 2010. You must take your first RMD, for 2010, by April 1, 2011. You must take your second RMD, for 2011, by December 31, 2011, and your third RMD, for 2012, by December 31, 2012.	Same as IRA rule
How do I calculate my RMD?	Your RMD is generally determined by dividing the adjusted market value of your IRAs as of December 31 of the preceding year by the distribution period that corresponds with your age in the Uniform Lifetime Table (Table III in IRS Publication 590, *Individual Retirement Arrangements (IRAs)*). If your spouse is your sole beneficiary and is more than 10 years younger than you, you will use the Joint Life and Last Survivor Expectancy Table (Table II in IRS Publication 590). Required Minimum Distribution Worksheets	Same as IRA rule Your plan sponsor/administrator should calculate the RMD for you.
How should I	If you have more than one IRA, you must	If you have more than one defined

take my RMDs if I have multiple accounts?	calculate the RMD for each IRA separately each year. However, you may aggregate your RMD amounts for all of your IRAs and withdraw the total from one IRA or a portion from each of your IRAs. You do not have to take a separate RMD from each IRA.	contribution plan, you must calculate and satisfy your RMDs separately for each plan and withdraw that amount from that plan. Exception: If you have more than one 403(b) tax-sheltered annuity account, you can total the RMDs and then take them from any one (or more) of the tax-sheltered annuities.
May I withdraw more than the RMD?	Yes, an IRA owner can always withdraw more than the RMD. You cannot apply excess withdrawals toward future years' RMDs.	Same as IRA rule
May I take more than one withdrawal in a year to meet my RMD?	You may withdraw your annual RMD in any number of distributions throughout the year, as long as you withdraw the total annual minimum amount by December 31 (or April 1 if it is for your first RMD).	Same as IRA rule
What happens if I do not take the RMD?	If the distributions to you in any year are less than the RMD for that year, you are subject to an additional tax equal to 50% of the undistributed RMD.	Same as IRA rule

Note: There are no RMD requirements for a Roth IRA while the owner is alive. However, designated Roth accounts are subject to the RMD rules.

Additional Resources

- FAQs - Required Minimum Distributions
- Publication 560, *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*
- Publication 571, *Tax-Sheltered Annuity Plans (403(b) Plans) For Employees of Public Schools and Certain Tax-Exempt Organizations*
- Publication 575, *Pension and Annuity Income*
- Publication 590, *Individual Retirement Arrangements (IRAs)*

Common Errors on Form W-2 Codes for Retirement Plans

You must ensure that the information on Form W-2, *Wage and Tax Statement*, and Form W-3, *Transmittal of Wage & Tax Statements*, you issue to your employees contains correct retirement plan information because:

- employees need accurate information to determine the correct deductions and credits on their tax return, and
- IRS agents use the information from these forms to determine whether employers are complying with income and employment tax reporting requirements.

Common mistakes

During Form 5500 examinations and EPCU projects, IRS agents found employers using incorrect codes in Box 12 of Form W-2, for example:

- code D for 401(k) elective deferrals incorrectly included 403(b), 457, or non-qualified amounts.
- code E for 403(b) contributions but did not have a 403(b) plan.
- code H to incorrectly report health benefits; code H is for elective deferrals to a 501(c)(18)(D) tax-exempt organization plan. (In fact, a recent Employee Plan Compliance Unit project found that only 6 % of employers who used this code actually contributed to a 501(c)(18) plan.)
- code S for a SIMPLE 401(k); the correct code for a SIMPLE 401(k) is code D.

Common codes used for Box 12

Letter code:	Used for:	Description:
D	401(k) contributions	Elective deferrals to a 401(k) cash or deferred arrangement, including SIMPLE 401(k)s
E	403(b) contributions	Elective deferrals made under a 403(b) salary reduction agreement
F	408(k)(6) contributions	Elective deferrals made under a SARSEP
G	457(b) contributions	Elective and nonelective deferrals made to a 457(b) deferred compensation plan
H	501(c)(18)(D) contributions	Elective deferrals to a Section 501(c)(18)(D) tax-exempt organization plan (Included in the "Wages, Tips, Comp." amount in Box 1)
S	408(p) SIMPLE contributions	Deferrals made under a SIMPLE IRA plan
AA	Roth contributions	Designated Roth contributions under a 401(k) plan
BB	Roth contributions	Designated Roth contributions under a 403(b) plan
EE	Roth contributions	Designated Roth contributions under a governmental 457(b) plan (a tax-exempt organization's 457(b) can't have a designated Roth account)

See the Instructions for Forms W-2 and W-3 for a complete list of codes.

Form W-2, Box 13

The "Retirement plan" indicator in Box 13 shows whether an employee is an active participant in your company's plan. If this box is checked, it lets the recipient know that depending on their filing status and modified adjusted gross income, they may not be entitled to a full deduction for their traditional IRA contributions. You should check the retirement plan box if an employee was an "active participant" for any part of the year in:

- a qualified pension, profit-sharing, or stock-bonus plan under Internal Revenue Code Section 401(a) (including a 401(k) plan).
- an annuity plan under IRC Section 403(a).
- an annuity contract or custodial account under IRC Section 403(b).
- a simplified employee pension (SEP) under IRC Section 408(k).
- a SIMPLE retirement account under IRC Section 408(p).
- a trust described in IRC Section 501(c)(18).
- a plan for federal, state, or local government employees or by an agency or instrumentality thereof (other than a 457(b) plan).

Active participant
Generally, an employee is an active participant if covered by a:

- defined contribution plan (for example, a 401(k) plan) for any tax year and is credited with any contributions or forfeitures, or
- defined benefit plan for any tax year that the employee is eligible to participate.

Don’t check the retirement plan box if your company only has non-qualified or 457(b) plans.

Form W-3, Box b
Form W-3, Box b has checkboxes to specify the type of employer filing the form. You should check the appropriate box if you are a:

- non-governmental tax-exempt 501(c) organization;
- state or local government or instrumentality;
- state or local government or instrumentality and have received a determination letter from the IRS indicating that you are also a 501(c)(3) tax-exempt organization; or
- federal government entity or instrumentality.

Otherwise, you should check the “None apply” box. Only check **one box**.

401(k) Resource Guide - Plan Sponsors - Filing Requirements

The plan sponsor is responsible for ensuring that its plan operates in compliance with the rules related to qualified plans. The plan sponsor is also subject to certain filing requirements. A list of those requirements is included here. Penalties may apply for the late filing or non-filing of required returns and reports.

This checklist may be used as a tool to help you meet 401(k) filing requirements. Please see the instructions to the applicable forms or the references for detailed information. **This checklist is not intended to be all-inclusive and does not apply to government plans or non-electing church plans**.

Required to be file annually:

Item	**Explanation**	**Due to:**
Form 5500, Annual Return/Report of Employee Benefit Plan or Form 5500-EZ, Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan with applicable schedules and independent auditor's report, if applicable. Form 5500 Instructions Form 5500-EZ Instructions Required Schedules	An administrator or sponsor of an employee benefit plan subject to ERISA must file information about each plan every year. A Form 5500-EZ may generally be filed for a plan that provides benefits solely for an individual (and spouse) who wholly owns a trade or business; or partners or partners (and spouses) in a partnership.	IRS/DOL: By the last day of 7th month after the end of the plan year.
Form W-2, Wage and Tax Statement and Form W-3 Transmittal of Wage and Tax Statements Instructions	Reports wages and the amount of elective deferrals for a 401(k) plan.	Employees: By January 31st following the calendar year. IRS: by February 28th following the calendar year.

Required to be file when applicable:

Item	**Explanation**	**Due to:**
Form 945, Annual Return of Withheld Federal Income Tax Instructions	Used to report income tax withheld from distributions made from qualified plans. Deposits of the tax with a Form 8109 to an authorized depositary must be made at specified times during the tax year.	IRS: By January 31st of the year following the calendar year in which the distribution was made.
Form 990-T, Exempt Organization Business Income Tax Return	Used to report gross unrelated business income of $1,000 or more.	IRS: By the 15th day of the 4th month after the end of the tax year.

Instructions	Generally deposits of the tax with a Form 8109 to an authorized depositary must be made at specified times during the tax year.	
Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. Instructions	Used to report distributions, including direct rollovers, from qualified plans.	Participant: by January 31st following the calendar year of the distribution. IRS: By February 28th of the year following the calendar year of the distribution.
Form 5310-A, Notice of Plan Merger or Consolidation, Spinoff or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business (QSLOB) Instructions	Used to inform the IRS of plan merger or consolidation, spinoff or transfer of plan assets or liabilities, or QSLOB.	IRS: At least 30 days prior to plan merger, consolidation, spinoff or transfer of plan assets to another employer. For QSLOB: By the later of October 15th of the year following the testing year, or the 15th day of the 10th month after the end of the plan year of the plan of the employer that begins earliest in the testing year.
Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts Instructions	Used to report and pay additional taxes.	IRS: As an attachment to the Individual Income Tax Return. (Note: filed by participant)
Form 5330, Return of Excise Taxes Related to Employee Benefit Plans Instructions	Used to report tax on the following IRC sections: 4971 - minimum funding deficiency 4972 - nondeductible contributions to qualified plans 4973(a)(3) - excess contributions to a 403(b)(7) custodial account 4975 - prohibited transactions 4978, 4978A - certain ESOP dispositions 4979 - excess contributions to plans with cash or deferred arrangements 4979A - certain prohibited	IRS: For taxes due under: 4971 - later of the last day of the 7th month after the end of the employer's tax year or 8 1/2 months after the last day of the plan year that ends with or within the filer's tax year. 4972, 4973(a)(3), 4975, 4978, 4978A, and 4979A - last day of the 7th month after the end of the tax year of the employer or other person who must file this return. 4979 - last day of the 15th month after the close of the plan year to which the excess contributions or excess aggregate contributions relate. 4980 - last day of the month following the month in which the reversion occurred. 4980F - last day of the month following

	allocations of qualified securities by an ESOP 4980 - reversion of qualified plan assets to employers 4980F - failure of applicable plans reducing future benefit accruals to satisfy notice requirements	the month in which the failure occurred.
Form 5558, Application for Extension of Time to File Certain Employee Plans Returns	Provides a 2 1/2 month extension to file the Form 5500 or 5500-EZ; a 6 month extension to file Form 5330.	IRS: By the last day of the 7th month after the end of the plan year for a 5500 extension; before otherwise due for a 5330 extension.

DOL Corner

The Department of Labor's Employee Benefits Security Administration (DOL/EBSA) announced new guidance as featured below. You can subscribe to DOL/EBSA's homepage for updates.

Guidance on fee disclosure rules

For your employees – DOL/EBSA held a webcast on September 13 to help participants understand the new fee disclosures they are receiving from their retirement plans. An archive of the webcast is available. DOL/EBSA also posted a dedicated Web page that includes publications, FAQs and videos.

On July 30, DOL/EBSA issued a set of frequently asked questions and answers in Field Assistance Bulletin 2012-02R to help plan administrators and service providers comply with the requirements of new rules improving the transparency of fees and investment expenses in retirement plans.

On July 18, DOL/EBSA published improved procedures for plan sponsors who want to obtain fiduciary relief for a service provider's failure to comply with the plan-level fee disclosure rule.

The final 408(b)(2) regulation, effective on July 1, 2012, includes a provision to protect plan sponsors or other responsible plan fiduciaries from liability for a breach of their fiduciary duties under ERISA when, unknown to the plan sponsor, a service provider failed to comply with the regulation's comprehensive disclosure requirements. If a plan sponsor discovers that required information has not been furnished, the sponsor must notify DOL/EBSA, electronically or by regular mail, when efforts to obtain the undisclosed information from a service provider are not successful. The new procedures allow a plan sponsor to notify DOL/EBSA online or by mail. The web-based tool will assist plan sponsors in ensuring that all required information is submitted with immediate confirmation of receipt by DOL/EBSA.

On February 3, DOL/EBSA published a final rule under ERISA Section 408(b)(2) that requires disclosures to employers sponsoring pension and 401(k) plans about the administrative and investment costs associated with providing such plans to their workers.

On October 20, 2010, DOL/EBSA published a final rule to help America's workers manage the money they have contributed to their 401(k) accounts, or similar retirement plan accounts, by requiring the disclosure of information regarding the fees and expenses associated with their plans. This participant-level disclosure rule, under ERISA Section 404(a), also ensures that workers receive core investment information in a format that enables them to meaningfully compare their plan's investment options.

Guidance for apprenticeship and training plans

On July 26, 2012, DOL/EBSA held a webcast for apprenticeship and training plans on fiduciary responsibilities. The webcast covered basic fiduciary responsibilities, including guidance on graduation ceremonies and program marketing Field Assistance Bulletin 2012-01. The archived webcast is available on DOL/EBSA's website.

Outreach and education

For notice of upcoming events as they are scheduled, subscribe on DOL/EBSA's homepage. DOL/EBSA also conducts seminars for small businesses sponsoring health benefits plans. Information on these events is also available on DOL/EBSA's homepage.