

# Retirement News for Employers

August 20, 2013 Edition

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- [Automatic contribution increases](#) – how your plan can automatically increase employee salary deferrals

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- [Why internal controls are critical](#) – they help you find and prevent errors in your plan
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## Voluntary Correction Program

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- [Consequences](#) of taking a hardship distribution from your 401(k)
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## Presentations

- [How to prepare for an IRS Employee Plans audit](#) phone forum - August 29 - two sessions
- [403\(b\) pre-approved plans](#) – June 25 phone forum about the new program (audio 1:17:46, and handout)
- [Form 5500 and 5558 filing tips](#) – avoid the top five mistakes (video, 1:40)

## Updated

- [Mark Your Calendar](#)
- [DOL Corner](#)
- [Lots of Benefits \(Spanish\)](#) – Designed for employers, this publication highlights advantages of retirement plans

## Self-Employed Individuals – Calculating Your Own Retirement-Plan Contribution and Deduction

If you are [self-employed](#) (a sole proprietor, or a working partner in a partnership or limited liability company), you calculate your [self-employment](#) (SE) tax using the amount of your net earnings from self-employment and following the instructions on Schedule SE, *Self-Employment Tax*. However, you must make adjustments to your net earnings from self-employment to arrive at your plan compensation, which is the amount you use to determine the plan contribution/deduction for yourself.

### Plan compensation

To calculate your plan compensation, you reduce your net earnings from self-employment by:

- the deductible portion of your SE tax from your Form 1040 return, page 1 (Schedule SE, IRC Sections 401(c)(2) and 164(f)); and
- the amount of your own (not your employees') retirement plan contribution from your Form 1040 return, page 1, on the line for self-employed SEP, SIMPLE, and qualified plans (IRC Section 401(c)(2)).

You use your plan compensation to calculate the amount of your own contribution/deduction.

**Note** that your plan compensation and the amount of your own plan contribution/deduction depend on each other - to compute one, you need the other (this is a circular calculation). One way to do this is to use a reduced plan contribution rate. You can use the [Table and Worksheets for the Self-Employed](#) (Publication 560) to find the reduced plan contribution rate to calculate the plan contribution and deduction for yourself.

### Example

Joe, a Schedule C sole proprietor, will have \$100,000 net profit on his 2013 Schedule C (after deducting all Schedule C expenses, including a 10% retirement plan contribution made for his common-law employees but not his own contribution). Joe must pay \$14,130 in SE taxes. To compute his plan compensation, Joe must subtract from his net profit of \$100,000:

- the IRC Section 164(f) deduction, which in this case is  $\frac{1}{2}$  of his SE tax ( $\$14,130 \times \frac{1}{2}$ ); and
- the amount of contribution for himself to the plan.

To determine the amount of his plan contribution, Joe must use the reduced plan contribution rate (considering the plan contribution rate of 10%) of 9.0909% from the rate table in [Pub. 560](#). Alternatively, Joe can compute his reduced plan contribution rate by:

1	Taking the plan contribution rate	10%
2	Dividing the plan contribution rate by 100% + plan contribution rate	10%/110%
3	To get the reduced plan contribution rate	9.0909%

Joe can now compute his own contribution/deduction amount as follows:

1		\$100,000	Schedule C net profit
2	-	\$7,065	½ SE tax deduction (\$14,130 x ½)
3	=	\$92,935	Net profit reduced by ½ SE tax
4	x	9.0909%	Joe's reduced plan contribution rate
5	=	\$8,449	Joe's allowed contribution and deduction

There is simple way to quickly verify the accuracy of Joe's contribution/deduction amount:

1		\$100,000	Joe's Schedule C net profit
2	-	\$7,065	½ SE tax deduction
3	-	\$8,449	Joe's contribution/deduction for himself
4	=	\$84,486	Amount subject to plan's <b>full</b> rate
5	x	10%	Plan's full rate
6	=	\$8,449	Joe's contribution/deduction for himself

If lines 3 and 6 above match, the contribution/deduction calculation is correct.

### Contribution or deduction mistakes

You should amend your Form 1040 tax return and Schedule C if you:

- deducted your own plan contribution on Schedule C instead of on Form 1040, page 1, or
- made and deducted more than the allowable plan contribution for yourself.

If you contributed more for yourself than your plan terms allowed, you should also correct this plan qualification failure by using the IRS [correction programs](#).

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### Automatic Contribution Increases

Your plan can automatically increase salary deferral contributions for participants if it has or adopts an [automatic contribution arrangement](#) (auto enrollment) feature. An automatic-contribution-increase feature can:

- periodically increase the amount employees contribute from their wages to the plan, and
- help employees save more for their retirement.

With an automatic contribution arrangement, you can automatically enroll employees in the plan when they meet the plan's eligibility requirements and then deduct salary deferrals from their wages. Employees may, however, elect to contribute at a different rate (including zero).

## Timing and amount of automatic contribution increases

You have flexibility over when employees' contributions will automatically increase and by how much, depending on your plan's type of automatic contribution arrangement.

**A basic automatic contribution arrangement** has the most flexibility because you may structure the contribution increases to occur at any time, in any amount and based on any definition of compensation. However, your plan must state:

- when increases will occur;
- the amount of the increase (may have a cap, for example, a maximum contribution rate of 15%); and
- the definition of compensation the plan will use for the increase.

**An eligible automatic contribution arrangement** (EACA) gives you about the same flexibility as a basic automatic contribution arrangement, but:

- you must inform employees of the timing and amount of automatic contribution increases in an annual notice; and
- any contribution increase must meet the uniformity requirement (the increase is the same for all employees, for example, 1%).

Your plan's EACA may allow employees to request a withdrawal of any automatically contributed amount within 90 days of when automatic contributions were first withheld from their wages.

**A qualified automatic contribution arrangement** (QACA) has similar notice and uniformity requirements as an EACA, but in addition:

- contribution increases must meet a minimum schedule of automatic contribution default percentages (starting at 3% and increasing by 1% each year until the default percentage is 6%);
- the default percentage cannot be more than 10%; and
- you must make a minimum level of employer contributions each year.

By meeting all QACA requirements, your plan is exempted from the annual actual deferral percentage and actual contribution percentage nondiscrimination testing requirements. Your plan can include an EACA as well as the QACA so that employees can request a withdrawal of any automatically contributed amount within 90 days of when automatic contributions were first withheld from their wages.

## Sample amendments

[Notice 2009-65](#) contains two sample amendments you can review and discuss with your benefits advisor to add:

1. a basic automatic contribution arrangement with automatic contribution increases to your 401(k) plan, or
2. an eligible automatic contribution arrangement with automatic increases to your 401(k) plan.

## Additional resources

- [Automatic enrollment fact sheet](#)
  - FAQs: [Automatic Contribution Arrangements \(Automatic Enrollment Arrangements\)](#)
  - [Publication 4674](#), *Automatic Enrollment 401(k) Plans for Small Businesses*
  - [Publication 560](#), *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*
  - [Revenue Ruling 2009-30](#), *Automatic contribution increases under automatic contribution arrangements*
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## Hardship Distribution Tips For You and Your Plan Participants

*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](mailto:RetirementPlanComments@irs.gov).*

I want to give employers who offer hardship distributions in their retirement plans some tips to keep their plans in compliance. Employers and plan participants are often confused by hardship distributions rules. These tips will help them both better understand hardship distribution requirements.

### Definition of a hardship – reminders for plan sponsors

To receive a [hardship distribution](#), a plan participant must have an “immediate and heavy financial need,” and the hardship distribution can only be for the amount necessary to satisfy that need. The IRS regulations give some qualifying situations for hardships, including:

- medical expenses for you, your spouse, dependents or beneficiary;
- costs directly related to the purchase of your main home (excluding mortgage payments);
- tuition, related educational fees including room and board expenses for the next 12 months of postsecondary education for you, your spouse, children, dependents or beneficiary;
- payments necessary to prevent eviction from your main home or foreclosure on the mortgage on that home;
- funeral expenses for you, your spouse, children, dependents or beneficiary; and
- certain expenses to repair damage to your main home.

You, the plan sponsor, can avoid hardship distribution errors simply by following the plan language. Please remember that plan language must specifically describe the criteria and situations in which the plan may make a hardship distribution. In addition, it's important to keep documentation to substantiate a participant's reason for the hardship.

We find many errors in applying the hardship rules, including making hardship distributions when the plan document doesn't allow them. Fortunately, plan sponsors can correct this error under the [Self-Correction Program](#) by adopting a retroactive amendment to their plan to allow hardship distributions.

## Applying for a hardship distribution – tips for participants

If you, the plan participant, have a financial need that requires a hardship distribution from your retirement plan, you must submit an application. Some employers require a paper application and others use electronic applications. Either way, participants should submit the following documentation with their request:

- Written representation of the hardship. In an electronic application, you may just have to check a box from a list of plan-approved hardship reasons. It's still important to keep all paperwork in case your employer needs to see it. For example, if you receive an eviction notice from your landlord or mortgage holder, make a copy for your hardship distribution request.
- The amount necessary to cover your hardship. Calculate the amount you need to relieve the hardship. Your employer needs to know the amount to determine if it's reasonable. **Remember, you must pay income taxes on any previously untaxed amount of your hardship distribution, and you may have to pay an additional 10% tax on early distributions unless you qualify for an exception.** You're permitted to include your estimated federal, state, local and early distribution taxes in the amount of your hardship request.
- Written representation that you can't relieve the hardship through other resources. The hardship distribution request will ask for a written statement or other verification that you have no other means to satisfy your hardship. Examples of other resources include plan loans, commercial loans, insurance, asset liquidation and discontinuing plan elective deferrals. If the plan allows loans, it may require you to take a plan loan first before receiving a hardship distribution.

However, you aren't required to take counterproductive actions. For example, if taking a plan loan to purchase a main home disqualifies you from obtaining other financing, then the loan is not a reasonable means to satisfy your hardship.

Remember that hardship distributions should be a last resort. These distributions can't be repaid; they're a permanent reduction in your retirement account. If you must take a hardship distribution from your plan, understanding your plan document and the hardship rules will help both the employer and employee with these distributions.

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## Internal Controls Protect Your Retirement Plan

As the sponsor of a retirement plan, you don't want to endanger your plan's tax-favored status by making mistakes administering your plan. Having formal procedures, known as internal controls, in place to review your plan will help you find and prevent errors in your retirement plan.

### What are internal controls?

The exact procedures depend on your organization, your plan type and its features, but involve regularly reviewing your plan document and operations. Your internal controls should include procedures that:

- review your plan document for updates as necessary for new law changes, and
- verify that you operate your plan consistently with your plan document terms.

For example, you should periodically:

- Compare your plan eligibility requirements with employment records to ensure that employees joined the plan once they met the eligibility requirements.
- Compare your employees' salary deferral election forms with the amounts deducted as plan contributions from their wages.
- Verify your plan is using the correct definition of employee compensation for each plan purpose.
- Ensure that you've transmitted accurate employee compensation records to your payroll processor and plan administrator.
- Monitor annual contribution and compensation [limits](#).
- Compare terminated participants' vesting years of service to the plan vesting schedule.
- Secure participant and applicable spousal consent for plan distributions over \$5,000.
- Monitor participants' ages to ensure that you make required minimum distributions.

### Does the IRS have any tools or resources on internal controls?

- [Fix-It Guides](#) – information, including examples on how to find and fix common plan errors and suggestions on how to avoid these errors in the future.
- [A Guide to Common Qualified Plan Requirements](#) – a list of important retirement plan requirements to help you implement practices, procedures and internal controls to monitor your plan operation.
- [Avoid Plan Errors](#) Web page – checklists, tips and articles on how to avoid common errors.
- [A Plan Sponsor's Responsibilities](#) – tips to keep your plan running smoothly.

### How often should I check for law changes to my plan?

At least once a year, you should check with your benefits advisor to see if you must amend your plan for law changes. Usually you have a set deadline to update your plan for these changes. It's especially important to check for any updates a few months before the end of the calendar year or the beginning of your next plan year.

### What if I miss the deadline for updating my plan document?

If you miss the deadline, you must still update your plan document and can correct the failure to meet the deadline by using the [Voluntary Correction Program](#).

### How often should I check whether my plan is operating according to the terms of the plan document?

You should have a periodic review of your plan operation throughout the year to ensure you're following its terms. By doing this, you can more quickly detect and correct any mistakes.

## What if I made a mistake and didn't operate the plan according to its terms?

You may correct:

- insignificant operational failures and even some significant operational failures through the [Self-Correction Program](#) without paying any fees or even notifying the IRS if your plan had internal controls, or
- most significant operational failures through the [Voluntary Correction Program](#).

## What if I don't correct the failure to update my plan by the required deadline or the failure to operate it according to its terms?

Your plan may become disqualified and lose its tax-deferred status resulting in negative [tax consequences](#) for you and your employees.

### Additional resources

- [Internal Controls phone forum](#)
  - [Internal Controls are Essential in Retirement Plans](#)
  - [Compliance Trends and Tips](#)
  - [Correcting Plan Errors](#)
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## Check the Status of Your Voluntary Correction Program Submission

### How do I know if the IRS has received my VCP submission?

We'll acknowledge receipt of your submission if you or your representative include the [Acknowledgement Letter](#) found in Revenue Procedure 2013-12, Appendix D in your submission. We'll mail it back to you with your submission's nine-digit control number.

### How do I check the status of my VCP submission?

You can check the status of your VCP submission, even if you didn't include an acknowledgment letter with your submission, by calling the VCP status inquiry line at (626) 927-2011. Please leave a message with your:

1. name and phone number
2. plan name
3. control number if you know the one assigned to your submission (it's listed on your acknowledgment letter)

We'll call you back with the status of your submission within 5 business days.

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## Pay Determination Letter User Fees Online Through Pay.gov

Plan sponsors filing a determination letter application (Form 5300 series applications only) may elect to pay user fees online through the secure government portal - Pay.gov. You can't pay Voluntary Correction Program compliance fees through Pay.gov at this time.

### Benefits of using Pay.gov

- Easy to use
- Eliminates writing checks
- Accepts payments made by credit card or direct debit from a checking or savings account (foreign entities can pay using a credit card or an automatic withdrawal from a U.S. bank)

### How to use Pay.gov

1. Go to [www.pay.gov](http://www.pay.gov). You don't need a user name and password to use this site. However, see "Should I Register?"
2. Find Form 8717 under "Find Public Forms" either by name (IRS Employee Plans Determination User Fee), or by agency (IRS), then name.
3. Click [IRS Employee Plans Determination User Fee](#) and complete the online Form 8717, and click Submit.
4. Once you complete your payment information, you will receive your confirmation. Print this page and place it on top of your determination letter application submission package instead of Form 8717.
5. Send the submission to the IRS at the [Covington, KY address](#).

You can find additional information in the [frequently asked questions](#) at Pay.gov.

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## 401(k) Plan Hardship Distributions - Consider the Consequences

Many 401(k) plans allow you to withdraw money before you actually retire for certain events that cause you a financial hardship. For example, some 401(k) plans may allow a [hardship distribution](#) to pay for your, your spouse's, your dependents' or your primary plan beneficiary's:

- medical expenses,
- funeral expenses, or
- tuition and related educational expenses.

However, you should know these consequences before taking a hardship distribution:

- The amount of the hardship distribution will permanently reduce the amount you'll have in the plan at retirement.
- You must pay income tax on any previously untaxed money you receive as a hardship distribution.
- You may also have to pay an additional 10% tax, unless you are age 59½ or older, or qualify for another [exception](#).
- You may not be able to contribute to the plan for six months after you receive the hardship distribution.

Remember, a 401(k) plan is designed to help you save money for your retirement while you're working. You should consider the consequences before dipping into your retirement savings.

### Additional resources

- FAQs: [Hardship Distributions](#)
  - [Publication 575](#), *Pension and Annuity Income*
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## Considering a loan from your 401(k) plan?

Your 401(k) plan may allow you to borrow from your account balance. However, you should consider a few things before taking a [loan](#) from your 401(k).

If you don't repay the loan, including interest, according to the loan's terms, any unpaid amounts become a plan distribution to you. Your plan may even require you to repay the loan in full if you leave your job.

Generally, you have to include any previously untaxed amount of the distribution in your gross income in the year in which the distribution occurs. You may also have to pay an additional 10% tax on the amount of the taxable distribution, unless you:

- are at least age 59 ½, or
- qualify for another [exception](#).

Any unpaid loan amount also means you'll have less money saved for your retirement.

### Additional resources

- FAQs: [Loans](#)
  - [Publication 575](#), *Pension and Annuity Income*
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## How Much Salary Can You Defer if You're Eligible for More than One Retirement Plan?

The amount you can contribute to retirement plans is your individual limit each calendar year no matter how many plans in which you participate. This limit must be aggregated for these plan types:

- 401(k)
- 403(b)
- SIMPLE plans (SIMPLE IRA and SIMPLE 401(k) plans)
- SARSEP

If you're eligible to defer to a [457\(b\) plan](#), you have a separate limit that includes both employee and employer contributions.

Make sure you don't exceed your individual limit. If you do and the excess isn't returned by April 15 of the next year, you could be subject to double taxation:

- once in the year you deferred your salary, and
- again when you receive a distribution.

## Individual limit

The amount you can defer as pre-tax or designated Roth contributions to all your plans (not including 457(b) plans) is \$17,500 for [2013](#). Although your limit is affected by the plan terms, it doesn't depend on how many plans you belong to or who sponsors those plans.

### Example

You're 40 years old and defer \$2,500 in pre-tax and designated Roth contributions to your company's 401(k) plan in 2013. You terminate employment and go to work for an unrelated employer and participate in your new employer's 401(k) plan immediately. The maximum you may defer to your new employer's plan in 2013 is \$15,000 (your \$17,500 individual limit - \$2,500 that you've already deferred to your former employer's 401(k)). The amount you can defer to both plans can't exceed your individual limit for that year.

## Optional plan terms

- **age-50 catch-ups** - If you'll be 50 years or older by the end of the year, your individual limit is increased by \$5,500 (in 2013). This means your individual limit increases from \$17,500 to \$23,000 in 2013 even if neither plan allows [age-50 catch-up contributions](#) (IRC Section [414\(v\)](#) and Treas. Regs. 1.402(g)-2).

### Example

You're 50 years old and participate in both a 401(k) and a 403(b) plan. Both plans permit the maximum contributions for 2013, \$17,500; but the 403(b) doesn't allow age-50 catch-ups. You can still contribute a total of \$23,000 in pre-tax and designated Roth contributions to both plans. Your contributions can't exceed either:

- your individual limit plus the amount of age-50 catch-up contributions, or
  - the maximum contribution in 2013 for that plan type (for example, you couldn't contribute the entire \$23,000 to the 403(b) plan because that 403(b) plan only allows a maximum contribution of \$17,500 in 2013).
- **compensation** - Although plans may set lower deferral limits, the most you can contribute to a plan is the greater of:
    - the allowed amount for that [plan type](#) for the year, or
    - 100% of your eligible compensation defined by plan terms (includible compensation for 403(b) and 457(b) plans).

If you're self-employed, generally your compensation is your net earnings from self-employment (see [Retirement Plans for Self-Employed People](#)).

### Example

You are 52 years old and participate in a 401(k) plan with Company #1 and a SIMPLE IRA plan with an unrelated employer Company #2. You'll receive \$10,000 in compensation in 2013 from Company #1 and another \$10,000 from Company #2. The most you can contribute to each plan is \$10,000 because your deferrals to each employer's plan can't exceed 100% of your compensation from that employer, even though your individual contribution limit for 2013 is \$23,000 (\$17,500 individual limit + \$5,500 age-50 catch-up limit). You can't defer more than \$10,000 to either plan (for example, \$12,000 to the 401(k) plan and \$8,000 to the SIMPLE IRA plan) because

your deferrals to each employer's plan can't exceed 100% of your compensation from that employer.

- **15-year catch-up deferrals in 403(b) plans** - your individual limit may be increased by as much as \$3,000 if your 403(b) plan allows a 15-year catch-up contribution.

#### Example

If you're 51 years old in 2013 and participate in both a 401(k) plan and a 403(b) plan, you may contribute \$23,000 in total to both plans, and up to an additional \$3,000 to the 403(b) plan if the plan allows and you work for the same employer for 15 years.

The 15-year catch-up is separate from the age-50 catch-up. If you're eligible and the plan allows both types of catch-ups, your contributions above your annual limit are considered to have been made first under the 15-year catch-up. See [Publication 571, Tax-Sheltered Annuity Plans \(403\(b\) Plans\)](#), for more information on 403(b) contributions.

- **reduced deferral limit** - Although rare, your plan may limit the amount you can defer to an amount less than the allowed deferrals for that plan type for the year.

#### Example

You are 52 years old and participate in two 401(k) plans. Each plan limits salary deferrals to the lesser of \$5,000 or 100% of your eligible compensation. Although your eligible compensation is \$10,000 from each employer sponsoring the plan and your individual limit allows you to contribute \$23,000 for 2013 (\$17,500 + \$5,500 age-50 catch-up limit), the most you may contribute is \$5,000 to each plan because of the plans' deferral limits set by their terms.

A plan with a 401(k) feature may also reduce the amount you can defer to ensure the plan meets nondiscrimination requirements. The plan may return some of your deferrals even if they don't exceed your individual limit.

### 457(b) plan

You have a [separate deferral limit](#) if you're also eligible to participate in a 457(b) plan. The amount of employee and employer deferrals allowed to a 457(b) plan depends on:

- if you're in a governmental or a tax-exempt 457(b) plan, and
- the plan's terms.

In 2013, you may defer the greater of \$17,500 or 100% of your includible compensation to a 457(b) plan. The plan may also permit:

- a special "last 3-year catch-up," which allows you to defer in the three years before you reach the plan's normal retirement age:
  - twice the annual 457(b) limit (2013,  $\$17,500 \times 2 = \$35,000$ ), or
  - the annual 457(b) limit, plus amounts allowed in prior years that you didn't contribute; and
- age-50 catch-ups of an additional \$5,500, if it's a governmental 457(b) plan. Tax-exempt organizations are not eligible for the age-50 catch-ups.

If a governmental 457(b) allows both the age-50 catch-up and the 3-year catch-up, you can use the one that allows a larger deferral but not both.

### Example

You're in a 457(b) and a 403(b) plan, each plan allows the maximum deferrals for 2013 and you have enough includible compensation, you may be able to defer:

- \$17,500 to each plan, regardless of your age
- 23,000 to the 403(b) plan and \$17,500 to the 457(b) plan if you're age 50 or older by the end of 2013 and the 403(b) plan allows age-50 catch-ups
- \$23,000 to each plan if you're in a governmental 457(b) plan and both plans allow age-50 catch-ups
- \$23,000 to the 403(b) plan if it allows and you're eligible to make age-50 catch-up, and \$35,000 to the 457(b) plan if it allows catch-up contributions and you're eligible for the last 3-year catch-up.
- an additional \$3,000 to the 403(b), if you've worked for a qualified organization at least 15 years and the plan terms allow these catch-ups.

### Track your annual contributions

You should track your deferrals to ensure that you don't exceed the individual limit and 457(b) limits. Be especially careful if you participate in more than one plan.

### Distribution of excess contributions

If you do exceed your individual and 457(b) limits, to avoid double taxation, contact your plan administrator and ask them to distribute any excess amounts. The plan should distribute the excess contribution to you by April 15 of the following year (or an earlier date specified in the plan). For information about taxes on excess contributions, see [What Happens When an Employee has Elective Deferrals in Excess of the Limits?](#)

When deciding from which plan to request a distribution of excess contributions keep in mind:

- getting the maximum matching contribution that may be offered
- type of investments
- plan fees

### Additional resources

- [Publication 560](#), *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)* Chapters 2 and 4
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### Mark Your Calendar

Here are some important dates in the upcoming months. Most of the deadlines are for calendar-year plans; non-calendar-year plans must adjust the dates.

### Upcoming conferences

- **August 27 - 29:** [IRS Nationwide Tax Forum](#) – National Harbor, Md.
- **September 17 - 19:** [IRS Nationwide Tax Forum](#) – San Diego, Calif.

## Plan deadlines

### September 15:

- make deductible contributions for 2012 if you file Form 1120 or 1120S and have an extension of your March 15, 2013, filing deadline.
- set up a SEP plan for 2012 if you file Form 1120 or 1120S and have an extension of your March 15, 2013, filing deadline.
- make final required minimum contributions for 2012 calendar-year money purchase and defined benefit plans for funding.
- elect (or change a standing election) for single-employer defined benefit plans to:
  - use funding balances to offset the minimum required contribution for the 2012 plan year,
  - credit excess contributions for the 2012 plan year to the plan's prefunding balance, and
  - revoke a previous election to use a funding balance to offset the minimum required contribution for the 2012 plan year, to the extent the election exceeded the full minimum required contribution for the year (only for plans with valuation dates that aren't the first day of the plan year).

**September 30:** obtain AFTAP certification from the plan's enrolled actuary to avoid triggering benefit restrictions under Internal Revenue Code Section 436 through at least the end of 2013 if you sponsor a single-employer defined benefit plan.

### October 1:

- establish a SIMPLE IRA or safe-harbor 401(k) plan for 2013 (newly established businesses may have until later in the year).
- implement any additional benefit restrictions that may apply under IRC Section 436 if you sponsor a single-employer defined benefit plan and haven't received a certified AFTAP from the plan's enrolled actuary.

### October 15:

- If Form 5558 filed for a 2½ month extension, file:
  - Form 5500, *Annual Return/Report of Employee Benefit Plan*;
  - Form 5500-SF, *Short Form Annual Return/Report of Small Benefit Plan*; or
  - Form 5500-EZ, *Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan*.
- make deductible contributions for 2012 if you file a Form 1040, Schedule C, and have an extension of your April 15, 2013, filing deadline.
- set up a SEP plan for 2012 if you file a Form 1040, Schedule C, and have an extension of your April 15, 2013, filing deadline.
- make third quarter contributions to 2013 calendar-year defined benefit plans.

- elect (or change a standing election) for single-employer defined benefit plans if they lost their standing election because they changed their enrolled actuary.
- make certain one-time elections under the MAP-21 transition rules (see [Notice 2012-61](#) for details).

**November 2:** employers with a SIMPLE IRA or SIMPLE 401(k) plan must notify eligible employees of their 2014 salary reduction rights and whether the employer's required contributions will be matching or nonelective contributions.

**December 2:** give 2014 plan year notice to eligible employees for safe harbor 401(k) plans and plans containing an eligible automatic contribution arrangement.

**December 31:**

- set up a retirement plan for 2013 (but can't have retroactive elective deferrals).
- distribute 2013 required minimum distributions (plans have until April 1, 2014, to pay the first RMD for a participant who turned 70½ in 2013).
- distribute 2012 401(k) excess contributions and excess aggregate contributions (both including income or losses for 2012) without jeopardizing the plan's tax-qualified status.
- single-employer defined benefit plans must elect to:
  - reduce a funding balance for the 2013 plan year.
  - revoke a previous election to use a funding balance to offset the minimum required contribution for the 2013 plan year, to the extent the election exceeded the full minimum required contribution for the year (if the valuation date is the first day of the plan year).

**January 15:** make the 2013 fourth quarter contributions for defined benefit plan.

**January 31:**

- file [Form 945](#), *Annual Return of Withheld Federal Income Tax*. If you made deposits in full payment of the taxes for 2013 by the required deadlines, you may file Form 945 later.
- trustees and custodians must issue [Form 1099-R](#), *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, to recipients of 2013 retirement plan distributions.
- amend for [recent law changes](#) and submit the plan for a [determination letter](#), if desired, for an individually designed plan sponsored by an employer with an EIN ending in 3 or 8.

## 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.*

### Required annual fee disclosure

On July 22, DOL/EBSA issued a temporary enforcement policy that will allow 401(k)-type plans to reset the timing for the annual distribution of the investment comparative chart that they are required to furnish to plan participants. Most plans must furnish this year's annual comparative chart no later than August 30, 2013.

Under the enforcement policy contained in [Field Assistance Bulletin 2013-02](#), plan administrators may reset the deadline one time, for either the 2013 or the 2014 comparative chart, if:

- the responsible plan fiduciary determines that doing so will benefit the plan's participants and beneficiaries, and
- provided that no more than 18 months may pass before participants receive their next comparative chart.

This enforcement policy does not alter a plan administrator's obligations under the regulation to timely update the investment information that is available at the plan's internet web address or to notify participants about changes to investment information, such as a new plan investment option.

The DOL/EBSA participant-level fee disclosure regulation, which was implemented last year, requires that administrators of 401(k)-type plans disclose information about plan investment options, such as fee and performance information, to participants and beneficiaries at least annually. Plans operating on a calendar year had to furnish their first chart no later than August 30, 2012, and their second chart is due no later than August 30, 2013. Many other plan disclosures, however, such as pension benefit statements, are disclosed later in the calendar year. Permitting a one-time "re-set" of the deadline will allow plan administrators to align the comparative chart with other participant disclosures.

### Abandoned plans

On June 3, DOL/EBSA announced that it approved a process to terminate and wind up approximately 180 defined contribution plans that were abandoned by their plan sponsors. This action, conducted through DOL/EBSA's abandoned plan program, will give plan participants control over the fate of their retirement savings.

When employers abandon their individual account plans, custodians such as banks, insurers and mutual fund companies are left holding the assets of these abandoned plans but without the authority to terminate such plans and make benefit distributions – even in response to participant demands. DOL/EBSA developed the abandoned plan program to facilitate a voluntary, safe and efficient process for winding up the affairs of abandoned individual account plans so that benefit distributions are made to participants and beneficiaries. Visit DOL/EBSA's website for more information on the [abandoned plan program](#).

## Comment letter on Proposed FASB Accounting Standards Update

On May 30, DOL/EBSA submitted a [comment letter](#) to the Financial Accounting Standards Board on the Proposed Accounting Standards Update – Deferral of the Effective Date of Certain Disclosures for Nonpublic Employee Benefit Plans in Update No. 2011-04.

## Pension benefit statements – lifetime income illustrations

On May 8, DOL/EBSA published an [advanced notice of proposed rulemaking](#) focusing on lifetime income illustrations given to participants in defined contribution plans such as 401(k) and 403(b) plans.

DOL/EBSA is developing proposed regulations on the pension benefit statement requirements under ERISA Section 105. The ANPRM solicits input on a rule that would require a participant's accrued benefit to be included on his or her pension benefit statement as an estimated lifetime stream of payments, in addition to an account balance. DOL/EBSA also requests comments on a rule that would require a participant's accrued benefits to be projected to his or her retirement date, assuming annual contributions and an estimated rate of return, and then presented as an estimated lifetime stream of payments.

In conjunction with the publication of this ANPRM, DOL/EBSA posted on its website an [interactive calculator](#) that computes lifetime income streams in accordance with the proposed regulatory framework.

The ANPRM serves as a request for comment on specific language and concepts in advance of the proposed regulations. DOL/EBSA extended the comment period to August 7, 2013. Comments received are posted on the [DOL/EBSA](#) website.

## New annual funding notice requirements

On March 8, DOL/EBSA issued [Field Assistance Bulletin 2013-01](#) concerning new disclosure requirements mandated by the Moving Ahead for Progress in the 21st Century Act.

MAP-21 amended ERISA Section 101(f) to require plan administrators of single-employer defined benefit pension plans to provide participants and others additional information on the impact of MAP-21's interest rate stabilization rules on the plan's funding status. An estimated 12,000 single-employer plans covering approximately 33.5 million participants and beneficiaries are subject to the new disclosure requirements. Many of these plans must furnish their first annual funding notice under the new law no later than April 30, 2013.

The FAB addresses a need for interim guidance pending adoption of regulations or other guidance under Section 101(f) as amended by MAP-21. The FAB sets forth technical questions and answers and provides a model supplement that plan administrators may use to meet their MAP-21 disclosure obligations.

## 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.