

The various retirement plan limitations that will take effect on January 1, 2012 are as follows:

<b>Calendar Year Plan Limitations</b>	<b>2012</b>	<b>2011</b>
401(k) Salary Deferral	\$17,000	\$16,500
401(k) "Catch-Up" Contribution	\$5,500	\$5,500
Compensation Recognized in Plans	\$250,000	\$245,000
Defined Contribution Limit per Person	\$50,000	\$49,000
Defined Contribution Limit per Person age 50 or older	\$55,500	\$54,500
Highly Compensated Employee Definition	\$115,000	\$110,000
Social Security Wage Base	\$110,100	\$106,800

For the 2012 Plan Year the maximum amount that can be credited to a participant's account is the lesser of \$50,000 or 100% of salary which includes employer contributions, 401(k) employee deferrals and reallocated forfeitures from non-vested participants. If a participant is eligible for the catch-up contributions, the maximum limit is increased to \$55,500.

#### **Year End News and Reminders**

**Forms 1099-R:** IRS Form 1099-R must be provided by January 31, 2012 to any individuals who received a plan distribution (including a rollover) or a defaulted loan in 2011. The Form 1099-R must be filed with the IRS by February 28, 2012. If any federal tax was withheld for distributions during the year, a Form 945 must also be filed by January 31, 2012. The IRS can assess penalties for failure to file. In many cases the investment provider will prepare these forms. SAI can provide the reporting if needed and requested.

#### **Form 8109-B Coupons Eliminated:**

Effective January 1, 2011 discontinued the system that processes Form 8109, which is the manual deposit of federal income tax and other payroll withholding. The regulations require use of the Electronic Federal Tax Payment System (EFTPS). A de minimis rule may apply which allows taxpayers with a deposit liability of less than \$2,500 to remit such taxes with their Form 945 annual return. Therefore, only plans with less than \$2,500 on an annual basis may continue to pay the taxes by check when filing the Form 945. If depositing with Form 945, the form and payment are due January 31<sup>st</sup>.

Plan sponsors that did not receive pre-enrollment information from IRS may not have made any benefit payments that required tax withholding in recent years. Such plans will need to apply for EFTPS at [www.eftps.com](http://www.eftps.com) keeping in mind that it may take 7-10 business days to receive the PIN from IRS by mail.

**NOTE:** Many plan sponsors who are self-trusted may have contracts with the recordkeeper that include preparation and filing of the Forms 1099-R, 1096 and 945 each year. Plans utilizing recordkeepers such as The American Funds, Transamerica, John Hancock, The Hartford, Great-West and the like handle this function for the plan sponsors. No action required.

#### **Beneficiary Designations Forms:**

The new year is a good time to give participants an opportunity to update their beneficiary forms. Their circumstances may have changed due to divorce, remarriage, etc., necessitating a change to their prior elections. Reminder: it is up to the plan sponsor to retain the beneficiary forms.

**Enrollment/Change Forms:** Verify that newly eligible employees are being enrolled in the plan on their appropriate plan entry date, and that they are receiving enrollment materials promptly. Even if an employee decides not to make 401(k) contributions, make sure they complete an enrollment form to indicate that they are declining participation.

**Participant Fee Disclosures:**

Last year the Department of Labor (DOL) issued final regulations requiring broad disclosures of fees, expenses and certain other plan and investment-related information to participants and beneficiaries under individual account plans.

The purpose of the new disclosure requirements is to ensure participants and beneficiaries have access to adequate information to enable them to comparison shop among investment options to make informed investment decisions.

**Annual Disclosure:** All individual account plans that permit participants to direct their account investments must comply with the disclosure requirements. For calendar year plans, plan administrators are required to provide the *initial disclosures* of plan and investment-related information to participants no later than May 31, 2012. There are several categories of information to be disclosed, such as:

- general plan information about investments and fees,
- administrative expenses charged to all participant's accounts,
- fees and expenses charged to individual accounts (generally based on transactions),
- investments available under the plan,
- comparison chart of the investments, reflecting a list of characteristics and costs that all investments must reflect in a comparative format,
- an internet website providing access to certain information about the investment,
- a glossary of investment-related terms to assist participants with understanding their investment options or a website address that directs them to such a glossary, and more.

**Quarterly Disclosures:** The first quarterly statements of fees and expenses charged to participants' plan accounts must be provided no later than 45 days after the end of the calendar quarter in which the first *initial disclosures* were required. For calendar year plans that date will be August 14, 2012 .

The quarterly statements must provide:

- The dollar amount of any individual fees and expenses actually charged to his or her account during the previous quarter;
- A description of the services for which the fees were charged; and
- If applicable, an explanation that some administrative expenses were paid from the operating expenses of one or more of the plan's designated investment alternatives, such as through 12b-1 fees or revenue sharing arrangements.

The ultimate responsibility for providing all of the required information and other materials belongs to the Plan Administrator. The Plan Administrator is the plan sponsor. Fortunately, the responsibility for providing the required information and materials will ordinarily be delegated to a plan's recordkeeper. Accordingly, plan sponsors need to verify that their recordkeepers will provide these services under their contracts. If so, the plan administrator's responsibility will be limited to overseeing the recordkeeper to make sure it is fulfilling its obligations.

Plan sponsors of individual account plans are encouraged to understand and plan ahead for the new reporting and disclosure requirements. Timely reporting and disclosure is necessary to satisfy fiduciary duties under ERISA.

You will most likely be receiving much more detailed information about these new rules over the next few months. If in the meantime you would like additional information about these required participant fee disclosures, please contact us.

## **Forfeiture Accounts:**

The IRS recently published an article in their Newsletter regarding improper forfeiture suspense accounts. The article reminds plan sponsors that forfeitures must be used or allocated in the plan year incurred. Many plans allow forfeitures to be used to reduce future contributions and/or pay administrative expenses. In some cases the plan provides for forfeitures to be allocated with the employer contribution for a given plan year.

The Internal Revenue Code does not authorize forfeiture suspense accounts to hold unallocated monies beyond the plan year in which they arise. In order to avoid potential problems the IRS suggests that plan sponsors monitor the forfeitures and use any available forfeitures promptly. Please review the provisions in your plan document to confirm how forfeitures are to be used.

**401(k) Plan Contribution Deposits:** The Department of Labor (DOL) issued FINAL regulations on January 13, 2010 establishing a safe harbor for timely deposit of employee contributions to small retirement plans. **A plan will be treated as complying with the regulations if the contributions are deposited no later than the 7<sup>th</sup> business day following the day on which the amounts would have been payable to the participant in cash or following the day on which such amount is received by the employer** (in the case of a participant loan payment given to the employer).

## **How To Provide Good Census Information:**

The nondiscrimination testing and reporting requirements for qualified retirement plans are numerous and quite complex. There is no area that is more fraught with complexity than employee census data. The IRS knows this - and their examination guidelines provide their reviewing agents with a mandate to carefully review this information. It is important that plan sponsors pay close attention to the data provided and ensure that any changes made after the data is submitted is communicated to us.

On the surface, providing good census data sounds simple enough. Social Security numbers, dates of birth, hire and termination, compensation: all of these elements are on your payroll records. In actuality, the information for your Plan is both broader and more detailed.

The first good practice to smooth operation of the annual administration is to provide the requested data early. Send your data as soon as possible after the final payroll of the year.

The other important factor is providing data that is complete and accurate. All employees should be on the census data. This includes employees who you think are not eligible yet, part-time staff and employees of controlled related companies. Identify employees on a leave of absence due to military service. They are treated differently for contributions and years of service.

Compensation is easily the most complicated area of census reporting. One reason is that there are many possible elements of pay and companies differ in which elements are included in their benefits and how they are titled. The best advice is to know your Plan's definition as much as possible and ask questions if there is any doubt.

Include dates of termination for all terminated employees. If the terminated employee receives pay after the final regular paycheck, provide the dates of these additional payments and the reason for them (i.e., unused vacation, severance pay).

Identify rehired participants. Very often a rehired employee who had been a participant in the plan is immediately eligible and should be allowed to make salary deferrals and receive company contributions. Both the original date of hire and the rehire date should be included on your census.

Identify the owners and officers of the company. This information is needed to help determine highly compensated employees (HCEs) for purposes of the nondiscrimination tests and key employees for top heavy. It is also important to indicate which employees are relatives of any owners, since they may be considered owners through stock attribution rules. For example, if Allen works for a corporation that is owned by his father then Allen will be considered to own the corporation through stock attribution, for testing purposes.

In addition to these payroll elements, certain other information is important to the testing and compliance work. These include:

- Changes in company structure or ownership
- Hiring family members of the company's owners
- Acquisition or disposition of other entities
- Ownership by the principal in other companies

**ERISA/Fidelity Bond:** Make sure your Plan has the proper kind of bond. Under ERISA regulations, the Department of Labor (DOL) requires that the trustees of a pension or profit sharing plan (also called "plan fiduciaries"), who are appointed to manage the plan assets, must be covered by an ERISA/Fidelity Bond equal to at least 10% of "qualified" plan assets and 100% of "unqualified" plan assets.

An ERISA/ Fidelity Bond is **not** the same as an employee dishonesty bond or fiduciary bond. These bonds do not fulfill the DOL requirement for ERISA compliance. Additionally, the company issuing the bond must be one that has been approved by the Treasury Department. The most current list of Treasury-authorized companies is available at: <http://www.fms.treas.gov/c570/index.html>.

**Non-Discrimination Testing for 401(k) Plans:** Unless your 401(k) plan has implemented safe harbor provisions, 401(k) ADP/ACP testing needs to be done and any necessary refunds issued no later than 2½ months after year-end to avoid an IRS penalty tax. To ensure timely processing, send in your complete and accurate employee census data by January 31, 2012. Be sure to complete the Annual Questionnaire, as that information is required for proper plan administration.

If your 401(k) plan is already utilizing the Safe Harbor provisions, you can stop reading now. If you have had to curtail the highly-compensated employees from contributing the maximum allowable 401(k) contributions or have had to refund contributions to the highly-compensated then read on.

**Safe Harbor 401(k) Provisions:** Adopting safe harbor 401(k) provisions permits an employer to avoid Actual Deferral Percentage (ADP) and Actual Contribution Percentage (ACP) testing. A safe harbor plan must contain the following provisions.

- ▶ The plan sponsor must provide either a minimum amount of non-elective contribution *or* a minimum level of matching contribution for each participant. The safe harbor non-elective contribution is 3% of compensation. The safe harbor basic match formula provides for a matching contribution equal to 100% of the first 3% of compensation plus 50% on the next 2% of compensation.
- ▶ The safe harbor contribution must be fully and immediately vested whether the contribution is non-elective or matching.
- ▶ A plan may not impose any restrictions on the non-elective contribution or matching contribution. Individuals eligible to participate at any time during the year will have to be entitled to the appropriate match or non-elective allocation at year end, whether or not still actively employed. This is not to say that these restrictions could not be required if the employer were to make a profit sharing contribution to the plan.
- ▶ Each year, a written notice of the safe harbor provisions must be distributed to each employee eligible to participate in the plan within a reasonable period prior to the beginning of the plan year.

Safe harbor plan provisions may not be added to an existing 401(k) plan in the middle of a plan year. Instead, the plan must be timely amended to add the safe harbor 401(k) provisions for the next plan year. It is critical that the amendment should be adopted not later than the last day of the current plan year to ensure that the safe harbor notice to participants is provided not less than 30 days before the first day of the following plan year.