

**Please Remember!**

October 31, 2013

After you and the participant sign the participant's benefit election form, please remember to return to us a signed copy of the participant's payment election form, as well as the spouse's consent form, if applicable. Having signed forms ensures that the records we maintain for your Plan are accurate. This request applies to both defined benefit and defined contribution plans. Thank you!


**2014 COLA Limits**

<b><u>LIMITATION</u></b>	<b><u>2013</u></b>	<b><u>2014</u></b>	
<b>401(k) and 403(b) Deferrals</b>	\$ 17,500	\$ 17,500	*
<b>457 Deferrals</b>	\$ 17,500	\$ 17,500	*
<b>415 Limits</b>			
Defined Benefit Plans	\$ 205,000	\$ 210,000	**
Defined Contribution Plans	\$ 51,000	\$ 52,000	
<b>Highly Compensated Employee (HCE)</b>	\$ 115,000	\$ 115,000	
<b>Compensation Limit – 401(a)(17)</b>	\$ 255,000	\$ 260,000	
<b>OASDI Taxable Wage Base</b>	\$ 113,700	\$ 117,000	
<b>ESOP Limits</b>			
Maximum balance subject to the 5-year distribution period	\$1,035,000	\$1,050,000	
Amount for addition of one year to the 5-year distribution period	\$ 205,000	\$ 210,000	

\* \$5,500 additional catch-up for participants *over* age 50 by December 31, 2014, if plan allows.

\*\* Reduced for retirement *prior to* age 62.

**Note:** In 2014, a Highly Compensated Employee will be any employee who earned over \$115,000 in 2013 (unless a special election was made to only include the top 20% of employees as Highly Compensated Employees) or who was a 5% owner in either 2013 or 2014.

## Reminders

- Recurring *70-1/2 required minimum distributions* must be made to participants by December 31 for defined contribution plans;
- Distributions to correct a *failed 2012 ADP/ACP test* must be made by December 31 for calendar year plans;
- Any *discretionary plan amendments* that are effective in 2013 for calendar year plans must be adopted by December 31, 2013; and
- Sponsors of individually-designed plans with an *EIN ending in a "3" or "8"* must restate their plan by January 31, 2014, and submit it to the IRS by January 31, 2014, for the protection of a determination letter. This deadline applies regardless of the plan year. Government plans have to be restated and submitted by January 31, 2014, unless they have chosen to postpone restatement and submission until January 31, 2016.
- *Census requests, HCE/Key employee questionnaires, and controlled group questionnaires* will be sent at the end of the year for calendar year plans. One of the most common errors in the administration of retirement plans is using the wrong compensation. If you have any questions about what compensation to report to us, please contact your McCready and Keene representative. It is also very important to complete and return the controlled group questionnaire. Accurate controlled group information is essential to the administration of your plan. For example, it is necessary to perform the coverage test, to determine if a participant has terminated employment and, therefore, entitled to a distribution (as opposed to transferring to another member of the controlled group and not entitled to a distribution), and to determine funding requirements if other defined benefit plans are maintained by the controlled group.

## IRS Has Been Erroneously Assessing Form 8955-SSA Penalties

Form 8955-SSA is the Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits. According to the IRS, about 4,000 plans received CP283C, Notice of Balance Due for Incomplete/Late Penalties, for their Form 8955-SSA in error. The erroneous notices were dated between July 28 and August 26, 2013. It is our understanding that the IRS will send a letter to the plan sponsors who received the notice in error.

## Identifying HCEs and Key Employees

The proper identification of highly compensated employees (HCEs) is critical to accurate annual nondiscrimination testing.

An employee is considered highly compensated if he or she:

- Was more than a five-percent owner of the employer at any time during the testing year or the preceding plan year. Ownership is attributed between certain family members to determine whether the five-percent threshold is met.
- Had compensation from the employer in excess of a certain amount in the preceding plan year and, if the employer so elected in its adoption agreement or plan document, was in the top-paid group of the employer.

Other considerations when determining HCE status include:

- Controlled groups and affiliated services groups. All employees employed by members of a controlled group, affiliated service group or group of trades or businesses under common control are treated as employed by a single employer. All employees of the single employer are included for the purpose of determining the HCEs. Legal assistance should be obtained in order to determine if the employer who adopted the plan is part of an affiliated service group, controlled group or a group of trades or businesses under common control. This determination is very complex and extremely important for accurate testing of your plan.
- Family members of more than five-percent owners. If an employee is a family member of a more than five percent owner, then such family member is also considered an HCE. Family members include the spouse, parents, children and grandparents. Family members for this purpose do not include grandchildren, siblings, or in-laws.
- Top-paid group. If you have made the top-paid group election in your adoption agreement or plan document, employees treated as HCEs because of their compensation are limited to the highest paid 20% of all the employees of the employer in the preceding plan year. To determine the number of employees that represent the highest paid 20% of all employees, there are certain categories of employees that may be excluded

## **Identifying HCEs and Key Employees continued -**

"Key Employees" are used to determine the top-heavy status of a Plan. Key Employees include:

- Officers earning a certain compensation amount
- More than 5% owners
- More than 1% owners earning annual compensation in excess of \$150,000

We send an HCE/Key Employee Questionnaire to plan sponsors near the beginning of each plan year. We have designed the HCE/Key Employee Questionnaire to provide information that will enable us to determine HCE and key employee status. Please be sure to complete the questionnaire and return it to us. If you have questions, please contact your McCready and Keene representative.

## **Defined Benefit Plans-Participants Working After Normal Retirement Age**

When an employee continues to work beyond normal retirement age or is re-employed after commencing benefits, a defined benefit plan must either: 1) provide participants with a notice saying that benefits will not be paid until the participant terminates employment (known as a "Suspension of Benefits Notice"), 2) provide an actuarial adjustment of the participant's normal retirement benefit when he or she terminates employment, or 3) start payment of the benefit when the participant reaches normal retirement age even if the participant is still working for the employer and continue payment of the early retirement benefit if the participant is re-employed after the early retirement benefit commences and before normal retirement age.

Option 3 is expensive and is not used by many of our clients. Option 2 is a special type of actuarial adjustment. The adjustment applies to the benefit at normal retirement age plus the actuarial adjustment for the benefit earned each year after normal retirement age. This complicated calculation requires an additional administrative charge. Option 1 requires providing participants with a Suspension of Benefits Notice in the first month the benefit is suspended. Option 1 is the least expensive.

Most of the plans we service use Option 1. The benefit that could commence is being "suspended" until the participant terminates employment. However, there is one exception. If a participant works less than 40 hours a month, the benefit must be paid for that month, even though the participant is still working. (The Plan may require that the participant notify the employer that he or she has worked less than 40 hours a month.) The employer is required to provide specific information in a notice to participants designed to let them know that their benefit is suspended until termination of employment. For plans using Option 1, we provide the employer with a Suspension of Benefits Notice that satisfies the regulatory requirements. For participants who continue to work for the employer after normal retirement age, the notice must be given in the month the participant attains normal retirement age. For a participant who is reemployed after retirement, the notice must be given in the month of reemployment if payment of his or her benefit stops upon reemployment. You will want to set up a system to give participants a copy of the notice in a timely manner.

Please contact your McCready and Keene plan representative if you have any questions.

## **Internal Revenue Service (IRS) Provides Some Guidance on Same-Gender Marriages**

On August 29, 2013, the IRS released Revenue Ruling 2013-17 in response to the U.S. Supreme Court ruling that section 3 of the Defense of Marriage Act (DOMA) was unconstitutional. Revenue Ruling 2013-17 states that it will treat a same-gender marriage recognized as valid by the state (or foreign jurisdiction) in which it was "initially established" (i.e., the "state of celebration") as a marriage for federal tax purposes, regardless of the married couple's place of residence.

In other words, employers in states that do not recognize same-gender marriage will be required to recognize such marriages for many employee benefits purposes if the employee was married in a state where same-gender marriage is legal. States that currently recognize same gender marriages are: Connecticut, Delaware, District of Columbia, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Rhode Island, Vermont and Washington. The ruling does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under state law and the effect will be different for governmental plans not subject to the Employee Retirement Income Security Act of 1974 (ERISA) and church plans not electing coverage under ERISA.

## **Internal Revenue Service (IRS) Provides Some Guidance on Same-Gender Marriages continued -**

Qualified retirement plans must comply with these rules as of September 16, 2013. The IRS has not yet provided guidance with respect to periods before September 16, 2013. Areas affected by the new rules include:

- Qualified domestic relation orders (QDROs)
- Spousal consent requirements
- Beneficiary designations
- Required minimum distributions (RMDs)
- Qualified joint survivor annuities (QJSAs) and qualified pre-retirement survivor annuities (QPSAs)
- Rollover distributions
- Hardship distributions
- Highly compensated and key employee determination

What should employers do? You should notify employees of this ruling and encourage them to update their beneficiary forms, if applicable.

At this time, we are taking a wait and see approach with respect to plan amendments. We anticipate that the IRS may publish a model amendment for plan sponsors to use.

## **Respond Promptly If You Receive a Request For Clarification Letter From The Department of Labor (DOL)**

All Form 5500 and 5500-SF filings must be submitted to the DOL using EFAST2 which is an all-electronic system designed by the DOL, Internal Revenue Service and Pension Benefit Guaranty Corporation. The efficiency and speed of electronic filing enables the DOL to increase the number of compliance checks that the DOL can perform. If you receive an inquiry from the DOL, it's imperative that you respond by the date indicated in the letter. Failure to do so may result in an audit of your plan.

## **IRS Publishes Most Recent Edition of Retirement News For Employers**

The IRS has published the August 2013 edition of [Retirement News for Employers](#). Articles are categorized by topic including Plan operation, Internal Controls, Voluntary Correction Program, Information for your Employees, and Presentations.

The August edition also contains updated versions of Mark your Calendar, DOL Corner, and Lots of Benefits (Spanish version).

We encourage you to review this publication for specific articles, news, helpful hints and more. You can visit the following link to have this newsletter notification automatically delivered directly to your inbox: [IRS Retirement News](#).

If you have questions or would like additional information about the items presented in this newsletter, please call your McCready and Keene representative.

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