

# 403(b) Perspectives



## Insights into the Administration of §403(b) Tax-Sheltered Arrangements

WINTER 2016

### 2015 Form 5500 Changes

**E**RISA 403(b) plans subject to filing Form 5500 will be happy to hear that the just-issued Form 5500 instructions for the plan year 2015 introduce the compliance questions as optional for 2015. This is a welcome change, as until the instructions were issued the IRS had stated that these would be required for 2015. This information will probably be required information for the 2016 Form 5500. It is to be seen as to how the following will apply to 403(b) plans in plan year 2016.

#### Schedule H

**4o** Did the plan trust incur unrelated business taxable income? .....

**4p** Were in-service distributions made during the plan year? .....

**6c** Name of trustee or custodian **6d** Trustee's or custodian's telephone number

#### Schedule R

**20a** Is the plan a 401(k) plan? Yes No

**20b** If "Yes," how does the 401(k) plan satisfy the nondiscrimination requirements for employee deferrals and employer matching contributions (as applicable) under Sections 401(k)(3) and 401(m)(2)?

Design-based safe harbor method or ADP/ACP test

**20c** If the ADP/ACP test is used, did the 401(k) plan perform ADP/ACP testing for the plan year

using the "current year testing method" for nonhighly compensated employees (Treas. Reg. Sections 1.401(k)-2(a)(2)(ii) and 1.401(m)-2(a)(2)(ii))? Yes No

**21a** Check the box to indicate the method used by the plan to satisfy the coverage requirements under Section 410(b): Ratio percentage test or Average benefit test

**21b** Does the plan satisfy the coverage and nondiscrimination tests of Sections 410(b) and 401(a)(4) by combining this plan with any other plans under the permissive aggregation rules? Yes No

**22a** Has the plan been timely amended for all required tax law changes? Yes No N/A

**22b** Date the last plan amendment/restatement for the required tax law changes was adopted \_\_\_/\_\_\_/\_\_\_ . Enter the applicable code \_\_\_\_ (See instructions for tax law changes and codes).

**22c** If the plan sponsor is an adopter of a pre-approved master and prototype (M&P) or volume submitter plan that is subject to a favorable IRS opinion or advisory letter, enter the date of that favorable letter \_\_\_/\_\_\_/\_\_\_ and the letter's serial number \_\_\_\_\_.

**22d** If the plan is an individually-designed plan and received a favorable determination letter from the IRS, enter the date of the plan's last favorable determination letter \_\_\_/\_\_\_/\_\_\_.

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# 2015 Form 5500 Changes

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**23** Is the Plan maintained in a U.S. territory (i.e., Puerto Rico (if no election under ERISA Section 1022(i)(2) has been made), American Samoa, Guam, the Commonwealth of the Northern Mariana Islands or the U.S. Virgin Islands)?

More information about this change may be found on the IRS website at:

<https://www.irs.gov/Retirement-Plans/Frequently-Asked-Questions-Regarding-the-IRS-Compliance-Questions-on-the-2015-Form-5500-Series>Returns>. ■

## 2016 COLA Limits

In Information Release 2015-28, the IRS issued the cost-of-living adjustments (COLAs) applicable to the dollar limitations for pension plans (and other items) for the 2016 tax year. Most limits affecting qualified plans did not change from 2015.

**Traditional IRA changes.** There was only one change in 2016 to the adjusted gross income (AGI) “phaseout” limits for determining what portion of contributions to a traditional individual retirement account (IRA) are deductible. For taxpayers who are active participants filing a joint return (or qualified widow(er)s), the deduction begins to phase out when combined AGI is \$98,000 (unchanged from 2015). For taxpayers other than “married filing separate returns,” the deduction phaseout begins at \$61,000 AGI (unchanged from 2015). For a taxpayer who is not an active participant but whose spouse is an active participant, the deduction phaseout

begins at a combined AGI of \$184,000 (up from \$183,000).

**Roth IRA changes.** There is also an AGI-based limitation for determining the maximum Roth IRA contribution. For married taxpayers filing a joint return (or qualified widow(er)s), the contribution phaseout begins at \$184,000 (up from \$183,000). The AGI phaseout for single taxpayers begins at \$117,000 (up from \$116,000).

**Saver's credit.** The IRS has increased the AGI limit for the saver's credit for 2016. The limit for married couples filing jointly is \$61,500 (up from \$61,000). For heads of household, the limit is \$46,125 (up from \$45,750). For all other filers (single, married filing separately, or qualifying widow(er)), the limit is \$30,750 (up from \$30,500). ■

IRS Limits	2016	2015
403(b), 401(k), SARSEP, and 457 plan deferrals/catch-up	\$18,000/\$6,000	\$18,000/\$6,000
SIMPLE plan deferrals/catch-up	\$12,500/\$3,000	\$12,500/\$3,000
Compensation defining highly compensated employee*	\$120,000	\$120,000
Compensation defining key employee/officer	\$170,000	\$170,000
Defined benefit plan limit on annual benefits	\$210,000	\$210,000
Defined contribution plan limit on annual additions	\$53,000	\$53,000
Maximum compensation limit for allocation and accrual purposes	\$265,000	\$265,000
Key employee	\$170,000	\$170,000
DB 430 special election	\$1,106,000	\$1,101,000
SEP	\$600	\$600
IRA contributions/catch-up	\$5,500/\$1,000	\$5,500/\$1,000
Social Security taxable wage base	\$118,500	\$118,500

\* 2015 amount for use in 2016 plan year tests

### COLA Cards Now Available

To order COLA cards, call 973-492-1880 or send an e-mail to [mhco-info@dstrs.com](mailto:mhco-info@dstrs.com) with your name,

company name, company address, and how many COLA cards (up to five) you wish to receive.

# From Bill Grossman's Desk

## No New ERPAs

I am an enrolled retirement plan agent (ERPA) and was co-chair of the IRS's ERPA Conference for its entire run from 2010 to 2013. I believe in the importance of the ERPA program and was lucky enough to interview Monika Templeman (when she was the IRS Director of Employee Plans Examinations) about the importance of ERPAs and the ERPA program. My interview in which Monika championed the ERPA program can be found at [www.mhco.com/BreakingNews/TAJ\\_Fall11\\_Grossman.pdf](http://www.mhco.com/BreakingNews/TAJ_Fall11_Grossman.pdf).

It is my sad duty to report that there will be no new ERPAs created. The last chance to become an ERPA ends with the closing of the ERPA examination window, which runs from January 5, 2016, to February 12, 2016. Candidates can register for the test now by going to [www.erpaxam.org](http://www.erpaxam.org). Registration closes on January 4, 2016. Both parts of the ERPA-Special Enrollment Examination (ERPA-SEE) must be completed by the February 12 cutoff in order for an individual to become an ERPA.

There is no impact to those that are currently ERPAs. Anyone who is currently an ERPA may continue as an ERPA, provided they follow the Circular 230 requirements, which include renewing your enrollment every three years and completing continuing education credits.

ERPAs can continue to represent their clients before the IRS with respect to issues involving the following programs: Employee Plans Determination

Letter Program, Employee Plans Compliance Resolution System, and Employee Plans Master and Prototype and Volume Submitter Program. In addition, ERPAs are generally permitted to represent taxpayers with respect to IRS forms under the 5500 series and can practice before Appeals, Collection, Counsel, and other IRS offices with respect to the above-listed matters. Only ERPAs, attorneys, CPAs, and enrolled agents have the authority to practice in all of those areas. After February 12, 2016, employee benefit professionals who are not ERPAs should consider taking the SEE to become an *enrolled agent*, in order to have the authority to practice in those areas that ERPAs can practice (and much more).

Anyone who has passed both parts of the ERPA-SEE by February 12, 2016, can still become an ERPA if they file Form 23-EP, *Application for Enrollment to Practice before the Internal Revenue Service as an Enrolled Retirement Plan Agent (ERPA)*. The application for enrollment must be filed within one year of passing both parts of the test.

The IRS cited a steady decline in the volume of people taking the ERPA-SEE and the cost to administer the examination as reasons why they can no longer warrant offering the ERPA program. ■

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## Changes at the IRS

The IRS will no longer answer either Employee Plans (EP) e-mail questions or questions referred to them by the IRS customer service phone center. Due to the realignment of legal work and the reassignment of a number of the IRS's EP employees to the Office of the Associate Chief Counsel, the IRS's EP area no longer has the resources to do research and provide answers for legal topics. Effective October 1, 2015, the IRS's EP area ceased accepting technical questions through e-mail.

IRS Customer Account Services employees will

continue to help with account-specific questions. Basic information about EP forms and the status of pending applications may be obtained by calling 877-829-5500. The Private Letter Ruling process may be used to ask the IRS to address a particular fact set.

### VCP submission kits

The IRS provides voluntary correction program (VCP) submission kits to guide plan sponsors who are making certain VCP submissions. Submission kits can be found at: [www.irs.gov/Retirement-Plans/Correcting-Plan-Errors---VCP-Submission-Kits](http://www.irs.gov/Retirement-Plans/Correcting-Plan-Errors---VCP-Submission-Kits).

# Changes at the IRS

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There are currently four VCP submission kits:

- A money purchase and target benefit plans kit — for plan sponsors who failed to make timely required contributions
- [A 403\(b\) missing plan document kit](#) — for plan sponsors who missed the December 31, 2009, document deadline
- A missed preapproved defined contribution Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) restatement kit
- A missed preapproved defined benefit EGTRRA restatement kit

## IRS self-audit

The IRS has created a *Policies, Procedures and Internal Controls Self-Audit* web page to provide plan sponsors with methods for evaluating whether strong internal controls are in place to ensure a plan is operating properly. The web page also contains important links related to self-corrections and IRS plan correction programs. The web page can be found at: [www.irs.gov/Retirement-Plans/Policies,-Procedures-and-Internal-Controls-Self-Audit](http://www.irs.gov/Retirement-Plans/Policies,-Procedures-and-Internal-Controls-Self-Audit). ■

# Bipartisan Budget Act of 2015

For plan sponsors of 403(b) plans that also have a defined benefit (DB) plan, the Bipartisan Budget Act (BBA) of 2015, enacted in November 2015, includes three provisions that impact DB pension plans:

1. Congress extended DB funding stabilization provisions originally included in the Moving Ahead for Progress in the 21st Century Act (MAP-21) in 2012 and extended in the Highway Transportation Funding Act of 2014 (HATFA). Under these provisions, employers sponsoring DB plans can make smaller contributions to the plan; theoretically reducing their tax deductions and as a result raising additional tax revenue.
2. Pension Benefit Guaranty Corporation (PBGC) premiums have been increased in order to keep the PBGC solvent in light of the many plans being turned over to them for payment.
3. Pension plan sponsors may apply to the U.S. Treasury Department for the ability to customize mortality tables based on plan demographic

experience for the purposes of determining funding, PBGC premiums, and benefit restrictions. This will provide actuaries with more flexibility when determining which mortality table to use.

## Social Security Change

The BBA also made some changes to the Social Security rules. Generally, the law prospectively ended a filing process called “file and suspend,” which primarily was used by married couples as a way to maximize their Social Security benefits. The change takes effect in six months, meaning people age 66 and older, or who will turn 66 during the next six months, still have time to file and suspend their benefits. People already using the strategy to collect spousal benefits alone, can keep doing so. An excellent and very detailed article by Michael Kitces on this subject and the BBA changes can be found at [www.kitces.com/blog/navigating-the-effective-date-deadlines-for-the-new-file-and-suspend-and-restricted-application-rules/](http://www.kitces.com/blog/navigating-the-effective-date-deadlines-for-the-new-file-and-suspend-and-restricted-application-rules/). ■

**PBGC Premium Schedules for Single Employer Plans**

Plan Years Beginning in	Per Participant Flat Rate	Variable Rate Rate per \$1,000 Unfunded
2013	\$42	\$9
2014	\$49	\$14
2015	\$57	\$24
2016	\$64	\$30
2017	\$69	\$33
2018	\$74	\$37
2019	\$80	\$40

*Although 403(b) Perspectives is drafted by ERISA attorneys, the answers to issues addressed herein do not constitute legal opinions of McKay Hochman Consulting, nor does McKay Hochman Consulting guarantee that the IRS and the DOL will agree with the content of this newsletter. Accordingly, readers of 403(b) Perspectives should consult their attorneys or tax advisors before relying on any of the statements herein. Please direct any questions or comments to William C. Grossman at 973.492.1880.*