# ANNUAL LIMITS, DEFINITIONS, AND GUIDANCE

**Annual Plan Limits**

Each year the U.S. government adjusts the limits for qualified plans and Social Security to reflect cost-of-living adjustments and changes in the law. Many of these limits are based on the "plan year" as defined in the plan document. The elective deferral and catch-up limits are always based on the calendar year.

| | 2024 | 2023 | 2022 | 2021 |
|---|---|---|---|---|
| **Compensation** | $345,000 | $330,000 | $305,000 | $290,000 |
| **Limits on benefits and contributions:** | | | | |
| Defined contribution plans | $69,000 | $66,000 | $61,000 | $58,000 |
| Defined benefit plans | $275,000 | $265,000 | $245,000 | $230,000 |
| 401(k), 403(b) and 457 plan elective deferrals | $23,000 | $22,500 | $20,500 | $19,500 |
| SIMPLE plan elective deferrals | $16,000 | $15,500 | $14,000 | $13,500 |
| IRA | $7,000 | $6,500 | $6,000 | $6,000 |
| **Catch-up contributions:** | | | | |
| 401(k), 403(b) and 457 plans | $7,500 | $7,500 | $6,500 | $6,500 |
| SIMPLE plans | $3,500 | $3,500 | $3,000 | $3,000 |
| IRA | $1,000 | $1,000 | $1,000 | $1,000 |
| **"Highly Compensated" definition** | $155,000 | $150,000 | $135,000 | $130,000 |
| **"Key Employee" definition:** | | | | |
| Officer | $220,000 | $215,000 | $200,000 | $185,000 |
| 1% owner | $150,000 | $150,000 | $150,000 | $150,000 |
| **Social Security taxable wage base** | $168,600 | $160,200 | $147,000 | $142,800 |

## Annual Additions Limit (Internal Revenue Code Section 415)

The total of all contributions and forfeitures allocated (excluding catch-up contributions) for a participant may not exceed the lesser of 100% of gross compensation or the annual additions limit for the plan year. (See "Limits on benefits and contributions" on page 1.)

## Catch-up Contributions for 401(k) and 403(b) Plans

Catch-up contributions, if allowed by your plan, may be made by participants who are age 50 by the end of the calendar year. A participant whose 50th birthday occurs anytime during a calendar year is considered to be 50 as of January 1st of that year.

## Long Term, Part time Employees UPDATED

The SECURE Act enacted at the end of 2019 requires that 401(k) plans allow employees who are not already eligible and are employed for at least three consecutive years with at least 500 hours but less than 1,000 hours per year ("long term, part time employees" or "LTPTEs") to defer into the plan. Plan Sponsors had to start tracking hours worked for these employees beginning January 1, 2021 as pre-2021 service is disregarded. However, due to the three-year determination period, the first time these employees must be able to defer is January 1, 2024. In addition to tracking the hours, the exact hours worked needs to be provided as part of the year end census collection for the plan. If full census is being provided each pay period to a recordkeeper so that they can determine eligibility and/or vesting, make sure it has ALL employees and complete data, including hours worked.

The SECURE 2.0 Act enacted at the end of 2022 now requires that 401(k) AND 403(b) plans allow employees who are not already eligible and are employed for at least two consecutive years with at least 500 hours but less than 1,000 hours per year ("long term, part time employees" or "LTPTEs") to defer into the plan. For 401(k) plans, pre-2021 service continues to be disregarded. For 403(b) plans, pre-2023 service is disregarded. The first time the employees that meet these criteria must be able to defer is January 1, 2025.

Refer to our SECURE 2.0 documents (posted under Client Resources on our website) and the Winter 2022 and Winter 2023 newsletters (posted under Newsletters on our website) for more information and examples.

## Highly Compensated Employees

Highly compensated employees must be identified to apply the various nondiscrimination tests for qualified plans.

**In general**, an employee is a highly compensated employee if the employee meets one of two tests:

1. 5% Owner Test - The owner owns more than 5% of the employer (or more than 5% of a related employer) at any time during the current or prior plan year. An individual is treated as owning any interest that is owned by the individual's spouse, children, grandchildren or parents.

2. Compensation Test - In determining the highly compensated status for the current year, you are looking back to the prior year. Therefore, use the limit in effect for the prior year.

The employer may elect to limit the number of employees included in the compensation test to the top 20% of employees for the prior year, if permitted by the plan.

## Top Heavy Rules

The definition of Key Employee used to determine if a plan is top heavy is as follows:

1. an officer with compensation in excess of $220,000 (for 2024). However, in determining the key employees for the current year (2024), you are looking back to the threshold in effect for the prior year ($215,000 for 2023); or

2. a more than 5% owner*; or

3. a more than 1% owner* with compensation in excess of $150,000.

* An individual is treated as owning any interest that is owned by the individual's spouse, children, grandchildren or parents.

An employee is a Key Employee if he or she satisfies the definition during the preceding plan year.

A retirement plan is determined to be top heavy when the account balances of key employees exceed 60% of the total plan balance. **In general**, a plan determined to be top heavy must ensure that all eligible participants receive a minimum contribution (in most cases equal to 3% of compensation).

## Loan Repayments and Timing of Deposits

Please be sure that all loan repayments are made to the plan on an after-tax basis.

The Department of Labor issued final regulations establishing a safe harbor for the timely deposit of loan repayments and employee deferrals to pension plans.

Under the safe harbor, employee deferrals and loan repayments to plans with fewer than 100 participants will be in compliance if these amounts are deposited within 7 business days after the amounts would have been payable to the participant or received by the employer (in the case of a participant loan repayment outside of payroll). To date, no proposed guidance has been issued for plans with 100 or more participants. The DOL, however, has indicated that the deposits should be made at the same time as the payroll tax deposits.

Deposits that are not made timely are subject to the following: they must be "made whole" with lost earnings paid by the plan sponsor, they may be subject to an excise tax due to the IRS, a filing may need to be submitted to the Department of Labor explaining the reason for the error, the steps taken to correct the error, and the procedures implemented to avoid future errors, and they must be reported on the Form 5500-SF under penalty of perjury. We strongly recommend that you review your internal procedures and do whatever is necessary to meet the applicable standard.

## Loan Defaults

A participant's loan that is defaulted due to non-payment or late payment is taxable to the participant. A Form 1099-R must be issued. Please refer to the plan's loan procedure to determine if any loans are in default. Please let us know immediately when a loan is in default.

## Deferral Election Forms

New participants should be informed, and existing participants should be reminded, to verify that the employer has properly implemented their deferral election. This should be done at the beginning of each year as well as after any requested election change.

The employer should also verify that all participants have returned a deferral election form to the employer **even if the participant is choosing to defer $0**. This will serve as proof that the plan was offered to the participant should it be audited by the IRS or DOL.

## Elective Deferrals for Partners and Sole Proprietors

A partner's earned income is treated as currently available on the last day of the partnership's taxable year.

A partner's deferral election must be made no later than the last day of the partnership year and may state the deferral as a dollar amount, a percentage of the partner's earned income, or as a formula (e.g., the maximum deferral amount that does not exceed all applicable limits.)

Since a partnership will not determine each partner's earned income until after the end of the partnership's taxable year, a partner who defers during the year may (i) "overshoot" a plan-imposed limit on deferrals based on compensation (earned income) or a deferral election made as a percentage; (ii) have to "true-up" the deferrals at year end to correspond to his/her election; and (iii) not have sufficient earned income to sustain the deferral. For these reasons, a partner may wish to defer in fixed increments during the year, and to defer "conservatively" if it is not possible to reasonably forecast earned income until late in the year.

The deferrals must be deposited at the earliest date they can reasonably be segregated from the partner's general assets, but not later than the 7th business day following the day on which the partner's earned income is distributed. The date the partner's earned income is distributed is the date the partnership's accountant determines the partners' distributive share of earned income or, if deferring on a monthly draw which is paid on the last day of the month, the earned income is treated as being distributed on the last day of each month.

A sole proprietor's earnings are treated as currently available on the last day of the individual's taxable year. The sole proprietor's deferral election must be made no later than the last day of his or her individual taxable year.

The deferrals must be deposited at the earliest date they can reasonably be segregated from the sole proprietor's general assets, but not later than the 7th business day following the day on which the sole proprietor's earnings are determined.

Keep in mind that a partner or sole proprietor must have enough earned income to support the elective deferrals.

## S-Corp Shareholder Health Insurance Premium

The health insurance premiums paid by greater-than-2%-shareholders in an S-Corp are counted as compensation for employer contribution purposes, but only if reported in Box 1 on the shareholder's W-2. Reporting these amounts incorrectly may be a nondiscrimination issue. If this applies to you, please review your year-end reporting to avoid potential issues and delays in your annual calculations.

## Fidelity Bond

Under U.S. Department of Labor regulations, anyone who has discretionary authority or control over a plan or its assets, and anyone who handles funds or other property of a plan, must be bonded. A plan administrator, officer, or employee shall be deemed to be "handling" funds or other property of a plan whenever his/her duties or activities with respect to given funds or other property could be lost in the event of fraud or dishonesty on the part of such person, acting either alone or in collusion with others. Handling does not require physical contact.

The plan(s) must be named in the bond as an insured and the bonding company must be listed on the Department of the Treasury's Listing of Certified Companies. This list can be obtained at http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm. The bond must be in an amount of at least 10% of the plan(s) assets as of the beginning of the plan year. The bond may not be for less than $1,000 and need not be for more than $500,000 (see exception below*.) Please contact your insurance company to obtain a bond, or you may apply for a bond on-line by going to our website, http://www.crepen.com/, clicking on "Links", and then clicking on "Colonial Surety Company".

A bond is not required for a plan covering only the owner or the owner and the owner's spouse. If the plan's only participant is not the owner, this exception does not apply. Also, a bond is not required for a partnership if the plan covers only partners or partners and their spouses.

* For plans with investments in non-qualifying assets (limited partnership interests, non-marketable securities (i.e., securities that are not traded on an exchange and not readily marketable with an ascertainable value), real estate, collectibles, and mortgages or loans (other than participant loans)), DOL regulations require that the bond be increased to the value of the non-qualifying assets, even if for more than $500,000. **If the bond is not increased or there is no bond, the plan will be required to have an audit by an independent qualified public accountant.**

We have learned that the Department of Labor launched an initiative to contact retirement plan sponsors who appear to have no fidelity bond, or who have an insufficient amount of bonding as reported on the Form 5500. If so notified, plan sponsors will have 15 days to obtain sufficient bonding and provide proof of the bonding to the DOL.