



BENEFITS INSIDER
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WEB's **Benefits Insider** is a member exclusive publication providing the latest developments from the Nation's Capital on matters of interest to benefits professionals. The content of this newsletter is being provided as a result of a partnership with the American Benefits Council, a premier benefits advocacy organization, which provides its core content, and is edited by Christopher M. Smith, Employee Benefits attorney and Principal of Flexible Benefits Systems, Inc., csmith@fbsi.com.

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RECENT REGULATORY ACTIVITY

IRS Announces Changes in Retirement, Health Plan Limits for 2013

On October 18, the Internal Revenue Service (IRS) released [Revenue Procedure 2012-41](#), outlining the 2013 calendar year limits for high-deductible health plans (HDHPs) used in conjunction with Medical Savings Accounts (MSAs), as well as eligible long-term care premiums and transportation fringe benefits.

Additionally, in [News Release 2012-77](#), the IRS announced a series of retirement plan limits for Tax Year 2013. Section 415 of the Internal Revenue Code provides for dollar limitations on benefits and contributions under qualified retirement plans.

Annual Limit [Applicable Tax Code Section]	2012	2013
Maximum elective deferral [401(k) and 403(b)]	\$17,000	\$17,500
Maximum annual pension benefit [415(b)] (The limit applied is actually the lesser of the dollar limit or 100 percent of the participant's average compensation (generally the high three consecutive years of service))	\$200,000	\$205,000
Defined contribution maximum deferral [415(c)]	\$50,000	\$51,000
Maximum catch-up contribution for those age 50 and over [414(v)]	\$5,500	\$5,500
Qualified plan compensation limit [401(a)(17)]	\$250,000	\$255,000
Highly compensated threshold [414(q)]	\$115,000	\$115,000
Key employee definition [416]	\$165,000	\$165,000
Deductible amount for individual making qualified retirement contributions to an IRA [219(b)(5)(A)]	\$5,000	\$5,500

In related regulatory news, the Social Security Administration [has announced](#) that the Social Security wage base — also known as the "contribution and benefit base" — which is the amount of earnings subject to taxation for a given year, based on the [average wage index](#) — will increase from \$110,100 to \$113,700 in 2013.

[This IRS table](#) shows these and additional limits updated for 2013.

EEOC Q&A Transcript Addresses Treatment of Wellness Programs

The Joint Committee on Employee Benefits of the American Bar Association (ABA) recently released [a transcript of its annual Q&A session](#) with the Equal Employment Opportunity Commission (EEOC), originally held on May 10, 2012. This transcript constitutes troubling informal guidance regarding HIPAA-compliant wellness programs potentially violating the

Americans with Disabilities Act (ADA) and certain incentives for spousal HRAs potentially violating the Genetic Information Nondiscrimination Act (GINA)

Effect of Financial Incentives on a Wellness Program

Title I of the ADA allows employers to conduct voluntary medical examinations and activities, including obtaining information from voluntary medical histories as part of an employee wellness program, as long as certain criteria are satisfied; most notably, that the wellness program is "voluntary."

In answering Question 1 of the ABA Q&A session, the EEOC restated its prior position that programs that include disability-related inquiries and/or require medical examinations will violate the ADA if they are involuntary. The EEOC reiterated prior informal guidance, stating that, while a program cannot require participation or penalize individuals who do not participate, the EEOC has taken no position as to whether a financial incentive provided as part of a wellness program that makes disability-related inquiries and/or requires medical examinations (such as examinations for the purpose of determining whether an employee has met certain health standards) would render the program involuntary.

This position signals the EEOC's continued unwillingness to state formally or otherwise that HIPAA-compliant wellness programs comply with the ADA. As a result, employers may continue to risk liability under the ADA with respect to their HIPAA-compliant wellness plans due to EEOC enforcement activity as well as individual and class action litigation.

Provision by Spouse of Personal Medical History as Part of an HRA

Question 7 of the ABA Q&A session asked whether the EEOC takes the position that an employee's spouse is providing family medical history on behalf of the employee where the employee's spouse provides her personal medical history to the health plan of the employee's employer by completing an HRA. In its answer, the EEOC stated that the rules under Title II of GINA — which prohibits employers and other covered entities from requesting, requiring, or purchasing genetic information, subject to six limited exceptions including a voluntary wellness program — "are instructive" in answering the question and suggests that employers may violate GINA if they offer a reward in exchange for an employee's spouse providing information regarding her personal medical history as part of an HRA.

The Affordable Care Act added a new Section 2705 to the Public Health Service Act that largely incorporates existing HIPAA nondiscrimination regulations for wellness plans and increases the maximum reward for a health-contingent wellness program from 20 percent to 30 percent of the total cost of employee-only coverage (or 30 percent of the cost of coverage that may also include dependents where dependents are also eligible to participate in the employer's wellness program), effective 2014. On November 20, the U.S. departments of Treasury, Labor (DOL) and Health and Human Services (HHS) released [proposed regulations addressing incentives for nondiscriminatory wellness programs](#). We will report on these regulations in the December edition of *Benefits Insider*.

PBGC Sends Final Paper Notice Regarding Plan Premium Filings

The Pension Benefit Guaranty Corporation (PBGC) has sent a notice to all defined benefit plan administrators and practitioners who prepare and submit premium filings, informing them of

recent changes that may affect their filing actions. This will be the final paper notice that plans receive, with future notices to be posted on the PBGC website or sent by e-mail.

The paper notice discusses:

- 2013 Premium Instructions, which are expected to be posted on the PBGC website at www.pbgc.gov/premium-payment-instructions by January 2013;
- The Moving Ahead for Progress in the 21st Century (MAP-21) Act, which affects premium rates as described in [Technical Update 12-1](#);
- Other reporting requirement changes expected for the 2013 plan year, such as the revocation of the alternative premium funding target election, the breakdown of the total premium funding target; and
- New My Plan Administration Account (PAA) password requirements.

GASB Releases Fact Sheets to Clarify Recent Public Pension Accounting, Reporting Standards

Earlier this year, the Governmental Accounting Standards Board's (GASB) approved two new standards statements regarding the accounting and financial reporting of public employee pensions by state and local governments.

Additional disclosure of unfunded pension liabilities for state and local governments could increase interest in pension underfunding in general, both for lawmakers on Capitol Hill as well as the regulators. This heightened interest could lead to legislation or regulatory action that might adversely affect private employer-sponsored plans.

Specifically, [GASB Statement No. 67: Financial Reporting for Pension Plans](#), which revises existing guidance for the financial reports of most pension plans, and [Statement No. 68: Accounting and Financial Reporting for Pensions](#), which revises and establishes new financial reporting requirements for most governments that provide their employees with pension benefits, were published earlier this year. On October 16, GASB published two fact sheets, prepared in question-and-answer format, intended to clarify statements 67 and 68 on such issues as pension funding.

"After reexamining the prior standards for pensions, the GASB concluded that approaches to funding are not necessarily the best approach to accounting for and reporting pension benefits. Therefore, the new Statements mark a definitive separation of accounting and financial reporting from funding," the fact sheet said.

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