Chapter 2

RETIREMENT PLAN CHOICES AND DESIGN OPTIONS

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Ohio State Bar Association
November 9, 2016

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1114200.pptx Updated: 09/14/2016

TYPES OF QUALIFIED PLANS

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Profit-Sharing Plans.

- Profit-Sharing plans are the most flexible of all qualified plans. The employer is not obligated to make contributions to the plan, but each year it can elect to contribute any amount between 0% and 25% of the annual compensation of the covered employees.
- The maximum annual additions under IRC §415(c) for each year is the lesser of 100% of compensation or $53,000 (adjusted). Thus, contributions and forfeitures allocated on behalf of each participant cannot exceed these limitations.

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- The IRS requires that contributions to a profit-sharing plan be recurring and substantial. Rev. Rul. 80-146 provides that a plan may be considered to be terminated if no contributions have been made to the plan for five (5) consecutive plan years.
- The Pension Protection Act of 2006 (PPA) requires that employer contributions made to defined contribution plans be vested no less rapidly than under a 3-year cliff or 6-year graded vesting schedule.

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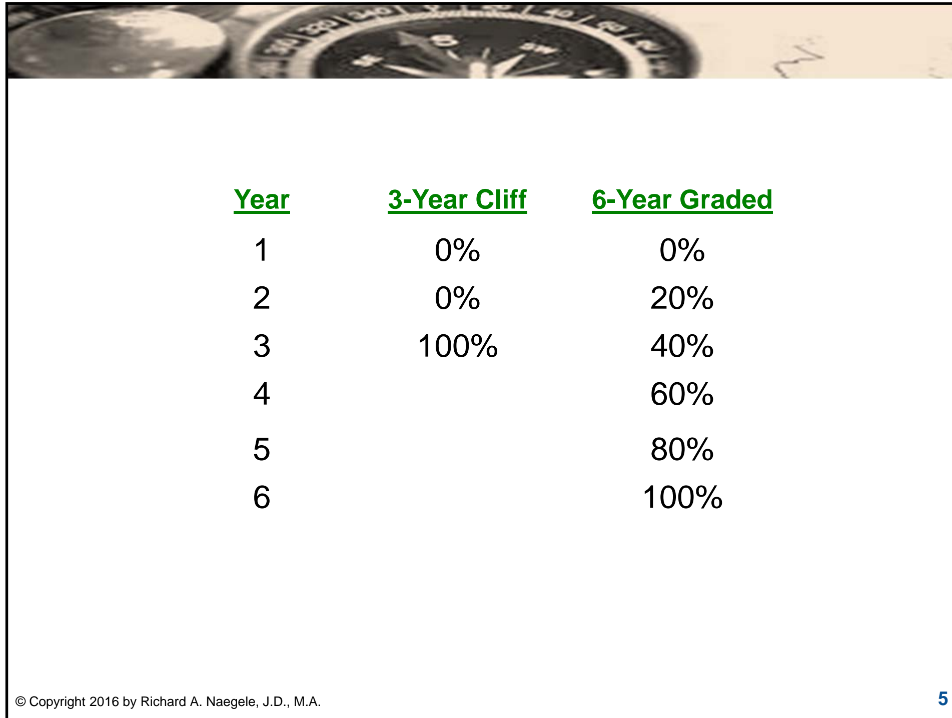

Year	3-Year Cliff	6-Year Graded
1	0%	0%
2	0%	20%
3	100%	40%
4		60%
5		80%
6		100%

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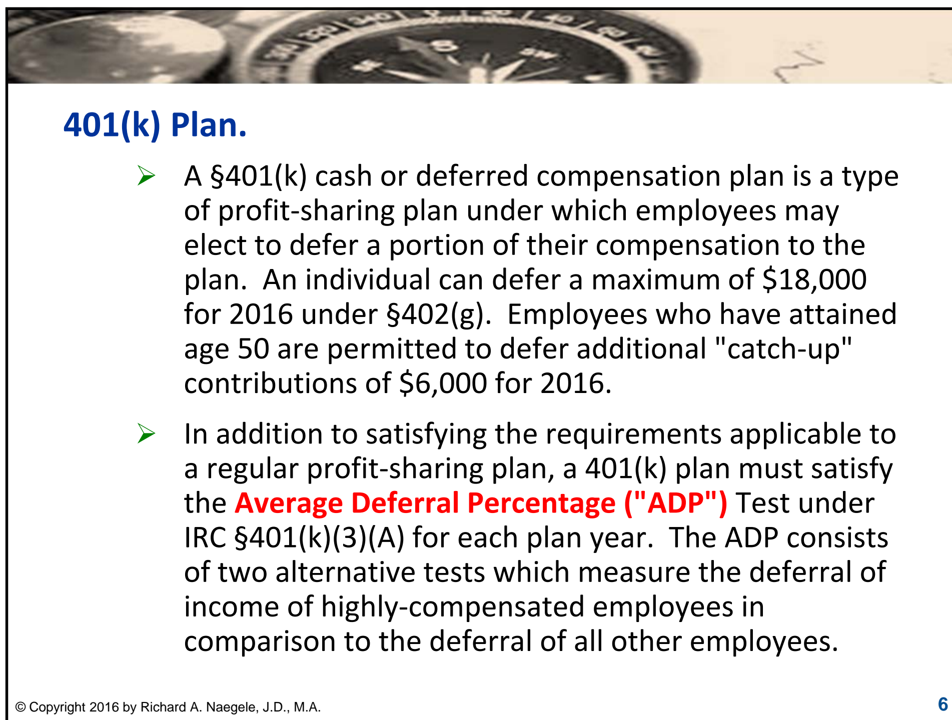

401(k) Plan.

- A §401(k) cash or deferred compensation plan is a type of profit-sharing plan under which employees may elect to defer a portion of their compensation to the plan. An individual can defer a maximum of $18,000 for 2016 under §402(g). Employees who have attained age 50 are permitted to defer additional "catch-up" contributions of $6,000 for 2016.
- In addition to satisfying the requirements applicable to a regular profit-sharing plan, a 401(k) plan must satisfy the **Average Deferral Percentage ("ADP")** Test under IRC §401(k)(3)(A) for each plan year. The ADP consists of two alternative tests which measure the deferral of income of highly-compensated employees in comparison to the deferral of all other employees.

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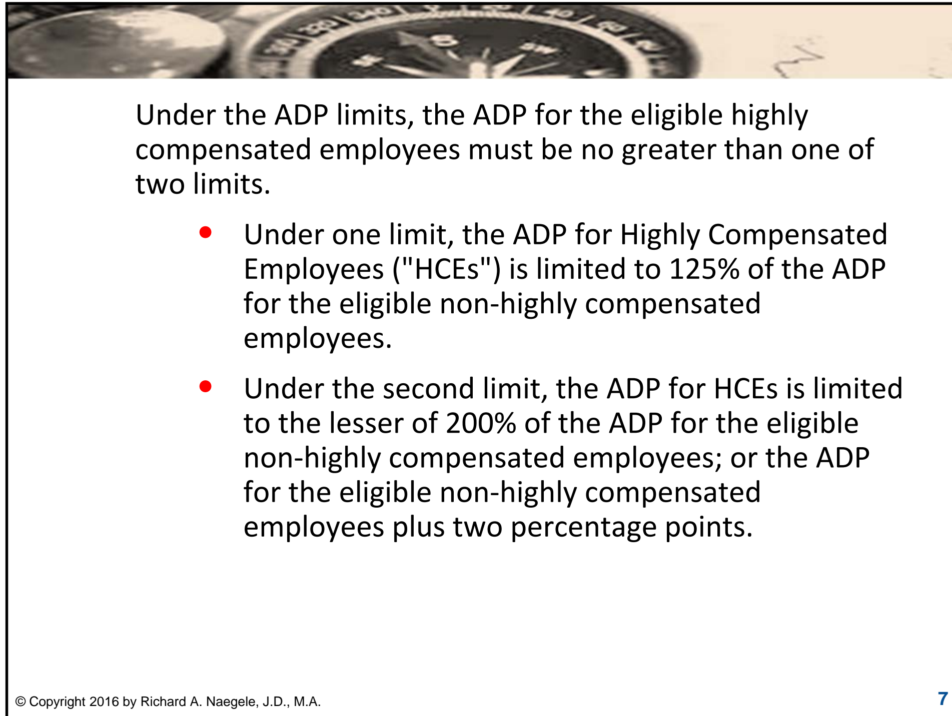
Under the ADP limits, the ADP for the eligible highly compensated employees must be no greater than one of two limits.
Under one limit, the ADP for Highly Compensated Employees ("HCEs") is limited to 125% of the ADP for the eligible non-highly compensated employees.
Under the second limit, the ADP for HCEs is limited to the lesser of 200% of the ADP for the eligible non-highly compensated employees; or the ADP for the eligible non-highly compensated employees plus two percentage points.
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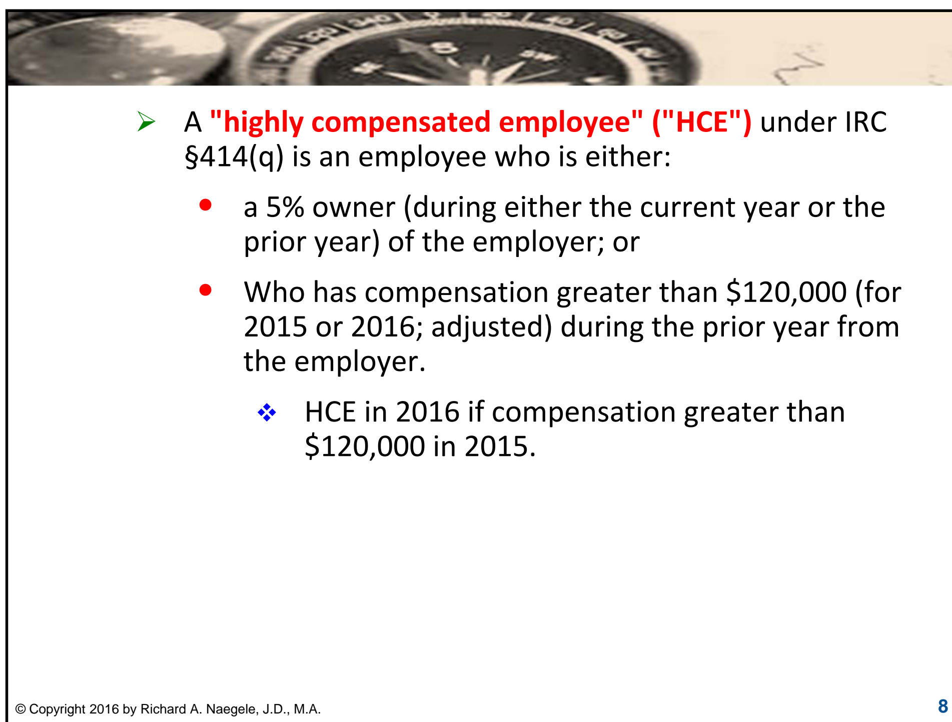
A "highly compensated employee" ("HCE") under IRC §414(q) is an employee who is either:
a 5% owner (during either the current year or the prior year) of the employer; or
Who has compensation greater than $120,000 (for 2015 or 2016; adjusted) during the prior year from the employer.
HCE in 2016 if compensation greater than $120,000 in 2015.
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The stock ownership attribution rules of IRC Section 318 apply for purposes of determining a 5% owner for HCE purposes. Therefore, the spouse, children, and parents of a 5% owner are also deemed to be 5% owners.

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Roth 401(k) Contributions.

- Plan Sponsors may amend 401(k) or 403(b) plans to permit plan participants to elect to treat some or all of their elective deferrals as contributed on a Roth basis. The amendment must be adopted by the last day of the plan year in the calendar year that Roth deferrals are permitted. However, the Participant must elect to treat a deferral on a Roth basis prior to the time that it is deferred.
- Unlike Roth IRA assets, Roth 401(k) accounts will continue to be subject to the minimum distribution rules under IRC Section 401(a)(9).

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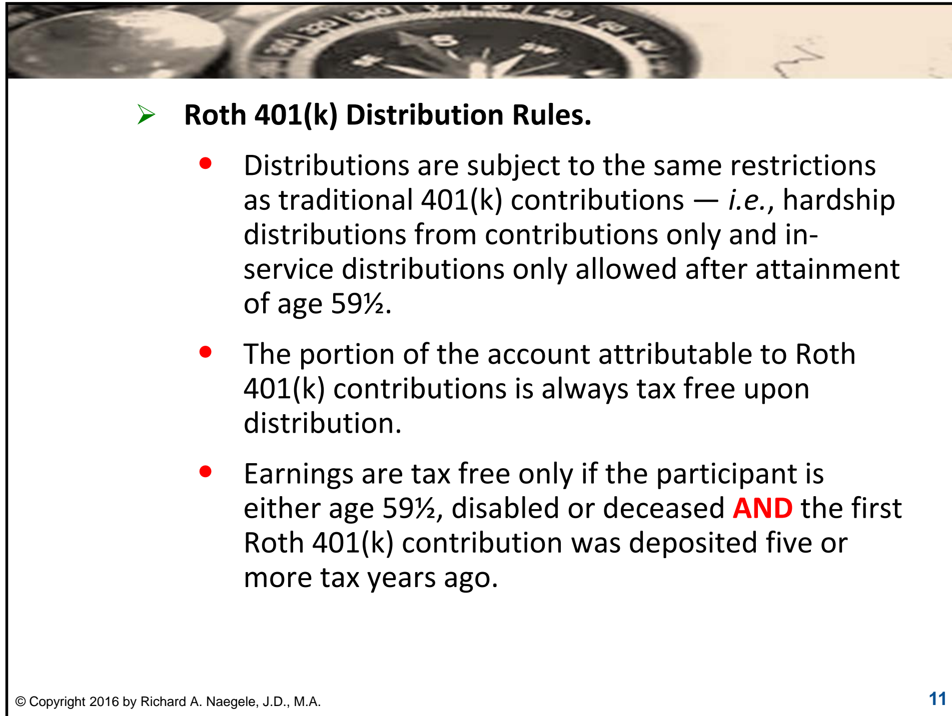

➢ **Roth 401(k) Distribution Rules.**

- Distributions are subject to the same restrictions as traditional 401(k) contributions — *i.e.*, hardship distributions from contributions only and in-service distributions only allowed after attainment of age 59½.
- The portion of the account attributable to Roth 401(k) contributions is always tax free upon distribution.
- Earnings are tax free only if the participant is either age 59½, disabled or deceased **AND** the first Roth 401(k) contribution was deposited five or more tax years ago.

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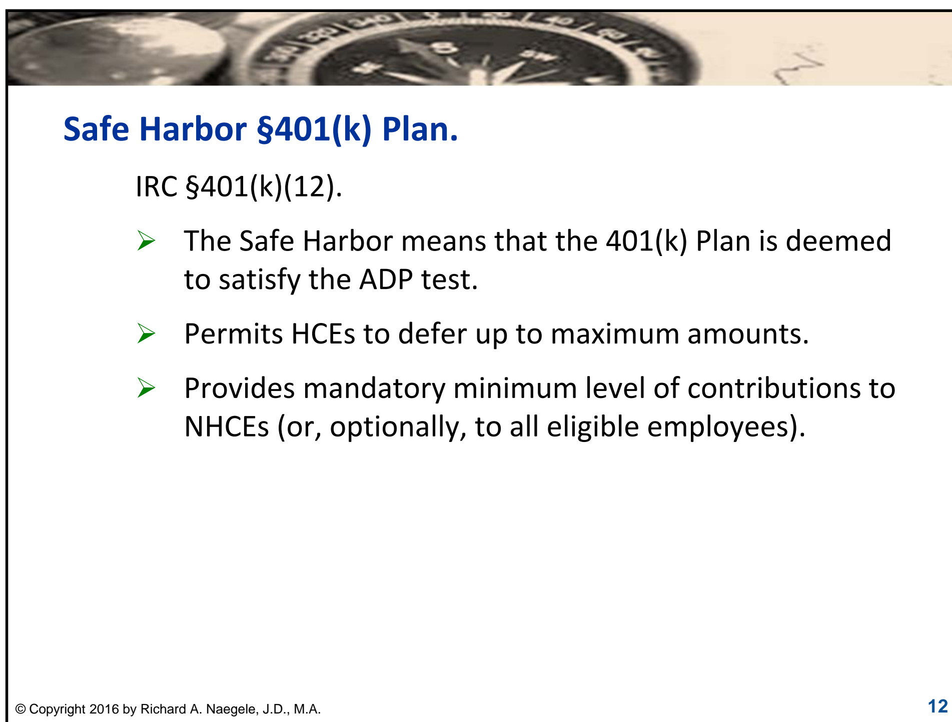

Safe Harbor §401(k) Plan.

IRC §401(k)(12).

➢ The Safe Harbor means that the 401(k) Plan is deemed to satisfy the ADP test.

➢ Permits HCEs to defer up to maximum amounts.

➢ Provides mandatory minimum level of contributions to NHCEs (or, optionally, to all eligible employees).

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- **Safe Harbor Non-Discrimination Rules.** A 401(k) plan satisfies the non-discrimination rules (the ADP test) if it meets the following requirements:
  - a notice requirement; and
  - one of two contribution requirements (discussed below).

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- The notice requirement is met if each employee eligible to participate in the Plan is given written notice (prior to the plan year) of his rights and obligations under the plan. The notice must be given between 30 and 90 days before the beginning of the plan year.

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- **Basic Match Formula.** The contribution requirement is met under the safe harbor if the employer provides a **matching contribution** on behalf of each Non-Highly Compensated Employee of (i) **100% of the employee's elective contributions up to 3% of compensation and** (ii) **50% of the employee's elective contributions to the extent that they exceed 3% (but not 5%) of the employee's compensation**.
  - **Enhanced Match Formula.** An enhanced formula provides a match that is at least equal to the amount of the match that would be made under the basic formula. **A match of 100% of the first 4%** deferred is an acceptable enhanced formula.

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- **Employer Non-Elective Contribution Alternative.** In lieu of a matching contribution, **the employer may make a non-elective contribution of at least 3% of an employee's compensation** to a defined contribution plan on behalf of each non-highly compensated employee who is eligible to participate in the plan regardless of whether the employee makes an elective contribution.

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- **100% Vesting Required.** The employer matching safe harbor contributions must be non-forfeitable and subject to the restrictions on withdrawals that apply to elective deferrals.
- **Last Day of Plan Year and 1,000 Hour Requirements Not Permitted.** The employer safe harbor matching or non-elective contribution for a plan year cannot be made subject to a requirement that the participant is employed in the last day of the plan year or that the participant completes 1,000 hours of service during the plan year.

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- **Document Requirements.** A plan must specify the formula requirement (the matching contribution or the nonelective contributions).

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- **Plan Year Requirements.** Plans may not rely on the safe harbors for a plan year unless the plan year is 12 months long. For a new plan, however, (other than a successor plan) the first plan year may be less than 12 months, but must be at least 3 months. A new plan for a newly established employer may be less than the 3-month minimum. A plan is a successor plan if 50% or more of the eligible employees for the first plan year were eligible under another 401(k) plan of the employer in the prior year. IRS Notice 98-1.

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- **"MAYBE" Safe Harbor Option.**
  - A non-safe harbor 401(k) plan that uses the current year testing method to be amended into a safe harbor plan as late as 30 days before the end of the plan year.
  - Safe harbor contribution must be in the form of a 3% nonelective contribution and two notices must be given.
  - First, eligible employees must receive notice at least 30 days before the beginning of the plan year advising them that the plan sponsor may choose to amend the plan into a safe harbor plan.
  - Second, a notice of the amendment must be given to participants at least 30 days before the end of the plan year.

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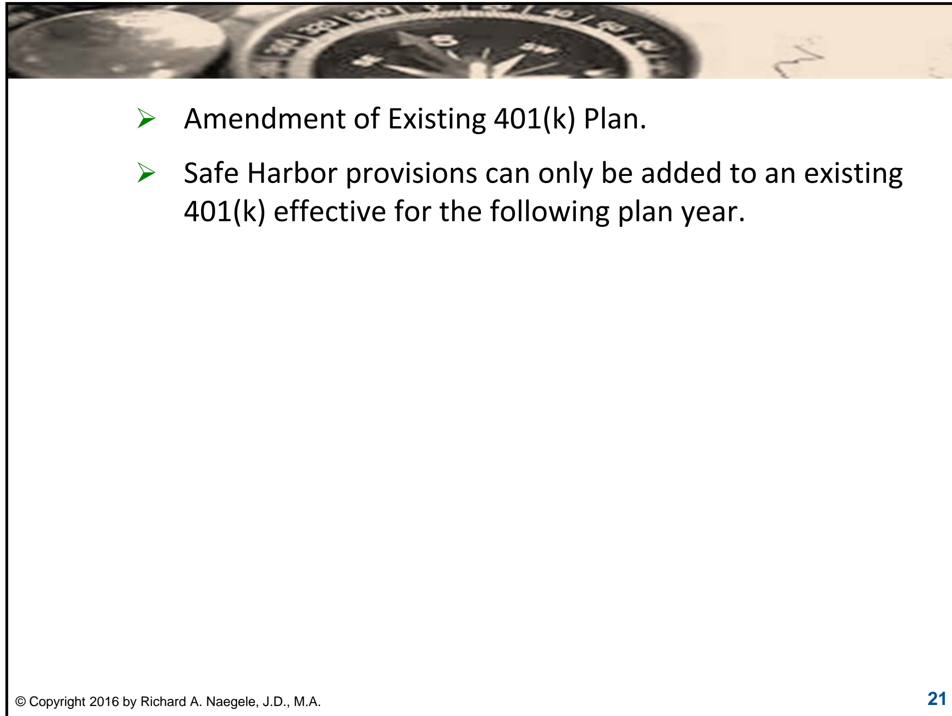

- Amendment of Existing 401(k) Plan.
- Safe Harbor provisions can only be added to an existing 401(k) effective for the following plan year.

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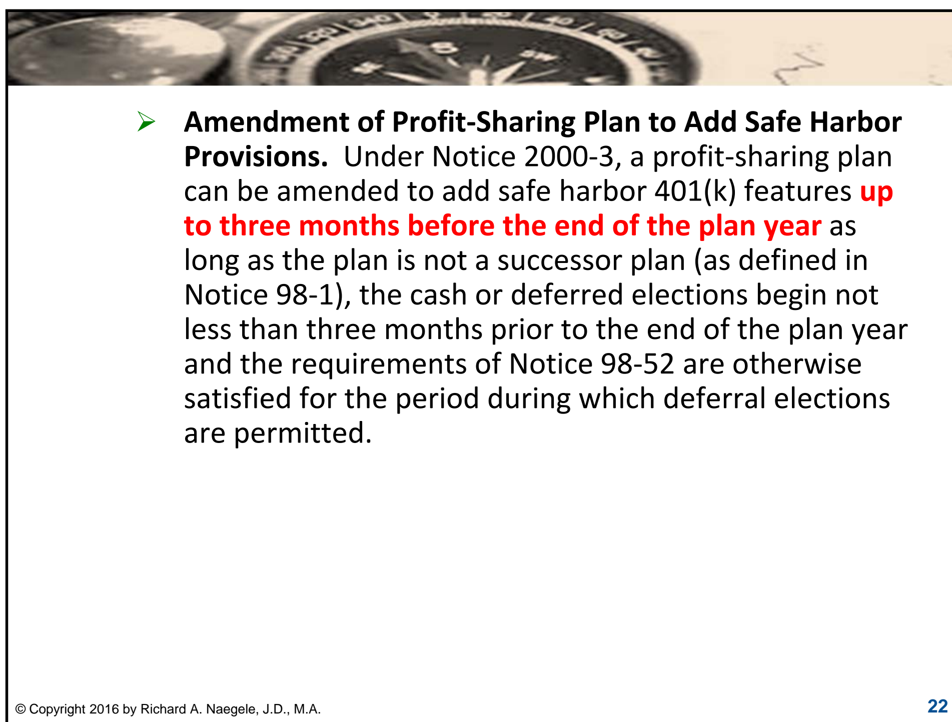

- **Amendment of Profit-Sharing Plan to Add Safe Harbor Provisions.** Under Notice 2000-3, a profit-sharing plan can be amended to add safe harbor 401(k) features **up to three months before the end of the plan year** as long as the plan is not a successor plan (as defined in Notice 98-1), the cash or deferred elections begin not less than three months prior to the end of the plan year and the requirements of Notice 98-52 are otherwise satisfied for the period during which deferral elections are permitted.

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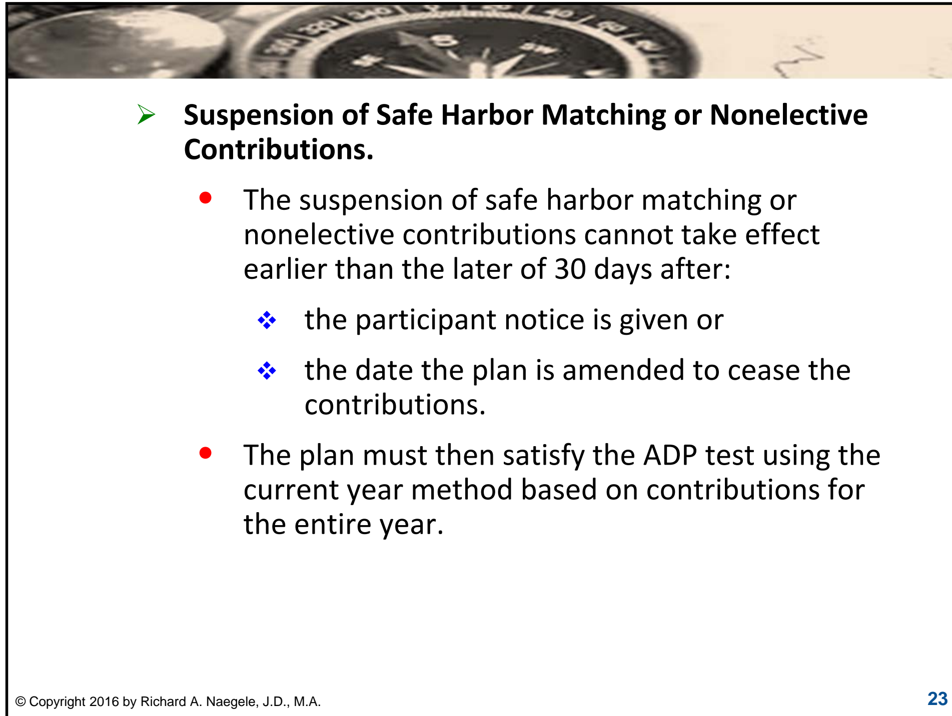

Suspension of Safe Harbor Matching or Nonelective Contributions.
The suspension of safe harbor matching or nonelective contributions cannot take effect earlier than the later of 30 days after:
the participant notice is given or
the date the plan is amended to cease the contributions.
The plan must then satisfy the ADP test using the current year method based on contributions for the entire year.
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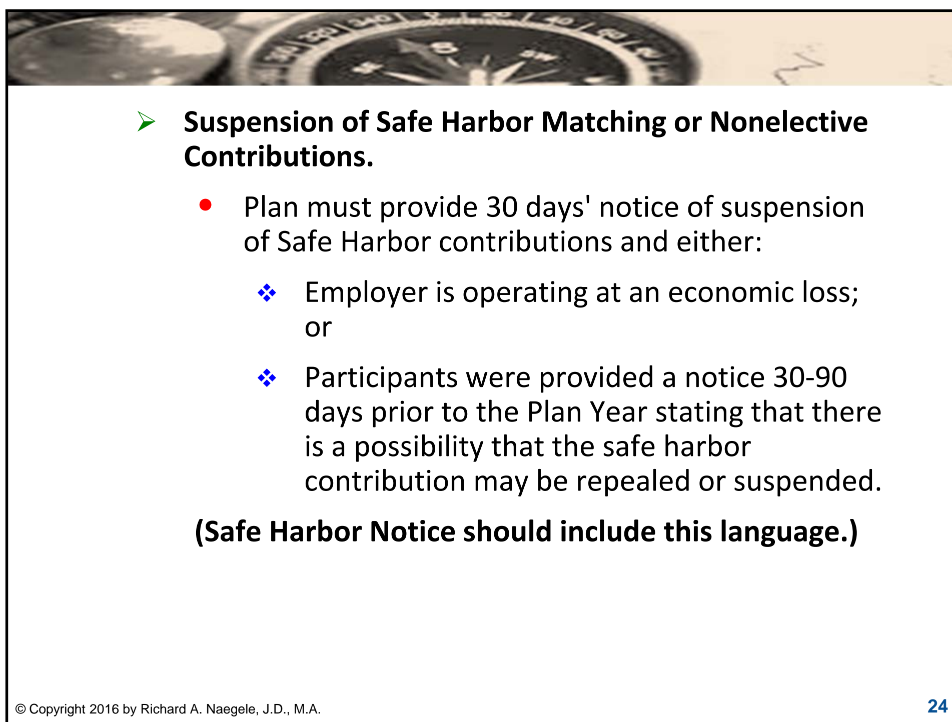

Suspension of Safe Harbor Matching or Nonelective Contributions.
Plan must provide 30 days' notice of suspension of Safe Harbor contributions and either:
Employer is operating at an economic loss; or
Participants were provided a notice 30-90 days prior to the Plan Year stating that there is a possibility that the safe harbor contribution may be repealed or suspended.
(Safe Harbor Notice should include this language.)
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- **Safe Harbor Matching Contribution Satisfies Top-Heavy Rules.** The safe harbor matching contribution is deemed to satisfy the top-heavy rules. This does not mean that an accompanying profit sharing plan automatically satisfies the top-heavy rules, but the matching contribution will count towards the top-heavy minimums.

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- **Mid-Year Amendments to Safe Harbor Plans.**

  IRS Notice 2016-16.

  Most mid-year amendments are permitted as long as:

  - Participants receive Notice; and
  - Participants can change their deferrals.

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➢ **Prohibited Mid-Year Amendments.**

1. Amendments that increase the number of years for vesting under a QACA.

2. Amendments that narrow the group of employees eligible for safe harbor contributions, except with respect to employees who are not already eligible to receive safe harbor contributions when the change is made.

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Prohibited Mid-Year Amendments (cont'd).

3. Amendments that switch the plan type (e.g., from a traditional safe harbor 401(k) to a QACA).

4. Amendments that: modify a formula used to determine matching contributions (or the definition of compensation used to determine the match) or permit discretionary matching contributions unless:

   - The amendment is adopted at least three months before the end of the plan year; and

   - Participants receive notice and can change their deferrals.

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Prohibited Mid-Year Amendments (cont'd).

5. Changes that would violate another requirements of the Internal Revenue Code or Regulations — such as the anti-cutback rules of IRC §411(d)(6).

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401(k) Qualified Automatic Contribution Arrangement (QACA); IRC §401(k)(13).

- Qualified Automatic Contribution Arrangement (QACA); IRC §401(k)(13).
- Optional nondiscrimination safe harbor for automatic enrollment plans.
- Plans satisfying the safe harbors do not have to perform the nondiscrimination tests for employee elective deferrals (ADP) or for matching contributions (ACP) and are exempt from the top-heavy rules.

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- **QACA Minimum Automatic Contribution Rate.**

Year of Participation	Auto Deferral %
1	3%
2	4%
3	5%
4	6%

Higher percentage up to 10% permitted.

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- **QACA Minimum Employer Matching Contribution:**

Deferrals up to 1% of compensation:	100% Match
Deferrals between 1% and 6% of compensation:	50% Match

Alternative to Match: 3% employer non-elective contribution.

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- **QACA Minimum Vesting for Employer Contribution is 2 Year Cliff Vesting:**

Years of Service	Vesting
< 1	0%
1	0%
2	100%

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- **Comparison of 401(k)(12) Safe Harbor to 401(k)(13) QACA.**

	401(k)(12) Safe Harbor	401(k)(13) QACA
Employer Match	4%	3.5%
Employer Non-Elective	3%	3.0%
Vesting	Immediate 100%	2 Years/100%

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- **Eligible Automatic Contribution Arrangement (EACA); IRC §414(w).**
  - An EACA must meet participant notification requirements providing:
    - annual notice to affected employees before the beginning of the year (the requirement that the notice be issued before the beginning of the plan year will make it difficult to begin automatic enrollment mid year);
    - notice of the participant's right to elect out of plan coverage or to change deferral percentages and the time periods for making such elections.

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- IRS regulations provide a uniformity requirement for an EACA. Thus, the automatic deferral requirement must be applied uniformly with respect to all eligible plan participants in a specific class of employees (*e.g.*, employees hired after a certain date). Treas. Reg. §1.414(w)-1(b)(2).

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- One of the advantages of satisfying the EACA requirements is that the plan may permit a participant to withdraw automatic contributions at any time during a 90-day window period without penalty. A plan meeting the EACA requirements can also make corrective distributions to pass nondiscrimination tests within 6 months of year end, rather than 2½ months. Amounts withdrawn or distributed are taxable in the year of receipt. IRC §414(w).

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401(k) EXAMPLES

EXAMPLE I

Safe Harbor 401(k) Example (2016)

				spouse
Compensation:	$ 50,000	$100,000	$265,000	$30,000
	x .04	x .04	x .04	x .04
Match:	$ 2,000	$ 4,000	$ 10,600	$ 1,200
Deferral:	+ 18,000	+ 18,000	+ 18,000	+18,000
Subtotal:	$ 20,000	$ 22,000	$ 28,600	$19,200
Catch-Up (Age 50):	+ 6,000	+ 6,000	+ 6,000	+ 6,000
Total:	$ 26,000	$ 28,000	$ 34,600	$25,200

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EXAMPLE II

Example Of Cost Of Benefits For NHCEs Under Various Retirement Plan Options To Provide Maximum $53,000. Contribution For HCE.

- **Highly Compensated Employee (HCE) (2016)**

Compensation:	$265,000
Contribution:	$ 53,000
Percentage:	20%

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- **Non-Highly Compensated Employees (NHCEs)**

	Retirement Plan Option	Employer Contribution
1.	Profit Sharing (Non-Integrated)	20%
2.	Profit Sharing (Integrated)*	16.54%
3.	Safe Harbor 401(k) (2016: $18,000) with Integrated Profit Sharing	9.74%
4.	Cross Tested Profit Sharing (with optimal demographics)	4.40%

* Integrated at 5.4% of compensation > 80% of social security taxable wage base + $1.00

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EXAMPLE III

- **Profit-Sharing Without 401(k)**

$ 212,000	Compensation
x .25	
53,000	Profit-Sharing
+ 212,000	Compensation
$ 265,000	Total $ Needed for Maximum Contribution

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- **Profit-Sharing With 401(k)**

$ 140,000	Compensation (Including 401(k) Deferral)
x .25	
35,000	Profit-Sharing
+ 18,000	401(k) Deferral
53,000	
+ 6,000	Catch-Up Deferral (50 Years of Age)
$ 59,000	Total Contributions

$ 140,000	Compensation (Including 401(k) Deferral)
+ 35,000	Profit-Sharing
$ 175,000	Total $ Needed for Maximum Contribution

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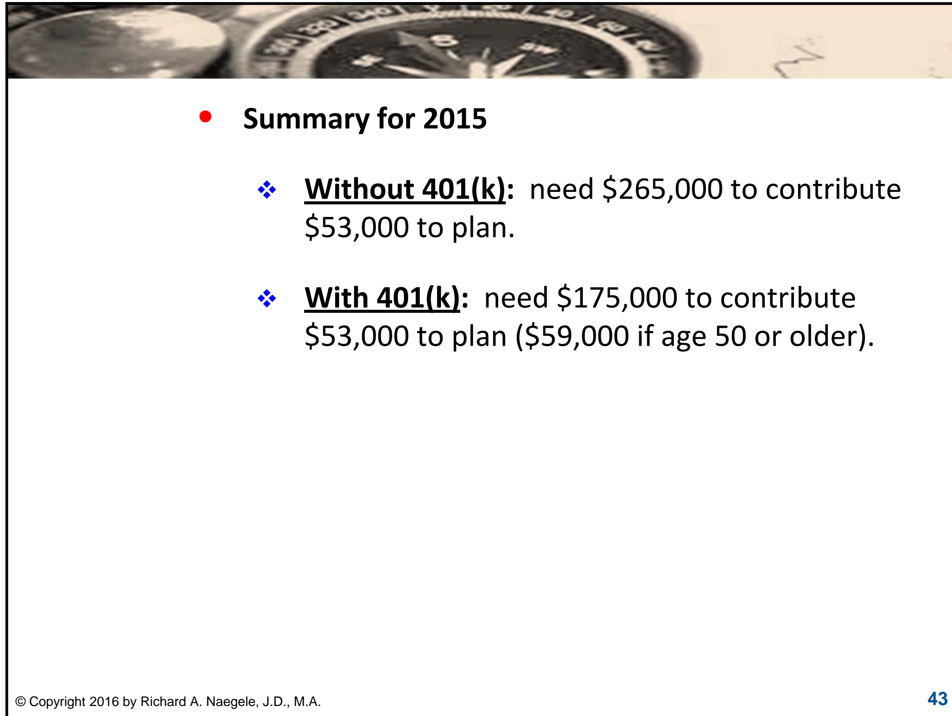

Summary for 2015
Without 401(k): need $265,000 to contribute $53,000 to plan.
With 401(k): need $175,000 to contribute $53,000 to plan ($59,000 if age 50 or older).
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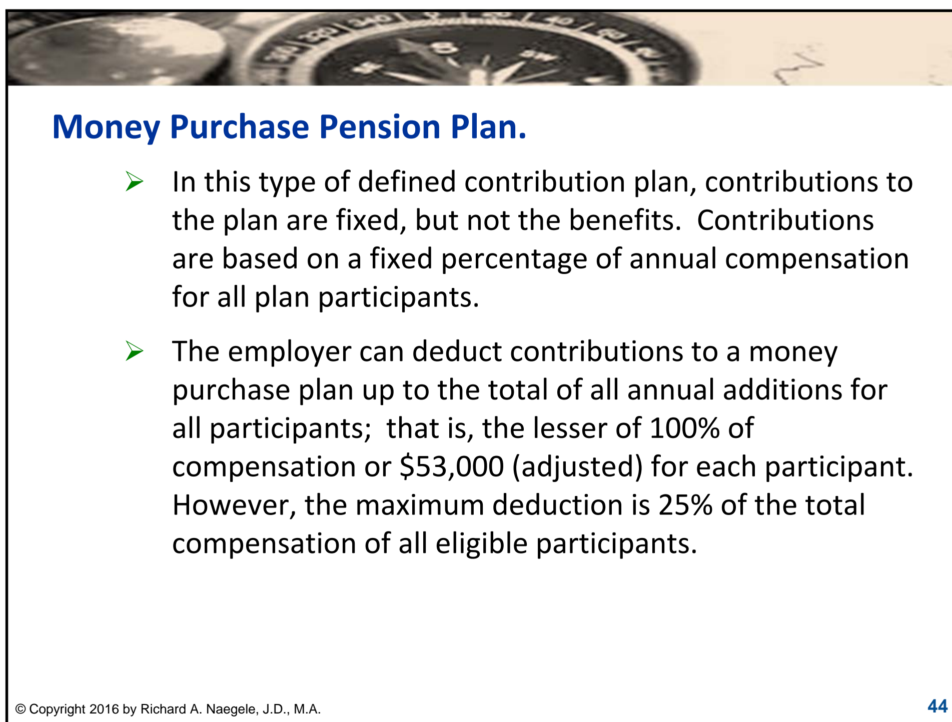

Money Purchase Pension Plan.
In this type of defined contribution plan, contributions to the plan are fixed, but not the benefits. Contributions are based on a fixed percentage of annual compensation for all plan participants.
The employer can deduct contributions to a money purchase plan up to the total of all annual additions for all participants; that is, the lesser of 100% of compensation or $53,000 (adjusted) for each participant. However, the maximum deduction is 25% of the total compensation of all eligible participants.
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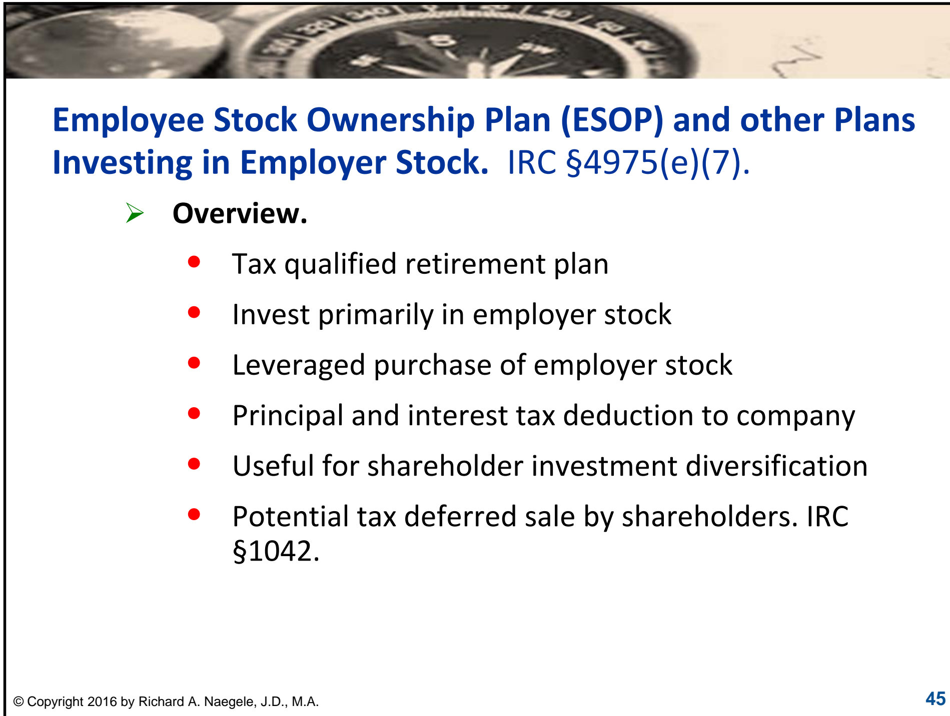

Employee Stock Ownership Plan (ESOP) and other Plans Investing in Employer Stock. IRC §4975(e)(7).
Overview.
Tax qualified retirement plan
Invest primarily in employer stock
Leveraged purchase of employer stock
Principal and interest tax deduction to company
Useful for shareholder investment diversification
Potential tax deferred sale by shareholders. IRC §1042.
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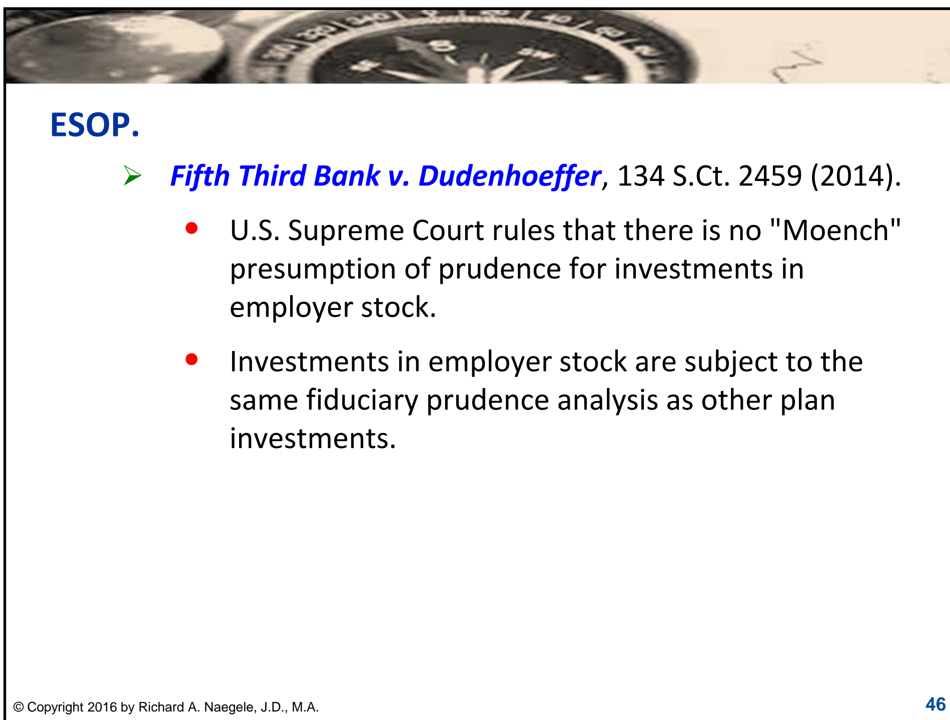

ESOP.
Fifth Third Bank v. Dudenhoeffer, 134 S.Ct. 2459 (2014).
U.S. Supreme Court rules that there is no "Moench" presumption of prudence for investments in employer stock.
Investments in employer stock are subject to the same fiduciary prudence analysis as other plan investments.
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Cross-Tested Profit-Sharing Plan (New Comparability Plans).

26 CFR §1.401(a)(4)-8(b); Rev. Rul. 2001-30.

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- A cross-tested profit-sharing plan is a plan under which the contribution percentage formula for one category of participants is greater than the contribution percentage formula for other categories of participants.

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- To satisfy the nondiscrimination requirements of the **IRC Section 401(a)(4) general test**, participants are put into different **"rate groups"** and the rate groups are tested separately for nondiscrimination.
- Plan formula can state that each plan participant is his or her own category or "rate group".

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- To determine rate groups, a cross-tested profit-sharing plan expresses each participant's allocation of employer contributions and forfeitures as an equivalent benefit rate rather than as an allocation rate. When equivalent benefit rates are used, the method is referred to as "cross-testing" because it analyzes the benefit that would be generated from the allocation as if the plan were a defined benefit plan.

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- **Minimum Gateway Contribution.** Treasury Regulation Section 1.401(a)(4)-8(b) (published 6/29/01) effective first day of plan year commencing after December 31, 2001. Cross-tested/new comparability plans need (i) broadly available allocation rates that increase as an employee ages or accumulates additional service or (ii) **satisfy a gateway with different allocation rates so that the percentage of pay allocation for HCEs is no more than three (3) times the percentage of pay allocation for NHCEs (safe harbor of 5% for NHCEs).**

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- It is often a good plan design to combine a cross-tested profit-sharing allocation formula with a safe harbor 401(k) plan. In this case, the 3% employer non-elective contribution option should be used for the 401(k) safe harbor since the 3% safe harbor contribution can count toward the cross-tested minimum gateway contributions.

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- The same 3% contribution can be used to satisfy (a) the safe harbor contribution, (b) the top-heavy contribution, and (c) the minimum gateway contribution. Employer matching contributions to a 401(k) plan do not count toward the gateway contributions.

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- A cross-tested plan may impose 1,000 hours of service and/or last day of the plan year employment allocation conditions for participants to receive the minimum gateway contributions.

- **Note:** 1,000 hours and last pay requirements **CANNOT** be imposed on employer contribution used to satisfy the 401(k) safe harbor.

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- **Cross-Tested Profit-Sharing:**

EXAMPLE 1

$ 53,000	§415 Maximum
– 18,000	Elective Deferral
35,000	
÷ 265,000	§401(a)(17) Compensation Limit
13.207%	HCE Allocation as Percentage of Pay
÷ 3	
4.40%	NHCE Gateway Allocation (includes 3% 401(k) Safe Harbor)

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- **Cross-Tested/Safe Harbor 401(k):**

EXAMPLE 2

$ 150,000	HCE Compensation
x .09	3 x 3% Safe Harbor
13,500	Employer Contribution
+ 18,000	Elective Deferral
+ 6,000	Catch-Up Contribution (Age 50+)
$ 37,500	Total Contribution

3% safe harbor 401(k) employer non-elective contribution also counts as 3% minimum gateway contribution permitting 9% employer contribution (3 x 3%) for HCEs.

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Defined Benefit Pension Plan.

- Under a defined benefit plan, the level of benefits is fixed and contributions are determined by an actuary to provide adequate funding to furnish those benefits at retirement.
- Contributions to a defined benefit plan are mandatory, although some flexibility can be built into the plan.

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- The maximum benefit that can be funded is the lesser of $210,000 (adjusted) or 100% of an employee's annual compensation for the three highest consecutive years of service. IRC §415(b).
  - The $210,000 (adjusted) amount is reduced for benefit payments commencing prior to Age 62 and increased for benefit payments commencing after Age 65.
  - Benefits for participants with fewer than 10 years of participation under the plan must be proportionately reduced.

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- **Funding Target Attainment Percentage.** The Funding Target Attainment Percentage (FTAP) is the ratio of plan assets, reduced by both pre- and post-Act credit balances, to the plan's funding target. Many provisions of the PPA depend on a calculation of a plan's funding target attainment percentage.

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- **At-Risk Plans.** PPA imposes a number of requirements on plans with an asset/liability ratio of less than 80%, and additional burdens if the plan's asset/liability ratio is less than 60%.
- If the asset/liability ratio is less than 80%, the plan can't use a credit balance to reduce contributions. It can't amend the plan to increase benefits. It's ability to pay lump sums is restricted.
- If the asset/liability ratio is less than 60%, accruals must be frozen, no lump sums or shutdown benefits can be paid.

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- **Increased Deduction Limits.**

  DB Deduction Limits. Generally, plans can deduct contributions up to 100% of the plan's current liability. Contributions in excess of the limit are subject to a 10% excise tax.

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- The "top 25" rule also restricts lump sum distributions otherwise payable to the top 25 HCEs unless the plan is 110% funded after such lump sum distribution is made.

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Cash Balance Pension Plan.

- A cash balance pension plan is a defined benefit plan that defines an employee's benefit as the amount credited to an account.
- The account receives allocations (usually expressed as a percentage of pay) as the employee works.
- The account is also credited with interest adjustments until it is paid to the employee.

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- How is a cash balance plan different from other defined benefit plans?
  - A cash balance plan defines an employee's benefit as the amount credited to an account, while other defined benefit plans typically define an employee's benefit as a series of monthly payments.
  - Under a cash balance or hybrid plan, accrued benefit is often expressed as the employee's **hypothetical account balance**.

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- **2006 PPA changes to Cash Balance Plans.**
  - A participant's accrued benefit must be at least as great as that of any similarly situated younger individual who is or could be a participant in the plan.
  - The "interest credits" provided under the plan must not be at a rate that exceeds a "market rate of return", though the plan may provide for a reasonable minimum guaranteed rate of return or for interest crediting at the greater of a fixed or variable rate.
  - Cash balance and other hybrid plans must provide vesting no less rapid than 3-year cliff vesting (100% vesting after 3 years of service).

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- **Advantages of Cash Balance Plan Over Traditional Defined Benefit Plan.**
  - In a traditional defined benefit plan key employees will have different levels of accrued benefits and the levels of accrued benefits will not precisely match the contributions made on each key employee's behalf.
  - A cash balance plan focuses on account balances.
  - A cash balance plan can be designed to provide different levels of benefits for different classes or tiers of employees.
  - The benefit formula in a cash balance plan can also be designed to provide precisely different levels of benefits to different key employees.

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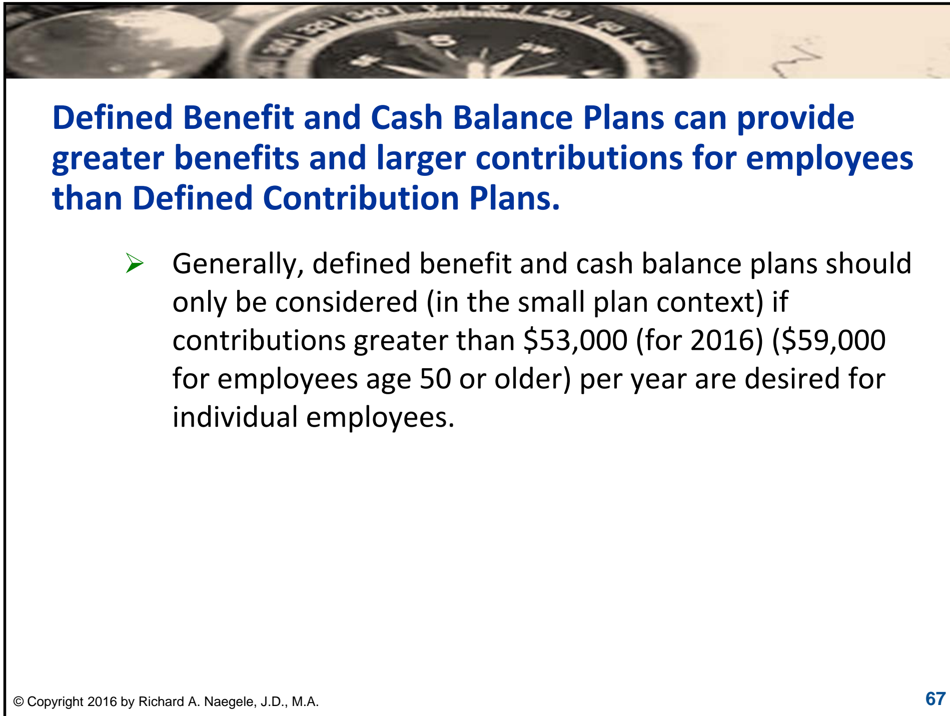

Defined Benefit and Cash Balance Plans can provide greater benefits and larger contributions for employees than Defined Contribution Plans.
Generally, defined benefit and cash balance plans should only be considered (in the small plan context) if contributions greater than $53,000 (for 2016) ($59,000 for employees age 50 or older) per year are desired for individual employees.
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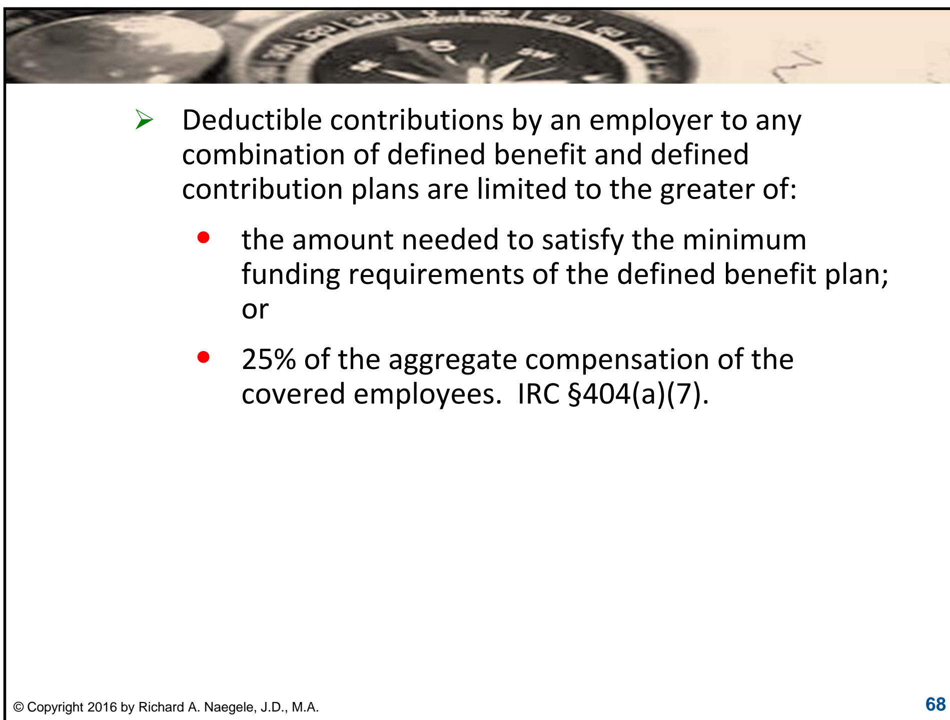

Deductible contributions by an employer to any combination of defined benefit and defined contribution plans are limited to the greater of:
the amount needed to satisfy the minimum funding requirements of the defined benefit plan; or
25% of the aggregate compensation of the covered employees. IRC §404(a)(7).
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- **2006 PPA Changes to Deduction Limits.**
  - The combined plan limit disregards contributions to a defined contribution plan up to 6% of compensation for plans not covered by the PBGC.
  - Employers can ignore contributions to any single-employer defined benefit plan covered by the the PBGC for purposes of the combined plan limit.
  - IRC Sections 404(a)(7) and 4972.

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- **Example after 2006 PPA (2016):**

Cash balance benefit plan contribution (Age 62):	$ 250,000
Profit sharing 6% of compensation ($265,000 x .06):	+ 15,900
401(k) elective deferral:	+ 18,000
401(k) catch-up (Age 50+):	+ 6,000
Total:	$ 289,900

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Section 403(b) Plan

- **Overview.** A Section 403(b) plan, also known as a tax-sheltered annuity (TSA) plan, is a retirement plan for employees of public schools, employees of tax-exempt organizations, and certain ministers.
- **Preapproved Plans for 403(b)s.** The IRS has approved the use of prototype and volume submitter plans for 403(b) plans.

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- **Contributions.**
  - Contributions may be made to 403(b) accounts through elective deferrals made under a salary reduction agreement, non-elective contributions made by the employer, and after-tax contributions. 403(b) plans are subject to the same §415(c) contribution limits as defined contribution plans. The §402(g) limit on elective deferrals through a salary reduction agreement is $18,000 for 2016.

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OTHER RETIREMENT PLANS

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Section 457 Plan.

- IRC Section 457 governs the tax treatment of certain deferred compensation plans maintained by state or local governments or tax-qualified organizations. Any amount of compensation deferred by an employee or independent contractor under an "eligible deferred compensation plan" of a state or local government or a tax-exempt organization is includible in income for federal tax purposes only for the taxable year in which such compensation is paid or otherwise made available to such individual. IRC §457(a).

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- One important issue to note is that an individual is not required to coordinate the maximum annual deferral amount for a 457(b) plan (*e.g.*, an "eligible plan") with contributions made to a 401(k) or 403(b) plan. Therefore, employees can defer the maximum applicable dollar amount to each plan.

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Simplified Employee Pensions (SEP)

- SEP Requirements. I.R.C. §408(k).
  - A SEP is an individual retirement account which is employer-funded and can accept an expanded rate of contributions. An employer's annual contribution to a SEP on behalf of each employee is limited to the lesser of (a) 25% of the employee's compensation (not reduced for employee contributions to the SEP), or (b) $53,000 for 2016 (adjusted). I.R.C. §§408(j) and 415(c)(1)(A). The SEP/IRA is owned by the employee, who may be self-employed.

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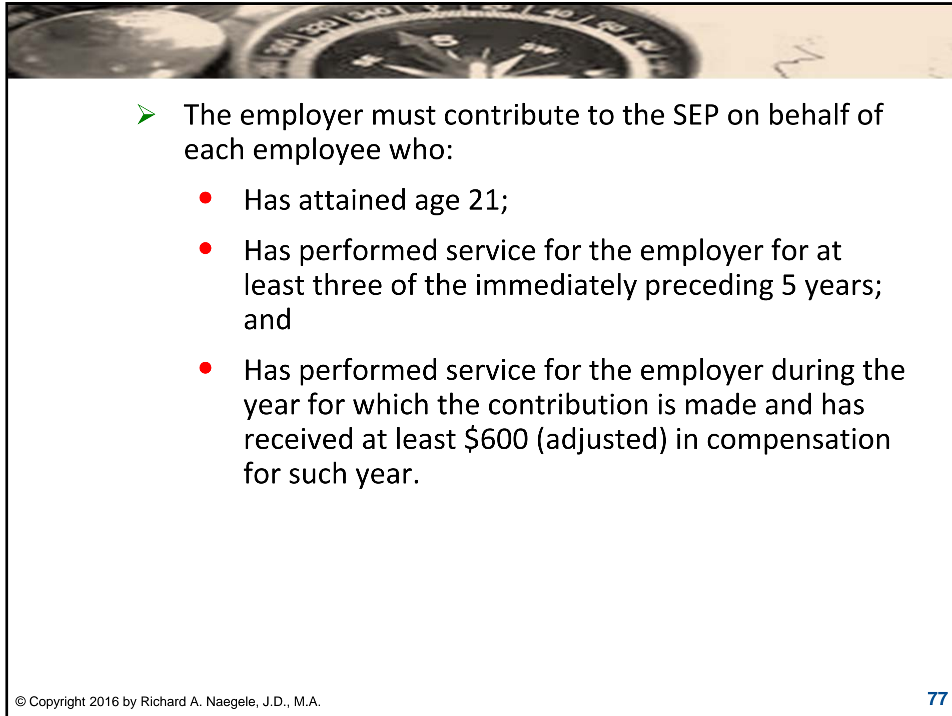

➢ The employer must contribute to the SEP on behalf of each employee who:
• Has attained age 21;
• Has performed service for the employer for at least three of the immediately preceding 5 years; and
• Has performed service for the employer during the year for which the contribution is made and has received at least $600 (adjusted) in compensation for such year.
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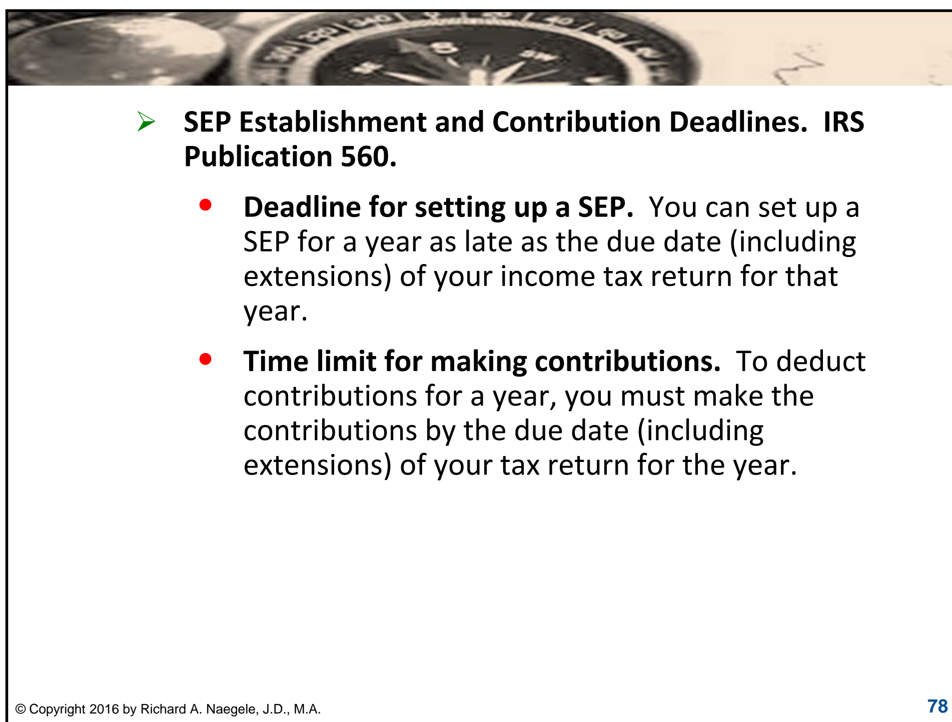

➢ SEP Establishment and Contribution Deadlines. IRS Publication 560.
• Deadline for setting up a SEP. You can set up a SEP for a year as late as the due date (including extensions) of your income tax return for that year.
• Time limit for making contributions. To deduct contributions for a year, you must make the contributions by the due date (including extensions) of your tax return for the year.
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SIMPLE IRA.

I.R.C. §408(p)

- Savings Incentive Match Plans for Employees (SIMPLE Plans).

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Employers with 100 or fewer employees who received at least $5,000 in compensation in the preceding year may adopt a SIMPLE plan **if they do not maintain another qualified plan** (*i.e.*, a qualified plan, a SEP or a 403(b)).

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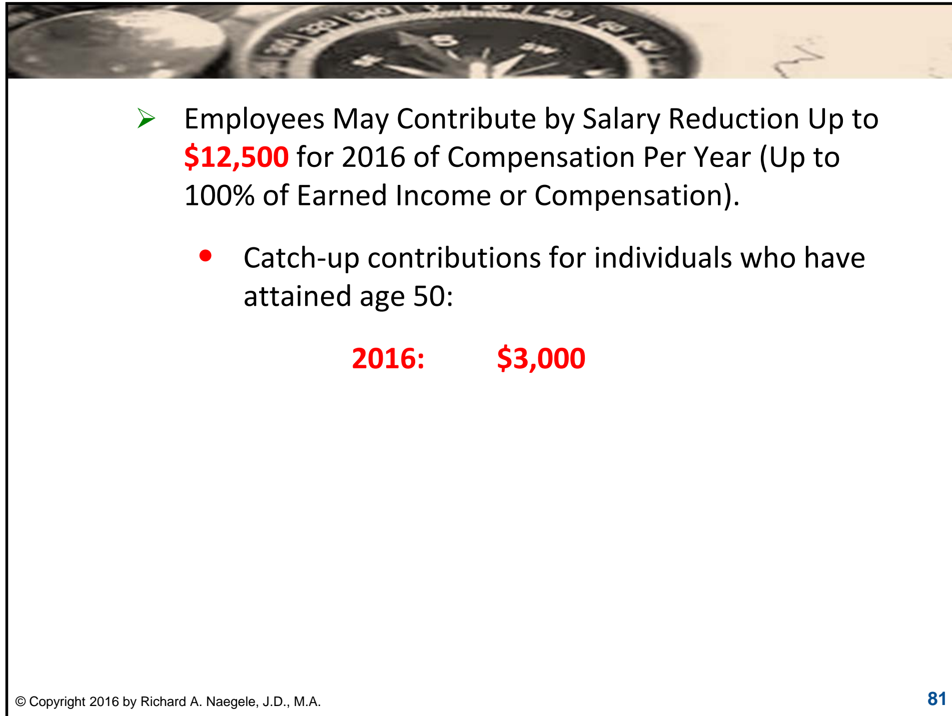
Employees May Contribute by Salary Reduction Up to $12,500 for 2016 of Compensation Per Year (Up to 100% of Earned Income or Compensation).
Catch-up contributions for individuals who have attained age 50:
2016: $3,000
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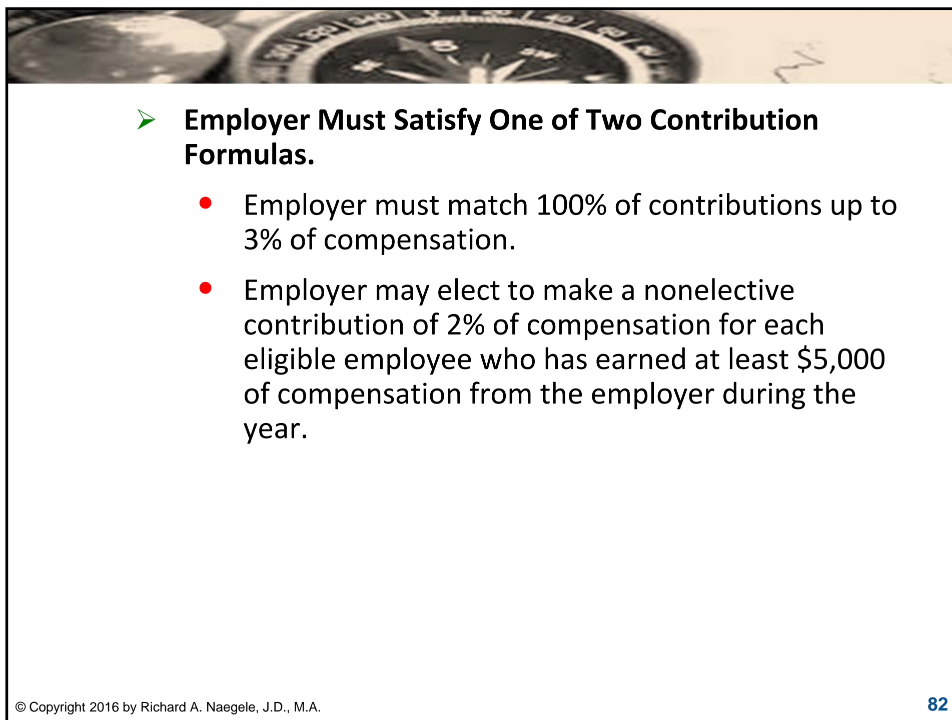
Employer Must Satisfy One of Two Contribution Formulas.
Employer must match 100% of contributions up to 3% of compensation.
Employer may elect to make a nonelective contribution of 2% of compensation for each eligible employee who has earned at least $5,000 of compensation from the employer during the year.
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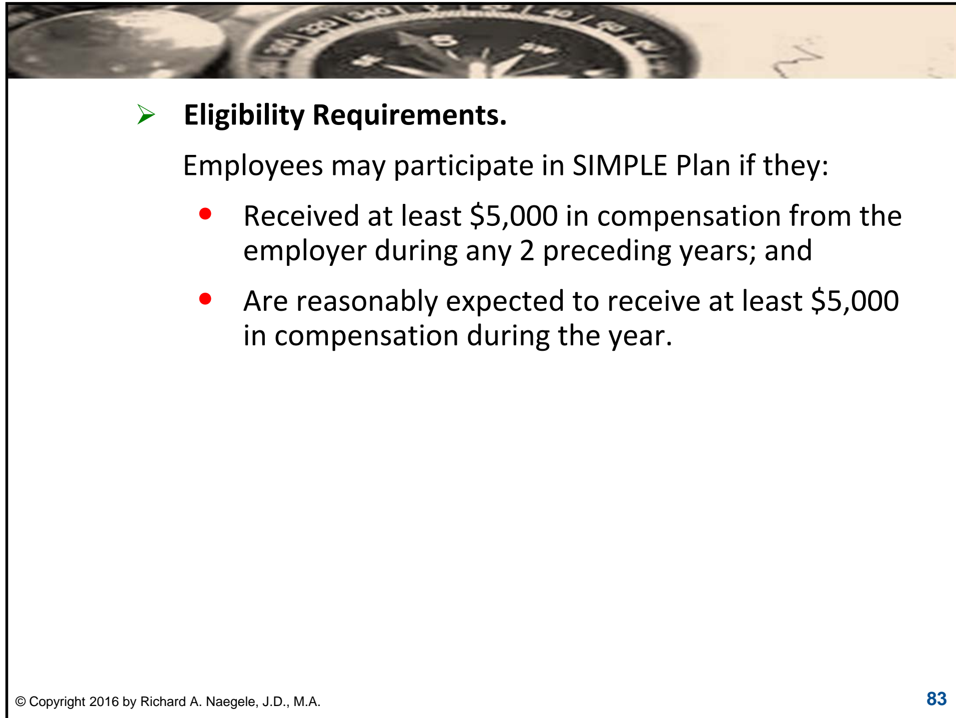

Eligibility Requirements.
Employees may participate in SIMPLE Plan if they:
Received at least $5,000 in compensation from the employer during any 2 preceding years; and
Are reasonably expected to receive at least $5,000 in compensation during the year.
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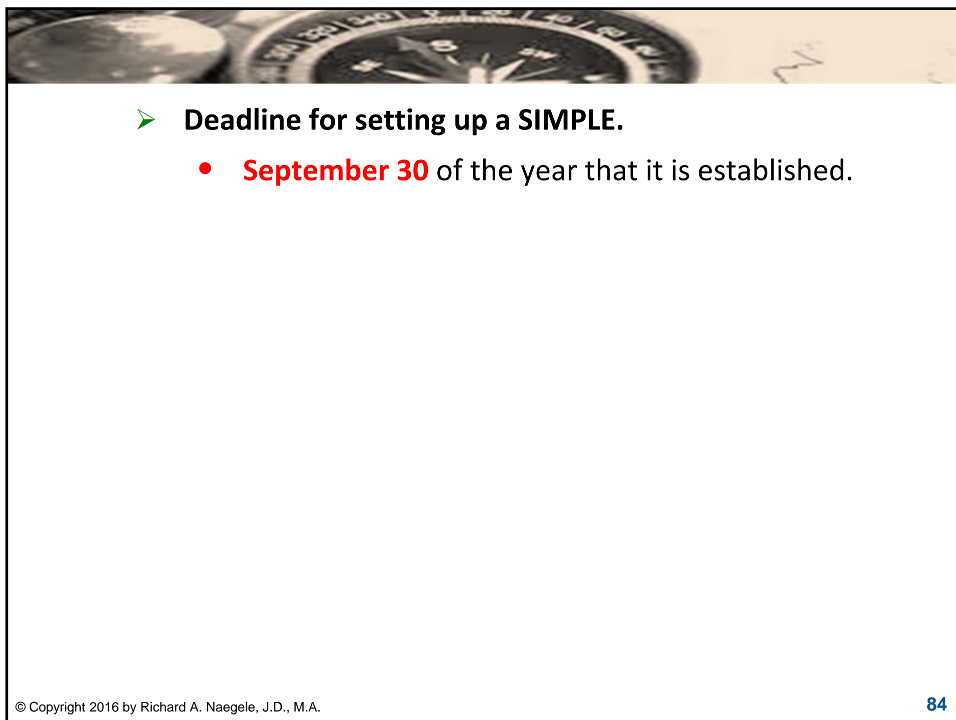

Deadline for setting up a SIMPLE.
September 30 of the year that it is established.
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COMPARISON OF SIMPLE-IRA TO SAFE HARBOR 401(k)

- **SIMPLE-IRA**
  - defer up to $12,500 (plus $3,000 catch-up).
  - 3% employer match or 2% employer non-elective contribution.
  - no additional employer contributions are permitted.

- **Safe Harbor 401(k)**
  - defer up to $18,000 (plus $6,000 catch-up).
  - 4% employer match or 3% employer non-elective contribution.
  - additional employer matching or profit-sharing contributions are permitted.

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