Retirement Plan Update and Overview

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Part 1

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TAX QUALIFIED RETIREMENT PLANS

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Introduction.

- Qualified retirement plans serve **two major functions** — they provide **employee benefits** and they act as **tax shelters**.

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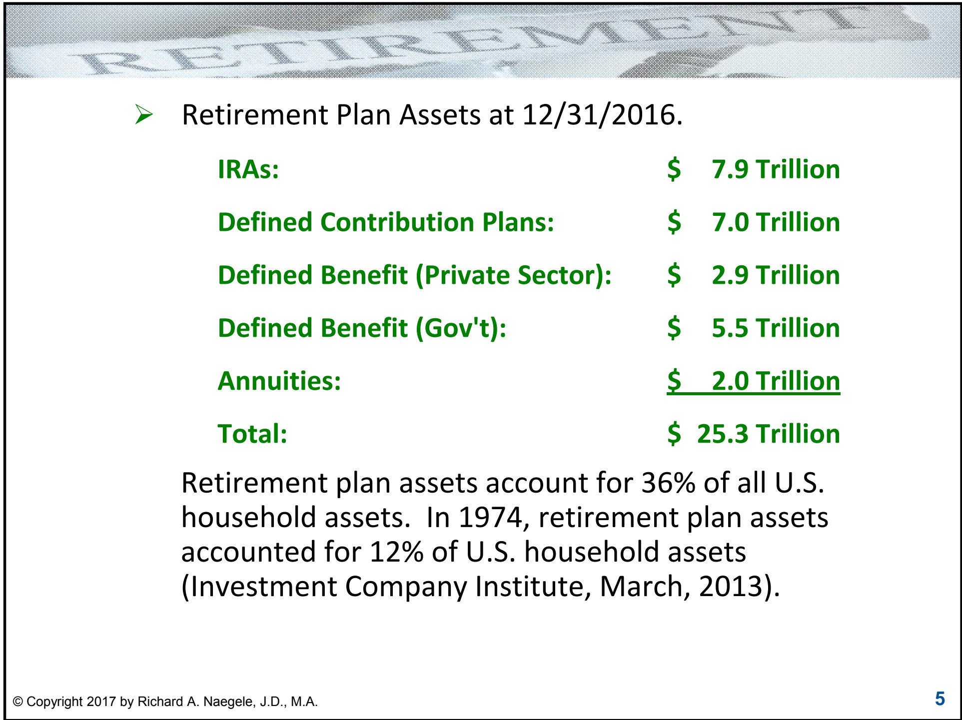
RETIREMENT

Retirement Plan Assets at 12/31/2016.

IRAs: $ 7.9 Trillion
Defined Contribution Plans: $ 7.0 Trillion
Defined Benefit (Private Sector): $ 2.9 Trillion
Defined Benefit (Gov't): $ 5.5 Trillion
Annuities: $ 2.0 Trillion
Total: $ 25.3 Trillion

Retirement plan assets account for 36% of all U.S. household assets. In 1974, retirement plan assets accounted for 12% of U.S. household assets (Investment Company Institute, March, 2013).

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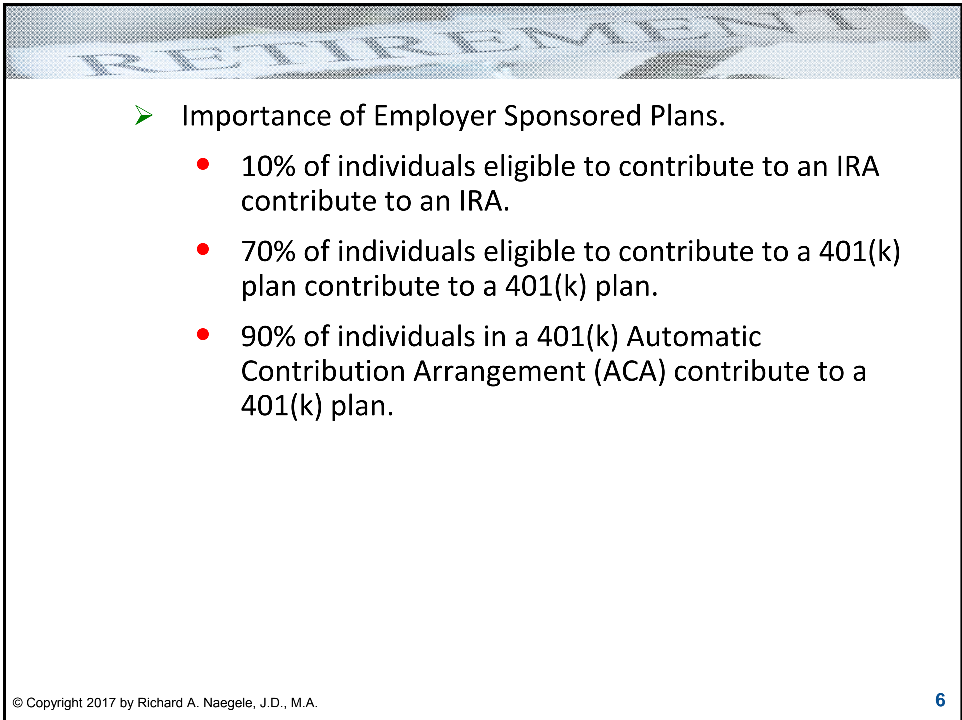
RETIREMENT

Importance of Employer Sponsored Plans.

10% of individuals eligible to contribute to an IRA contribute to an IRA.
70% of individuals eligible to contribute to a 401(k) plan contribute to a 401(k) plan.
90% of individuals in a 401(k) Automatic Contribution Arrangement (ACA) contribute to a 401(k) plan.

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Tax advantages of qualified plans:

1. Employer contributions are deductible in the year made. Contributions are deductible if made prior to the due date for the corporate tax return, including extensions. IRC §404(a).
2. Participants are taxed only when they receive payments from the trust. IRC §402(a).
3. The retirement trust is tax-exempt and the trust funds accumulate income tax free. IRC §501(a).
4. Income tax brackets are generally lower at the time benefits are received following the participant's retirement or death. Additionally, Social Security taxes are paid neither on employer contributions to tax-qualified retirement plans nor on distributions to participants from such plans.
5. Qualified plans provide a means of forced savings and protection of assets from creditors claims.

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Example:

Compensation		Retirement Plan Contribution
$ 10,000		$ 10,000
– 4,000	Taxes	– 0
$ 6,000		$ 10,000
– 3,000	Spend	– 0
$ 3,000	Save	$ 10,000
x .1	Invest	x .1
$ 300		$ 1,000
– 60	Taxes	– 0
$ 240		$ 1,000
+ 3,000		+ 10,000
$ 3,240		$ 11,000

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RETIREMENT PLAN DOLLAR AND PERCENTAGE LIMITS

	2016	2017	2018
Annual compensation for plan purposes (for plan years beginning in calendar year) 401(a)(17)	$265,000	$270,000	
Defined benefit plan, basic limit (for limitation years ending in calendar year) 415(b)	$210,000	$215,000	
Defined contribution plan, basic limit (for limitation years ending in calendar year) 415(c)	$53,000	$54,000	
401(k) / 403(b) plan, elective deferrals (for taxable years beginning in calendar year) 402(g)	$18,000	$18,000	
457 plan, elective deferrals (for taxable years beginning in calendar year)	$18,000	$18,000	
401(k) / 403(b) / 457, catch-up deferrals (for taxable years beginning in calendar year) (Age 50+) 414(v)	$6,000	$6,000	

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RETIREMENT PLAN DOLLAR AND PERCENTAGE LIMITS (cont'd)

	2016	2017	2018
SIMPLE plan, elective deferrals (for calendar years) 408(p)	$12,500	$12,500	
SIMPLE plan, catch-up deferrals (for taxable years beginning in calendar year) (Age 50+) 408(p)	$3,000	$3,000	
Defined contribution plan §415 percentage of compensation contribution limit 415(c)	100% of compensation	100% of compensation	100% of compensation
Profit sharing plan §404 percentage of compensation deduction limit	25% of compensation	25% of compensation	25% of compensation
Elective deferrals	Do not count against §404 deduction limits	Do not count against §404 deduction limits	Do not count against §404 deduction limits
SEP contribution / deduction limit 408(k)	25% of compensation	25% of compensation	25% of compensation

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RETIREMENT

RETIREMENT PLAN DOLLAR AND PERCENTAGE LIMITS (cont'd)

	2016	2017	2018
IRA contribution limit 408(a)	$5,500	$5,500	
IRA catch-up contribution (Age 50+)	$1,000	$1,000	
Highly Compensated Employee 414(q)	$120,000	$120,000	
SEP Coverage 408(p)	$600	$600	
FICA Covered Compensation	$118,500	$127,200	
PBGC Maximum Monthly Insured Benefit (Age 65)	$5,011	$5,369	

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RETIREMENT

KEY AGES FOR RETIREMENT PLANS AND SOCIAL SECURITY

Age 49 and Under Individuals covered under 401(k) plans can contribute up to $18,000 (in 2017).

Age 50 Employees age 50 and older may make catch-up contributions. These employees can contribute an additional $6,000 into a 401(k) plan for a total of $24,000 (for 2017).

Age 55 If you terminate employment from your employer after attaining your 55th birthday, you can begin to take penalty-free distributions from your employer's 401(k) plan or other tax-qualified retirement plan at this age.

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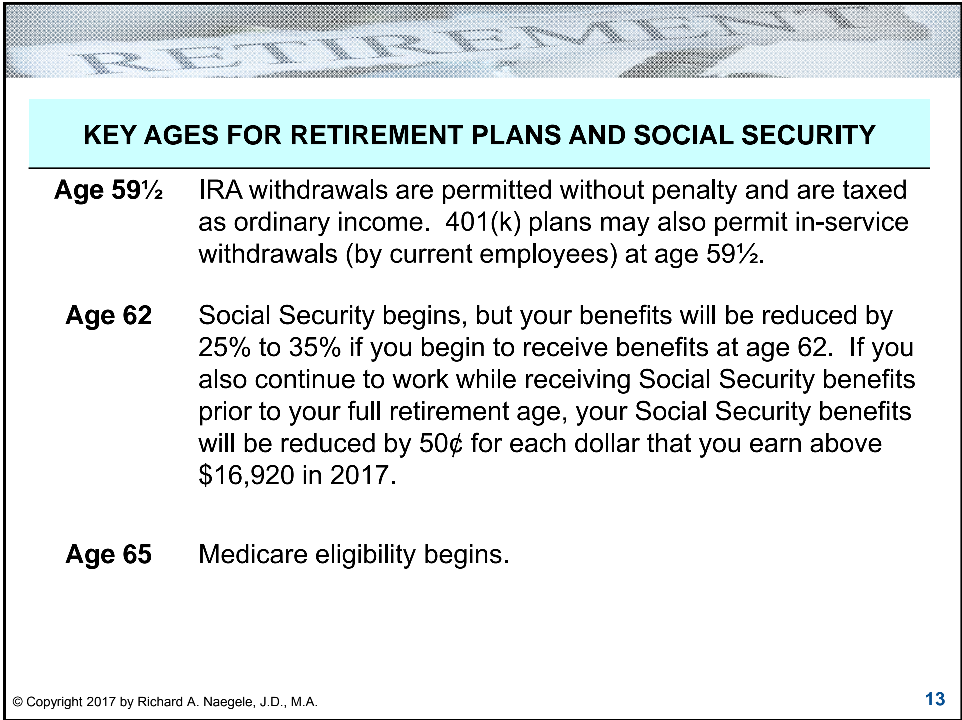
RETIREMENT
KEY AGES FOR RETIREMENT PLANS AND SOCIAL SECURITY
Age 59½ IRA withdrawals are permitted without penalty and are taxed as ordinary income. 401(k) plans may also permit in-service withdrawals (by current employees) at age 59½.
Age 62 Social Security begins, but your benefits will be reduced by 25% to 35% if you begin to receive benefits at age 62. If you also continue to work while receiving Social Security benefits prior to your full retirement age, your Social Security benefits will be reduced by 50¢ for each dollar that you earn above $16,920 in 2017.
Age 65 Medicare eligibility begins.
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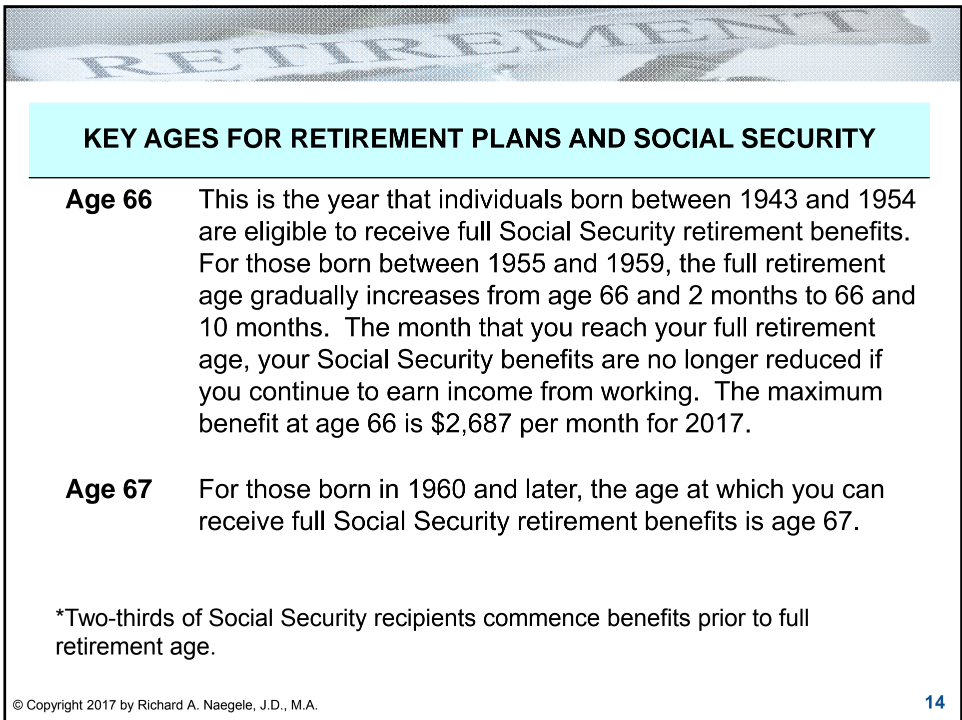
RETIREMENT
KEY AGES FOR RETIREMENT PLANS AND SOCIAL SECURITY
Age 66 This is the year that individuals born between 1943 and 1954 are eligible to receive full Social Security retirement benefits. For those born between 1955 and 1959, the full retirement age gradually increases from age 66 and 2 months to 66 and 10 months. The month that you reach your full retirement age, your Social Security benefits are no longer reduced if you continue to earn income from working. The maximum benefit at age 66 is $2,687 per month for 2017.
Age 67 For those born in 1960 and later, the age at which you can receive full Social Security retirement benefits is age 67.
*Two-thirds of Social Security recipients commence benefits prior to full retirement age.
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KEY AGES FOR RETIREMENT PLANS AND SOCIAL SECURITY

Age 70 Your Social Security benefits will increase by 8% for each year that you delay receiving your benefits up until age 70. After age 70 there is no additional incentive to delay collecting your Social Security benefits.

Example:

Age	Benefit %	Benefit
62	75%	$1,500
66	100%	$2,000
70	132%	$2,640

*Benefit at age 70 is 176% of benefit at age 62.

Age 70½ At age 70½, individuals must begin to receive required minimum distributions from Individual Retirement Accounts and, in most cases, employer retirement plans.

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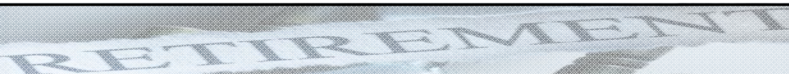

CHANGES TO IRS EMPLOYEE PLANS DETERMINATION LETTER PROGRAM

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Rev. Proc. 2017-41 makes significant changes to IRS "Pre-Approved" Plans Program.

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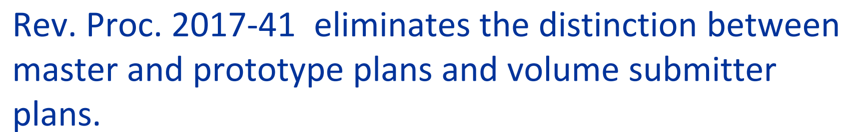

Rev. Proc. 2017-41 eliminates the distinction between master and prototype plans and volume submitter plans.

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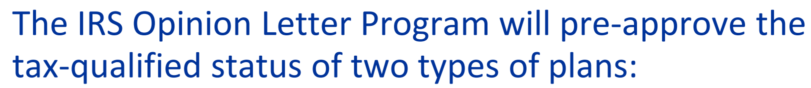

The IRS Opinion Letter Program will pre-approve the tax-qualified status of two types of plans:

- Standardized Plans
- Non-Standardized Plans

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- **Standardized Plan:**
  - The employer must adopt plan on a word-for-word basis.
  - Employer can only select from pre-approved options for plan terms and provisions.

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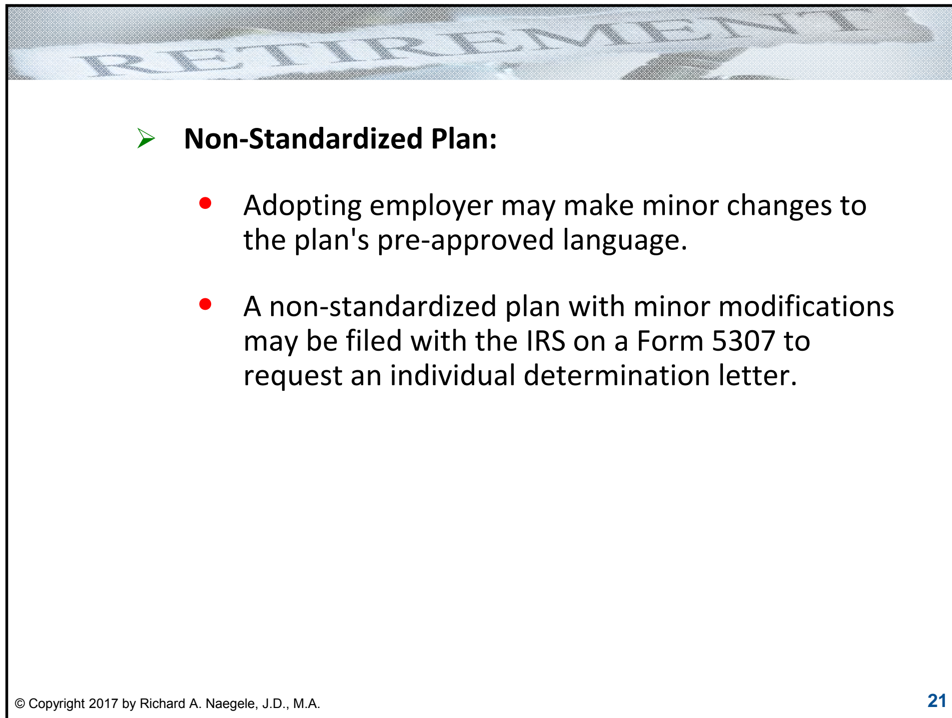
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Non-Standardized Plan:
Adopting employer may make minor changes to the plan's pre-approved language.
A non-standardized plan with minor modifications may be filed with the IRS on a Form 5307 to request an individual determination letter.
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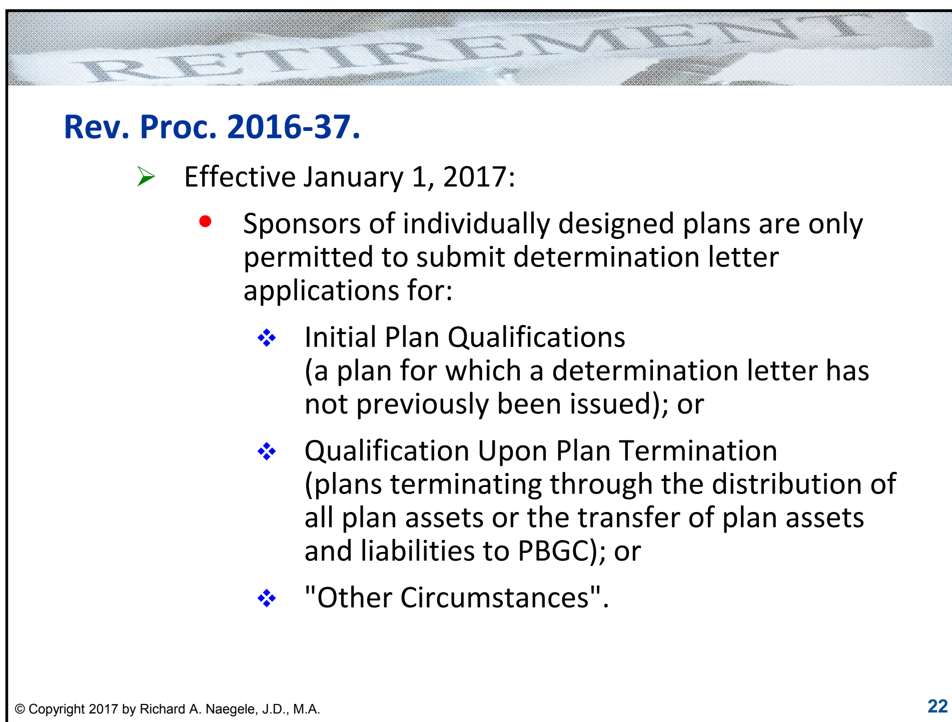
RETIREMENT
Rev. Proc. 2016-37.
Effective January 1, 2017:
Sponsors of individually designed plans are only permitted to submit determination letter applications for:
Initial Plan Qualifications (a plan for which a determination letter has not previously been issued); or
Qualification Upon Plan Termination (plans terminating through the distribution of all plan assets or the transfer of plan assets and liabilities to PBGC); or
"Other Circumstances".
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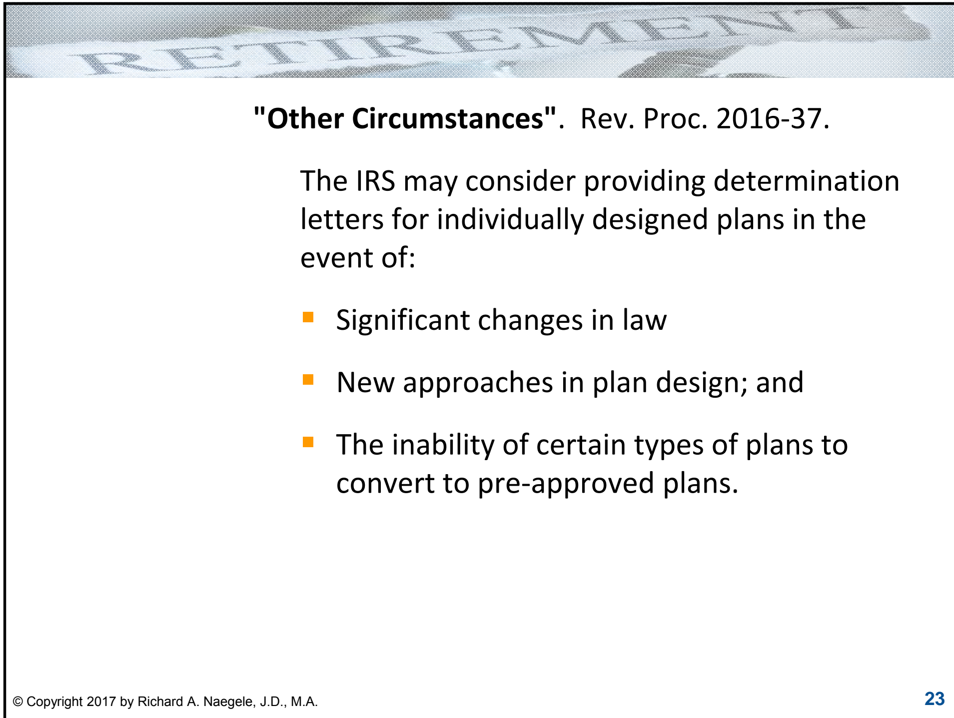
RETIREMENT

"Other Circumstances". Rev. Proc. 2016-37.

The IRS may consider providing determination letters for individually designed plans in the event of:

- Significant changes in law
- New approaches in plan design; and
- The inability of certain types of plans to convert to pre-approved plans.

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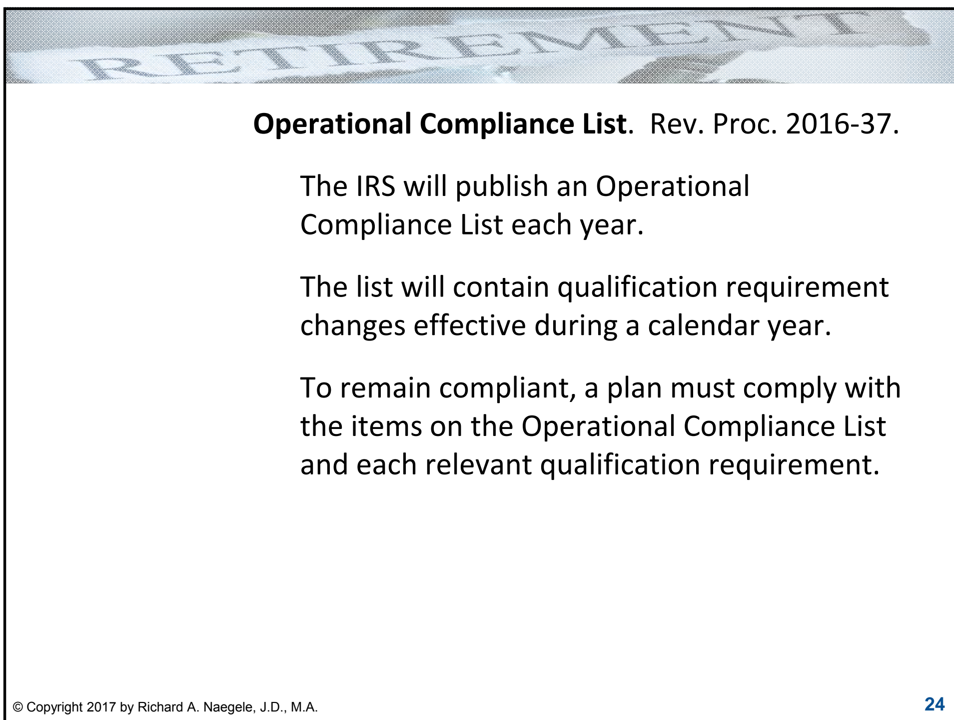
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Operational Compliance List. Rev. Proc. 2016-37.

The IRS will publish an Operational Compliance List each year.

The list will contain qualification requirement changes effective during a calendar year.

To remain compliant, a plan must comply with the items on the Operational Compliance List and each relevant qualification requirement.

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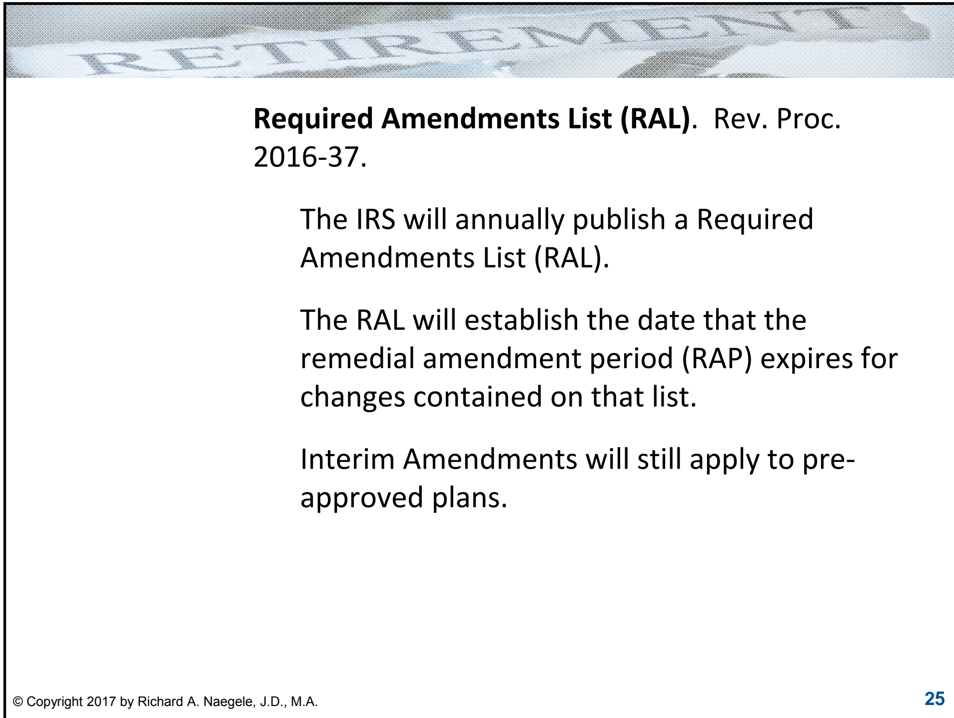
RETIREMENT
Required Amendments List (RAL). Rev. Proc. 2016-37.
The IRS will annually publish a Required Amendments List (RAL).
The RAL will establish the date that the remedial amendment period (RAP) expires for changes contained on that list.
Interim Amendments will still apply to pre-approved plans.
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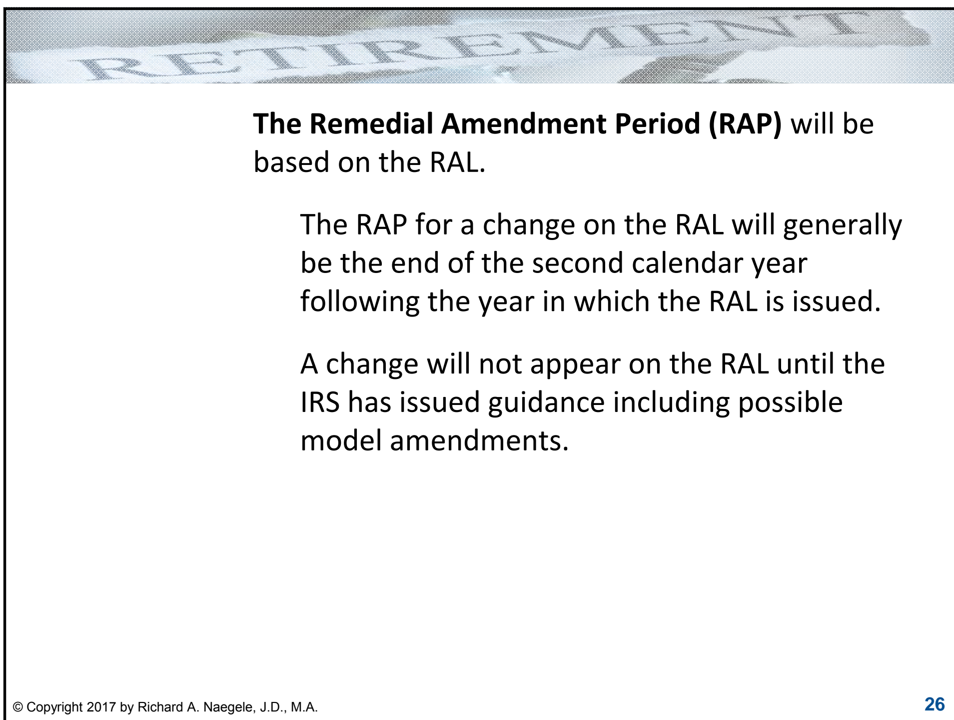
RETIREMENT
The Remedial Amendment Period (RAP) will be based on the RAL.
The RAP for a change on the RAL will generally be the end of the second calendar year following the year in which the RAL is issued.
A change will not appear on the RAL until the IRS has issued guidance including possible model amendments.
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Rev. Proc. 2016-37.

- Effective January 1, 2017:
  - Staggered 5-year determination letter remedial amendment cycles for individually designed plans are eliminated.
  - Expiration dates on determination letters no longer apply. Determination letter is still valid after expiration date.

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Rev. Proc. 2015-36.

- IRS Pre-Approved Plan Programs expanded to include:
  - Employee Stock Ownership Plans (ESOPs)
  - Cash Balance Pension Plans

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QUALIFIED PLAN DOCUMENT UPDATES/REMEDIAL AMENDMENT CYCLE. REV. PROC. 2007-44; REV. PROC. 2015-36; REV. PROC. 2016-37; REV. PROC. 2017-41

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Six-Year Cycle for Pre-Approved Plans.

- Six-Year Cycle for Pre-Approved Defined Contribution (DC) Plans.

Year	Step
5/1/2014-4/30/2016	Employers restate DC plans by adopting pre-approved plans. (PPA)
5/1/2008-4/30/2010	Employers restate DC plans by adopting pre-approved plans. (EGTRRA)

- The last day of the EGTRRA Remedial Amendment Cycle (RAC) for employers to adopt pre-approved defined contribution plans was April 30, 2010.
- The PPA RAC began 5/1/2014 and **ended 4/30/2016**.
- The next RAC for Defined Contribution Plans should begin in 2020 and end in 2022.

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Six-year cycle for Pre-Approved Defined Benefit (DB) Plans.

- The two year remedial amendment cycle for employers to restate DB Plans by adopting pre-approved DB Plans commenced May 1, 2010 and ended on April 30, 2012.
- The next two year RAC for employers to restate DB Plans by adopting pre-approved DB Plans should begin in 2017 or 2018 and end in 2019 or 2020.

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Interim Amendments.

- Summary of Interim Amendments and due dates.

Amendment	Due Date
EGTRRA Good Faith	End of 1st plan year beginning on or after January 1, 2003.
Required Minimum Distributions. IRC §401(a)(9)	End of 1st plan year beginning on or after January 1, 2003.
Mandatory Rollover/Involuntary Cash-Out	End of the Plan year that contains March 28, 2005.
IRC §401(k) final regulations	Last day of the 1st plan year beginning on or after January 1, 2006.
IRC §415 final regulations	Last day of the limitation year beginning on or after July 1, 2007.
Pension Protection Act (PPA) of 2006	Last day of the plan year beginning on or after January 1, 2009.
HEART Act IRC §§401(a)(37); 414(u)(9)	Last day of the first plan year beginning on or after January 1, 2010.
WRERA Waiver of 2009 RMDs	Last day of the first plan beginning on or after January 1, 2011.
IRC §436 Defined Benefit Plans	Last day of the first plan year beginning on or after January 1, 2013.

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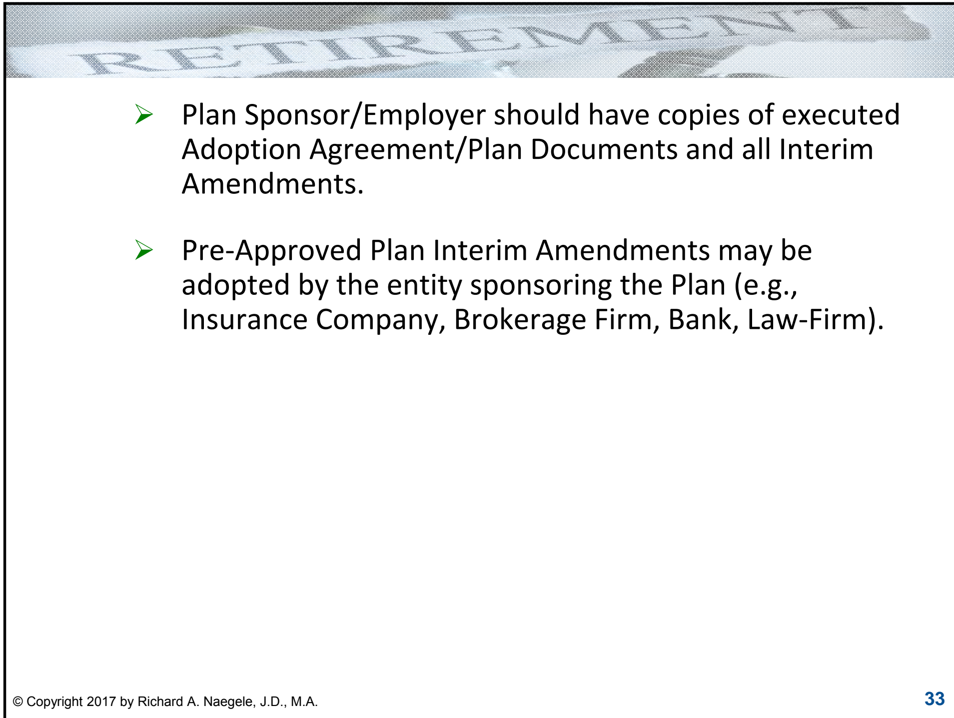

- Plan Sponsor/Employer should have copies of executed Adoption Agreement/Plan Documents and all Interim Amendments.
- Pre-Approved Plan Interim Amendments may be adopted by the entity sponsoring the Plan (e.g., Insurance Company, Brokerage Firm, Bank, Law-Firm).

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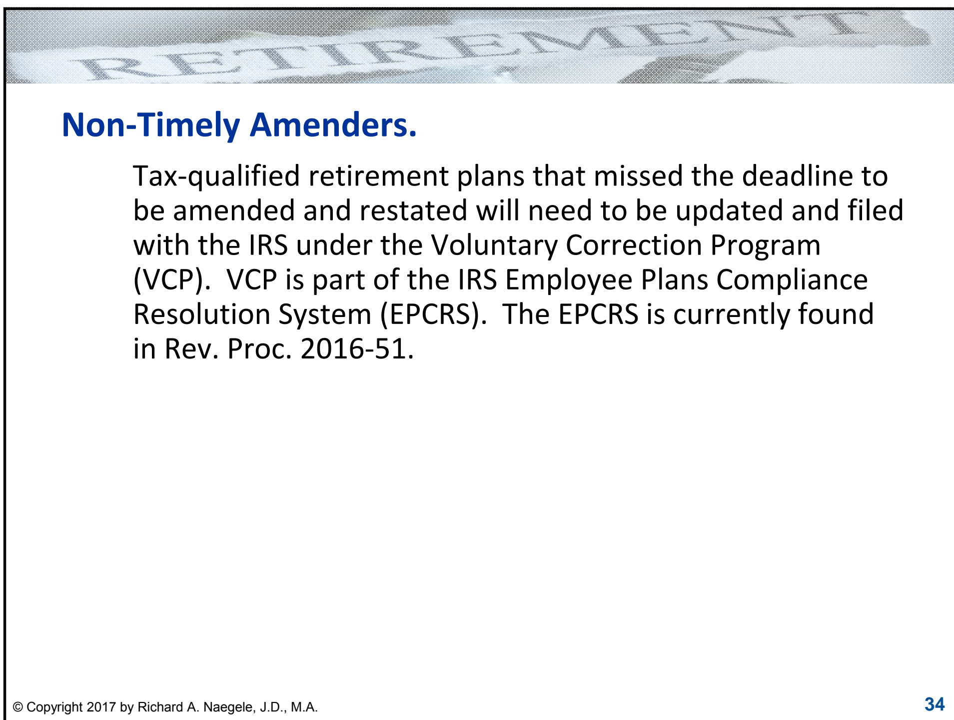

Non-Timely Amenders.

Tax-qualified retirement plans that missed the deadline to be amended and restated will need to be updated and filed with the IRS under the Voluntary Correction Program (VCP). VCP is part of the IRS Employee Plans Compliance Resolution System (EPCRS). The EPCRS is currently found in Rev. Proc. 2016-51.

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FEE DISCLOSURE AND PARTICIPANT REPORTING REQUIREMENTS

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Service Provider Fee Disclosure.

- **ERISA §408(b)(2)**.
- 29 CFR §2550.408b 2; DOL FAB 2012-02 (effective July 1, 2012).

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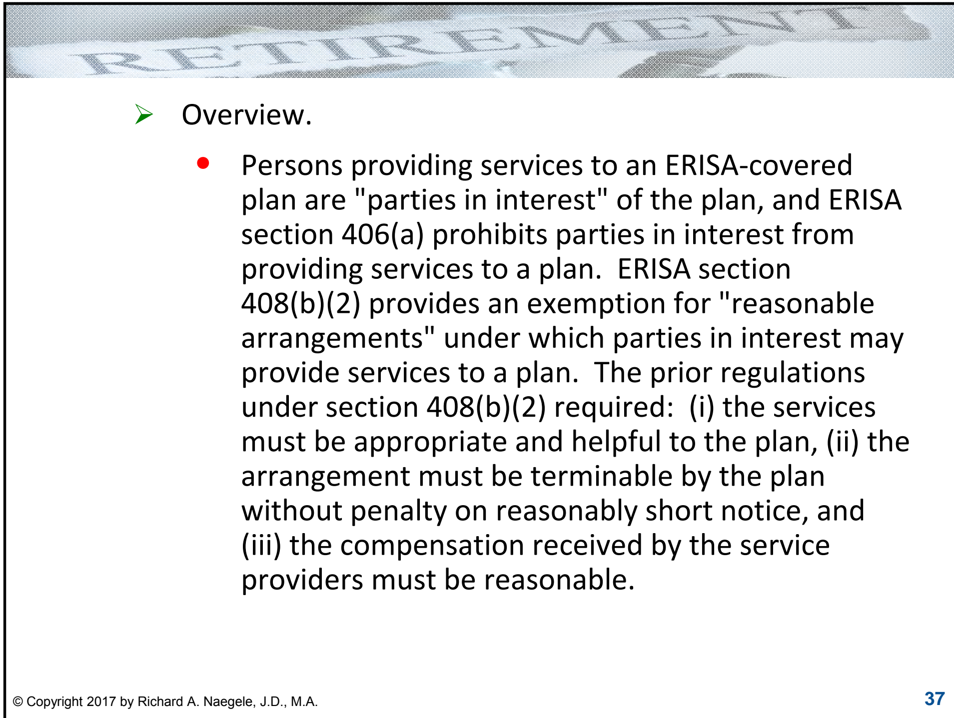

RETIREMENT

➢ Overview.

- Persons providing services to an ERISA-covered plan are "parties in interest" of the plan, and ERISA section 406(a) prohibits parties in interest from providing services to a plan. ERISA section 408(b)(2) provides an exemption for "reasonable arrangements" under which parties in interest may provide services to a plan. The prior regulations under section 408(b)(2) required: (i) the services must be appropriate and helpful to the plan, (ii) the arrangement must be terminable by the plan without penalty on reasonably short notice, and (iii) the compensation received by the service providers must be reasonable.

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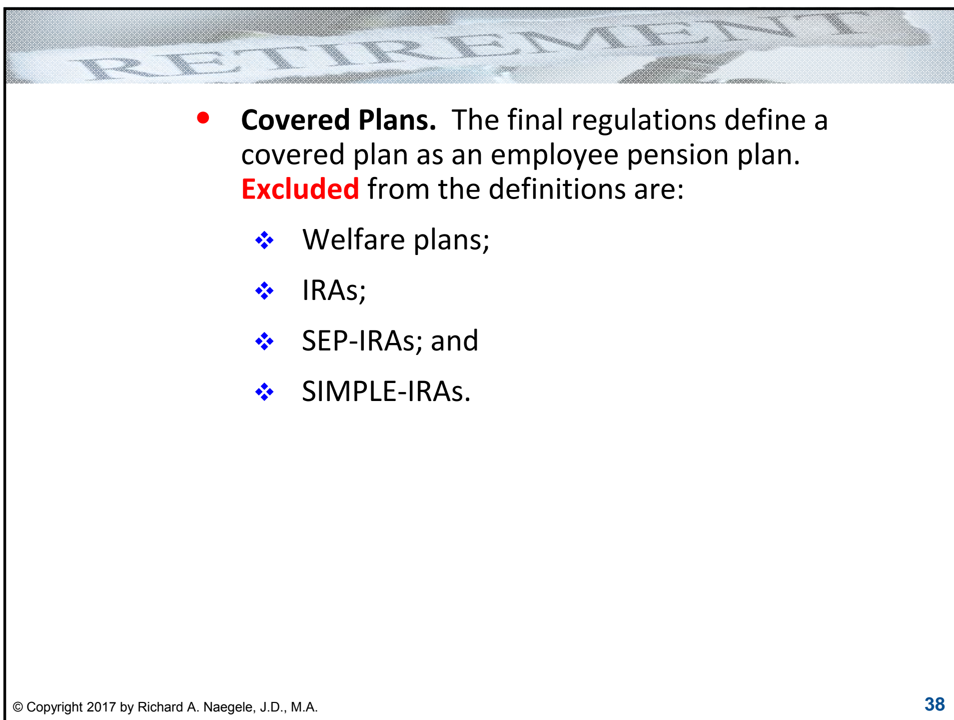

RETIREMENT

- **Covered Plans.** The final regulations define a covered plan as an employee pension plan. **Excluded** from the definitions are:
  - Welfare plans;
  - IRAs;
  - SEP-IRAs; and
  - SIMPLE-IRAs.

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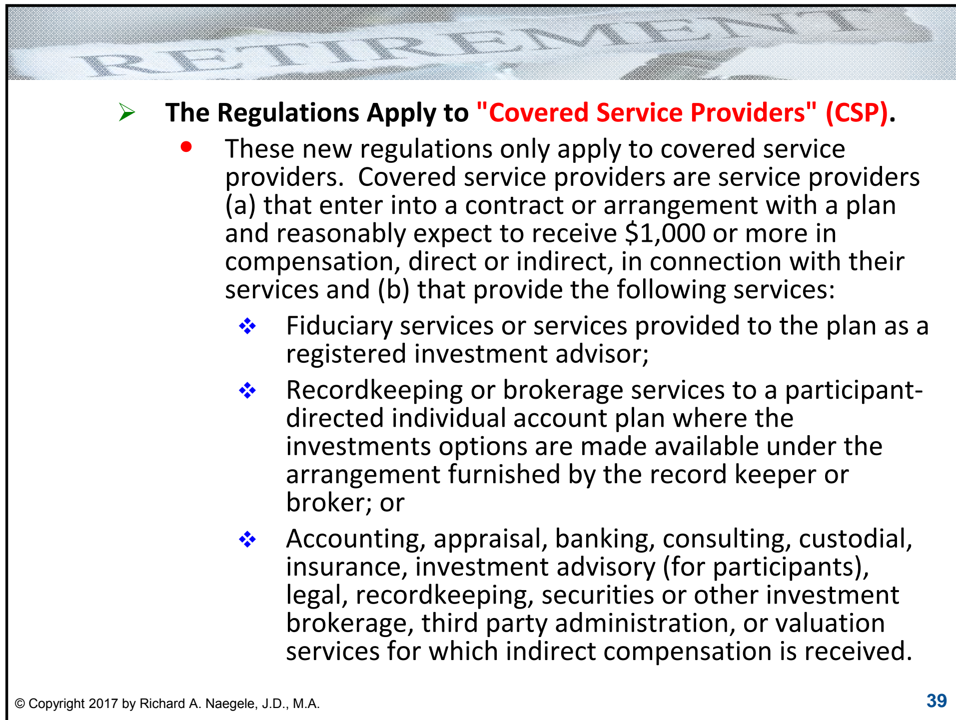
RETIREMENT

➢ The Regulations Apply to "Covered Service Providers" (CSP).
• These new regulations only apply to covered service providers. Covered service providers are service providers (a) that enter into a contract or arrangement with a plan and reasonably expect to receive $1,000 or more in compensation, direct or indirect, in connection with their services and (b) that provide the following services:
❖ Fiduciary services or services provided to the plan as a registered investment advisor;
❖ Recordkeeping or brokerage services to a participant-directed individual account plan where the investments options are made available under the arrangement furnished by the record keeper or broker; or
❖ Accounting, appraisal, banking, consulting, custodial, insurance, investment advisory (for participants), legal, recordkeeping, securities or other investment brokerage, third party administration, or valuation services for which indirect compensation is received.
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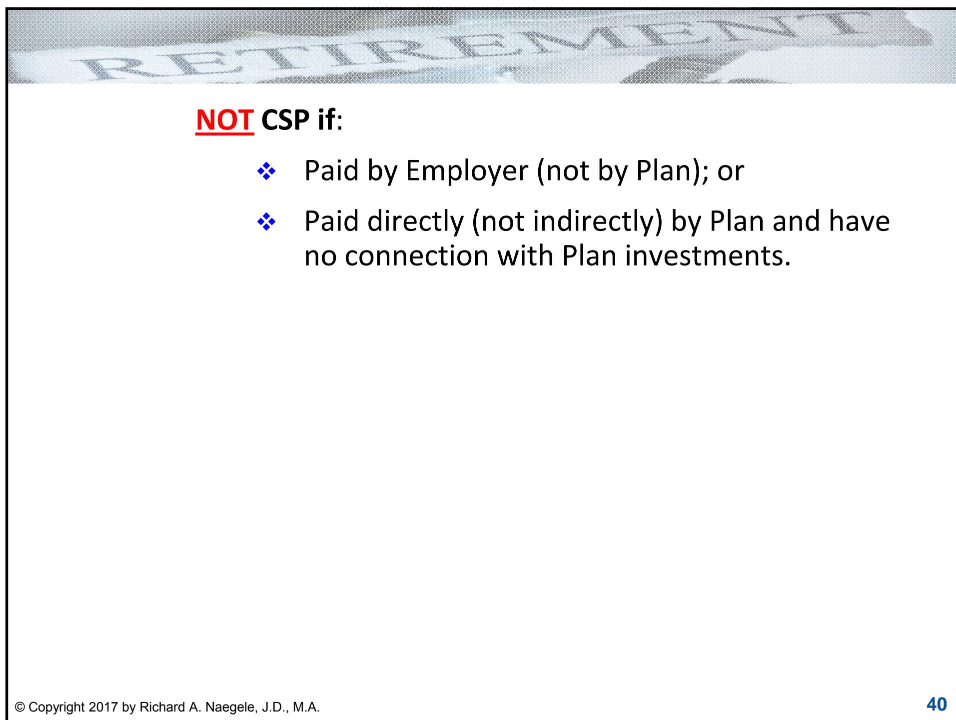
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NOT CSP if:
❖ Paid by Employer (not by Plan); or
❖ Paid directly (not indirectly) by Plan and have no connection with Plan investments.
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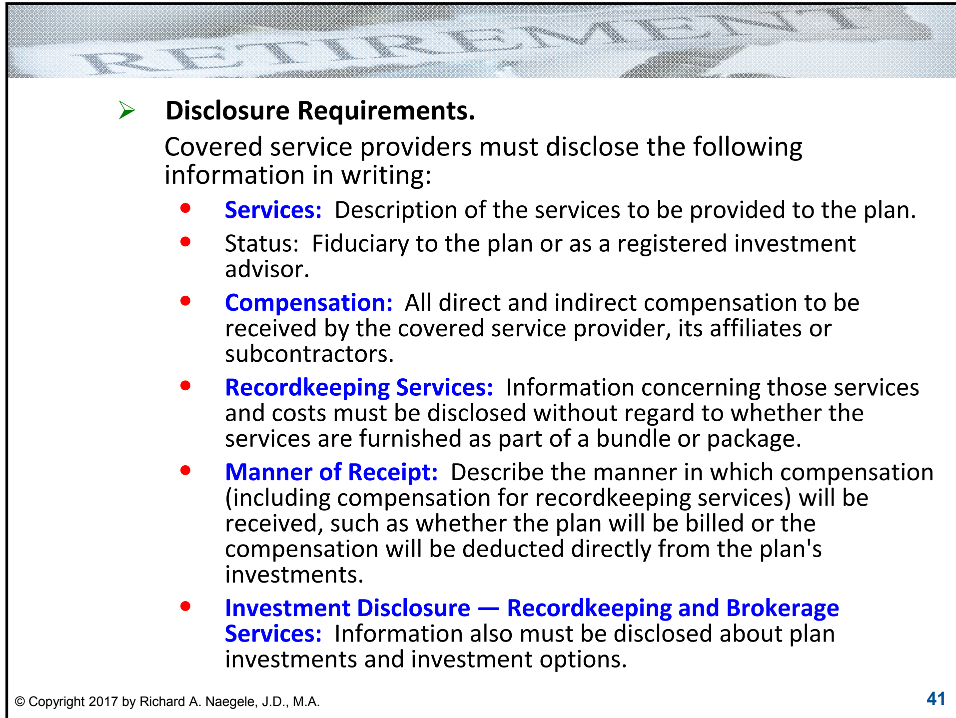
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Disclosure Requirements.
Covered service providers must disclose the following information in writing:
Services: Description of the services to be provided to the plan.
Status: Fiduciary to the plan or as a registered investment advisor.
Compensation: All direct and indirect compensation to be received by the covered service provider, its affiliates or subcontractors.
Recordkeeping Services: Information concerning those services and costs must be disclosed without regard to whether the services are furnished as part of a bundle or package.
Manner of Receipt: Describe the manner in which compensation (including compensation for recordkeeping services) will be received, such as whether the plan will be billed or the compensation will be deducted directly from the plan's investments.
Investment Disclosure — Recordkeeping and Brokerage Services: Information also must be disclosed about plan investments and investment options.
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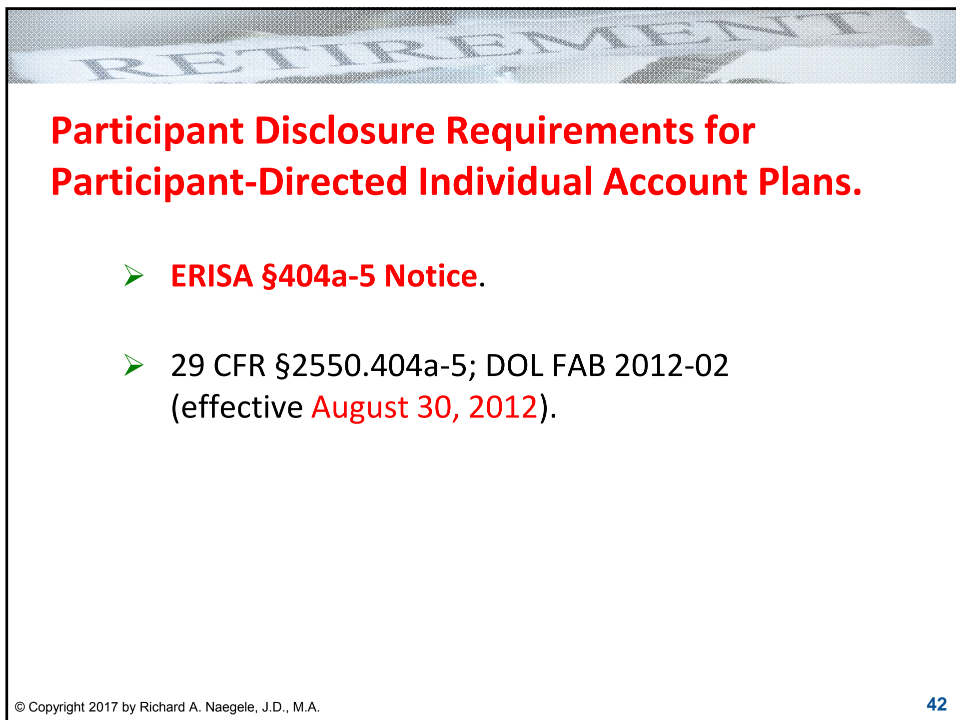
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Participant Disclosure Requirements for Participant-Directed Individual Account Plans.
ERISA §404a-5 Notice.
29 CFR §2550.404a-5; DOL FAB 2012-02 (effective August 30, 2012).
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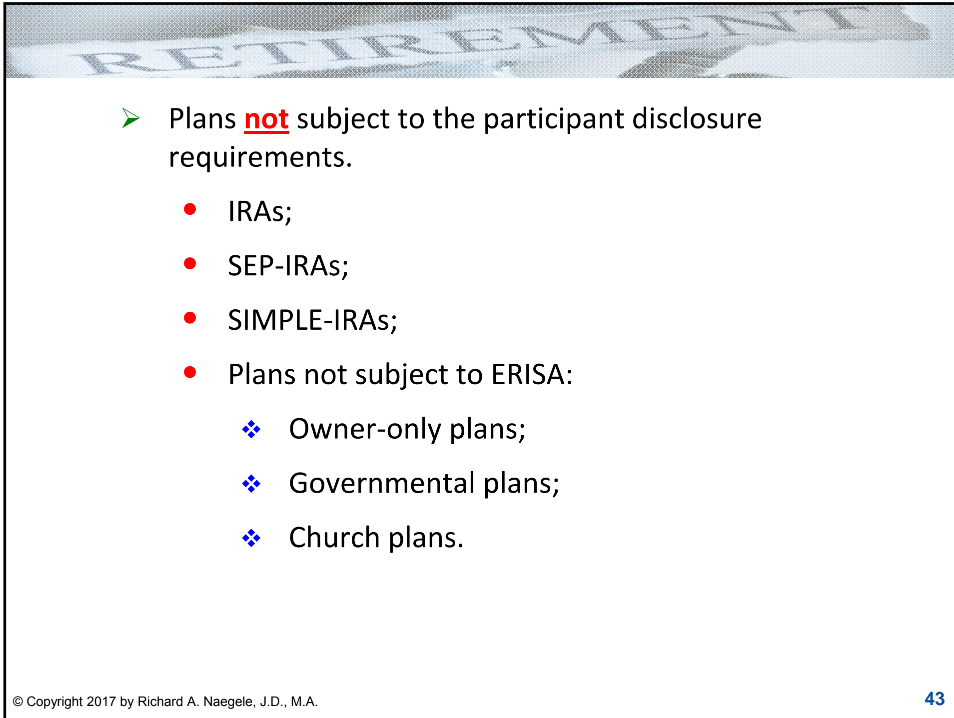

RETIREMENT
➢ Plans **not** subject to the participant disclosure requirements.
- IRAs;
- SEP-IRAs;
- SIMPLE-IRAs;
- Plans not subject to ERISA:
  - Owner-only plans;
  - Governmental plans;
  - Church plans.
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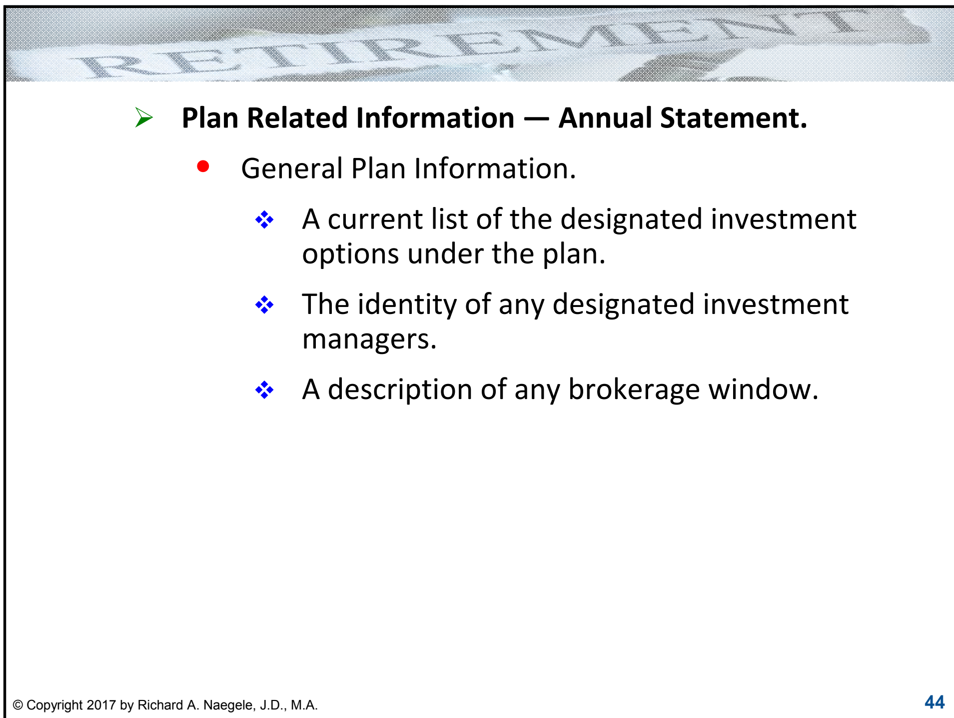

RETIREMENT
➢ **Plan Related Information — Annual Statement.**
- General Plan Information.
  - A current list of the designated investment options under the plan.
  - The identity of any designated investment managers.
  - A description of any brokerage window.
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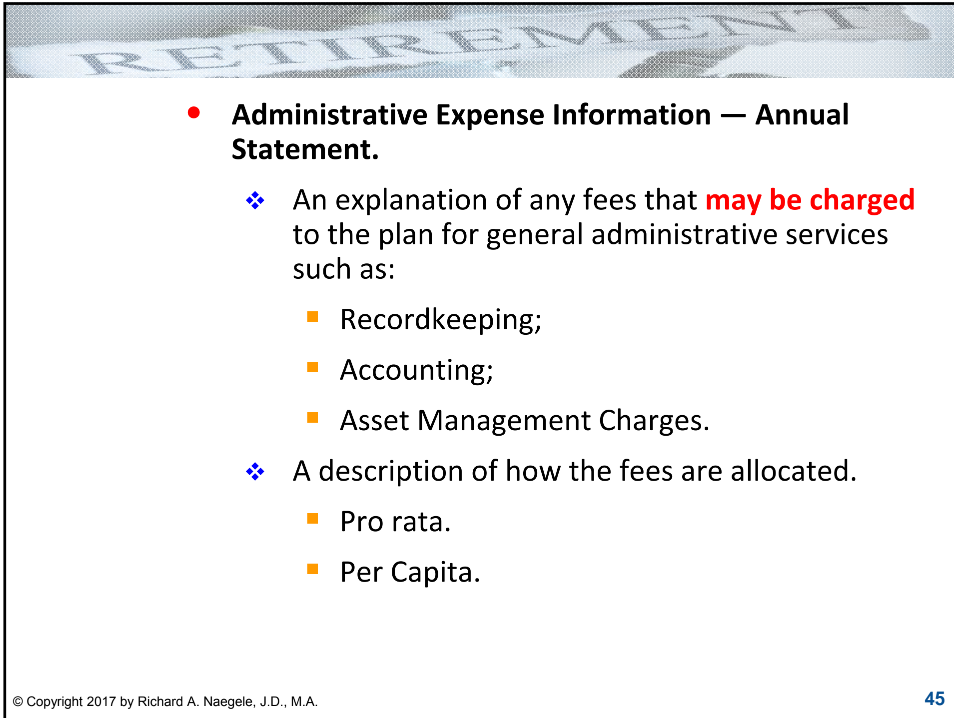
RETIREMENT
Administrative Expense Information — Annual Statement.
An explanation of any fees that may be charged to the plan for general administrative services such as:
Recordkeeping;
Accounting;
Asset Management Charges.
A description of how the fees are allocated.
Pro rata.
Per Capita.
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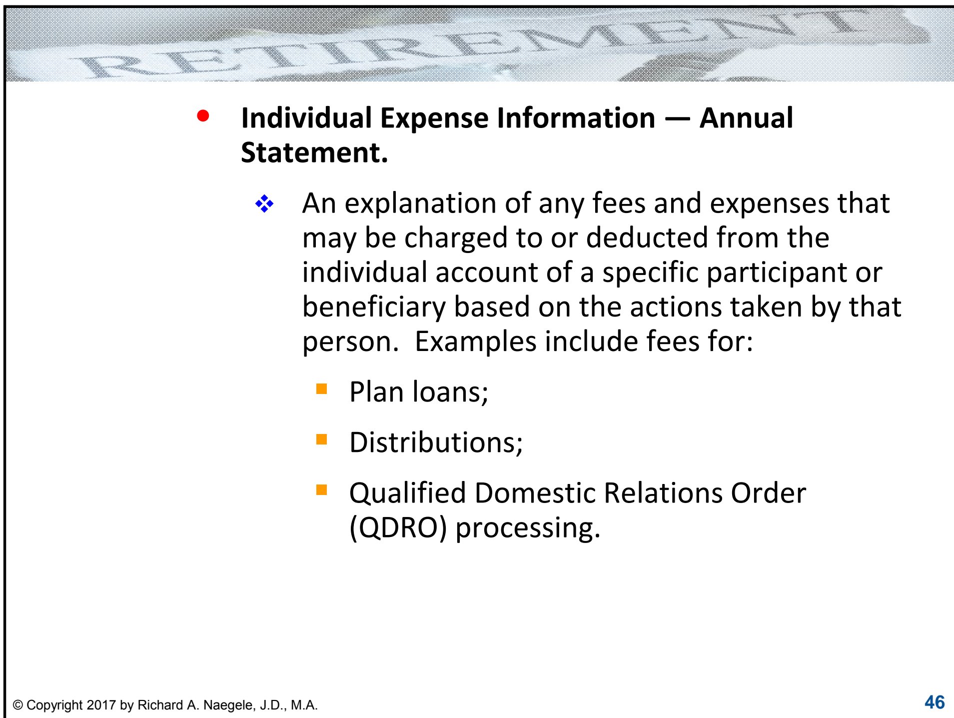
RETIREMENT
Individual Expense Information — Annual Statement.
An explanation of any fees and expenses that may be charged to or deducted from the individual account of a specific participant or beneficiary based on the actions taken by that person. Examples include fees for:
Plan loans;
Distributions;
Qualified Domestic Relations Order (QDRO) processing.
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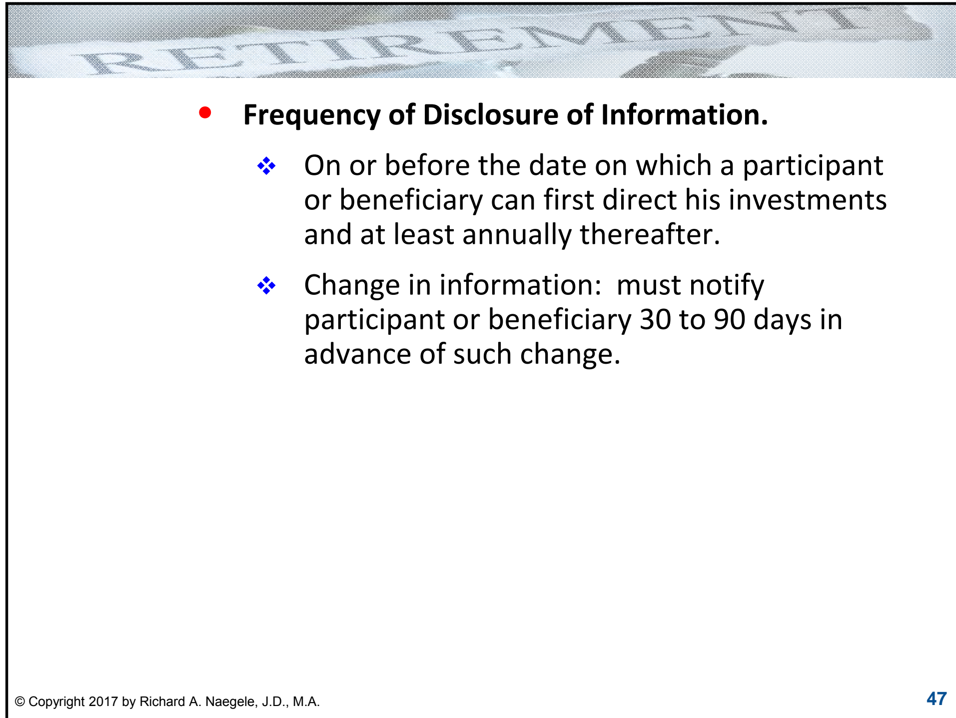
RETIREMENT
Frequency of Disclosure of Information.
On or before the date on which a participant or beneficiary can first direct his investments and at least annually thereafter.
Change in information: must notify participant or beneficiary 30 to 90 days in advance of such change.
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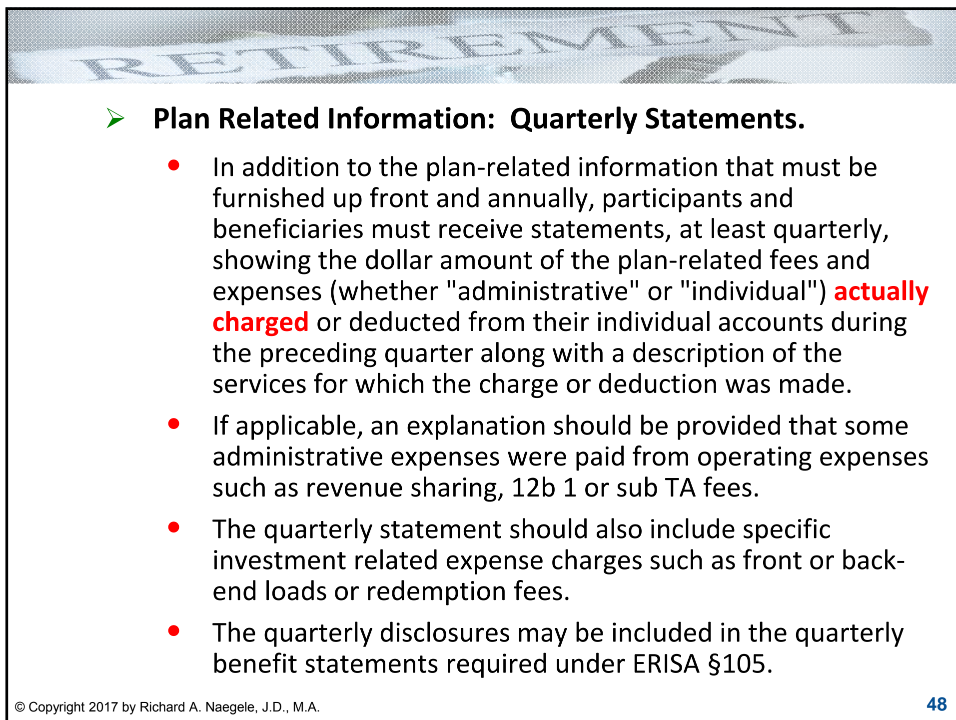
RETIREMENT
Plan Related Information: Quarterly Statements.
In addition to the plan-related information that must be furnished up front and annually, participants and beneficiaries must receive statements, at least quarterly, showing the dollar amount of the plan-related fees and expenses (whether "administrative" or "individual") actually charged or deducted from their individual accounts during the preceding quarter along with a description of the services for which the charge or deduction was made.
If applicable, an explanation should be provided that some administrative expenses were paid from operating expenses such as revenue sharing, 12b 1 or sub TA fees.
The quarterly statement should also include specific investment related expense charges such as front or back-end loads or redemption fees.
The quarterly disclosures may be included in the quarterly benefit statements required under ERISA §105.
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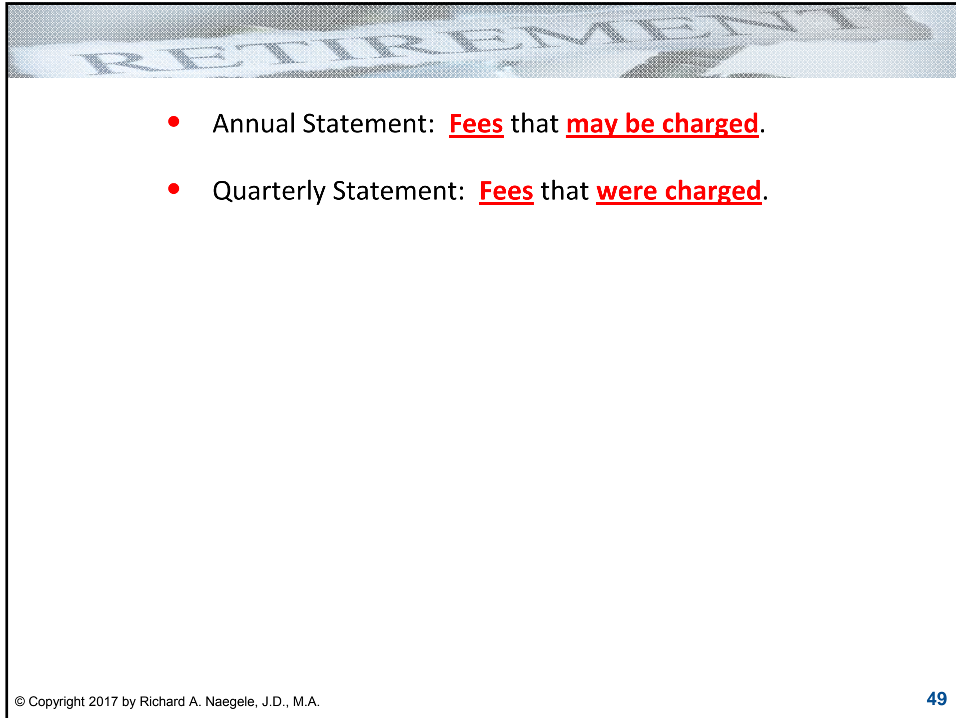
RETIREMENT
- Annual Statement: Fees that may be charged.
- Quarterly Statement: Fees that were charged.
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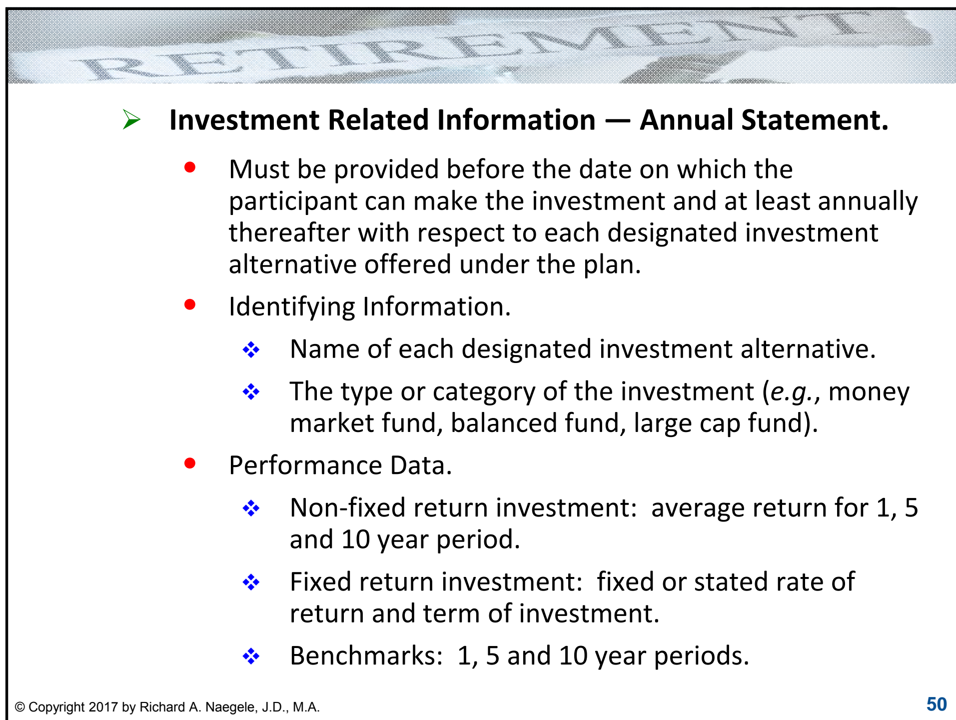
RETIREMENT
Investment Related Information — Annual Statement.
- Must be provided before the date on which the participant can make the investment and at least annually thereafter with respect to each designated investment alternative offered under the plan.
- Identifying Information.
- Name of each designated investment alternative.
- The type or category of the investment (e.g., money market fund, balanced fund, large cap fund).
- Performance Data.
- Non-fixed return investment: average return for 1, 5 and 10 year period.
- Fixed return investment: fixed or stated rate of return and term of investment.
- Benchmarks: 1, 5 and 10 year periods.
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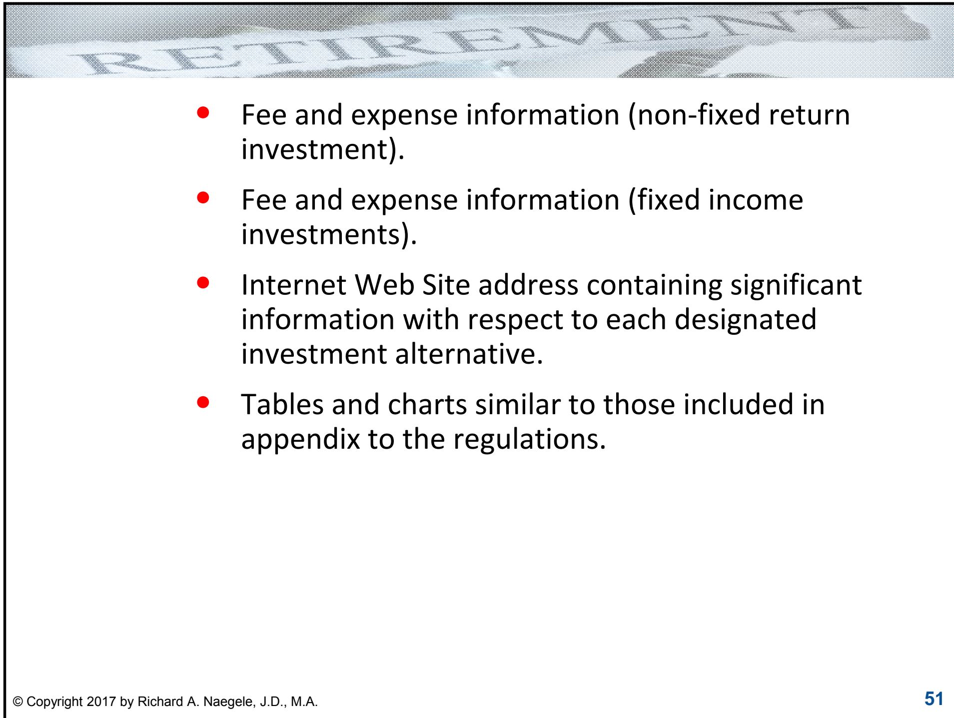
RETIREMENT
- Fee and expense information (non-fixed return investment).
- Fee and expense information (fixed income investments).
- Internet Web Site address containing significant information with respect to each designated investment alternative.
- Tables and charts similar to those included in appendix to the regulations.
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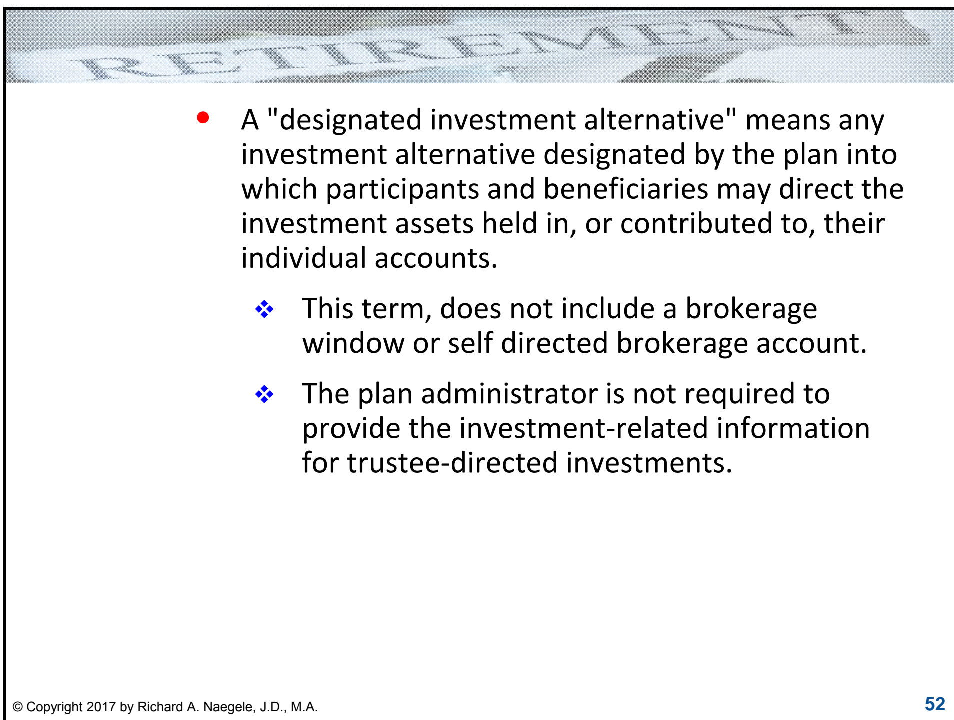
RETIREMENT
- A "designated investment alternative" means any investment alternative designated by the plan into which participants and beneficiaries may direct the investment assets held in, or contributed to, their individual accounts.
- This term, does not include a brokerage window or self directed brokerage account.
- The plan administrator is not required to provide the investment-related information for trustee-directed investments.
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Other Annual Notices.

- Safe Harbor 401(k) Plan Notice.
- QDIA (Qualified Default Investment Alternative) Notice
- EACA (Eligible Automatic Contribution Arrangement) Notice
- SAR (Summary Annual Report)

Safe Harbor 401(k), QDIA, and EACA are all due 30-90 days prior to the 1st day of the Plan Year and may be prepared as a single Notice.

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Benefit Statement Requirements for Non-Participant-Directed Plans.

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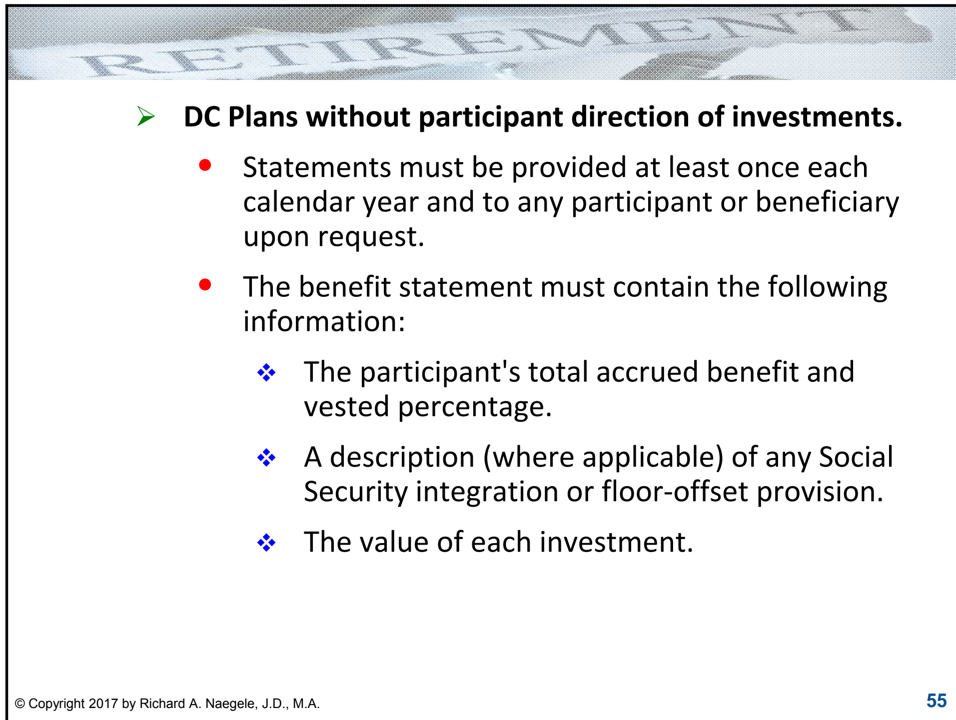
RETIREMENT
DC Plans without participant direction of investments.
Statements must be provided at least once each calendar year and to any participant or beneficiary upon request.
The benefit statement must contain the following information:
The participant's total accrued benefit and vested percentage.
A description (where applicable) of any Social Security integration or floor-offset provision.
The value of each investment.
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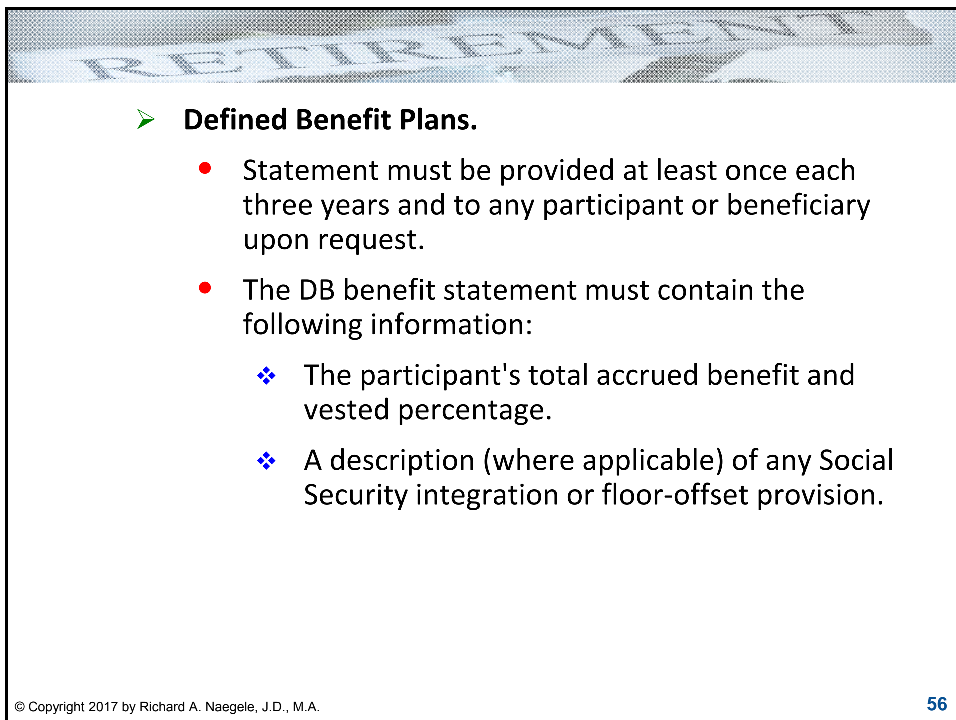
RETIREMENT
Defined Benefit Plans.
Statement must be provided at least once each three years and to any participant or beneficiary upon request.
The DB benefit statement must contain the following information:
The participant's total accrued benefit and vested percentage.
A description (where applicable) of any Social Security integration or floor-offset provision.
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Defined Benefit Plan Funding Notice and Annual Reporting Requirements.

- Effective in 2008, a DB plan insured by the PBGC must provide a DB funding notice to each plan participant and beneficiary, each labor organization representing participants and beneficiaries, and to the PBGC. The notice must be provided within 120 days after the close of each plan year.
- The DB funding notice must contain the following information:
  - A statement as to whether the plan's adjusted funding target attainment percentage **("AFTAP")** for the current and two preceding years is at least 100%.

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RECENT DEVELOPMENTS

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I. Rev. Proc. 2016-47 waiver of 60 day rollover requirement in certain situations.

- IRC §§402(c)(3) and 408(d)(3) require that eligible rollover distributions from IRAs and tax-qualified retirement plans be rolled over into the same or another IRA or qualified plan within 60 days after the date of the distribution.

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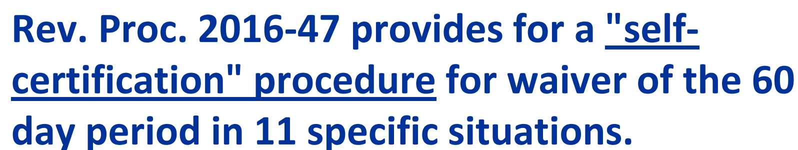

Rev. Proc. 2016-47 provides for a "self-certification" procedure for waiver of the 60 day period in 11 specific situations.

1) An error was committed by the financial institution receiving the contribution or making the distribution.

2) The distribution was in the form of a check and the check was misplaced and never cashed.

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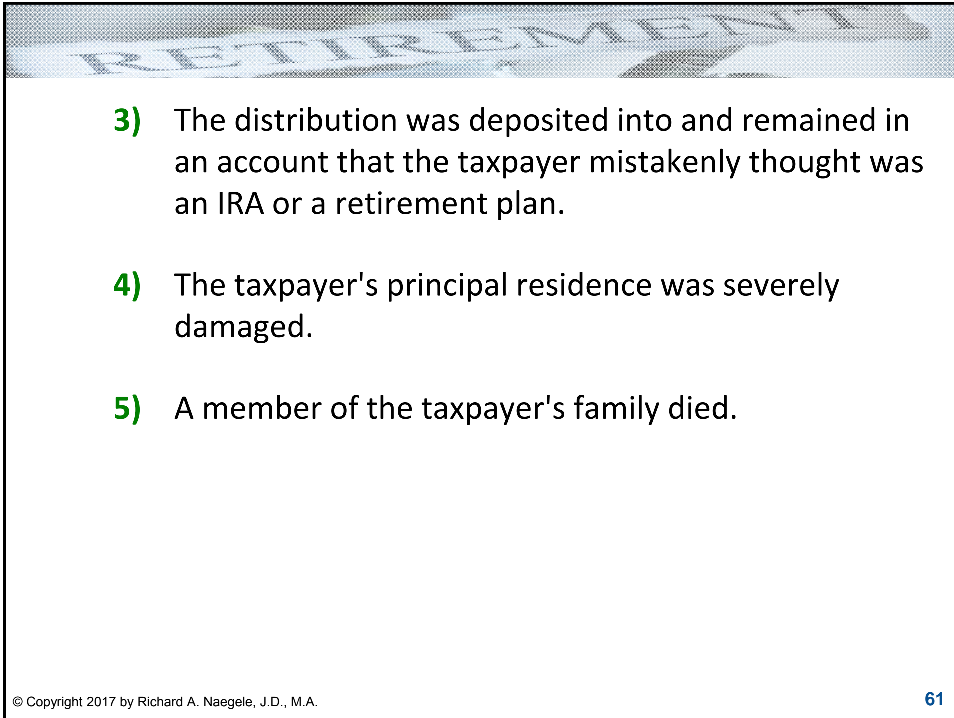
RETIREMENT
3) The distribution was deposited into and remained in an account that the taxpayer mistakenly thought was an IRA or a retirement plan.
4) The taxpayer's principal residence was severely damaged.
5) A member of the taxpayer's family died.
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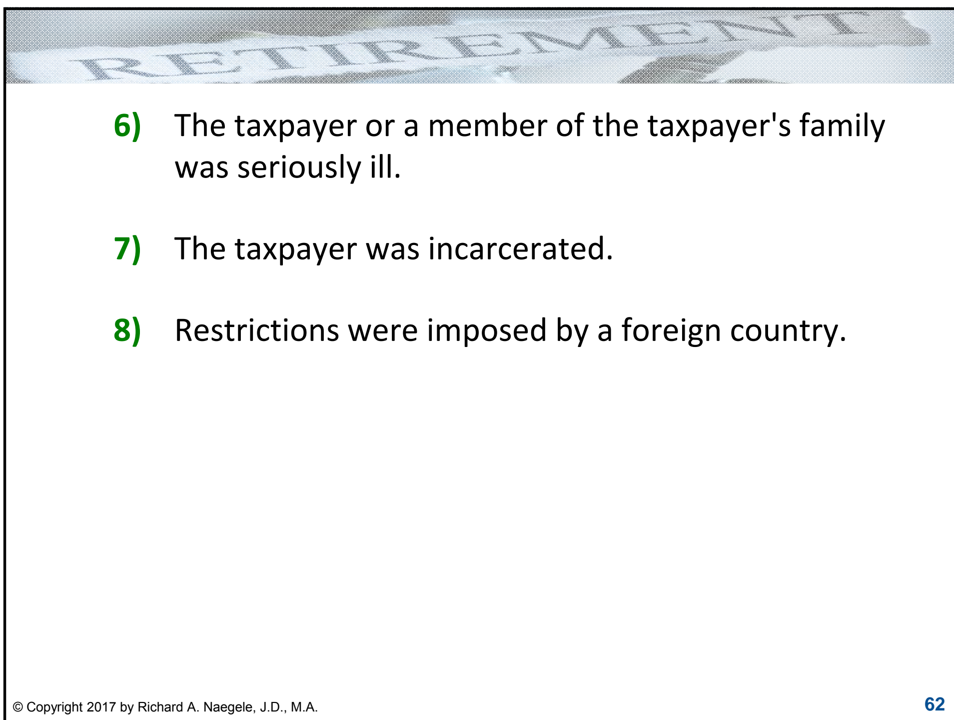
RETIREMENT
6) The taxpayer or a member of the taxpayer's family was seriously ill.
7) The taxpayer was incarcerated.
8) Restrictions were imposed by a foreign country.
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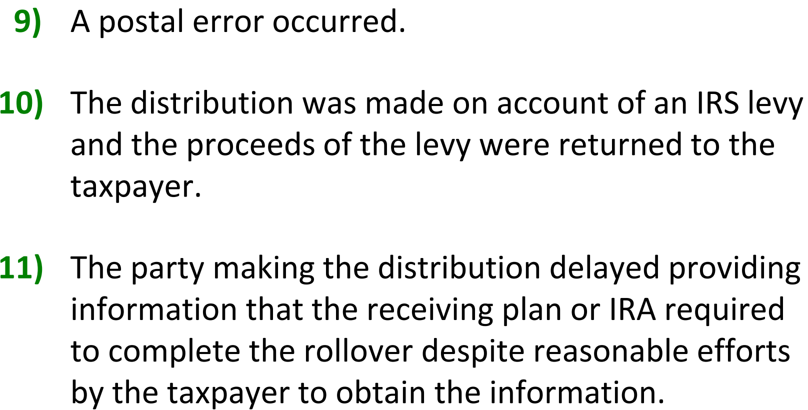

9) A postal error occurred.

10) The distribution was made on account of an IRS levy and the proceeds of the levy were returned to the taxpayer.

11) The party making the distribution delayed providing information that the receiving plan or IRA required to complete the rollover despite reasonable efforts by the taxpayer to obtain the information.

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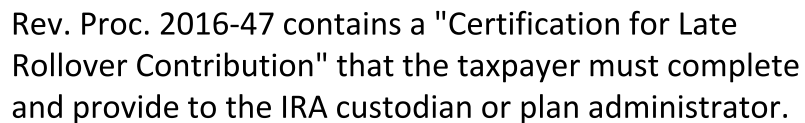

Rev. Proc. 2016-47 contains a "Certification for Late Rollover Contribution" that the taxpayer must complete and provide to the IRA custodian or plan administrator.

The IRA custodian or the plan administrator may rely on a taxpayer's self-certification unless the IRA custodian or plan administrator has actual knowledge that is contrary to the self-certification.

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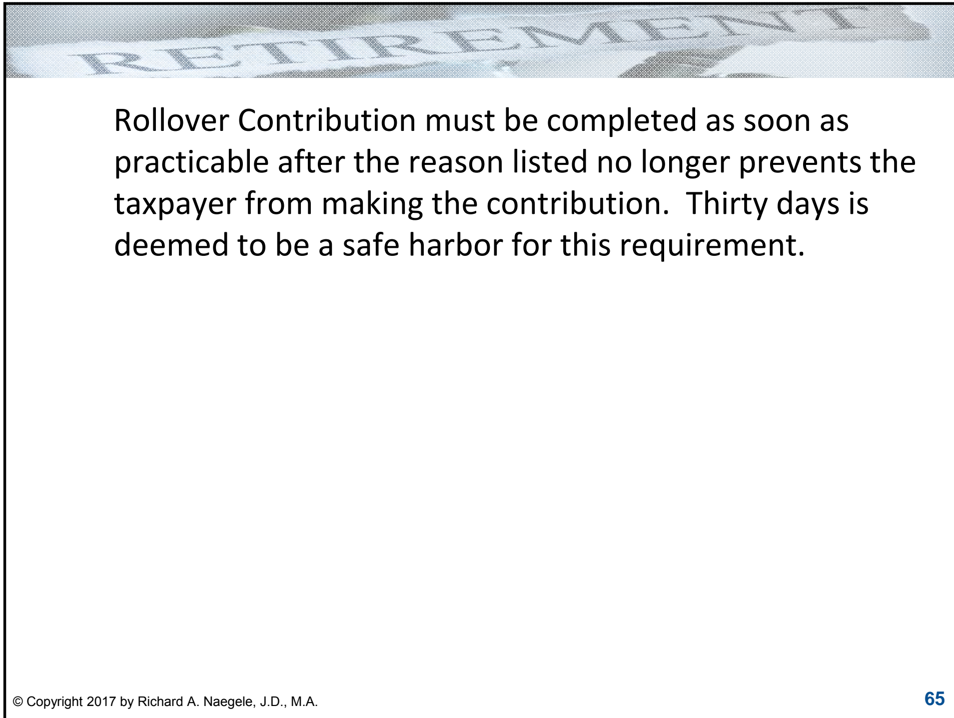
RETIREMENT
Rollover Contribution must be completed as soon as practicable after the reason listed no longer prevents the taxpayer from making the contribution. Thirty days is deemed to be a safe harbor for this requirement.
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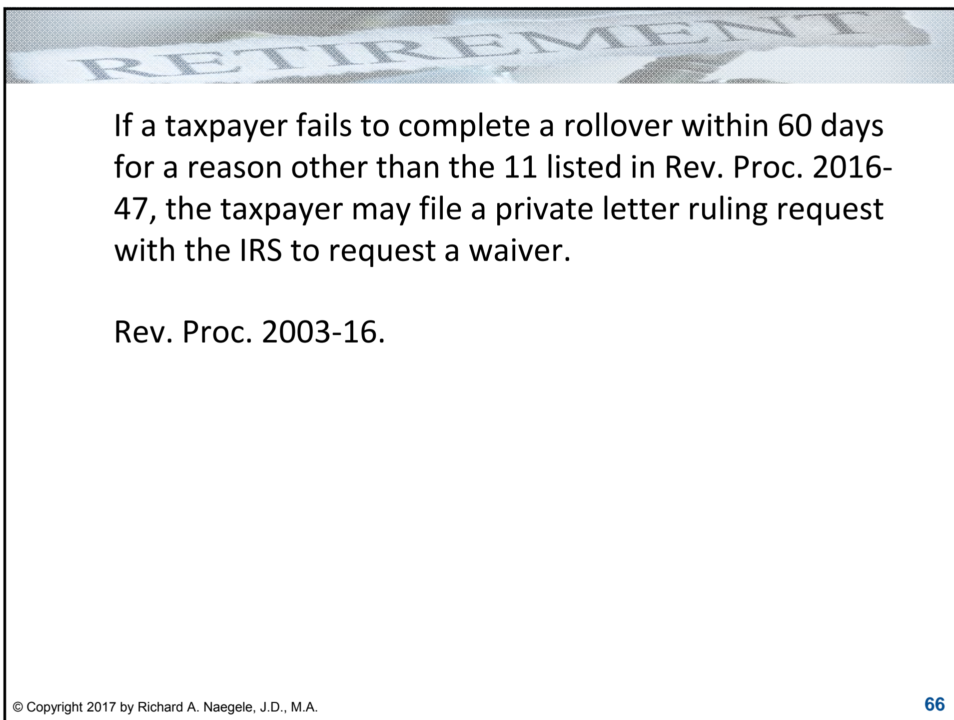
RETIREMENT
If a taxpayer fails to complete a rollover within 60 days for a reason other than the 11 listed in Rev. Proc. 2016-47, the taxpayer may file a private letter ruling request with the IRS to request a waiver.
Rev. Proc. 2003-16.
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II. Department of Labor (DOL) Final Fiduciary Rule.

- Fiduciary:
  - ERISA §404(a)(1)
  - ERISA §3(21)(A)
  - ERISA §3(38)
- Effective Date: June 9, 2017.

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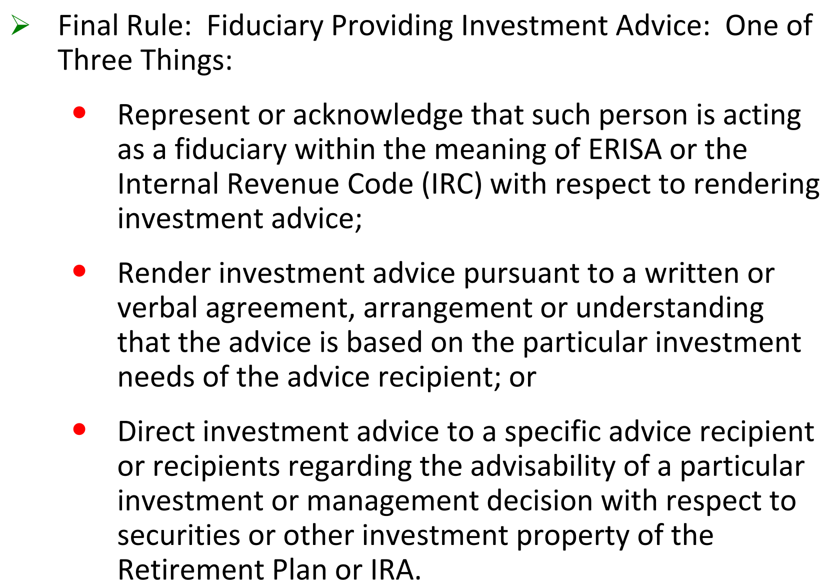

- Final Rule: Fiduciary Providing Investment Advice: One of Three Things:
  - Represent or acknowledge that such person is acting as a fiduciary within the meaning of ERISA or the Internal Revenue Code (IRC) with respect to rendering investment advice;
  - Render investment advice pursuant to a written or verbal agreement, arrangement or understanding that the advice is based on the particular investment needs of the advice recipient; or
  - Direct investment advice to a specific advice recipient or recipients regarding the advisability of a particular investment or management decision with respect to securities or other investment property of the Retirement Plan or IRA.

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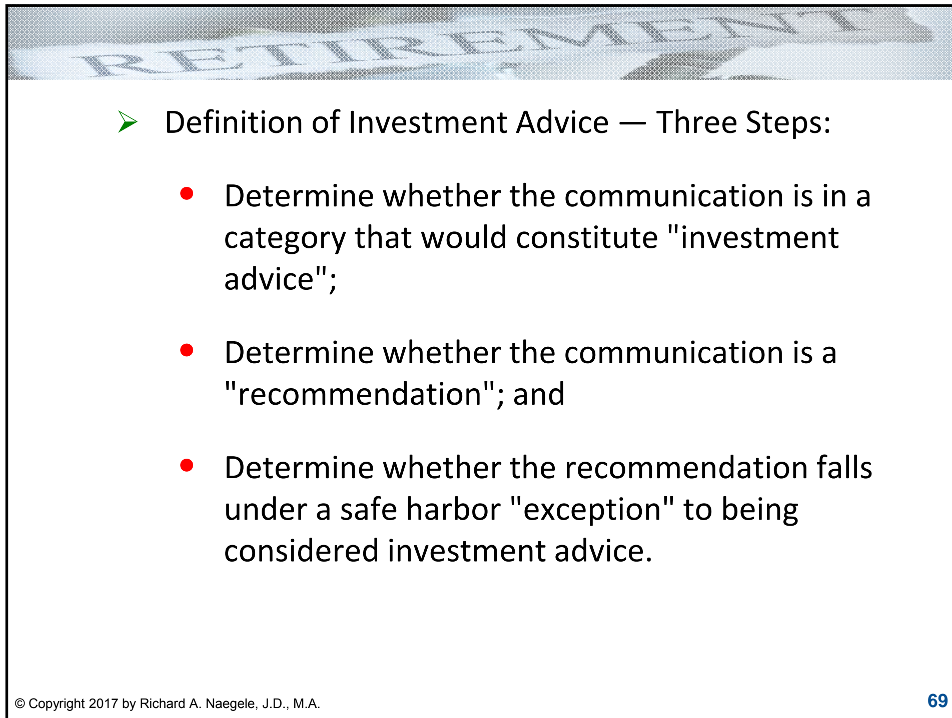
RETIREMENT
➢ Definition of Investment Advice — Three Steps:
• Determine whether the communication is in a category that would constitute "investment advice";
• Determine whether the communication is a "recommendation"; and
• Determine whether the recommendation falls under a safe harbor "exception" to being considered investment advice.
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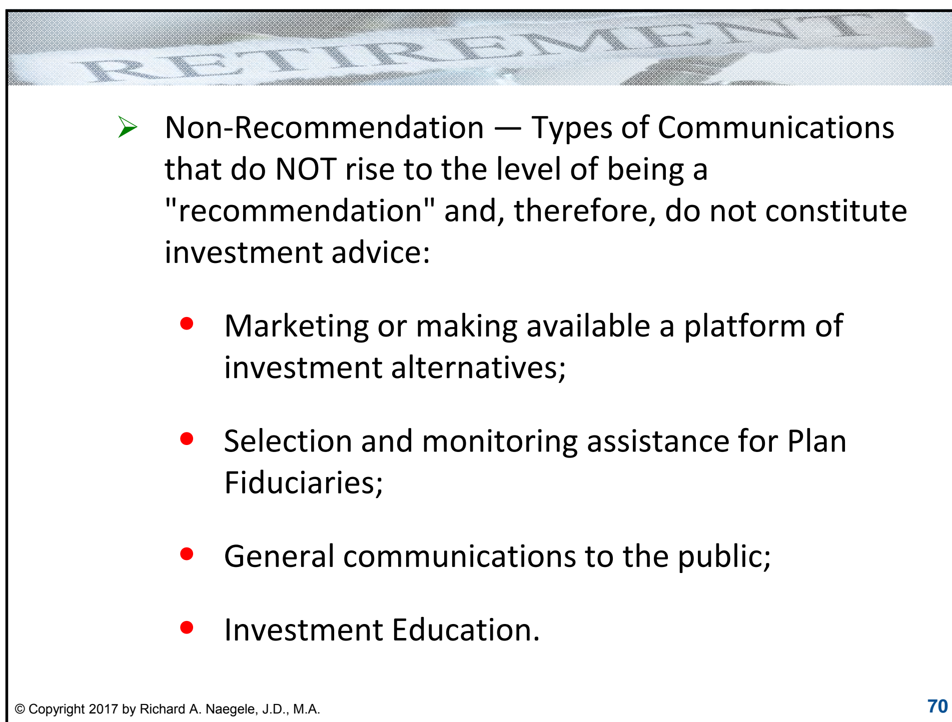
RETIREMENT
➢ Non-Recommendation — Types of Communications that do NOT rise to the level of being a "recommendation" and, therefore, do not constitute investment advice:
• Marketing or making available a platform of investment alternatives;
• Selection and monitoring assistance for Plan Fiduciaries;
• General communications to the public;
• Investment Education.
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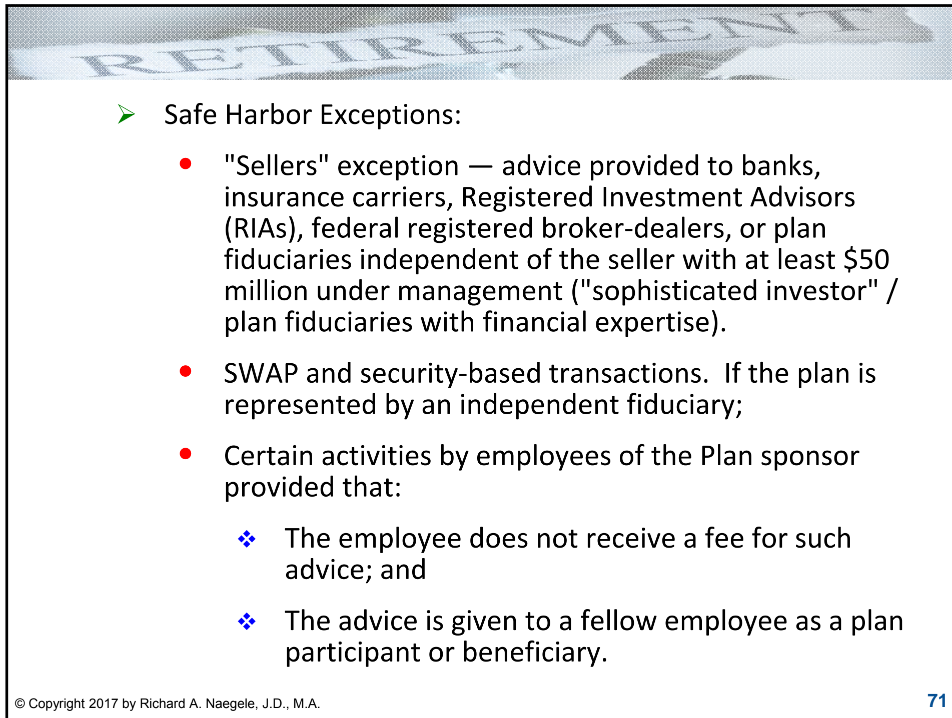
RETIREMENT
- Safe Harbor Exceptions:
  - "Sellers" exception — advice provided to banks, insurance carriers, Registered Investment Advisors (RIAs), federal registered broker-dealers, or plan fiduciaries independent of the seller with at least $50 million under management ("sophisticated investor" / plan fiduciaries with financial expertise).
  - SWAP and security-based transactions. If the plan is represented by an independent fiduciary;
  - Certain activities by employees of the Plan sponsor provided that:
    - The employee does not receive a fee for such advice; and
    - The advice is given to a fellow employee as a plan participant or beneficiary.
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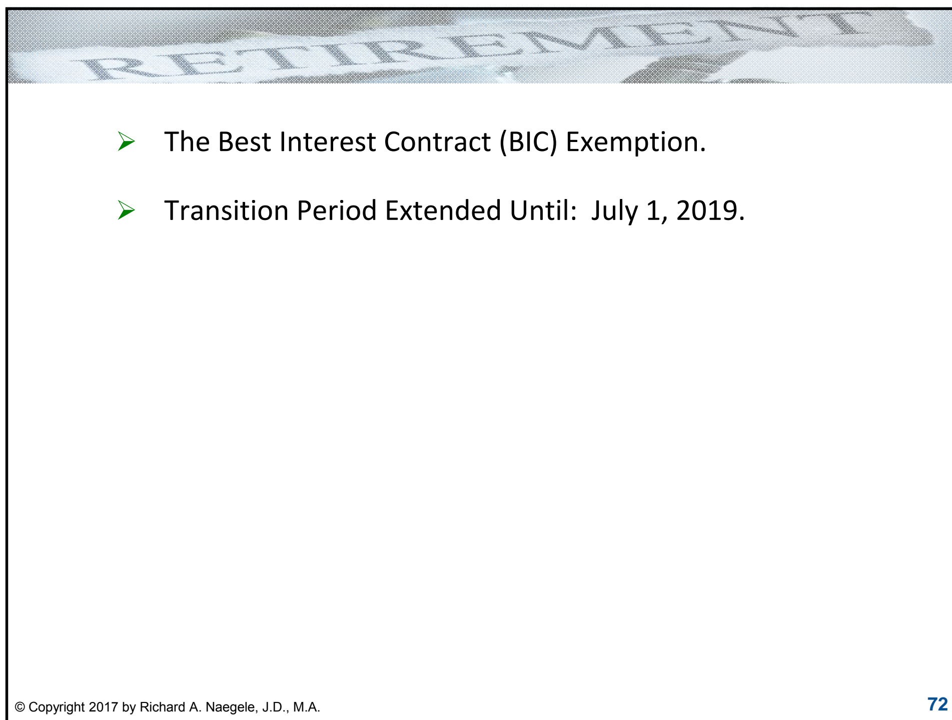
RETIREMENT
- The Best Interest Contract (BIC) Exemption.
- Transition Period Extended Until: July 1, 2019.
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During BIC Exemption Transition Period, Fiduciaries Must Comply With the Impartial Conduct Standards.

1. Give prudent advice that is in retirement investor's best interests.
2. Charge no more than reasonable compensation.
3. Avoid making misleading statements.

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DOL Field Advice Bulletin (FAB) 2017-03 (August 30, 2017).

- DOL will **not enforce** the limitation on arbitration provisions in the BIC Exemption.

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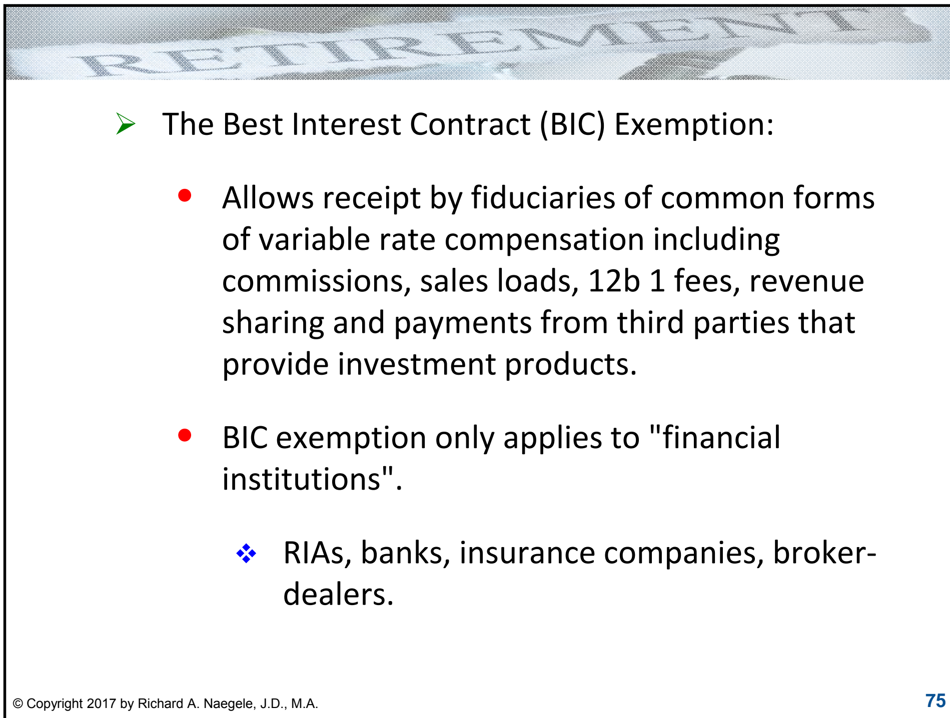
RETIREMENT
The Best Interest Contract (BIC) Exemption:
Allows receipt by fiduciaries of common forms of variable rate compensation including commissions, sales loads, 12b 1 fees, revenue sharing and payments from third parties that provide investment products.
BIC exemption only applies to "financial institutions".
RIAs, banks, insurance companies, broker-dealers.
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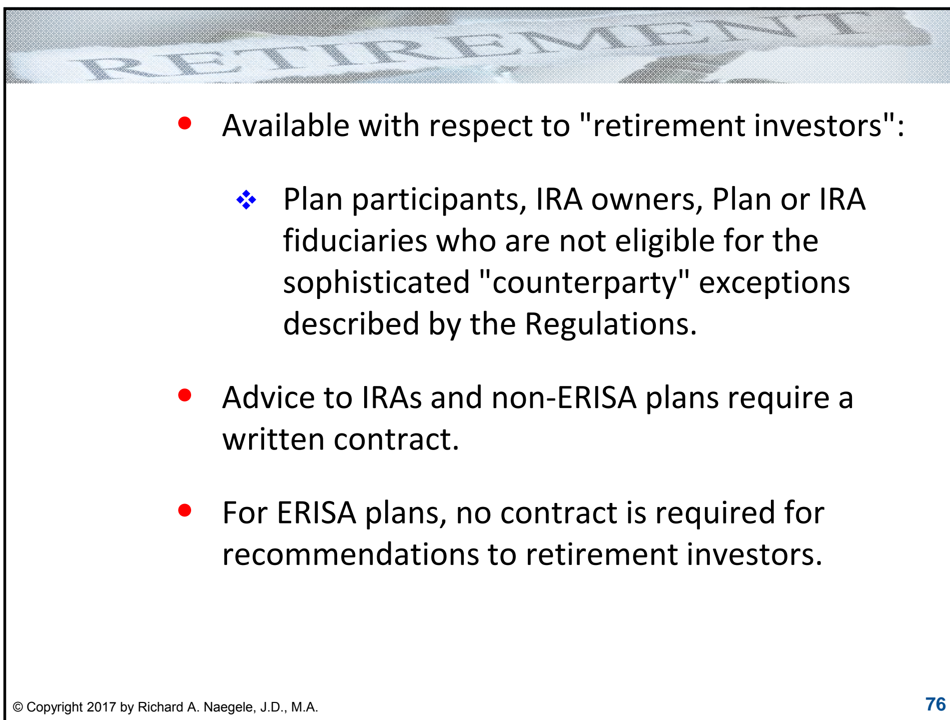
RETIREMENT
Available with respect to "retirement investors":
Plan participants, IRA owners, Plan or IRA fiduciaries who are not eligible for the sophisticated "counterparty" exceptions described by the Regulations.
Advice to IRAs and non-ERISA plans require a written contract.
For ERISA plans, no contract is required for recommendations to retirement investors.
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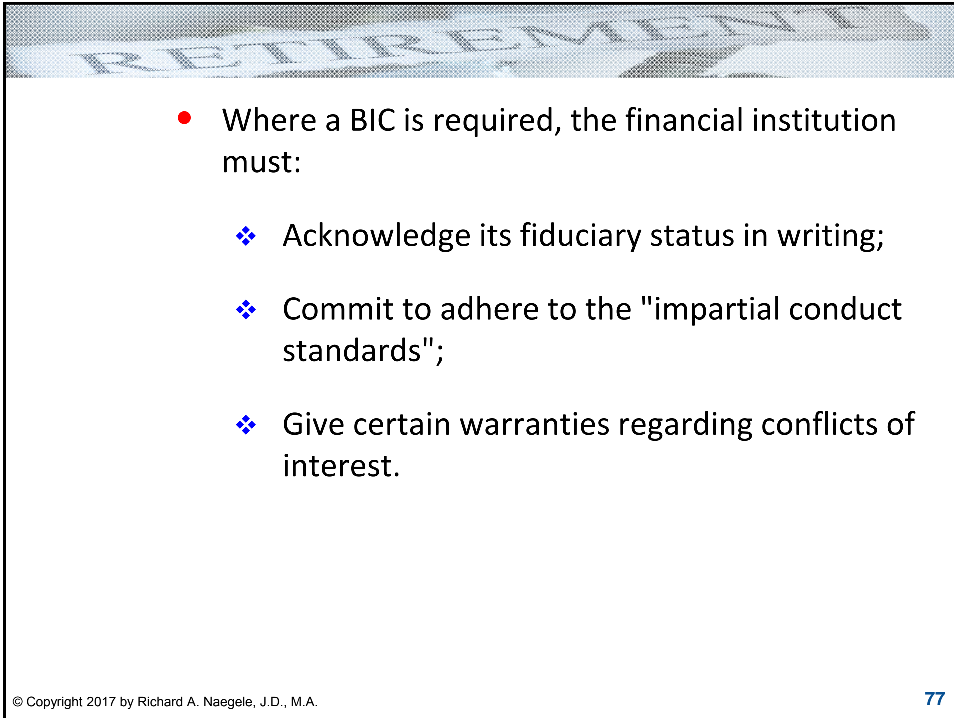
RETIREMENT
Where a BIC is required, the financial institution must:
Acknowledge its fiduciary status in writing;
Commit to adhere to the "impartial conduct standards";
Give certain warranties regarding conflicts of interest.
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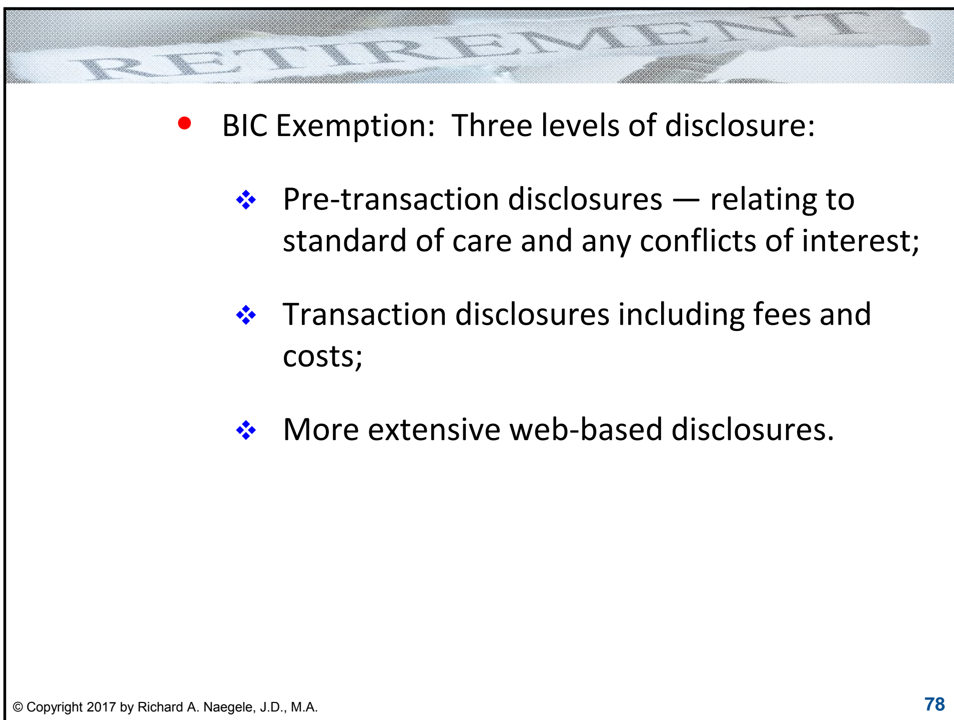
RETIREMENT
BIC Exemption: Three levels of disclosure:
Pre-transaction disclosures — relating to standard of care and any conflicts of interest;
Transaction disclosures including fees and costs;
More extensive web-based disclosures.
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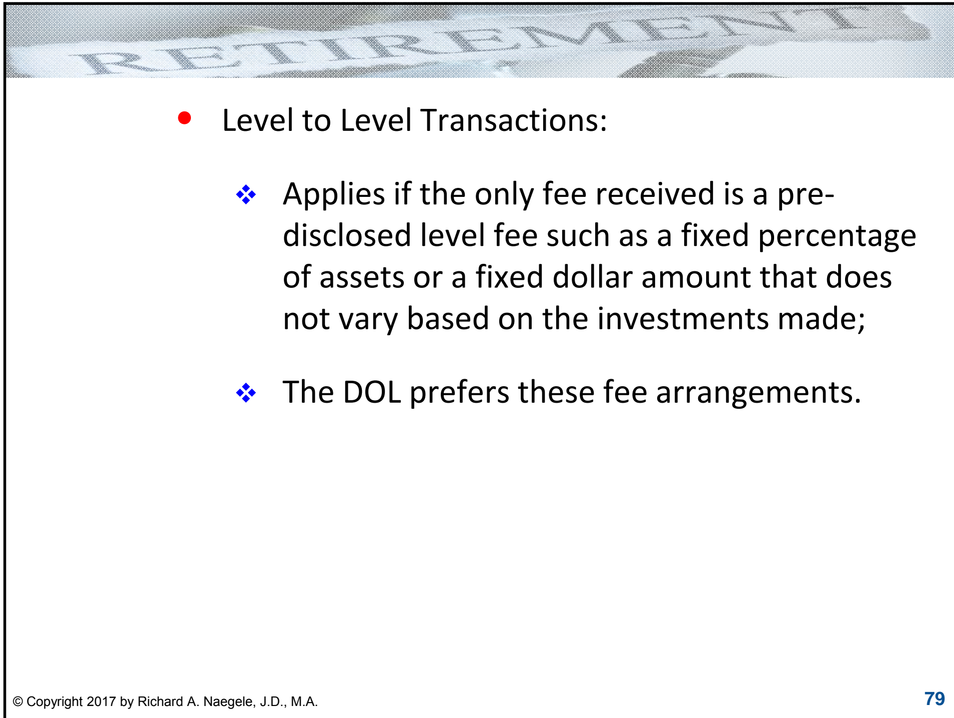

RETIREMENT
- Level to Level Transactions:
  - Applies if the only fee received is a pre-disclosed level fee such as a fixed percentage of assets or a fixed dollar amount that does not vary based on the investments made;
  - The DOL prefers these fee arrangements.
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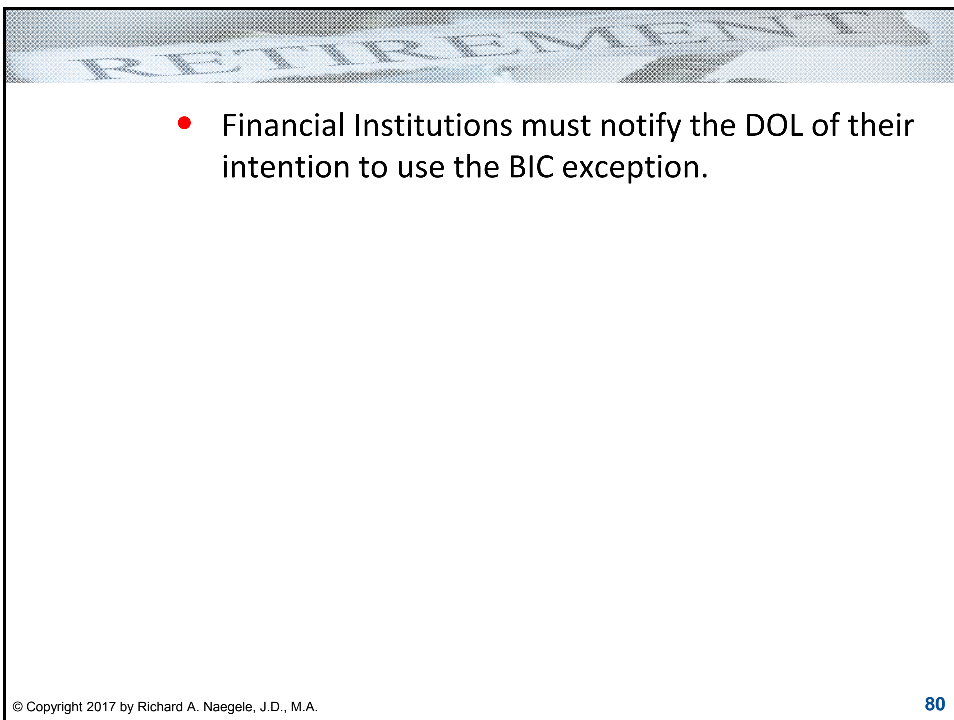

RETIREMENT
- Financial Institutions must notify the DOL of their intention to use the BIC exception.
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III. ERISA Fiduciary Issues.

- ***Tibble v. Edison Int'l.***, 135 S.Ct. 1823 (2015).
  - Fiduciary duty to monitor retirement plan investments.
    - Prudent at selection of investment
    - Investments regularly reviewed.
  - ERISA 6 year Statute of Limitations(SOL) is ongoing for investment options.
    - SOL is not limited to initial selection of investment.

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Fiduciary Investment Lessons from *Tibble v. Edison Int'l.*

- Trustees and investment fiduciaries must actively, periodically, and systematically review a plan's investments to ensure that they are prudent and meet ERISA's fiduciary requirements.
- Trustees should reconsider whether retail-class shares, rather than institutional-class shares, are prudent or proper investment options for a plan.
- Fiduciaries should strongly consider the engagement of a professional investment advisor to assist and monitor investment decisions.
- Trustees and advisors should develop, implement, and document an investment process and investment decisions.

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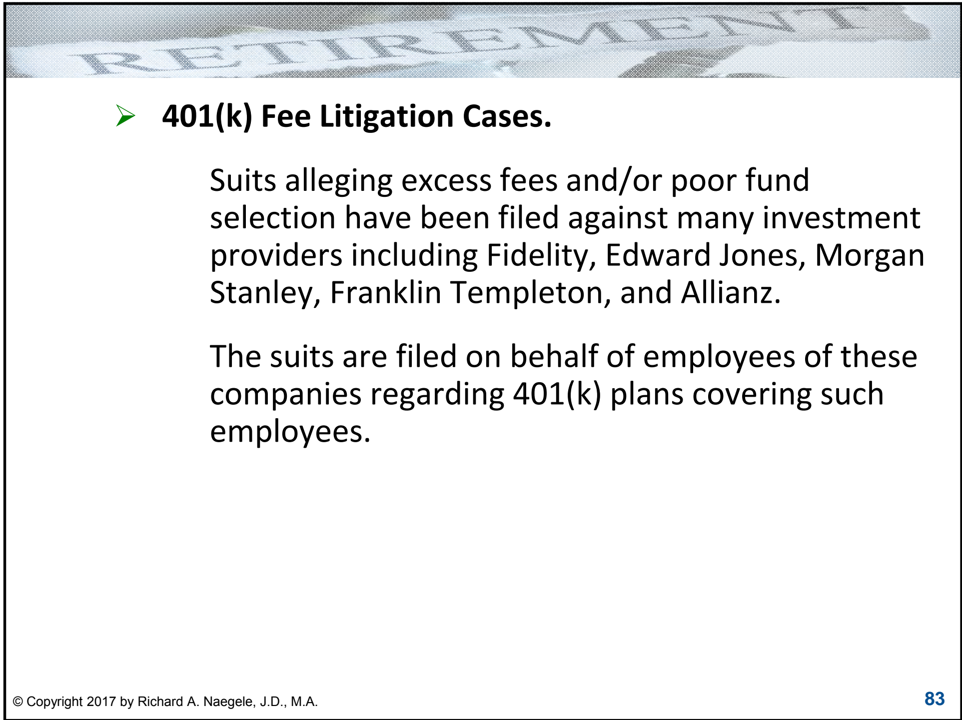
RETIREMENT
401(k) Fee Litigation Cases.
Suits alleging excess fees and/or poor fund selection have been filed against many investment providers including Fidelity, Edward Jones, Morgan Stanley, Franklin Templeton, and Allianz.
The suits are filed on behalf of employees of these companies regarding 401(k) plans covering such employees.
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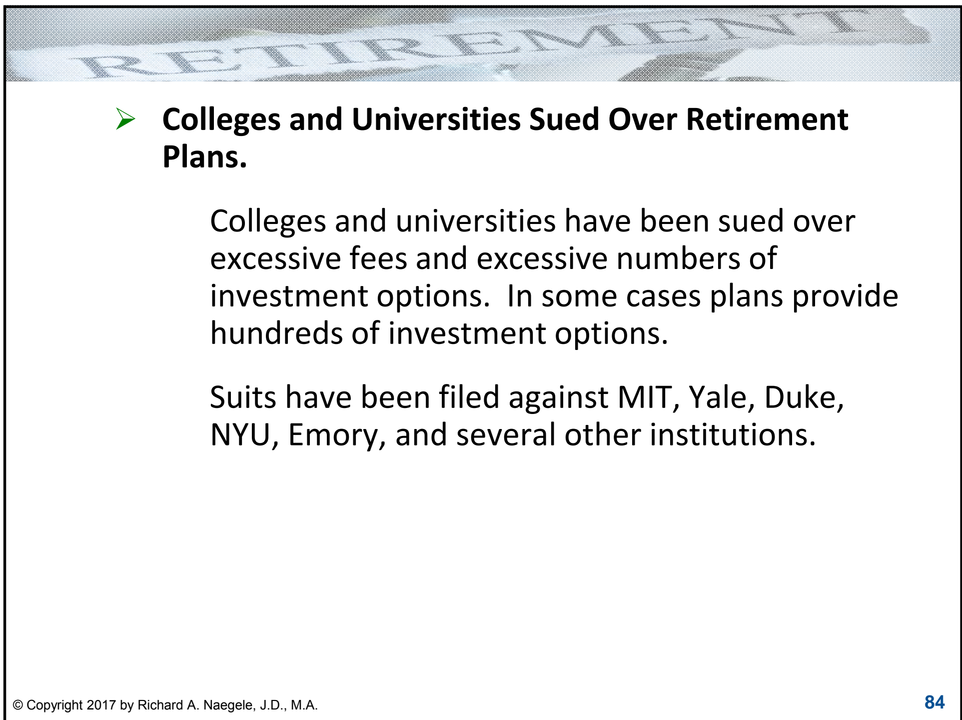
RETIREMENT
Colleges and Universities Sued Over Retirement Plans.
Colleges and universities have been sued over excessive fees and excessive numbers of investment options. In some cases plans provide hundreds of investment options.
Suits have been filed against MIT, Yale, Duke, NYU, Emory, and several other institutions.
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IV. PBGC Expansion of Missing Participant Program.

PBGC has proposed expanding its missing participant program to include retirement plans not currently covered by the PBGC.

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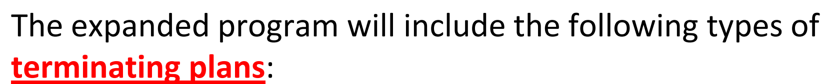

The expanded program will include the following types of **terminating plans**:

- Most Defined Contribution Plans (e.g., 401(k) plans).
- Multiemployer Defined Benefit Plans covered by PBGC's Insurance Program.
- Small Professional Service Defined Benefit Plans (< 25 participants) not covered by the PBGC's insurance program.

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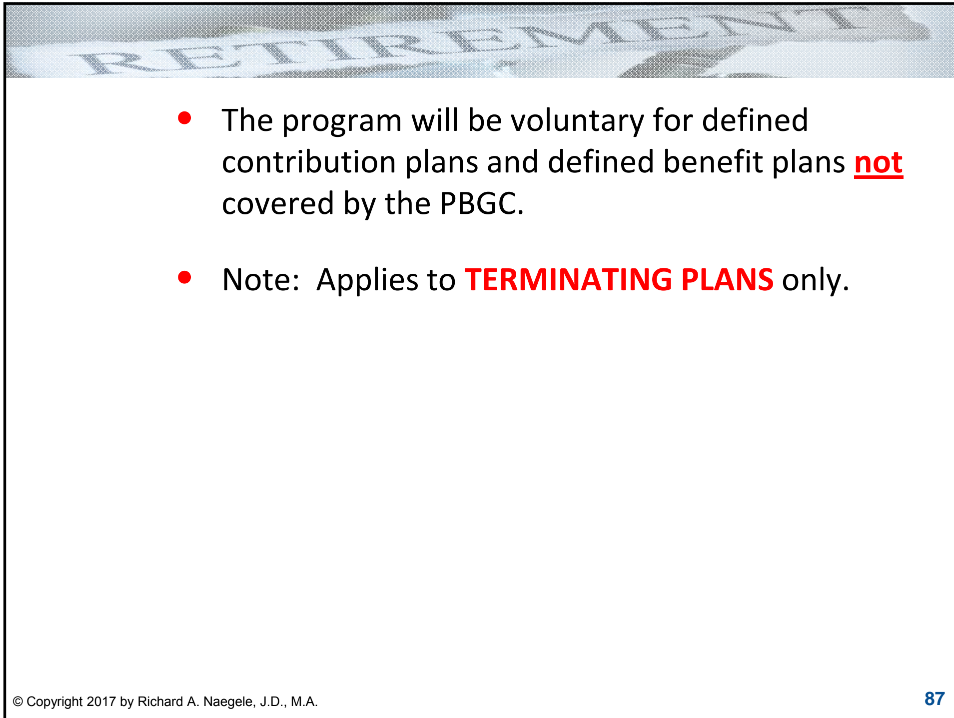
RETIREMENT
- The program will be voluntary for defined contribution plans and defined benefit plans **not** covered by the PBGC.
- Note: Applies to **TERMINATING PLANS** only.
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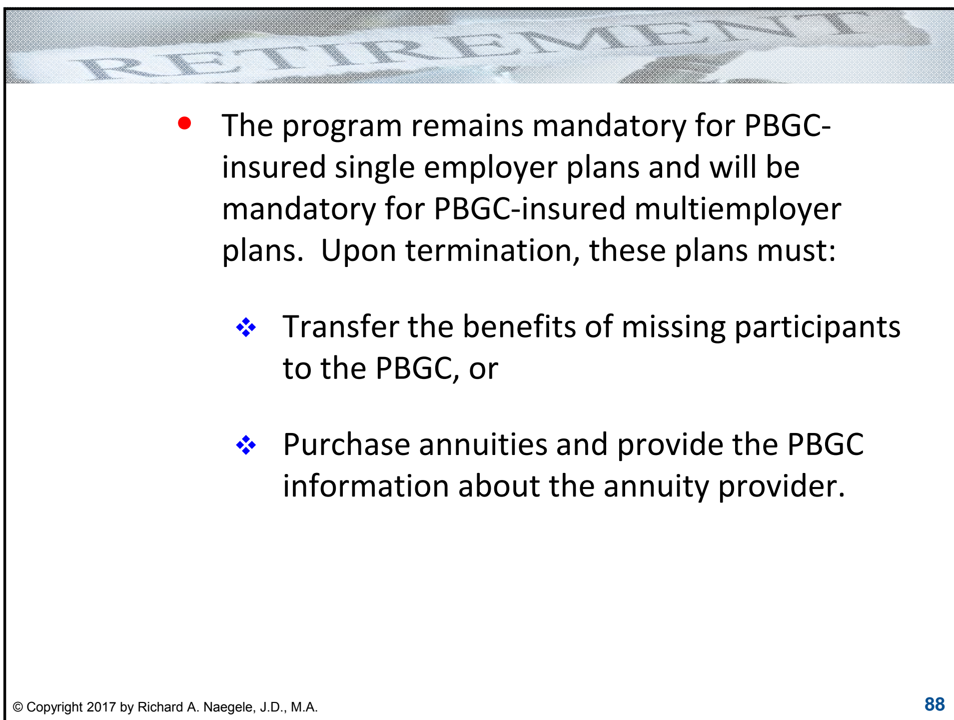
RETIREMENT
- The program remains mandatory for PBGC-insured single employer plans and will be mandatory for PBGC-insured multiemployer plans. Upon termination, these plans must:
- Transfer the benefits of missing participants to the PBGC, or
- Purchase annuities and provide the PBGC information about the annuity provider.
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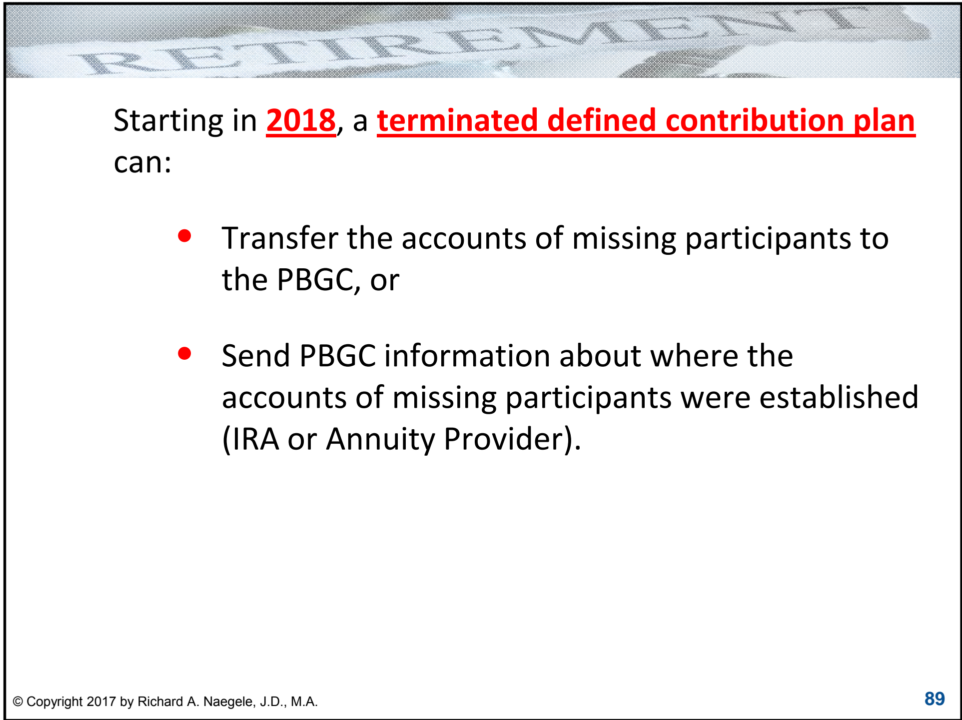

RETIREMENT

Starting in **2018**, a **terminated defined contribution plan** can:

- Transfer the accounts of missing participants to the PBGC, or
- Send PBGC information about where the accounts of missing participants were established (IRA or Annuity Provider).

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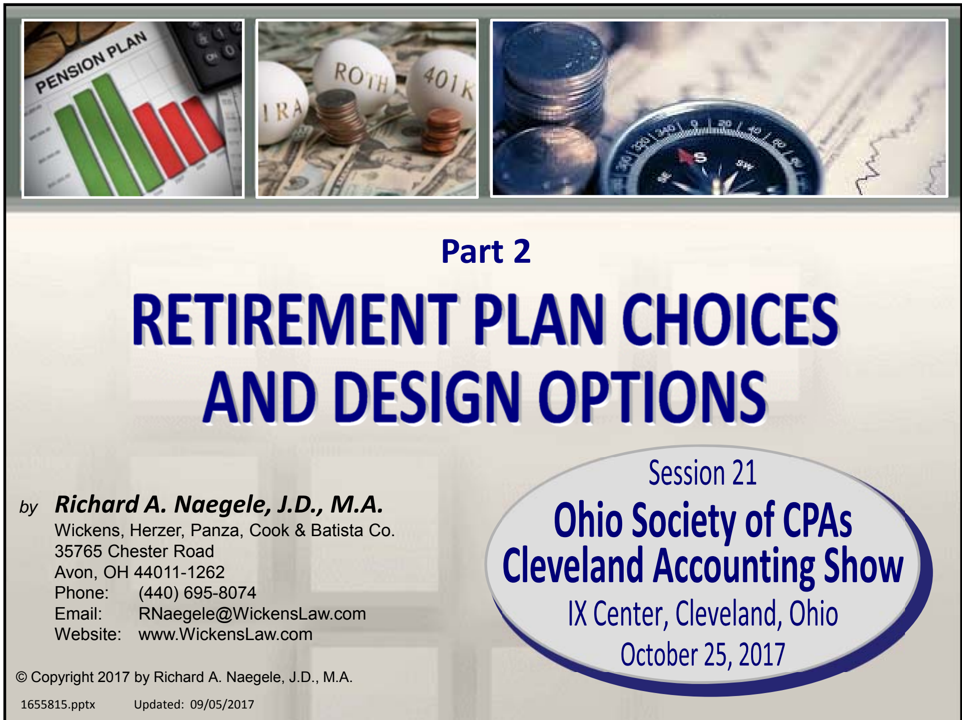

PENSION PLAN
ROTH
401K
IRA
Part 2
RETIREMENT PLAN CHOICES AND DESIGN OPTIONS
by Richard A. Naegele, J.D., M.A.
Wickens, Herzer, Panza, Cook & Batista Co.
35765 Chester Road
Avon, OH 44011-1262
Phone: (440) 695-8074
Email: RNaegele@WickensLaw.com
Website: www.WickensLaw.com
Session 21
Ohio Society of CPAs
Cleveland Accounting Show
IX Center, Cleveland, Ohio
October 25, 2017
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TYPES OF QUALIFIED PLANS

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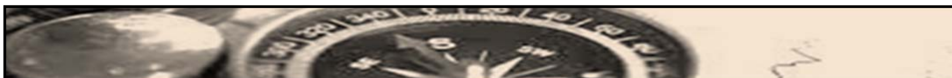

Profit-Sharing Plans.

- 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 $54,000 (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 2017 under §402(g). Employees who have attained age 50 are permitted to defer additional "catch-up" contributions of $6,000 for 2017.
- 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 2016 or 2017; adjusted) during the prior year from the employer.
    - HCE in 2017 if compensation greater than $120,000 in 2016.

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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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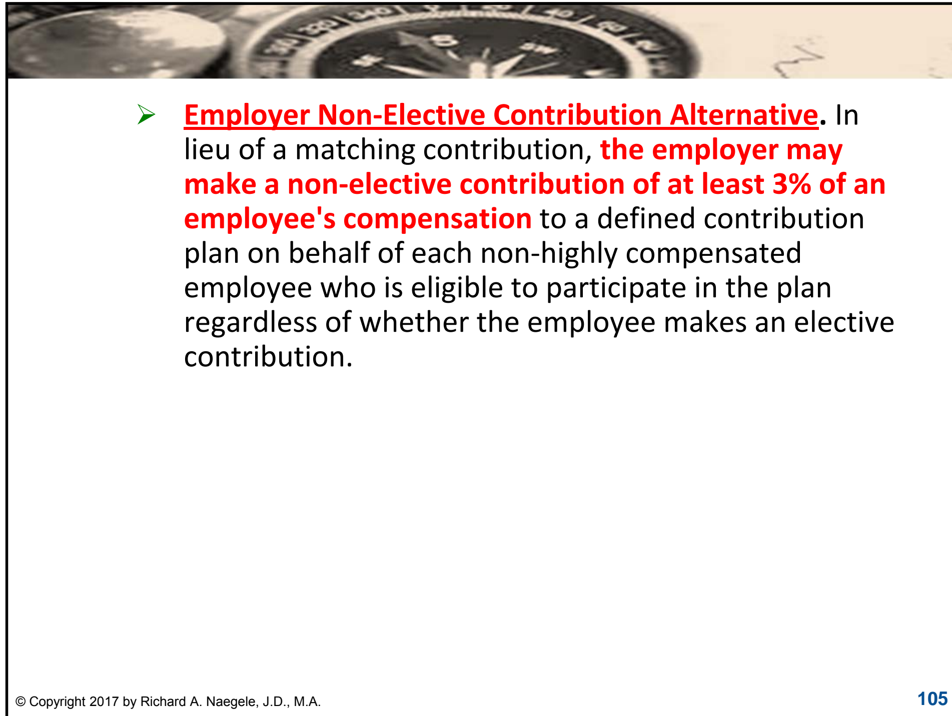

- **Employer Non-Elective Contribution Alternative.** In lieu of a matching contribution, **the employer may make a non-elective contribution of at least 3% of an employee's compensation** to a defined contribution plan on behalf of each non-highly compensated employee who is eligible to participate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

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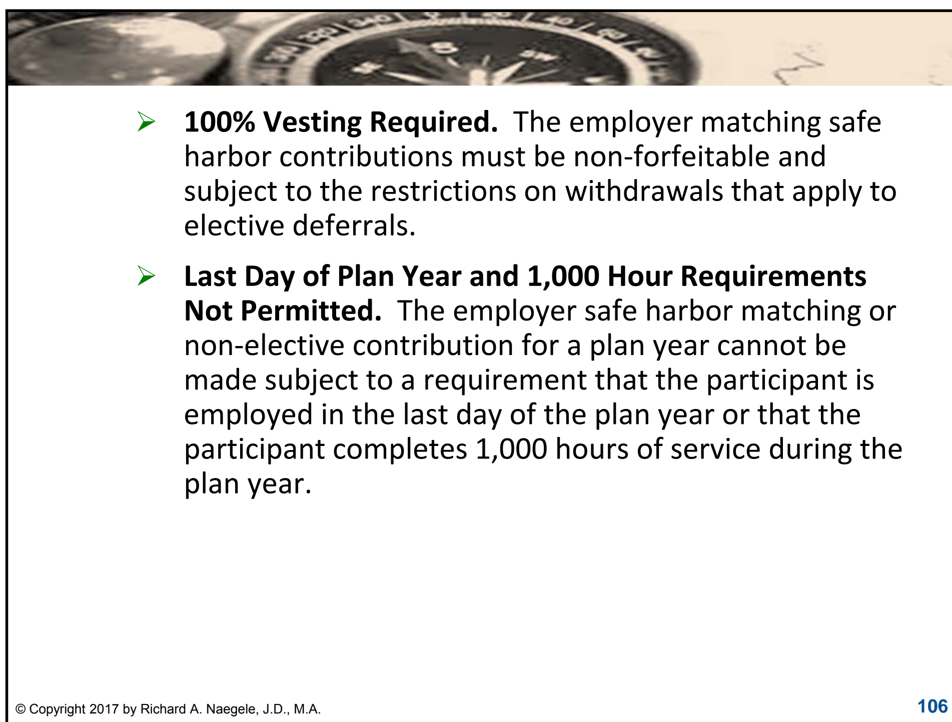

- **100% Vesting Required.** The employer matching safe harbor contributions must be non-forfeitable and subject to the restrictions on withdrawals that apply to elective deferrals.
- **Last Day of Plan Year and 1,000 Hour Requirements Not Permitted.** The employer safe harbor matching or non-elective 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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- **New Safe Harbor Plan or Amendment of Profit-Sharing Plan to Add Safe Harbor Provisions.** A new safe harbor plan can be established or 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 safe harbor requirements 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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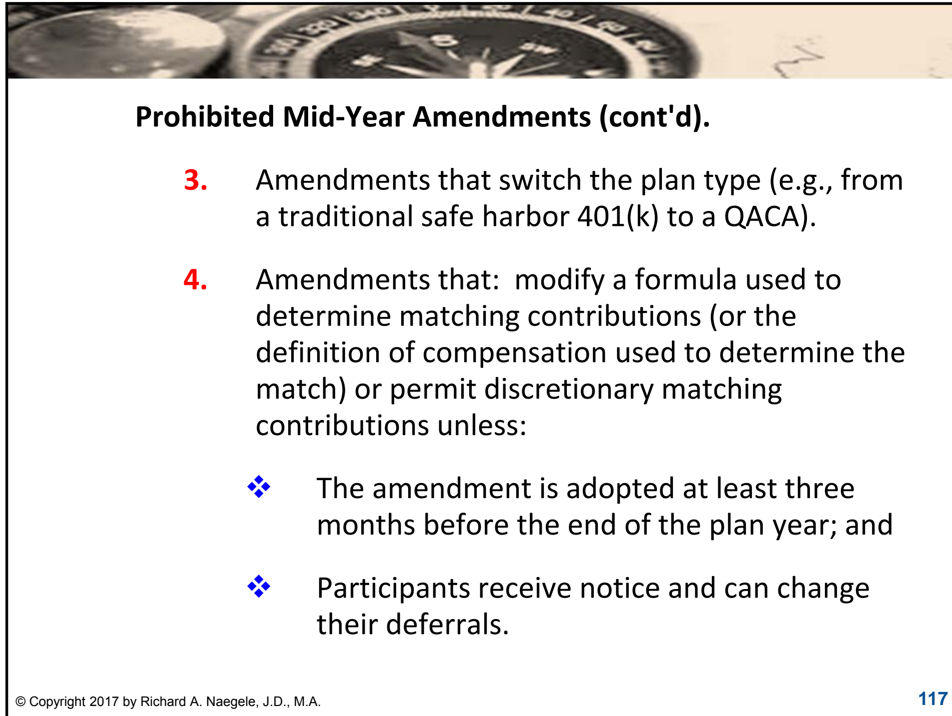

Prohibited Mid-Year Amendments (cont'd).

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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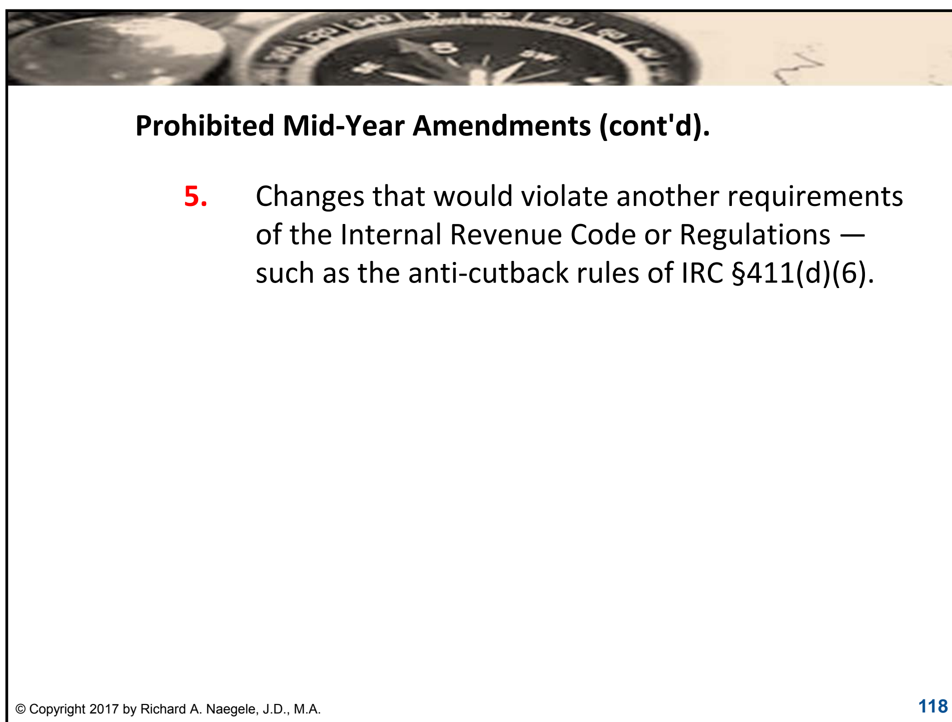

Prohibited Mid-Year Amendments (cont'd).

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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Use of Forfeitures to Fund Safe Harbor Contributions.

- Effective January 18, 2017, the IRS reversed its prior position and now permits the use of forfeitures to fund 401(k) Safe Harbor Contributions.

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Prop. Reg. §1.401(k)-6 provides that QNECs, QMACs, and Safe Harbor contributions must be **nonforfeitable when** they are **allocated** to participants' accounts, **rather than when** they are **contributed** to the plan.

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Plan amendments may be needed to remove language restricting the use of forfeitures to fund safe harbor contributions.

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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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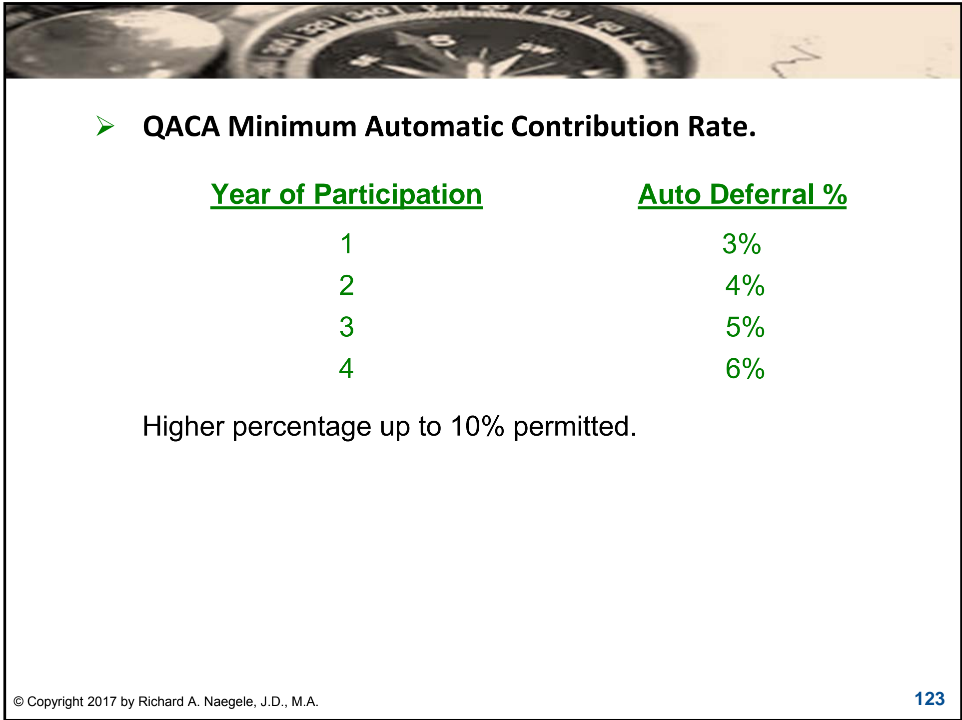

QACA Minimum Automatic Contribution Rate.
Year of Participation
Auto Deferral %
1
3%
2
4%
3
5%
4
6%
Higher percentage up to 10% permitted.
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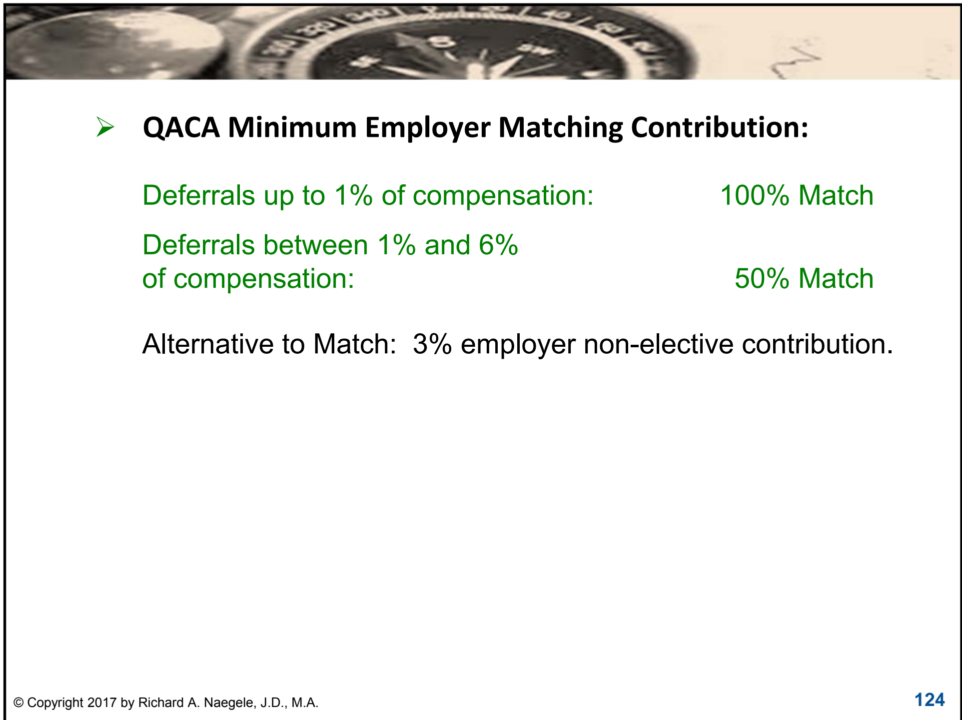

QACA Minimum Employer Matching Contribution:
Deferrals up to 1% of compensation:
100% Match
Deferrals between 1% and 6%
of compensation:
50% Match
Alternative to Match: 3% employer non-elective contribution.
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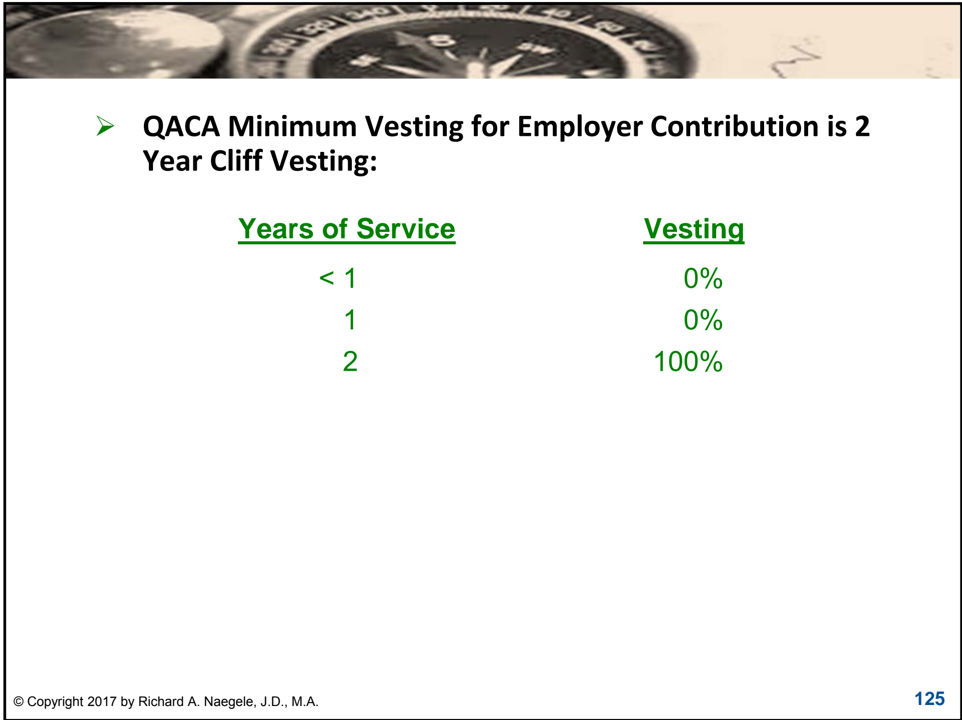
QACA Minimum Vesting for Employer Contribution is 2 Year Cliff Vesting:
Years of Service
Vesting
< 1
0%
1
0%
2
100%
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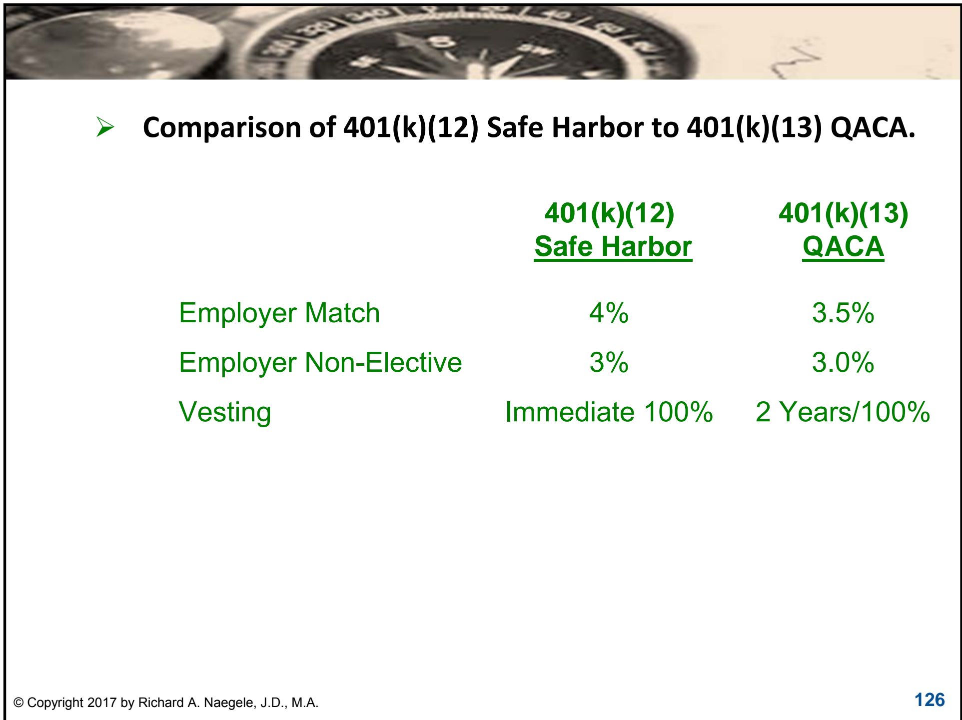
Comparison of 401(k)(12) Safe Harbor to 401(k)(13) QACA.
401(k)(12) Safe Harbor
401(k)(13) QACA
Employer Match
4%
3.5%
Employer Non-Elective
3%
3.0%
Vesting
Immediate 100%
2 Years/100%
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- **Eligible Automatic Contribution Arrangement (EACA); IRC §414(w).**
  - 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 (2017)

				spouse
Compensation:	$ 50,000	$100,000	$270,000	$30,000
	x .04	x .04	x .04	x .04
Match:	$ 2,000	$ 4,000	$ 10,800	$ 1,200
Deferral:	+ 18,000	+ 18,000	+ 18,000	+18,000
Subtotal:	$ 20,000	$ 22,000	$ 28,800	$19,200
Catch-Up (Age 50):	+ 6,000	+ 6,000	+ 6,000	+ 6,000
Total:	$ 26,000	$ 28,000	$ 34,800	$25,200

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EXAMPLE II

Example Of Cost Of Benefits For NHCEs Under Various Retirement Plan Options To Provide Maximum $54,000. Contribution For HCE.

- **Highly Compensated Employee (HCE) (2017)**

Compensation:	$ 270,000
Contribution:	$ 54,000
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)*	16.64%
3.	Safe Harbor 401(k) (2017: $18,000) with Integrated Profit Sharing	9.97%
4.	Cross Tested Profit Sharing (with optimal demographics)	4.44%

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

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EXAMPLE III

- **Solo 401(k)**

Amount	Description
$ 144,000	Compensation (Including 401(k) Deferral)
x .25	
36,000	Profit-Sharing
+ 18,000	401(k) Deferral
$ 54,000	
+ 6,000	Catch-Up Deferral (Age 50+)
$ 60,000	Total Contributions

Amount	Description
$ 144,000	Compensation (Including 401(k) Deferral)
+ 36,000	Profit-Sharing
$ 180,000	Total $ Needed for Maximum Contribution

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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 $54,000 (adjusted) for each participant. However, the maximum deduction is 25% of the total compensation of all eligible participants.

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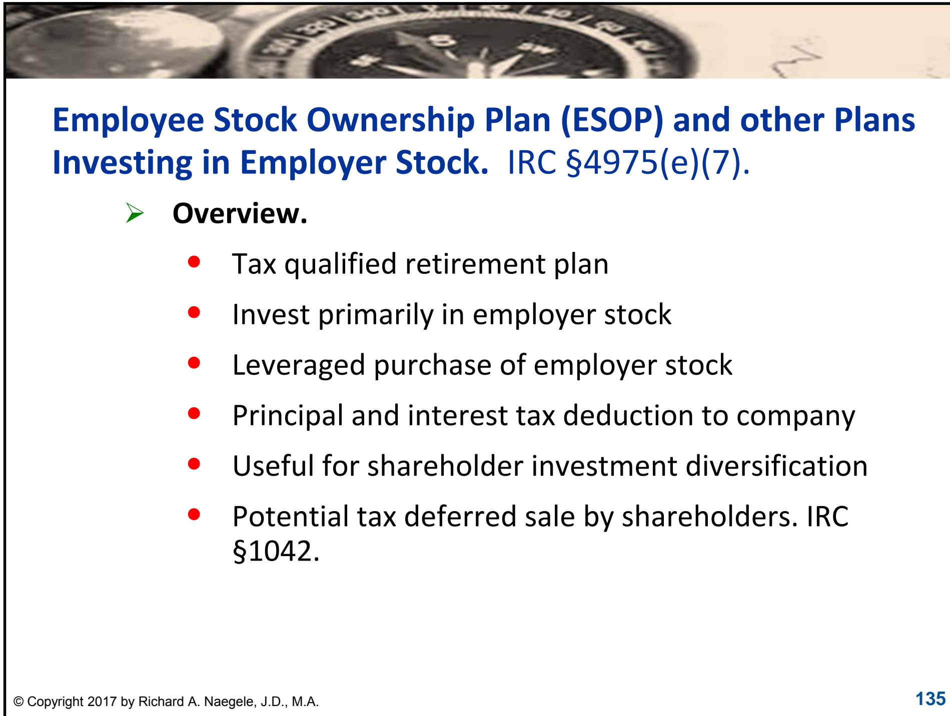

Employee Stock Ownership Plan (ESOP) and other Plans Investing in Employer Stock. IRC §4975(e)(7).
Overview.
Tax qualified retirement plan
Invest primarily in employer stock
Leveraged purchase of employer stock
Principal and interest tax deduction to company
Useful for shareholder investment diversification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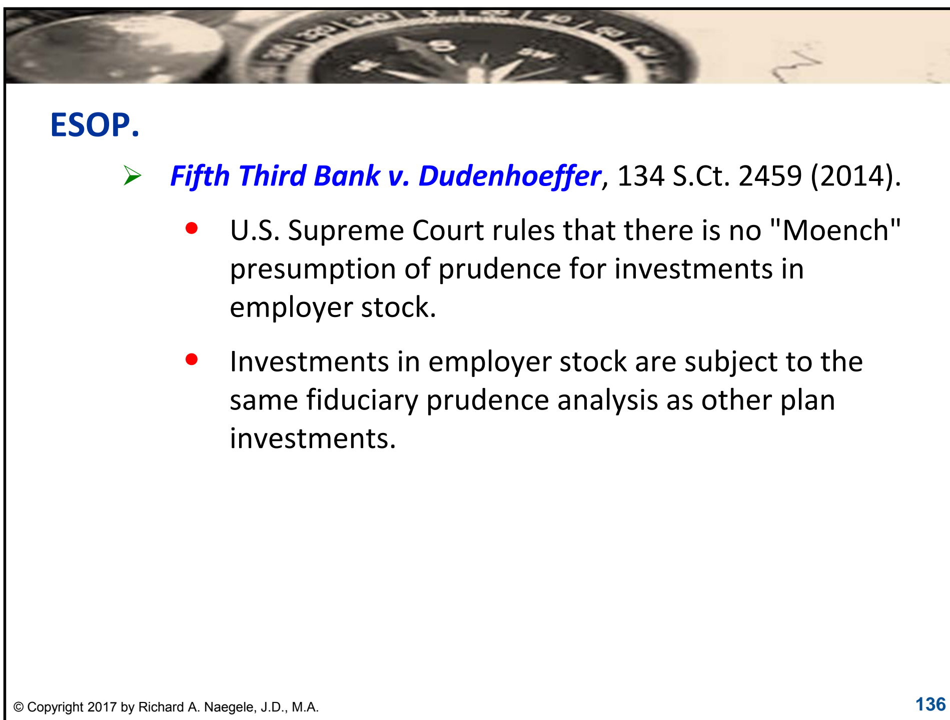

ESOP.
Fifth Third Bank v. Dudenhoeffer, 134 S.Ct. 2459 (2014).
U.S. Supreme Court rules that there is no "Moench" presumption of prudence for investments in employer stock.
Investments in employer stock are subject to the same fiduciary prudence analysis as other plan investments.
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Cross-Tested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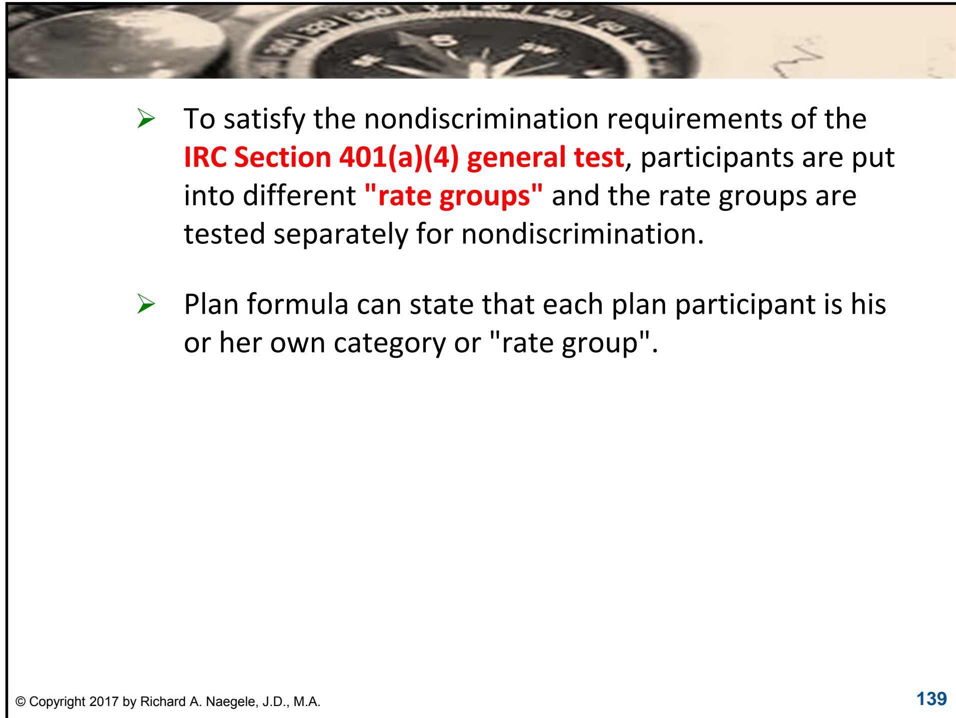

- To satisfy the nondiscrimination requirements of the **IRC Section 401(a)(4) general test**, participants are put into different **"rate groups"** and the rate groups are tested separately for nondiscrimination.
- Plan formula can state that each plan participant is his or her own category or "rate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

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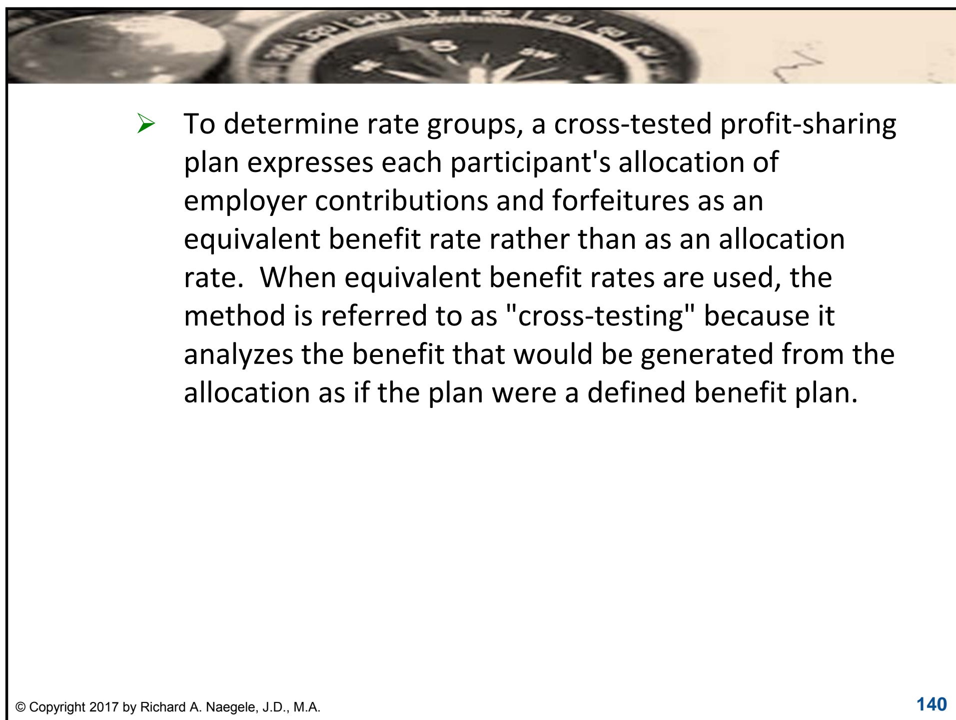

- To determine rate groups, a cross-tested profit-sharing plan expresses each participant's allocation of employer contributions and forfeitures as an equivalent benefit rate rather than as an allocation rate. When equivalent benefit rates are used, the method is referred to as "cross-testing" because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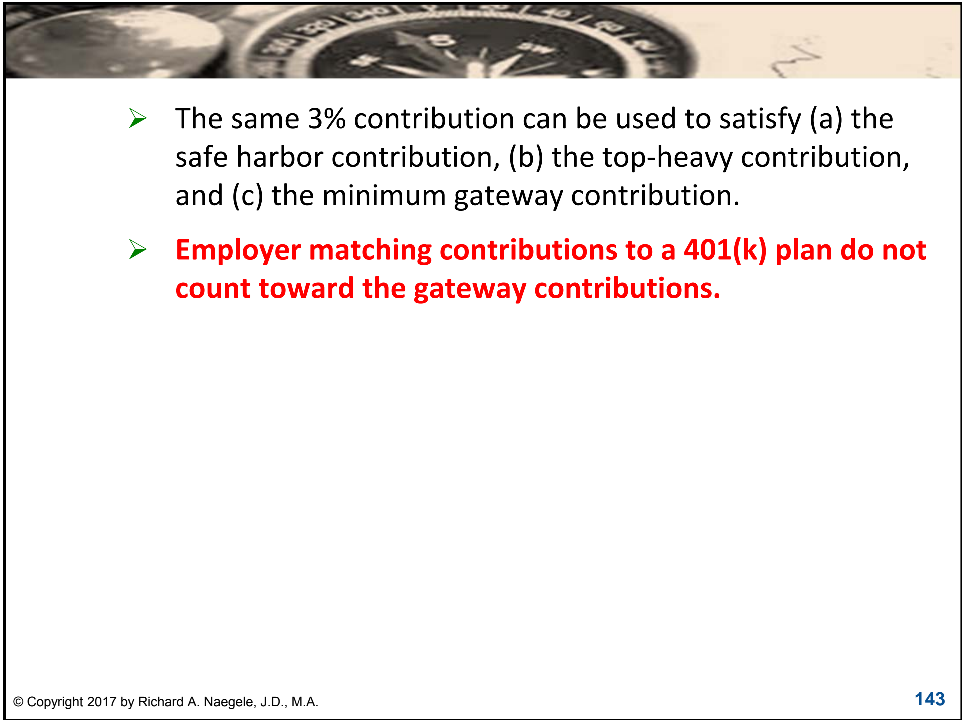

➢ The same 3% contribution can be used to satisfy (a) the safe harbor contribution, (b) the top-heavy contribution, and (c) the minimum gateway contribution.
➢ Employer matching contributions to a 401(k) plan do not count toward the gateway contributions.
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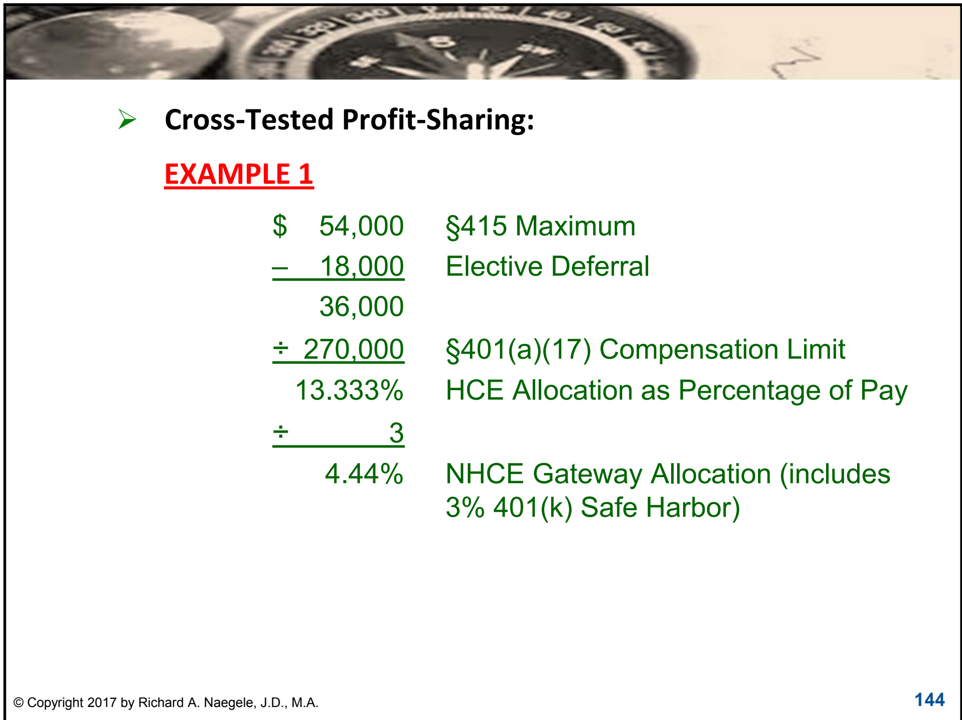

➢ Cross-Tested Profit-Sharing:
EXAMPLE 1
$ 54,000 §415 Maximum
– 18,000 Elective Deferral
36,000
÷ 270,000 §401(a)(17) Compensation Limit
13.333% HCE Allocation as Percentage of Pay
÷ 3
4.44% NHCE Gateway Allocation (includes 3% 401(k) Safe Harbor)
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- **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 $215,000 (adjusted) or 100% of an employee's annual compensation for the three highest consecutive years of service. IRC §415(b).
  - The $215,000 (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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- **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 $54,000 (for 2017) ($60,000 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 PBGC for purposes of the combined plan limit.
  - IRC Sections 404(a)(7) and 4972.

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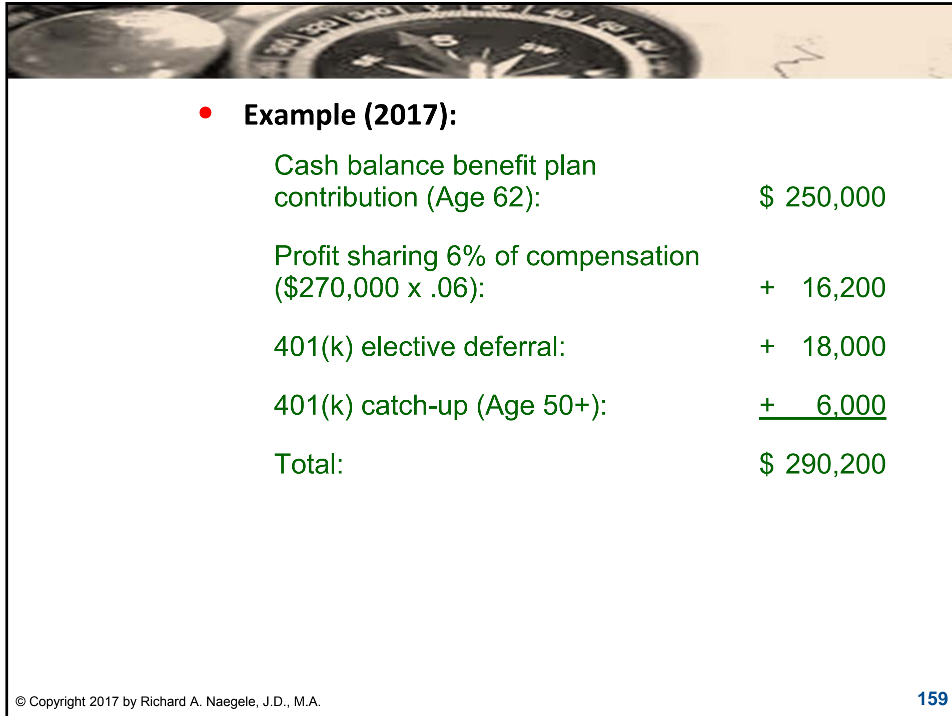

- **Example (2017):**

Cash balance benefit plan contribution (Age 62):	$ 250,000
Profit sharing 6% of compensation ($270,000 x .06):	+ 16,200
401(k) elective deferral:	+ 18,000
401(k) catch-up (Age 50+):	+ 6,000
Total:	$ 290,200

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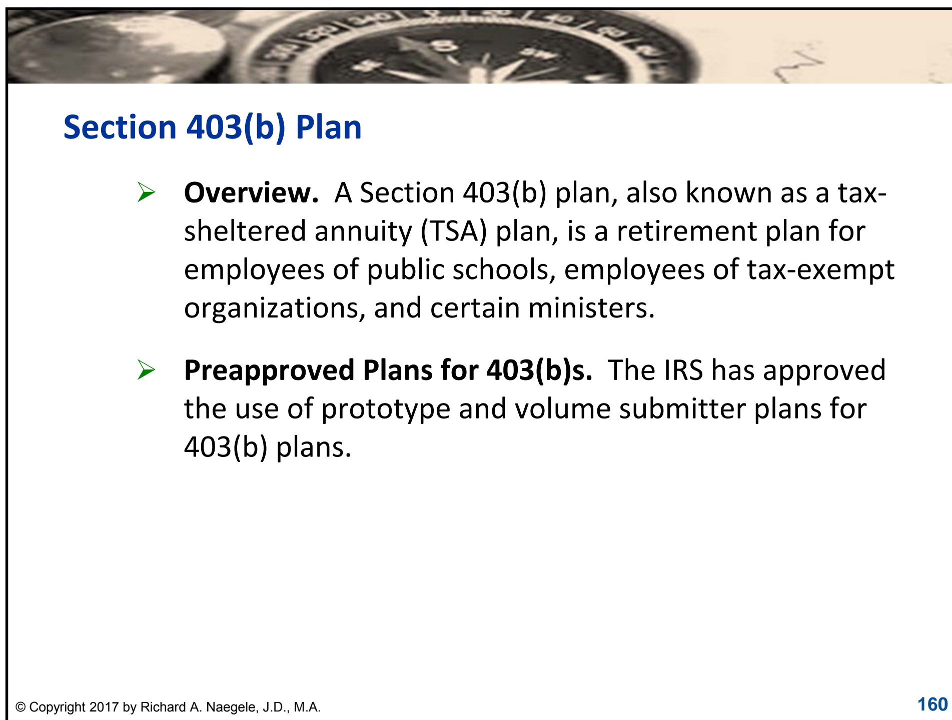

Section 403(b) Plan

- **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 2017.

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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) $54,000 for 2017 (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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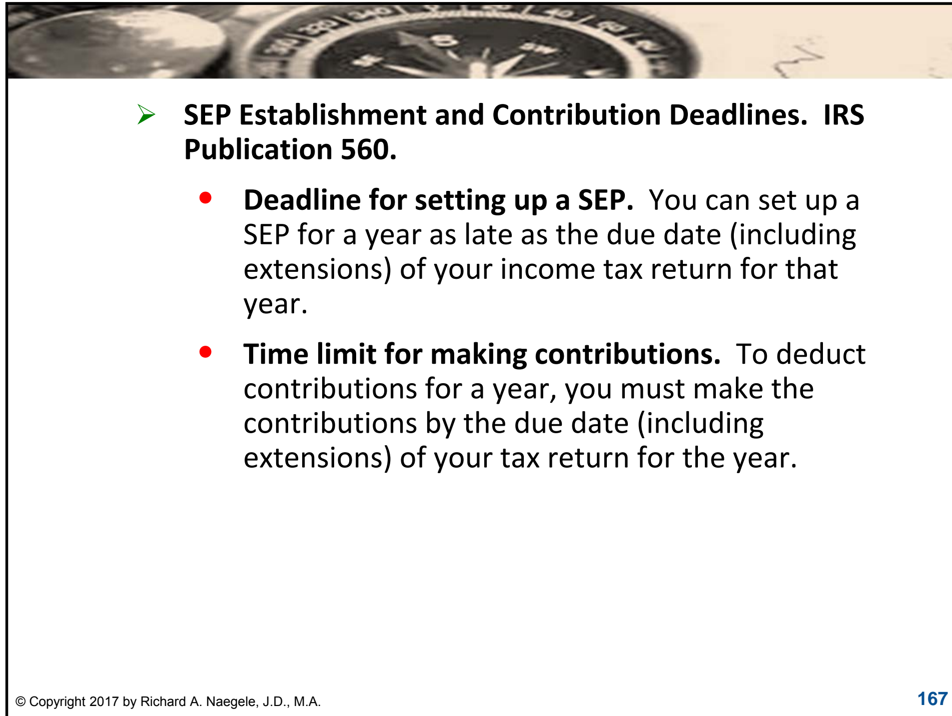

- **SEP Establishment and Contribution Deadlines. IRS Publication 560.**
  - **Deadline for setting up a SEP.** You can set up a SEP for a year as late as the due date (including extensions) of your income tax return for that year.
  - **Time limit for making contributions.** To deduct contributions 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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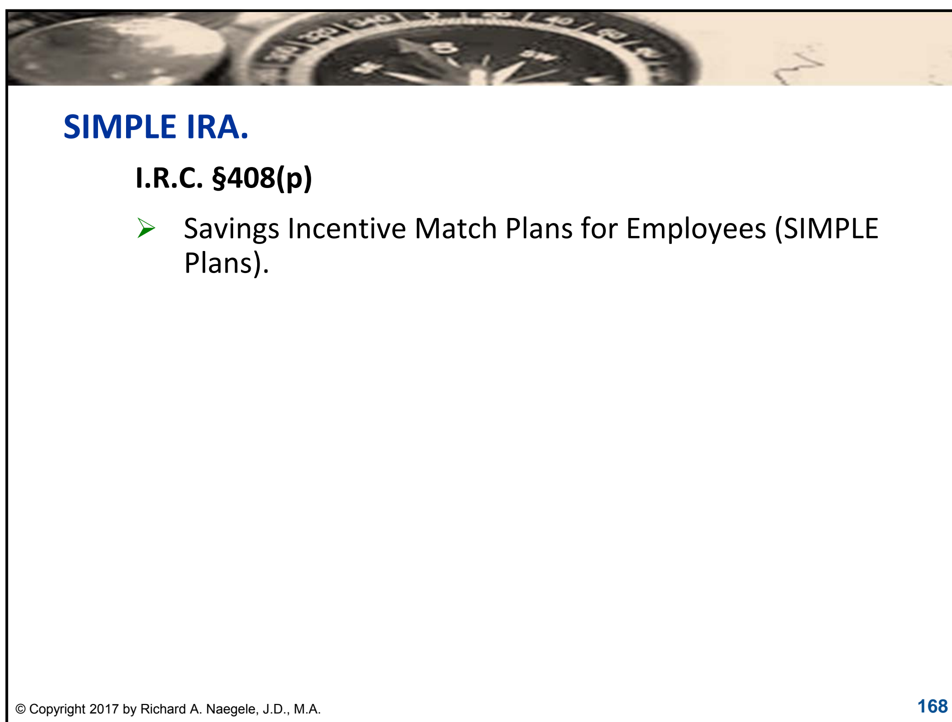

SIMPLE IRA.

I.R.C. §408(p)

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

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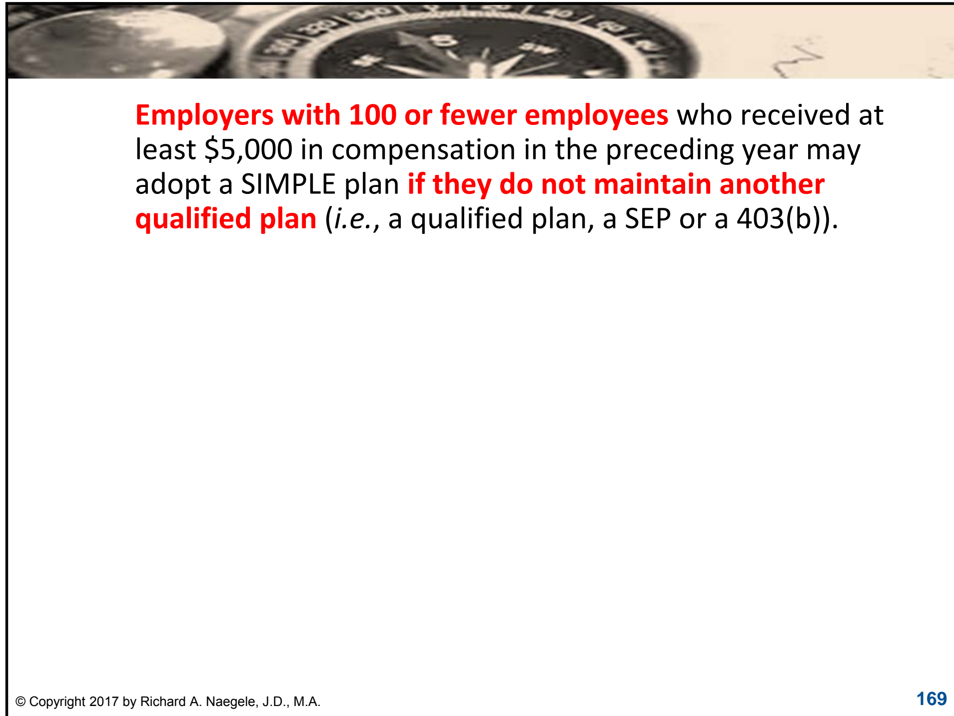
Employers with 100 or fewer employees who received at least $5,000 in compensation in the preceding year may adopt a SIMPLE plan **if they do not maintain another qualified plan** (*i.e.*, a qualified plan, a SEP or a 403(b)).
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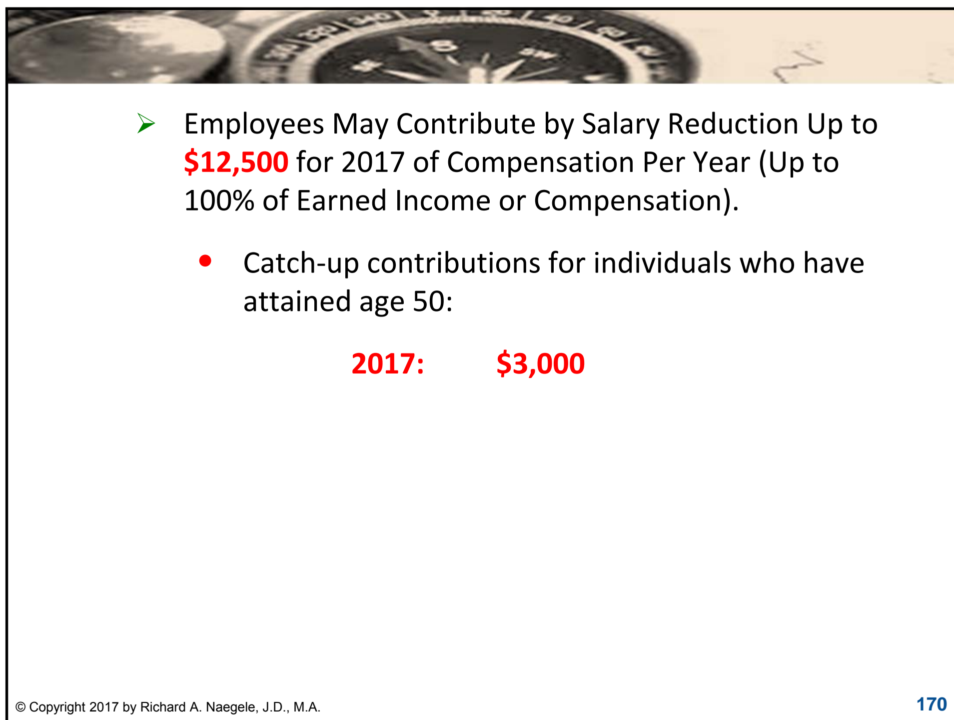
➢ Employees May Contribute by Salary Reduction Up to **$12,500** for 2017 of Compensation Per Year (Up to 100% of Earned Income or Compensation).
• Catch-up contributions for individuals who have attained age 50:
2017: $3,000
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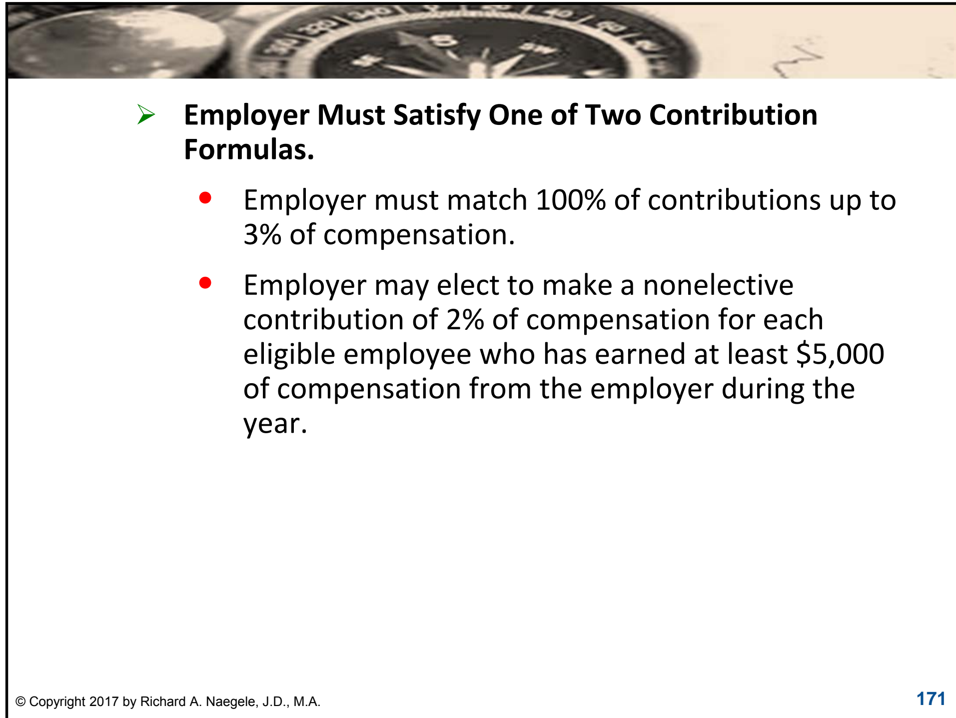

➢ **Employer Must Satisfy One of Two Contribution Formulas.**

- 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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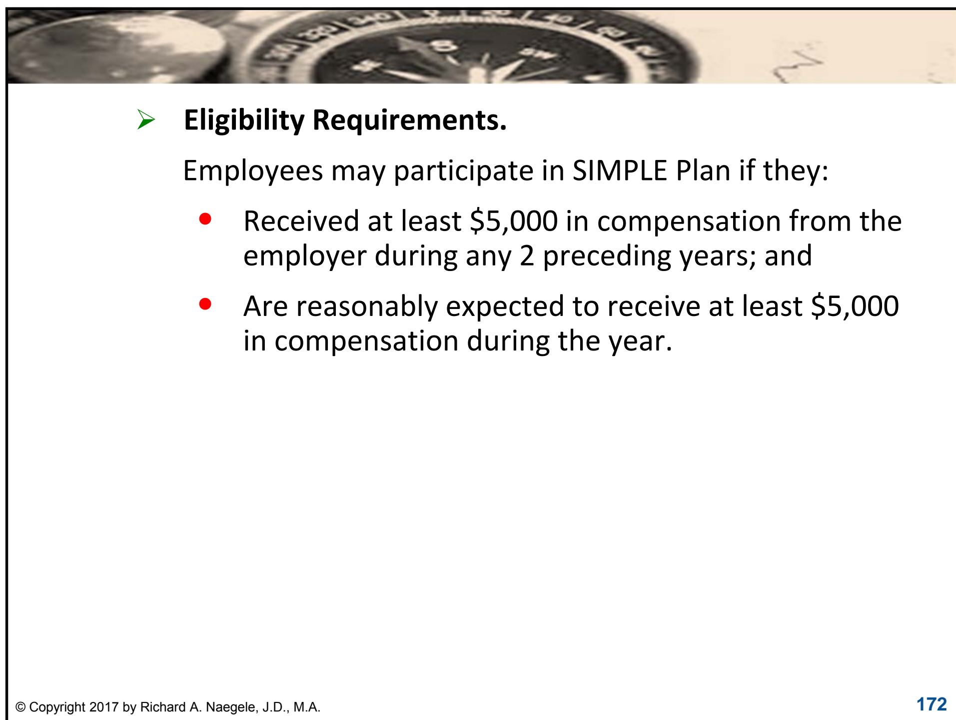

➢ **Eligibility Requirements.**

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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