

---

---

# **COMPLETE GUIDE TO RETIREMENT PLANS FOR SMALL BUSINESSES**

**TAX LAW • ERISA REQUIREMENTS •  
PLANNING AND COMPLIANCE GUIDANCE**

---

---

**Edited by  
Mark S. Weisberg, J.D.**

**With the assistance of  
Donald R. Levy, J.D., M.B.A.**



**Civic Research Institute**

4478 U.S. Route 27 • P.O. Box 585 • Kingston, NJ 08528

Copyright © 2008

By Civic Research Institute, Inc.  
Kingston, New Jersey 08528

The information in this book is not intended to replace the services of trained legal or accounting professionals. Civic Research Institute, Inc. provides this information without advocating the use of or endorsing the issues, theories, precedent, guidance, resources, or practical materials discussed herein. Any application of the issues, theories, precedent, guidance, resources, or practical materials set forth in this book is at the reader's sole discretion and risk. The author, editors, and Civic Research Institute, Inc. specifically disclaim any liability, loss or risk, personal or otherwise, which is incurred as a consequence, directly or indirectly, of the use and application of any of the contents of this book.

All rights reserved. This book may not be reproduced in part or in whole by any process without written permission from the publisher.

This book is printed on acid free paper.

Printed in the United States of America

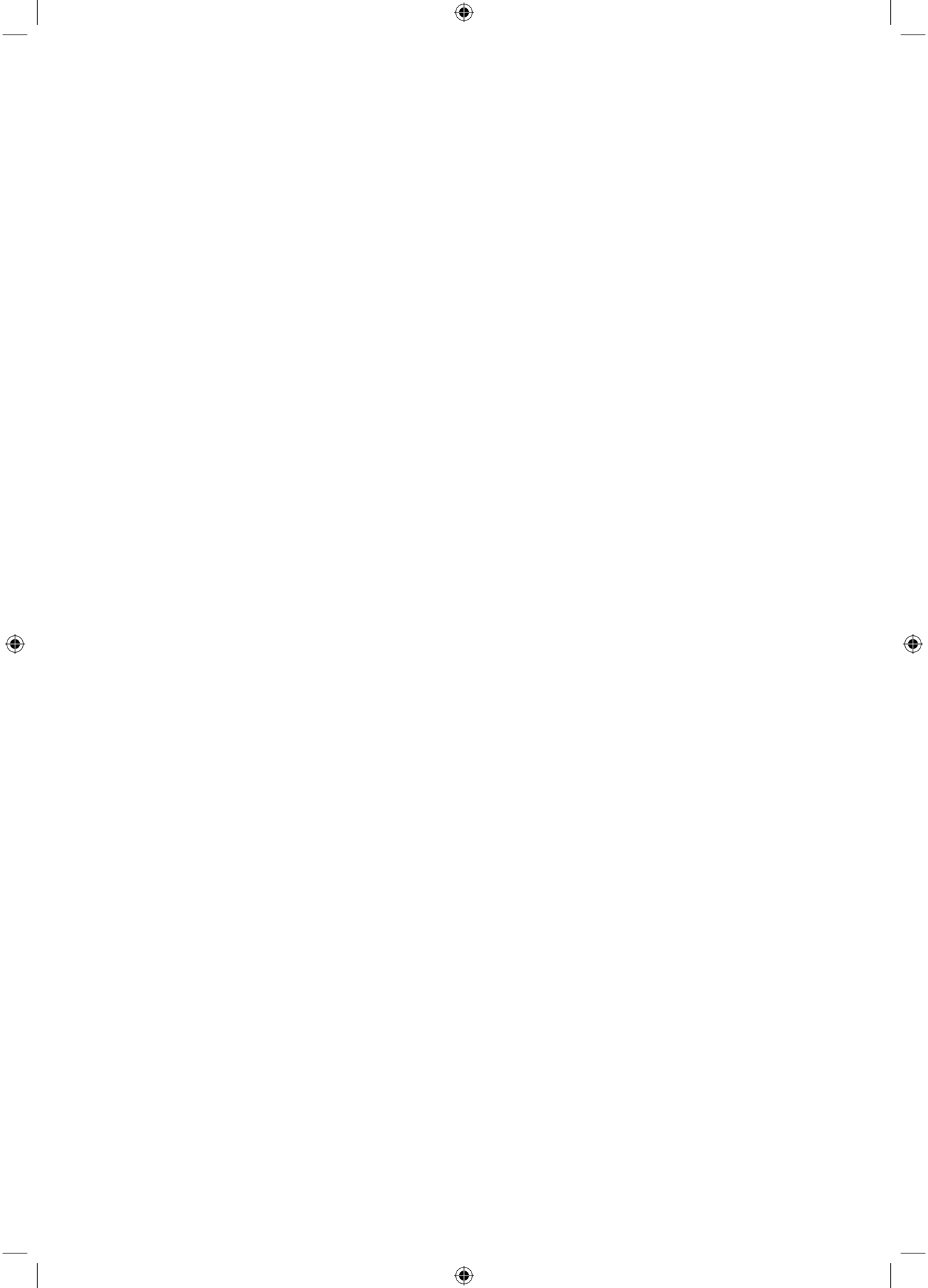
Library of Congress Cataloging in Publication Data  
Complete guide to retirement plans for small businesses: Tax law, ERISA requirements, planning and compliance guidance/ Mark S. Weisberg, J.D., with the assistance of Donald R. Levy, J.D., M.B.A.

ISBN 1-887554-65-3

Library of Congress Control Number:  
2008924909

# Acknowledgements

The editor gratefully acknowledges the hard work and expertise that all the authors and attorneys in the employee benefits and executive compensation group at Winston & Strawn LLP contributed to this book. The editor appreciates the many hours they spent working on this book. To the extent that we have achieved our goals in writing this book, they deserve all of the credit. Many thanks, also, to Mayer Naiman and Barry Salkin for their invaluable contributions to the book and for all they added to the group during their time at Winston & Strawn LLP.



# About the Editors and Contributors

**Mark S. Weisberg, J.D.**, a partner in Winston & Strawn LLP's employee benefits and executive compensation practice group, represents employers in the design, establishment, and administration of retirement benefit, welfare benefit, deferred and equity-based compensation plans.

In 2005, Mr. Weisberg was named one of the leading employee benefits and executive compensation lawyers in the United States by Chambers USA: America's Leading Business Lawyers. He also was honored in the peer rankings-based 2007 and 2008 editions of *The Best Lawyers in America*.

Mr. Weisberg is a frequent speaker and writer on employee benefits and executive compensation topics. He is coauthor of numerous articles published in the *Benefits Law Journal*.

Mr. Weisberg's speaking engagements include: "409A Deferred Compensation Update," Tax Executives Institute, Inc. Northeast Wisconsin Chapter, October 2007, "How to Add Value when Plan Sponsors Are Subject to a DOL or IRS Audit," 2006 Conference for Due Diligence—Advisor Conference, October 2006, "Pension Practice Act: An Overview," Metal Service Center Institute 2006 Financial Executives Conference, September 2006, "Managing and Monitoring the Optimal Investment Menu," Defined Contribution/401(k) Conference, February 2004; "Legal and Accounting—The Costs and Effects of Stock Plans," Citigroup Stock Plan Services 4th Annual Client Advisory Board Meeting, April 2003; "Regulatory and Compliance Concerns for 401(k) and 403(b) Plans," Pensions & Investments East Coast Conference, February 2002; "New Frontiers: The Emergence of Section 529 College Savings Plans," Stable Value Investment Association of Illinois Annual Meeting, October, 2001; "The Patients Bill of Rights Acts," Self Insurance Association of Illinois Annual Meeting, October 2001; "Plan Conversions and M&A Challenges," Pensions & Investments East Coast Conference, March 2001; and "New Developments in Executive Compensation," Worldwide Employee Benefits Network Monthly Meeting, November 2000.

His publications include: "Complying With the New SEC Executive Compensation Rules," CCH Pension Plan Guide, Benefits Practice Portfolio, November 2006; "Are Cash Balance Plans Really Unlawful?" 16(2) *Benefits Law Journal* (Winter 2003); "The Extent to Which Retirement-Type Subsidies Are (or Should Be) Protected," 16(4) *Benefits Law Journal* (Summer 2003); "New Headaches for Employee Stock Purchase Plans and Incentive Stock Options?," 15(2) *Benefits Law Journal* (Summer 2002); "Equity Compensation Strategies After the New Accounting Rules," *Venture Economics Technology Supplement*, May 1, 2001; "The Employee Benefits and Stock Option Issues

Involved in ‘Spinning-Off’ e-Commerce Operations,” 14(1) *Benefits Law Journal* (Spring 2001); “Start While You’re Ahead: Be Current With Your ERISA Fiduciary Compliance,” *Outside Counsel*, March 1, 2001; “Underwater Options,” *i-Street*, January 1, 2001; and “The Increasing Responsibility to Make Meaningful Disclosure to Participants,” 13(1) *Benefits Law Journal* (Spring 2000).

Mr. Weisberg received a B.S., cum laude, from the University of Pennsylvania in 1985 and a J.D. from the University of Pennsylvania Law School in 1988.

**Donald R. Levy, J.D., M.B.A.**, is a retired attorney and author-editor of many law books. He graduated from Harvard College and Harvard Law School and afterwards was awarded a prize-winning MBA in accounting from New York University. Mr. Levy was associated with a leading Wall Street defendants’ practitioner in accountants’ liability, and much of his career was later spent in employee benefits, human resources, and taxation. He was a vice president at Johnson & Higgins and then became a vice president at United States Tobacco Company. His publishing activity developed in postretirement, after a few years with Prentice Hall and Research Institute of America. During this time he also served as a senior consultant with William M. Mercer, Inc. He is the sole author of the original *IRA Answer Book*, which is now going into its fourteenth edition, and has coauthored and/or edited books on estate planning, executive compensation, managed care, 403(b) plans, HIPAA, cash balance, planning for the affluent, insurance topics, annuities, and employment severance. He has lectured before a number of professional and university groups and has served as a trustee of philanthropic and educational organizations.

---

**Deborah K. Boling, J.D.**, is a partner in Winston & Strawn LLP’s employee benefits and executive compensations practice group.

Ms. Boling has a diverse practice that includes counseling clients on the design of, as well as tax and ERISA compliance with, all types of employee benefit plans; issues involving ERISA fiduciary standards; and executive compensation matters. She also has extensive experience in the employee benefits issues that arise in corporate mergers and acquisitions, and in lending transactions.

Ms. Boling is an active member of the National Native American Bar Association and the American Bar Association. A native of Oklahoma, Ms. Boling is an active member of the Comanche Nation.

Ms. Boling received a B.A., with general honors, from the University of Chicago in 1980 and a J.D. from the University of Chicago Law School in 1984.

**Michael G. Falk, J.D.**, is an associate in Winston & Strawn LLP’s Chicago office concentrating his practice in employee benefits and executive compensation matters.

Mr. Falk advises clients in connection with qualified and nonqualified retirement plans, executive and equity compensation, Code Section 409A, welfare plans, and the benefits aspects of mergers and acquisitions. His experience includes assisting clients with the design and implementation of defined benefit and defined contribution retirement plans, nonqualified deferred compensation plans, and equity/incentive compensation vehicles. Mr. Falk also provides counseling on retiree medical alternatives such as traditional defined benefit-type benefits, HRAs, and HSAs.

Mr. Falk is a frequent author and speaker on employee benefits topics. He is coauthor of a chapter titled “Don’t Be Fooled: Sarbanes-Oxley Applies to Private ESOP Companies” published in *ESOPs and Corporate Governance* by The National Center for Employee Ownership (2004) and “Terminating Defined Benefit Plans and Accessing the Excess Funding: Is the IRS Tangled Up in Its Underwear?” presented at the New York University 59th Institute on Federal Taxation (2001). Mr. Falk gave a presentation titled “Summary of 2003 Employee Benefits Case Law” at Worldwide Employee Benefits (WEB) Network’s Chicago chapter meeting (December 2003) and a presentation on “ESOP Basics” at the annual meeting of the National Center for Employee Ownership (April 2003). Mr. Falk has also given several presentations on Code Section 409A and has lectured at the Northwestern University School of Law’s class on Executive Compensation.

Mr. Falk received a B.A. in Philosophy from Northwestern University in 1994 and a J.D., magna cum laude, from the University of Illinois at Urbana-Champaign in 1998.

**Linda Lemel Hoseman, J.D., LL.M.**, is a partner in Winston & Strawn LLP’s employee benefits and executive compensation practice.

Ms. Hoseman assists clients on a wide variety of employee benefits matters, including the design and administration of qualified retirement benefit plans and welfare benefit plans. Ms. Hoseman also assists clients with drafting and updating such plans to comply with legislative changes. She has experience handling the ERISA aspects of private equity and other corporate transactions, as well as performing ERISA review of real estate transactions involving plan assets.

Ms. Hoseman is a member of the Illinois State Bar Association and served as a member of its Employee Benefits Section Council in 1998, 1999, and 2000. She also is an adjunct faculty instructor at the John Marshall Law School.

Ms. Hoseman has spoken to employers and associations on topics such as the portability provisions of the Health Insurance Portability and Accountability Act, continuation coverage under COBRA, plan governance, and benefits issues for leased employees. She is coauthor of “Bush Administration Saves Trees: DOL Expands Electronic Communication and Recordkeeping Safe Harbors,” 15(3) *Benefits Law Journal* (Autumn 2002); “Formalizing Plan Governance,” 14(3) *Benefits Law Journal* (Autumn 2001); and “The Increasing Responsibility to Make Meaningful Disclosure to Participants,” 13(1) *Benefits Law Journal* (Spring 2000).

Ms. Hoseman received a B.A. in Communication from Vanderbilt University in 1985, a J.D., *cum laude*, from Tulane University School of Law in 1989, and an LL.M. in Taxation from New York University School of Law in 1994.

**Erin A. Kartheiser, J.D.**, is an associate in Winston & Strawn LLP's employee benefits and executive compensation group.

Ms. Kartheiser has experience with a broad range of employee benefit matters, including health and welfare benefits, retirement plans, employee benefit-related tax and securities issues, executive compensation, and ERISA litigation.

Ms. Kartheiser received a B.S. from Northern Illinois University in 1997 and a J.D., *magna cum laude*, in 2002 from the University of Illinois College of Law, where she was a notes and comments editor of the *University of Illinois Law Review*. Prior to attending law school, Ms. Kartheiser worked as a registered nurse specializing in cardiac telemetry.

**Mayer Naiman, J.D., LL.M.**, is a senior attorney at a Fortune 100 publicly held insurance and financial services company.

Mr. Naiman provides advice and counsel regarding all aspects of the ongoing administration of the company's employee benefits and executive compensation plans and programs. Mr. Naiman's specific responsibilities include, among others, establishing, designing, and ensuring the legal compliance of the company's qualified and nonqualified retirement plans, executive compensation plans, and health and welfare plans. In addition, Mr. Naiman provides counsel to plan trustees and administrators with respect to fiduciary and plan governance issues.

Mr. Naiman received his LL.M. in taxation from New York University School of Law and his J.D. from Fordham University School of Law. He received his undergraduate degree in economics from Yeshiva University.

**Barry L. Salkin, Ph.D., J.D.**, is of counsel in Olshan Grundman Frome Rosenzweig & Wolosky LLP's employee benefits and executive compensation practice.

Mr. Salkin's practice concentrates in diversified employee benefits, compensation, ERISA, tax-qualified plans, and welfare plans. He has extensive experience in all aspects of retirement and benefit planning, including the design and implementation of retirement plans and executive compensation programs, the use of plan assets to make investments, the design of health and welfare programs, the restructuring and funding of retiree medical benefits, and ERISA litigation, as well as the many benefit issues that can arise in bankruptcies, mergers, and acquisitions.

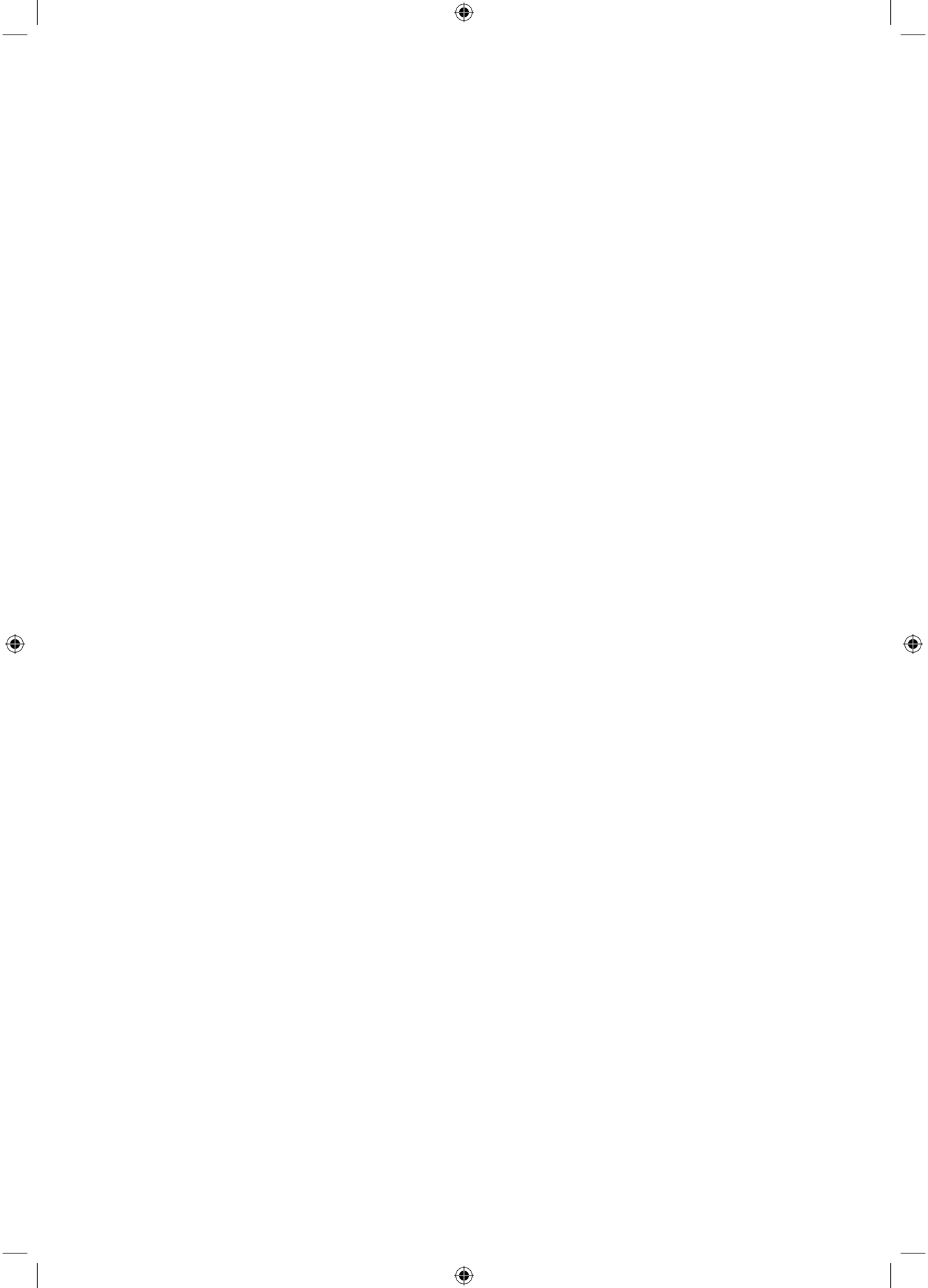
Mr. Salkin's publications have appeared in the *Journal of Pension Planning and Compliance*, the *Journal of Deferred Compensation*, the *Journal of Taxation of Investments*, the *New York State Bar Journal*, and the *PEO Insider*.



He is the author and coauthor of a number of NAPEO Legal Reviews. He has spoken to not-for-profit entities regarding HIPAA privacy and to the Chicago Bar Association on fiduciary issues under the Pension Protection Act of 2006. In addition, Mr. Salkin was selected in 2006 as a fellow of the American College of Employee Benefits Counsel.

Mr. Salkin received a B.A., *summa cum laude*, from Rutgers University and an M.A. and a Ph.D. in American History from Harvard University. He received a J.D., *cum laude*, from Harvard Law School.

Prior to joining Olshan, Mr. Salkin was a senior attorney in the Employee Benefits & Executive Compensation group in the New York office of Winston & Strawn LLP.



# Table of Contents

<i>Acknowledgements</i>	iii
<i>About the Editors and Contributors</i>	v

## **Chapter 1: Why Small Businesses Should Consider Providing a Qualified Retirement Plan**

*Mark S. Weisberg, J.D.*

¶ 1.1 Introduction	1-2
¶ 1.2 Competition for Top Talent	1-4
¶ 1.3 Employee Retention	1-7
¶ 1.4 Employee Motivation	1-10
¶ 1.5 Three-Legged Stool	1-11
¶ 1.6 Favorable Tax Benefits	1-15
¶ 1.7 Economies of Scale	1-18
¶ 1.8 Full Coverage for Increased Life Expectancies	1-19
¶ 1.9 Special Situation: Sale of All or Part of Business to an ESOP	1-19
[1] What Are Tax Benefits of an ESOP Sale?	1-20
[2] What Are Management Benefits to an ESOP Sale: Departing Owner's Perspective?	1-21
[3] How Does an ESOP Work?	1-22
[a] Taking Out a Loan	1-22
[b] Repaying the Loan	1-23
[c] Releasing Shares to Employee Accounts	1-24
[4] What Should an Owner Do When Considering Selling to an ESOP?	1-24
[a] Feasibility Study	1-25
[b] Valuation	1-25
[c] Hiring an Attorney	1-26
[d] Securing Funding	1-26
[e] Establishing a Committee and Trustee	1-27
[5] Conclusion	1-27
¶ 1.10 Severance Arrangements	1-27
[1] ERISA Governance of Severance Arrangements	1-28
[2] ERISA Requirements for Welfare Benefit Plans	1-28
[3] Tax Consequences of Severance Arrangements	1-30
¶ 1.11 Salary Continuation Arrangements	1-30

¶ 1.12 Other	1-31
[1] IRAs	1-31
[2] Life Insurance Plans	1-32
[3] Health Insurance	1-32
[4] Disability Insurance Plans	1-34
[5] Cafeteria Plans	1-34
[6] College Savings Plans	1-34

## **Chapter 2: Retirement Plan Options for Smaller Businesses— Contribution-Benefit Design**

*Michael G. Falk, J.D.*

¶ 2.1 Types of 401(a) Plans	2-2
[1] Defined Benefit Plans	2-2
[a] Investment Risk	2-3
[b] Single Asset Pool	2-3
[c] Funding	2-3
[d] Forms of Distribution	2-5
[e] Benefits Are Insured	2-5
[f] Lack of Portability	2-6
[g] Lack of Appreciation	2-6
[2] Defined Contribution Plans	2-7
[a] Individual Accounts	2-7
[b] Investment Risk	2-7
[c] Funding	2-7
[d] Form of Distribution	2-8
[e] Portability	2-8
[f] Appreciation	2-8
¶ 2.2 Types of Defined Contribution Plans	2-9
[1] Profit-Sharing Plans	2-9
[a] Amount of Contributions	2-9
[b] Allocation of Contributions	2-9
[2] Money Purchase Plans	2-10
[3] Target Benefit Plans	2-11
[4] Stock Bonus Plans and Employee Stock Ownership Plans	2-11
[5] Employee Contributions and Cash-or-Deferred Arrangements or 401(k) Plans	2-11
[a] 401(k) Contributions	2-12
[b] Catch-Up Contributions	2-12
[c] Roth Contributions	2-12
[d] After-Tax Contributions	2-13

¶ 2.3	Plan Design	2-13
[1]	Expense	2-13
[2]	Section 401(a)(17) Limit	2-14
[3]	Section 404 Deduction Limits	2-14
[a]	Defined Benefit Plans	2-14
[b]	Defined Contribution Plans	2-15
[i]	Percentage Limitation	2-15
[ii]	Compensation Determination	2-15
[4]	Section 415 Limits	2-16
[5]	Nondiscrimination Testing	2-16
[a]	Actual Deferral Percentage (ADP) Test	2-17
[b]	Actual Contribution Percentage (ACP) Test	2-18
[6]	Prototype Plans Versus Individually Designed Plans	2-18

### Chapter 3: Plan Distribution Issues

*Erin A. Kartheiser, J.D.*

¶ 3.1	Introduction	3-1
¶ 3.2	Timing of Distributions	3-2
¶ 3.3	Forms of Distribution	3-2
[1]	QJSAs and QPSAs	3-2
[2]	Alternate Forms of Benefit	3-4
¶ 3.4	Distribution on Vested Termination or Retirement	3-4
[1]	Severance From Employment	3-4
[2]	Disability	3-4
[3]	Involuntary Cash Out of Small Balances	3-5
¶ 3.5	Posttermination Distribution Alternatives	3-5
[1]	Required Beginning Date	3-5
[2]	Minimum Required Distributions	3-6
¶ 3.6	In-Service Withdrawals	3-6
[1]	Hardship Withdrawals	3-7
[a]	Immediate and Heavy Need	3-7
[b]	Amount of Hardship Distributions	3-9
[2]	Loans	3-10
[3]	QDROs	3-12
[4]	Age 59½	3-13
¶ 3.7	Other Issues	3-14
[1]	Roth Accounts	3-14
[2]	Rollovers	3-15
[3]	Anticutback Implications	3-16

## Chapter 4: Compliance With IRS and DOL Rules

*Deborah K. Boling, J.D.*

¶ 4.1	Introduction	4-2
¶ 4.2	Minimum Participation Requirements	4-3
[1]	All Participants Must Be Employees	4-3
[2]	Minimum Age and Service Conditions Permitted	4-3
[3]	Certain Classifications May Be Excluded	4-4
[4]	Year of Service	4-5
[5]	Methods of Crediting Service	4-5
[a]	Hours Counting Method	4-6
[b]	Equivalency Method	4-7
[c]	Elapsed Time Method	4-7
[6]	Break in Service Rules	4-8
[7]	Minimum Number of Participants in Defined Benefit Plans	4-9
¶ 4.3	Minimum Coverage Testing	4-10
[1]	Plans Excluded From Coverage Testing	4-10
[2]	Transitional Rule for Mergers and Acquisitions	4-10
[3]	Coverage Testing Generally	4-11
[a]	Total Employees	4-11
[b]	Excludable Employees	4-11
[c]	Other Employees Who May Be Excluded	4-12
[d]	Employees Benefiting Under the Plan	4-12
[e]	Highly Compensated Employees	4-13
[f]	Required Disaggregation	4-14
[g]	Permissive Aggregation	4-15
[4]	Ratio Percentage Test	4-15
[5]	Average Benefit Test	4-16
[a]	Nondiscriminatory Classification Test	4-16
[b]	Average Benefit Percentage Test	4-17
¶ 4.4	Permitted Disparity	4-18
[1]	Plans Not Eligible for Permitted Disparity	4-18
[2]	Defined Contribution Plan Requirements	4-19
[3]	Defined Benefit Plan Requirements	4-20
[a]	Excess Plan	4-20
[b]	Offset Plan	4-21
¶ 4.5	Top-Heavy Rules	4-22
[1]	Top-Heavy Test	4-23
[a]	Required Aggregation Group	4-23
[b]	Permissive Aggregation Group	4-23
[2]	Key Employees and Non-Key Employees	4-24

[3] Minimum Top-Heavy Benefits	4-25
[a] Defined Benefit Plans	4-25
[b] Defined Contribution Plans	4-26
[c] 401(k) Plans	4-26
[d] Employers With Multiple Plans	4-26
[4] Minimum Top-Heavy Vesting	4-27

## **Chapter 5: Fiduciary Compliance**

*Mayer Naiman, J.D.*

¶ 5.1 Introduction	5-1
¶ 5.2 Fiduciary Status Under ERISA	5-2
[1] General	5-2
[2] Service Providers	5-3
[3] Ministerial Functions	5-4
[4] Investment Advice for a Fee	5-4
[5] Settlor Functions	5-5
[6] Plan Expenses	5-6
[7] Delegation of Fiduciary Responsibilities	5-7
[8] Individuals Who May Not Serve as Fiduciaries	5-8
¶ 5.3 Fiduciary Duties Under ERISA	5-8
[1] Exclusive Purpose of Providing Benefits	5-9
[2] Prudence	5-15
[3] Diversification	5-21
[4] Following the Plan Documents	5-23
¶ 5.4 Prohibited Transactions	5-24
[1] Introduction	5-24
[2] Party-in-Interest Prohibited Transactions	5-24
[3] Self-Dealing Prohibited Transactions	5-27
[4] Prohibited Transaction Exemptions	5-28
[a] Statutory Exemptions	5-28
[b] Administrative Exemptions	5-29
[5] Prohibited Transaction Penalties	5-31
¶ 5.5 Liability for Breach of Fiduciary Duties	5-31
[1] Civil Actions	5-32
[2] Penalties	5-33
[3] Limiting Liabilities	5-33

## **Chapter 6: Plan Administration Issues**

*Barry L. Salkin, J.D.*

¶ 6.1 Professional Employer Organizations	6-1
¶ 6.2 Employee Benefits Law	6-6

¶ 6.3	Plan Fees	6-7
¶ 6.4	Plan Administration	6-13
	[1] Indemnity	6-18
	[2] Fiduciary Liability Policy	6-21
	[3] Policy Exclusions	6-22
	[4] Investment Options	6-23
¶ 6.5	Mutual Fund Scandals	6-24
¶ 6.6	Investment Advice/Investment Education	6-25
	[1] Information	6-25
	[2] General Financial and Investment Information	6-25
	[3] Asset Allocation Model	6-26
	[4] Questionnaires, Worksheets, Software, Etc.	6-26
¶ 6.7	Proxy Voting	6-31
¶ 6.8	Funding Policy/Investment Guidelines	6-32
¶ 6.9	ERISA Section 404(c) Defense	6-33
	[1] Introduction	6-33
	[2] Background	6-38
	[3] General Considerations	6-43
	[4] 404(c) Defense	6-45

## Chapter 7: Reporting and Disclosure

*Barry L. Salkin, J.D.*

¶ 7.1	Introduction	7-2
¶ 7.2	SPD	7-5
¶ 7.3	Electronic Disclosure and Record Keeping	7-12
¶ 7.4	Content of SPD	7-14
¶ 7.5	Documents to Be Provided Upon Request	7-17
¶ 7.6	Sanctions	7-20
¶ 7.7	Form 5500	7-24
	[1] Electronic Display of Form 5500 Information	7-24
	[2] Form 5500 Additional Reporting Requirements	7-27
¶ 7.8	Schedule SSA	7-31
¶ 7.9	SAR	7-32
¶ 7.10	Blackout Notice	7-32
¶ 7.11	Benefit Statements	7-35
¶ 7.12	Miscellaneous	7-45
¶ 7.13	Notice Regarding Freedom to Diversify Securities	7-45
¶ 7.14	Access to Multiemployer Plan Information	7-47
¶ 7.15	Reporting and Disclosure to PBGC	7-47
¶ 7.16	ERISA Section 4065—Annual Notice	7-48



¶ 7.17	ERISA Section 4063—Withdrawal of Substantial Employer	7-49
¶ 7.18	Premium Payments	7-49
¶ 7.19	Types of Premium	7-50
¶ 7.20	Filing Dates	7-51
¶ 7.21	Where to File	7-52
¶ 7.22	How to Pay	7-52
¶ 7.23	Definition of Participant	7-53
¶ 7.24	Notice to Participants	7-54
¶ 7.25	Defined Benefit Plan Funding Notice	7-55
¶ 7.26	Special Filings With PBGC—ERISA Section 4010	7-57
¶ 7.27	Notice of Benefit Limitations	7-59
¶ 7.28	Missing Participants	7-59
¶ 7.29	Methods of Filing	7-61
¶ 7.30	Extensions	7-62
¶ 7.31	Reportable Event	7-63
	[1] General Information	7-63
	[2] PBGC Form 10	7-64
	[3] Active Participant Reduction	7-66
	[4] Exception	7-68
	[5] Inability to Pay Benefits When Due	7-71
	[6] Distribution to Substantial Owner	7-73
	[7] Waivers	7-74
	[8] Changes in Contributing Sponsor or Controlled Group	7-75
	[9] Bankruptcy or Similar Settlement	7-76
	[10] Liquidation	7-76
	[11] Failure to Make Required Minimum Funding Payment	7-78
	[12] Use Form 200 to Notify PBGC of Failure to Make Required Contributions	7-79
	[13] Transfer of Benefit Liabilities	7-79
	[14] Application for Minimum Funding Waiver	7-81
	[15] Loan Default	7-81
	[16] Extraordinary Dividend or Stock Redemption	7-83
	[a] Cash Distribution	7-83
	[b] Noncash Distribution	7-84
	[c] Combined Distributions	7-84
	[17] Advance Reporting	7-87
	[18] Effect of PPA 2006	7-89
¶ 7.32	Distress Termination Notification	7-90

## **Chapter 8: Controlled Group and Multiple Employer Issues for Retirement Plans**

*Linda Lemel Hoseman, J.D., LL.M.*

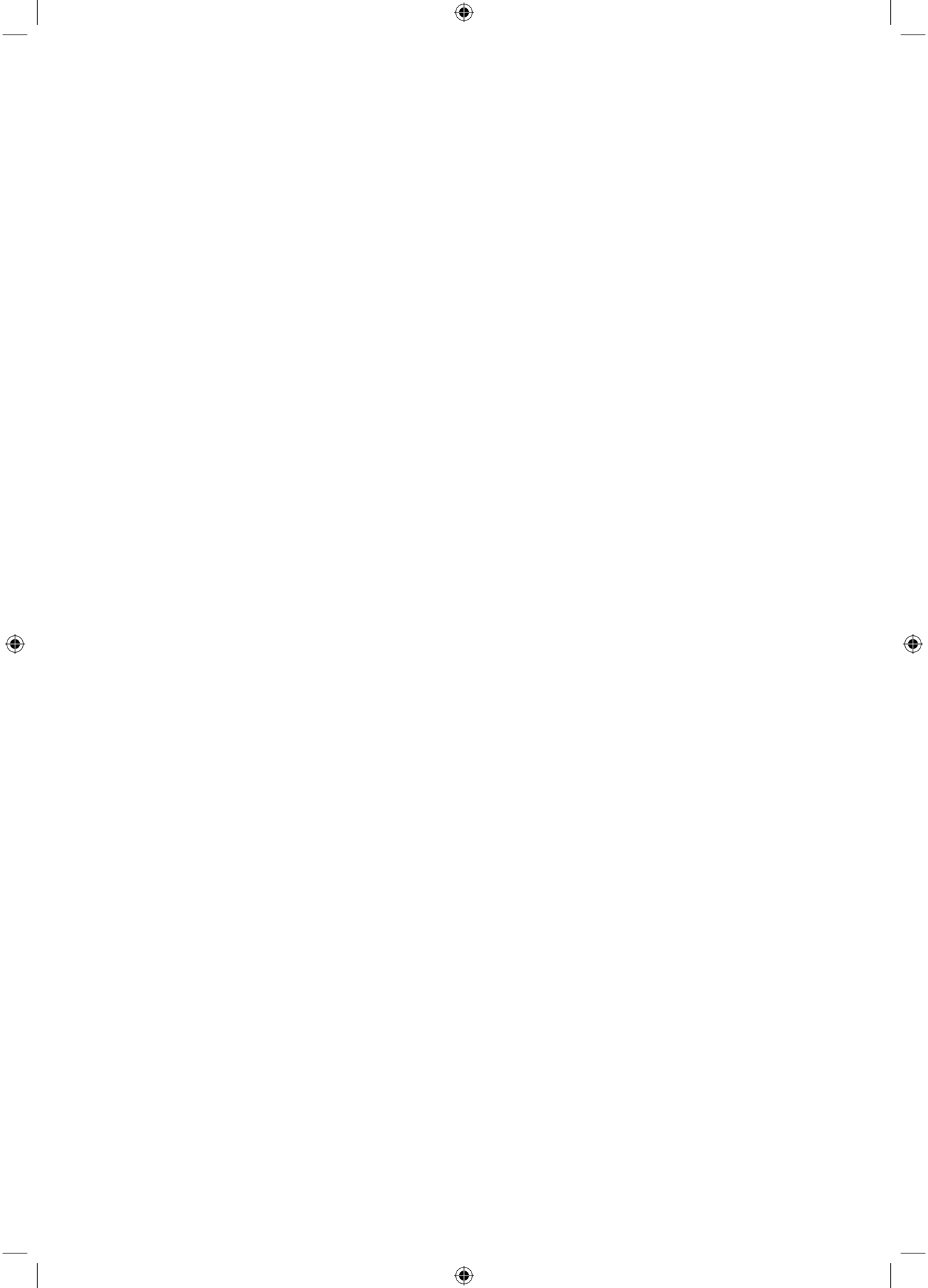
¶ 8.1	Introduction	8-1
¶ 8.2	Controlled Groups	8-2
¶ 8.3	Entities Under Common Control	8-5
¶ 8.4	Affiliated Service Groups	8-6
¶ 8.5	Retirement Plans and Controlled Groups	8-7
¶ 8.6	Multiple Employer Retirement Plans	8-7
	[1] Participation Rules	8-7
	[2] Discrimination and Termination Rules	8-7
	[3] Minimum Coverage Rules	8-8
	[4] Exclusive Benefit Test	8-8
	[5] Vesting Rules	8-9
	[6] Minimum Funding Standards	8-9
	[7] Deduction Limits	8-9
¶ 8.7	Conclusion	8-10

## **Chapter 9: Thinking Ahead: Planning for Possible Future Mergers and Acquisitions**

*Linda Lemel Hoseman, J.D., LL.M.*

¶ 9.1	Introduction	9-1
¶ 9.2	Preliminary Determinations	9-2
¶ 9.3	Due Diligence	9-3
	[1] Identification of Existing Plans and Compensation Arrangements	9-3
	[a] Qualified Plans	9-4
	[b] Nonqualified Plans	9-5
	[c] Severance Plans	9-5
	[2] Funded Status of Plans and Compensation Arrangements	9-6
	[3] Accelerated Payments	9-7
	[4] Foregoing Due Diligence	9-8
¶ 9.4	Representations and Warranties	9-8
¶ 9.5	Indemnities	9-9
¶ 9.6	Covenants	9-9
¶ 9.7	Negotiation	9-10
¶ 9.8	Pre- and Postclosing Actions	9-10
	[1] Preclosing	9-11
	[2] Postclosing	9-11
¶ 9.9	Conclusion	9-11

<b>Appendix A: List of Frequently Used IRS Employee Benefit Forms</b>	A-1
<b>Appendix B: List of Helpful DOL and IRS Manuals and Publications</b>	B-1
<b>Appendix C: Frequently Used Employee Benefit Notices and Forms</b>	C-1
C-1: Model Notice of Plan Termination	C-2
C-2: Model Notice of COBRA Continuation Coverage Rights	C-5
C-3: Model COBRA Continuation Coverage Election Notice	C-9
C-4: Model Notice of Blackout Periods Under Individual Account Plans	C-19
C-5: Model Notice of Pending Election of Multiemployer Plan Status	C-21
C-6: Model Participant Notice	C-26
C-7: Model Annual Funding Notice	C-29
C-8: Model Notice of Employee Rights Concerning Employer Securities	C-32
C-9: PBGC Model Shared Payment QDRO	C-34
C-10: PBGC Model Separate Interest QDRO	C-38
C-11: Sample QDRO Procedures	C-42
C-12: Advance Notice of Reportable Event—Filing Instructions and Forms	C-47
C-13: Post-Event Notice of Reportable Events—Filing Instructions and Forms	C-59
C-14: Notice of Failure to Make Required Contributions—Filing Instructions and Forms	C-76
C-15: Standard Termination—Filing Instructions and Forms	C-86
C-16: Distress Termination—Filing Instructions and Forms	C-120
C-17: Missing Participants—Filing Instructions and Forms	C-157
<b>Table of Cases</b>	T-1
<b>Table of Statutes, Regulations, Rulings, and Releases</b>	T-9
<b>Index</b>	I-1



# Index

[References are to paragraphs (¶) and appendix pages.]

## A

### Accountants

- as nonfiduciaries, 5.2[2]
- 401(k) plan, 7.7[2]
- reports, filing of, 7.7[2]

ACP (actual contribution percentage test), 2.3[5][b], 6.4

### Acquisitions

- covenants, 9.6
- due diligence, 9.3
  - accelerated payments, 9.3[3]
  - foregoing, 9.3[4]
  - funded status assessment, 9.3[2]
  - identifying existing plans and compensation arrangements, 9.3[1]
- indemnities, 9.5
- negotiations, 9.7
- postclosing, 9.8[2]
- preclosing, 9.8[1]
- preliminary determinations, 9.2
- representations and warranties, 9.4
- transitional rule, 4.3[2]

Actual contribution percentage test

(ACP), 2.3[5][b], 6.4

Actual deferral percentage test (ADP), 2.3[5][a], 6.4

Actuarial reports, multiemployer

plan, disclosure, 7.14

Actuarial valuation reports, disclosure, 7.5

Actuaries, as nonfiduciaries, 5.2[2]

Administration *See also* Plan administrator

- bright line law, 6.4[1]
- costs, 6.4
- exemptions
  - class exemptions, 5.4[4]
  - for fiduciary prohibited transactions, 5.4[4][b]
- expenses
  - allocation methods, 6.4
  - highly compensated employees and, 6.4
- fiduciary liability policy, 6.4[2]
  - acquisition, 6.4[2]
  - exclusions, 6.4[3]
  - provisions, 6.4[2]
- functions, 5.2[3], 6.4[1]
- inability to pay benefits due, 7.31[5]
- indemnity, 6.4[1]
- investment fees, 6.4
- investment options, 6.4[4]
- receipt of float, 6.3
- requirements, 6.9[1]

Administrative service agreements, 6.3

“acts of God,” 6.4

TPA is not fiduciary, 6.4[1]

ADP (actual deferral percentage test), 2.3[5][a], 6.4

Affiliated service groups, 8.4

After-tax contributions

- ineligibility for permitted disparity rules, 4.4[1]
- vs. Roth contributions, 2.2[5][d]

Age of participant

- minimum
  - excludable employees, 4.3[3][b]
  - minimum age and service rule, 4.2[2]
  - on or after age 59½, Roth accounts, 3.7[1]
  - under age 59½, distributions, 3.4[2], 3.6[4]
- at retirement, 1.8

Aggregation groups

- permissive, 4.5[1][a]
- required, 4.5[1][a]

Amendments

- defined benefit plans, 7.25
- plan prototype, preclosing action, 9.8[1]
- in summary plan description, 7.2

Annual reports

- multiemployer plan disclosure, 7.14
- obtaining copies, 7.25

Annuities

- group rate, 1.7
- individual, 1.7
- individual retirement (*See* Individual retirement annuities)
- joint and survivor (*See* Joint and survivor annuities)
- prohibited transaction exemptions, 5.4[4]
- qualified preretirement survivor, 3.3[1]
- single-life, 2.1[1][d], 3.3[1]
  - money purchase plans, 2.2[2]

Anticutbacks, distributions, 3.7[3]

Asset allocation model, 6.6[3]

Assets

- allocation, investment education questionnaires, worksheets, software etc., 6.6[4]
- de minimis* transactions, 7.31[2]
- fair market value, 7.31[4]
- illiquid, 5.5[2]
- investment of, 5.4[4]
- liquid, 7.31[5]
- listing, 6.9[2]
- loan purchases, 5.5[2]
- payment
  - of administrative fees/expenses, 5.2[6]
  - of commissions, 6.3
  - of reasonable administration expenses, 5.3[2]
- 95 percent test, 7.7[2]
- purchase from nonparties-in-interest, 5.5[2]
- qualifying plan, 7.7[2]
- sale to parties in interest, 5.5[2]
- transfer, 6.1

## I-2

## RETIREMENT PLANS FOR SMALL BUSINESSES

[References are to paragraphs (¶) and appendix pages.]

- Attorneys  
 award of fees in civil actions, 5.5[1]  
 hiring, for ESOP sale, 1.9[4][c]  
 as non-fiduciary, 5.2[2]
- Average benefit percentage test, 4.3[5][b]  
 Average benefit test, 4.3[5]  
 average benefit percentage test, 4.3[5][b]  
 minimum coverage rules for multiple employer plans, 8.6[3]  
 nondiscriminatory classification test, 4.3[5][a]
- B**
- Bankruptcy  
 advance reporting, 7.31[17]  
 as reportable event, 7.31[9]
- Banks  
 ancillary services, 5.4[4]  
 failure to follow plan procedures, 6.9[4]  
 qualifying plan assets, 7.7[2]
- Base benefit percentage, 4.4[3][a]
- Beneficiaries  
 exercise of control, causal connection with claim, 6.9[4]  
 investment control, 6.9[2]  
 legally incompetent, 6.9[3]  
 request for benefit statement, 7.11
- Benefit notices and forms, C-1  
 advance notice of reportable event—filing instructions and forms, C-47  
 annual funding notice, model, C-29  
 blackout periods under individual account plans, model notice, C-19  
 COBRA continuation coverage election notice, model, C-9  
 COBRA continuation coverage rights, model notice, C-5  
 distress termination—filing instructions and forms, C-120  
 employee rights concerning employer securities, model notice, C-32  
 failure to make required contributions—filing instructions and forms, C-76  
 missing participants—filing instructions and forms, C-157  
 participant notice, model, C-26  
 PBGC model separate interest QDRO, C-38  
 PBGC model shared payment QDRO, C-34  
 pending election of multiemployer plan status, model notice, C-21  
 plan termination, model notice, C-2  
 post-event notice of reportable events—filing instructions and forms, C-59  
 QDRO procedures, sample, C-42  
 standard termination—filing instructions and forms, C-86
- Benefits  
 calculation  
 under different plan distribution options, allocation of expenses, 5.3[2]  
 payable under different investment options, 6.4 change under serious consideration, 5.3[1]  
 continuation covenants, 9.6  
 distribution, 6.4  
 inability to pay when due, 7.31[5]  
 liabilities, 7.23  
 determination of payment, 7.31[4]  
 transfer, advance reporting of, 7.31[17]  
 transfer of, 7.31[13]  
 of missing participants, 7.28  
 notice of limitations, 7.27  
 representations, 9.4  
 tax-favored, 1.1  
 three-part determination test, 5.3[1]  
 unfunded vested, determination of, 7.31[4]  
 use or transfer between plan and party-in-interest, 5.4[2]  
 vested (*See Vesting*)
- Benefit statements, 7.11
- Blackout periods  
 definition, 7.10  
 notice, 7.10  
 electronic, 7.10  
 model notice of blackout periods under individual account plans, C-19  
 thirty-day advance requirement, 7.10  
 suspensions, limitations and restrictions, 7.10
- Board of directors, fiduciary status, 5.2[5]
- Bonding  
 qualifying plan assets, 7.7[2]  
 requirement for fiduciary, 5.5[3]
- Bonuses, for highly compensated employees, 4.3[3][e]
- Boutiques, qualified plan sponsorship, 1.1
- Bright line law, indemnity, 6.4[1]
- Brokers, qualifying plan assets, 7.7[2]
- Brother-sister controlled groups  
 defined, 8.2  
 entities under common control, 8.3  
 excluded stock, 8.2  
 stock ownership rules, 8.2
- Burial expenses, as immediate and heavy financial need, 3.6[1]
- Buyers, 9.4
- C**
- Cafeteria plans, 6.1  
 professional employer organizations, 1.12[5]  
 salary reduction contributions, for highly compensated employees, 4.3[3][e]
- Capital preservation funds, 6.9[1]
- Cash balance plans, 2.1[1][f]
- Cash-or-deferred arrangement (CODA)  
 contributions  
 401(k), 2.2[5][a]  
 after-tax, 2.2[5][d]  
 catch-up, 2.2[5][b]  
 designated Roth, 2.2[5][c]  
 qualification requirements, 2.2[5]
- Catch-up contributions, for cash-or-deferred arrangement, 2.2[5][b]
- C corporations, 6.1

[References are to paragraphs (¶) and appendix pages.]

- Children, stock ownership rules in brother-sister controlled groups, 8.2
  - Civil actions, failure to provide participant/beneficiary information, 7.6
  - COBRA. *See* Consolidated Omnibus Budget Reconciliation Act of 1986
  - CODA. *See* Cash-or-deferred arrangement
  - Coemployment doctrine, 6.1
  - Collective bargaining arrangements, 9.3[2]
  - Collectively bargained employees, excludable employees, 4.3[3][b]
  - Collectively bargained plan, summary plan description, 7.2
  - College Savings Plans, 1.12[6]
  - Combined controlled groups, 8.2, 8.3
  - Commercial delivery service, schedule MP filing, 7.29
  - Commissions
    - for investment advice, 5.2[4]
    - payment from plan assets, 6.3
  - Compensation
    - average annual, 4.5[3][a]
    - competition among job seekers, 1.2
    - definition of, 4.3[3][e]
    - duplicate, excessive, unnecessary, 5.5[2]
    - identification for mergers/acquisitions, 9.3[1]
    - for office space, legal and accounting services, 5.4[4]
    - retirement benefits, 1.1
    - with retirement plan, employer costs, 1.6
    - to service provider, 6.3
    - for services, reasonableness, 6.3
    - for skilled workers, 1.2
  - Compliance
    - fiduciary (*See* Fiduciary)
    - permitted disparity, 4.4
      - defined contribution plan requirements, 4.4[2]
      - plans not eligible for, 4.4[1]
    - tests, 6.4
      - Actual Deferral Percentage/Actual Contribution Percentage test, 6.4
      - nondiscrimination test, 6.4
      - safe harbor test, 6.4
      - Section 402(g) test, 6.4
      - top-heavy test, 6.4
    - top-heavy rules, 4.5
  - Confidentiality, 6.9[3]
  - Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA)
    - continuation health coverage, 1.12[3]
    - model COBRA continuation coverage election notice, C-9
    - model notice of COBRA continuation coverage rights, C-5
  - Consultants, as non fiduciary, 5.2[2]
  - Contributing sponsor
    - change, advance reporting, 7.31[17]
    - changes, 7.31[8]
  - Contributions
    - after receipt of hardship distribution, 3.6[2]
    - after-tax
      - ineligibility for permitted disparity rules, 4.4[1] vs. Roth contributions, 2.2[5][d]
  - catch-up, cash-or-deferred arrangement, 2.2[5][b]
  - employer deductions, 1.6
  - failure to make required minimum funding payment, 7.31[11]
  - integration level for employer, 4.4[2]
  - limits, 6.4
  - matching
    - for coverage testing, 4.3[3][f]
    - for 401(k) plans, 4.4[1]
  - notice of failure to make required contributions—
    - filing instructions and forms, C-76
  - Roth, vs. after-tax contributions, 2.2[5][d]
  - source, in summary plan description, 7.2
  - using Form 200 to notify of failure to make required contributions, 7.31[12]
- Controlled groups, 8.1
    - advance reporting of changes, 7.31[17]
    - bankruptcy, 7.31[9]
    - brother-sister
      - defined, 8.2
      - excluded stock, 8.2
    - changes, 7.31[8], 7.31[17]
    - combined, 8.2
    - deductibility of employer contributions, 8.1
    - defined, 8.2
    - determination, 8.2
    - entities under common control, 8.3
    - funding standards, minimum, 8.1
    - limitations on benefits and contribution in qualified plans, 8.1
    - minimum coverage requirements, 8.1
    - nondiscrimination requirements, 8.1
    - parent-subsidiary
      - defined, 8.2
      - stock, 8.2
    - participation, 8.1
    - retirement plans, 8.5
    - stock ownership rules, 8.2
    - top-heavy plans, 8.1
    - vesting standards, minimum, 8.1
  - Convicts, prohibition of fiduciary status, 5.2[8]
  - Corporate officers, as nonfiduciaries, 5.2[5]
  - Corporation, as party-in-interest, 5.4[2]
  - Covenants, 9.6
  - Coverage
    - continuation, fiduciary breach of loyalty duty, 5.3[1]
    - minimum coverage testing, 4.3
      - exclusions, 4.3[1]
  - Coverage tests
    - average benefit test, 4.3[5]
    - average benefit percentage test, 4.3[5][b]
    - nondiscriminatory classification test, 4.3[5][a]
    - generally, 4.3[3]
    - determining employees benefiting under plan, 4.3[3][d]
    - excludable employees, 4.3[3][b], 4.3[3][c]
    - highly compensated employees, 4.3[3][e]
    - permissive aggregation, 4.3[3][g]

## I-4

## RETIREMENT PLANS FOR SMALL BUSINESSES

[References are to paragraphs (¶) and appendix pages.]

- required disaggregation, 4.3[3][f]
- total number of employees, 4.3[3][a]
- minimum, 4.3
  - exclusions, 4.3[1]
  - transitional rule for mergers and acquisitions, 4.3[2]
  - ratio percentage test, 4.3[4]
- Covered compensation, 4.4[3][a]
- Crime conviction, prohibition of fiduciary status, 5.2[8]
- Criminal penalties, ERISA violations, 7.6
- D**
- Death, absence of proof, 7.28
- Death benefit, ancillary, 7.23
- Deduction limits, multiple employer retirement plans, 8.6[7]
- Deferred compensation arrangements, 9.3[2]
  - nonqualified, pay-as-you-go basis, 1.2
  - prefunded, 1.2
- Deferred vested benefits, Schedule SSA, 7.8
- Defined benefit plans, 2.1[1]
  - alternative notice requirement, 7.11
  - amendments, 7.25
  - benefit statement, 7.11
  - cash balance plan, 2.1[1][f]
  - combined with 401(k), 7.7[1]
  - contribution holidays, 2.1[1][c]
  - contributions
    - maximum deductible, 2.3[3][a]
    - minimum, 2.3[3][a]
    - Section 404 deduction limits, 2.3[3]
  - determining employees benefiting under plan, 4.3[3][d]
  - distribution, timing of, 3.2
  - early retirement benefits, 1.3
  - employer considerations, 2.1[1][g]
  - employer costs, 2.1[1][g]
  - Form 5500 additional reporting requirements, 7.7[2]
  - forms of distribution, 2.1[1][d]
    - joint and survivor annuity, 2.1[1][d]
    - single life annuity, 2.1[1][d]
  - full coverage for increased life expectancies, 1.8
  - funding, 2.1[1][c]
    - notice, 7.25
    - policy, 6.8
  - identification for mergers/acquisitions, 9.3[1][a]
  - in-service loans, 3.6[2]
  - in-service withdrawals, 3.6
  - insured benefits, 2.1[1][e]
  - integration with Social Security benefits, 4.4
  - investment risk, 2.1[1][a]
  - lack of portability, 2.1[1][f]
  - minimum funding standard, 3.3[1]
  - minimum number of participants, 4.2[7]
  - missing participants, 7.28
  - not subject to Part 4 of Title IV of ERISA, 7.28
  - payment formula, 2.1[1]
  - pension fund gains, 2.1[1][c]
  - permitted disparity requirements, 4.4[3]
    - excess plan, 4.4[3][a]
    - offset plan, 4.4[3][b]
  - single asset pool, 2.1[1][b]
  - summary plan description, actuarial reduction, 7.4
  - top-heavy rules, 4.5
    - minimum benefits, 4.5[3][a]
    - top-heavy test, 4.5[1]
  - total accrued benefit, 7.11
  - underfunding, 9.3[2]
  - vs. defined contribution plans, 1.3
- Defined contribution plans, 2.1
  - advantages, 2.1[2]
  - allocation of expenses, 6.4
    - former employees charged pro rata share, 6.4
    - reasonable administration expenses among participants, 5.3[2]
  - appreciation, 2.1[2][f]
  - benefit statement, 7.11
  - contributions
    - 401(k), 2.3[3][b]
    - formula for, 2.1[2][c]
    - Section 404, 2.3[3][b]
  - determining employees benefiting under plan, 4.3[3][d]
  - disadvantages, 2.1[2][c]
  - distribution, timing of, 3.2
  - Economic Growth and Tax Reconciliation Act (EGTRRA), 2.3[3][b]
  - excess plan, 4.4[2]
  - forms of distribution, 2.1[2][d]
  - funding, 2.1[2][c]
  - identification for mergers/acquisitions, 9.3[1][a]
  - individual accounts, 2.1[2][a]
  - in-service loans, 3.6[2]
  - in-service withdrawals, 3.6
  - integration with Social Security benefits, 4.4
  - investment risk, 2.1[2][b]
  - joint and survivor annuity, 2.1[2][d]
  - maximum deductible contributions
    - compensation determination, 2.3[3][b]
    - percentage limitation, 2.3[3][b]
  - minimum funding rules, 3.7[3]
  - minimum funding standard, 3.3[1]
  - minimum top-heavy benefits, 4.5[3][b]
  - not subject to Part 4 of Title IV of ERISA, 7.28
  - permitted disparity requirements, 4.4[2]
  - portability, 2.1[2][e]
  - rollovers, 2.1[2][d]
  - top-heavy rules, 4.5
  - top-heavy test, 4.5[1]
  - types, 2.2
    - cash-or-deferred arrangements, 2.2[5]
    - employee contribution plans, 2.2[5]
    - employee stock ownership plans (See Employee stock ownership plans)
    - 401(k) plans, 2.2[5]
    - money purchase plans, 2.2[2]
    - profit-sharing plans, 2.2[1]



[References are to paragraphs (¶) and appendix pages.]

- stock bonus plans, 2.2[4]
  - target benefit plans, 2.2[3]
  - vs. defined benefit plans, 1.3
  - Delinquent Filing Voluntary Compliance Program (DFVCP), 7.7[1]
  - Dental insurance, 1.12[3]
  - Department of Labor (DOL)
    - definition of large employers, 1.2
    - manuals/publications, B-1
    - regulations, Form 5500, 7.7
    - safe harbor regulations, 3.4[3]
    - top-hat plan determination, 1.11
    - welfare benefit plan determination, 1.10[2]
  - DFVCP (Delinquent Filing Voluntary Compliance Program), 7.7[1]
  - Diligent search requirement, for missing participants, 7.28
  - Disability
    - definition of, 3.4[2]
    - distributions, 3.4[2]
  - Disability insurance plans, 1.12[4]
    - long-term policies, 1.12[4]
    - short-term policies, 1.12[4]
  - Disclosure
    - actuarial valuation reports, 7.5
    - automatic, 7.1
    - complete and accurate information, 7.1
    - document provision upon request, 7.5
    - electronic, 7.3
    - of fee-related information, 6.3
    - of former employee names, 7.5
    - of future plan changes, 7.1
    - of investment alternatives, 6.9[2]
    - multiemployer plan, information access, 7.14
    - to PBGC, 7.15
    - of plan characteristics affecting beneficiary material interests, 7.1
    - requirements, for plans with fewer than 100 participants, 7.7[2]
    - sanctions, 7.6
    - summary plan description, 7.2
    - truthful information, 7.1
  - Disqualification circumstances, in summary plan description, 7.2
  - Distress termination notification, 7.32
  - Distributions
    - under age 59½, 3.4[2], 3.6[4]
    - allocation of expenses, 5.3[2]
    - anticutback implications, 3.7[3]
    - benefits, 6.4
    - cash, 7.31[16][a]
    - combined, 7.31[16][c]
    - delayed, 1.6
    - flexible rules, 1.6
    - forms, 3.3
      - lump-sum payment, 3.3[2]
      - qualified joint and survivor annuity, 3.3[1]
      - qualified preretirement survivor annuity, 3.3[1]
      - rollovers, 3.3[2]
    - hardship withdrawals, 3.6[4]
    - in-service withdrawals, 3.6
      - general requirements, 3.6
      - hardship withdrawals, 3.6[1]
      - loans, 3.6[2]
      - QDROs, 3.6[3]
    - lump-sum
      - for participants under age 59½, 3.4[2]
      - required beginning date, 3.5[1]
    - minimum required, 3.7[2]
    - noncash, 7.31[16][b]
    - penalty tax, 1.6
    - posttermination alternatives, 3.5
      - minimum required distributions, 3.5[2]
      - required beginning date, 3.5[1]
    - rollover option, 1.6
    - rollovers, 3.7[2]
    - Roth accounts, 3.7[1]
    - Section 415(b) limit, 7.31[7]
    - to substantial owner, 7.31[6]
    - summary plan description, 7.2
    - timing, 3.2
      - on vested termination or retirement, 3.4
        - disability, 3.4[2]
        - involuntary cash out of small balances, 3.4[3]
        - severance from employment, 3.4[1]
  - Diversification rights, notice, 7.13
  - Dividends
    - advance reporting, 7.31[17]
    - extraordinary, 7.31[16]
  - Divorce, allocation of expenses for highly compensated employees, 6.4
  - Documents
    - interpretation, erroneous, 5.3[4]
    - provision of named fiduciary, 5.2[1]
    - provision upon request, 7.5
    - separate documents/procedures, 5.3[4]
    - terms, fiduciary obligation to follow, 5.3[4]
  - DOL. *See* Department of Labor
  - Domestic relations order (DRO), 3.6[3]
  - Double prospectus issue, 6.9[2]
  - DRO (domestic relations order), 3.6[3]
  - Due diligence process
    - corporate transactions, 9.3
    - identification of existing plans and compensation arrangements, 9.3[1][a]
    - non-qualified plans, 9.3[1][b]
    - qualified plans, 9.3[1][a]
    - severance plans, 9.3[1][c]
- E**
- Early retirement, 1.3
  - Early retirement subsidy, 1.3
  - Economic Growth and Tax Reconciliation Act (EGTRRA), defined contribution plans, 2.3[3][b]
  - Economies of scale, advantages, 1.7
  - Educational fees, as immediate and heavy financial need, 3.6[1]

[References are to paragraphs (¶) and appendix pages.]

- EGTRRA (Economic Growth and Tax Reconciliation Act), defined contribution plans, 2.3[3][b]
- EIN (employer identification number), 7.2
- Elapsed time method, for crediting service, 4.2[5][c]
- Elective deferrals
  - for highly compensated employees, 4.3[3][e]
  - limits, 6.4
- Electronic filing, form 5500, 7.7
- Electronic media, pension benefit statements, 7.11
- Eligibility for participation
  - in summary plan description, 7.2
  - year of service, 4.2[4]
- Employee benefit law, 6.2
- Employee benefit notices/forms. *See* Benefit notices/forms
- Employee benefits. *See* Benefits
- Employee Benefits Security Administration, 5.3[2]
- Employee leasing company, 6.1
- Employee organizations
  - joint venture, as party-in-interest, 5.4[2]
  - as party-in-interest, 5.4[2]
- Employee Retirement Income Security Act of 1974 (ERISA)
  - administration provisions, 1.10[2]
  - defined benefit plan sponsors and, 2.1[1][c]
  - definition of pension plan, 1.5
  - eligibility, 1.10[2]
  - fiduciary duty provisions, 1.10[2]
  - fiduciary obligations of employers, 1.5
  - qualification requirements for preferential tax treatment, 1.5
  - reporting and disclosure requirements, 1.10[2]
  - requirements, for welfare benefit plans, 1.10[2]
  - rules, severance arrangements, 1.10[1]
  - Section 302(d)(6)(C), 7.31[5]
  - Section 404(c), 6.9
    - background, 6.9[2]
    - DOL interpretation, 6.9[4]
    - general considerations, 6.9[3]
    - introduction, 6.9[1]
    - PPA changes, 6.9[1]
    - relief, 6.9[3]
  - Section 4010, 7.26
  - Section 4043, reportable events, 7.31[2]
  - Section 4065—annual notice, 7.16
  - Section 404(c) defense elements
    - loss or fiduciary breach on claim results from participant's exercise of control, 6.9[4]
    - participants must exercise control over assets, 6.9[4]
    - plan must provide for individual accounts, 6.9[4]
  - Section 4063—withdrawal of substantial employer, 7.17
  - severance arrangements, top-hat exemption, 1.11
  - vesting rules, 1.10[2]
- Employee Retirement Income Security Act of 1974 (ESOP), 7.5
- Employees
  - benefits of professional employer organization, 6.1
  - classification
    - nondiscriminatory, 4.3[5][a]
    - reasonable, 4.3[5][a]
  - committed vs. trapped, 1.4
  - compensation packages (*See* Compensation)
    - in controlled groups (*See* Controlled groups)
  - empowerment of, 1.4
  - excludable
    - coverage testing, 4.3[3][b], 4.3[3][c]
    - ratio percentage test and, 4.3[3][c]
  - financial security of, 1.4
  - forfeiture of accrued benefits, 1.3
  - former, disclosure of, 7.5
  - highly compensated (*See* Highly compensated employees)
  - key
    - definition, 4.5[2]
    - minimum top-heavy benefits, 4.5[3][a], 4.5[3][b]
    - top-heavy rules, 4.5[2]
  - leased, 4.2[3]
  - long-term retention, value to employer, 1.3
  - loyalty to employer, 1.4
  - morale of, 1.4
  - motivation, 1.4
    - as nonfiduciaries, 5.2[5]
  - nonhighly compensated
    - average benefit percentage test, 4.3[5][b]
    - increasing contribution rates, 2.3[5][b]
  - non-key
    - definition, 4.5[2]
    - minimum top-heavy benefits, 4.5[3][a], 4.5[3][b]
    - top-heavy rules, 4.5[2]
  - retention, 1.3
  - separation from service, nonqualified deferred compensation, 1.6
  - service
    - hours of service determination, 4.2[5]
    - minimum age and service rule, 4.2[2]
    - year of service, 4.2[4]
  - skilled, compensation packages for, 1.2
- Employee stock ownership plans (ESOPs), 2.2[4]
  - administration/set-up costs, 1.9[4][a]
  - allocation, 1.9[3][c]
  - cash earnings, 1.9[4][a]
  - disaggregated for coverage testing, 4.3[3][f]
  - distributions, 1.9[3][c]
  - dividend payments, reasonable, 1.9[3][b], 1.9[4][a]
  - generally, 6.9[3]
  - identification for mergers/acquisitions, 9.3[1][a]
  - ineligibility for permitted disparity rules, 4.4[1]
  - liability issues, 1.9[4][a]
  - loans
    - repayment, 1.9[3][b]
    - taking out, 1.9[3][a]
  - participation, 1.9[3][c]
    - exemptions, 1.9[3][c]
    - older employees, 1.9[3][c]
    - voting rights, 1.9[2]
  - payroll size, relative, 1.9[4][a]

[References are to paragraphs (¶) and appendix pages.]

- releasing shares to employee accounts, 1.9[3][c]
  - principal and interest method, 1.9[3][c]
  - principal-only method, 1.9[3][c]
- sales, 1.9
  - advantages, 1.9[5]
  - committee, 1.9[4][e]
  - employee productivity and, 1.9[2]
  - feasibility study for, 1.9[4][a]
  - funding sources for, 1.9[4][d]
  - hiring an attorney, 1.9[4][c]
  - management benefits, 1.9[2]
  - qualified replacement property, 1.9[1]
  - requirements, 1.9[1]
  - Securities Act of 1934 and, 1.9[2]
  - tax benefits, 1.9[1], [2]
  - trustee, 1.9[4][e]
  - violation of requirements, 1.9[1]
- tax benefits, deduction of loan interest, 1.9[3][a]
- tax-free contributions, 1.9[4][a]
- trustee, 1.9[2]
- vesting, 1.9[3][c]
  - cliff, 1.9[3][c]
  - gradual, 1.9[3][c]
- Employer-employee relationship,
  - sense of partnership, 1.4
- Employer identification number (EIN), 7.2
- Employer real estate, acquisition on behalf of plan, as
  - party-in-interest prohibited transaction, 5.4[2]
- Employers
  - commitment to employee, 1.4
  - contributions, integration level, 4.4[2]
  - dual functions, 5.2[5]
  - encouragement of employee retirement, 1.3
  - encouragement of retirement patterns, 1.5
  - financial condition, qualified plans and, 1.5
  - large (*See* Large businesses)
  - moral obligations, 1.5
    - as party-in-interest, 5.4[2]
  - payments to nonqualified plans,
    - matching principle, 1.6
  - qualified plan sponsorship,
    - flexible distribution rules, 1.6
  - service-providing, affiliated service groups, 8.4
  - small (*See* Small businesses)
  - substantial, withdrawal of, 7.17
  - vesting requirements, 1.3
- Employer securities
  - acquisition on behalf of plan, as party-in-interest
    - prohibited transaction, 5.4[2]
  - model notice of employee rights concerning
    - employer securities, C-32
- Employer stock investment option, 6.9[2]
- Employment commencement date, in elapsed time
  - method, 4.2[5][c]
- Equivalency method, for crediting service, 4.2[5][b]
- ERISA. *See* Employee Retirement Income Security Act of 1974
- ERISA (Employee Retirement Income Security Act of 1974), 2.1[1][c]
  - ESOPs. *See* Employee stock ownership plans (ESOPs)
  - Estates
    - as party-in-interest, 5.4[2]
    - stock, attribution from, 8.2
  - Eviction, as immediate and heavy financial need, 3.6[1]
  - Excess benefit percentage, 4.4[3][a]
  - Excess plan, 4.4[2], 4.4[3][a]
  - Excise tax, 5.5[2]
  - Exclusive benefit rule
    - exclusions, 4.2[1]
    - multiple employer retirement plans, 8.6[4]
  - Executive compensation plans, 9.3[2]
  - Extensions, 7.30
- F**
- Favorable determination letter, filing, 7.12
- Fees
  - services exempted under ERISA, 6.3
  - unreasonable, direct losses from, 6.3
  - usual and customary, documentation of, 7.5
- Fiduciary/fiduciaries
  - allocation of expenses among participants, 6.4
    - hardship withdrawals, 6.4
    - justification, 6.4
  - application for administrative exemption, 5.4[4]
  - breach of duty, 6.3
    - causing loss of tax-qualified status, 6.4[3]
    - communication of incorrect information, 5.3[1]
    - deliberate misleading of participants, 5.3[1]
    - failure to disclose potentially harmful
      - information, 5.3[1]
    - failure to disclose suspicions of fund mishandling,
      - 5.3[1]
    - failure to diversify, 5.3[4]
    - failure to follow terms of plan, 5.3[4]
    - failure to inform of future program availability,
      - 5.3[1]
    - insurance, 6.4[1]
    - loyalty, 5.3[1]
    - lying/deceit, 5.3[1]
    - selection and monitoring of investment
      - alternatives, 6.9[4]
    - violation of duty of prudence, 5.3[2]
  - decision making
    - information considerations, 5.3[2]
    - investment-related, 5.3[2]
  - definition, 5.2[1], 6.6
  - delegation, of investment management
    - responsibilities, 5.3[2]
  - determination
    - general, 5.2[1]
    - person providing investment advice, 6.6
  - discretionary interpretive authority, 5.3[4]
  - dishonest and reckless acts, 6.4[3]
  - duties under ERISA, 5.3
    - allocation of reasonable administration expenses
      - among participants, 5.3[2]
    - to answer participant questions accurately and
      - completely, 7.1

[References are to paragraphs (¶) and appendix pages.]

- bright line test, 5.3[1]
- to correct misleading statements, 7.1
- to disclose truthful information, 7.1
- disclosure obligations, 5.3[1]
- diversification, 5.3[3]
- exclusive purpose of providing benefits, 5.3[1]
- following plan documents, 5.3[4]
- during hostile takeover, 5.3[1]
- informing participants of information to prevent harm, 5.3[1]
- informing participants of plan modifications, 5.3[1]
- investigation/research for decision making, 5.3[2]
- loyalty, 5.3[1]
- monitoring of third-party service providers, 5.3[2]
- plan changes/enhancements under serious consideration, 5.3[1]
- potential conflicts of interest, 5.3[1]
- protection of benefits, 5.3[1]
- prudence, 5.3[2]
- regarding tax implications, 5.3[1]
- selection of third-party administrators, 5.3[2]
- voting of proxies, 6.7
- funding policy, 6.8
- information concerning investigations, 7.12
- insurance policy, 6.4[1]
- legal fee payments, 6.4[1]
- liability, 5.5
  - applicable recovery amount, 5.5[2]
  - avoidance, 5.3[2]
  - civil actions, 5.5[1]
  - limitation of, 6.4[1]
  - limiting, 5.5[3]
  - penalties, 5.5[2]
  - range of investment options, 6.4[4]
  - section 404(c) defense, 6.9
- liability policy, 6.4[2]
  - acquisition, 6.4[2]
  - exclusions, 6.4[3]
  - provisions, 6.4[2]
- litigation, duty of prudence-related, 5.3[2]
- named in written plan document, 5.2[1]
- notification of participants,
  - of employee rights, 6.9[1]
- as party-in-interest, 5.4[2]
- plan expenses, 5.2[6]
  - administrative-related, 5.2[6]
  - settlor-related, 5.2[6]
- prohibited transactions, 5.4
  - administrative exemptions, 5.4[4][b]
  - class exemptions, 5.4[4], 5.5[3]
  - determination, 6.3
  - party-in-interest, 5.4[2], 6.3
  - penalties, 5.4[5]
  - self correction, 5.5[2]
  - self-dealing, 5.4[3]
  - statutory exemptions, 5.4[4][a]
- prudence, in plan transactions, 5.4[2]
- reimbursement of expenses, 6.4[1]
- relief, 6.9[1]
- responsibilities, delegation, 5.2[7]
- status under ERISA, 5.2
  - delegation of fiduciary responsibilities, 5.2[7]
  - general, 5.2[1]
  - investment advice for fee, 5.2[4]
  - ministerial functions, 5.2[3]
  - plan expenses, 5.2[6]
  - prohibited individuals, 5.2[8]
  - service providers, 5.2[2]
  - settlor functions, 5.2[5]
  - transactions, fair and reasonable, 6.9[3]
- Fiduciary investment advisors
  - annual audit, 6.6[4]
  - definition, 6.6[4]
  - records, 6.6[4]
- Fifty-employee rule, 4.2[7]
- Filing dates, 7.20
- Financial institutions
  - ancillary services, 5.4[4]
  - qualifying plan assets, 7.7[2]
- Financial need, immediate and heavy, 3.6[1]
- Financial reports, multiemployer plan,
  - disclosure, 7.14
- Financial service providers, receipt of float, 6.3
- Fiscal year, 7.26
- Five-factor test, award of attorney fees in civil actions, 5.5[1]
- Five percent owner, 4.3[3][e]
- 529 plans (College savings plans), 1.12[6]
- Foreclosure, as immediate and heavy financial need, 3.6[1]
- Form 5500, 7.7
  - additional reporting requirements, 7.7[2]
  - contents, 7.7[1]
  - electronic display of information, 7.7[1]
  - electronic filing, 7.7
  - failure to file, 7.7[1]
  - filing
    - due date, 7.7[2]
    - extension, 7.7[2]
  - Form 5500-EZ, 7.7[1]
  - SAR, 7.9
- Form 5558 (Application for Extension to File Certain Employee Plan Returns), 7.7[2]
- 401(k) plans, 3.3[1]
  - administration
    - additional services, 6.4
    - expenses, 6.4
  - blackout notice, 7.10
  - combined with defined benefit plan, 7.7[1]
  - contributions, 2.2[5][a]
    - defined contribution plans, 2.3[3][b]
    - disaggregated for coverage testing, 4.3[3][f]
    - elective deferrals, 6.4
    - ESOP loan repayment and, 1.9[3][b]
  - costs, 6.3
  - determining employees benefiting under plan, 4.3[3][d]

[References are to paragraphs (¶) and appendix pages.]

- distributions, timing of, 3.2
  - diversification, 5.3[4]
  - elective contributions, ineligibility for permitted
    - disparity rules, 4.4[1]
  - ERISA 404(c) defense, 6.9[1]
  - fees, 6.3, 6.4
  - filing
    - Schedule A, 7.7[1]
    - Schedule C, 7.7[1]
    - Schedule D, 7.7[1]
    - Schedule E, 7.7[1]
    - Schedule G, 7.7[1]
    - Schedule H, 7.7[1]
    - Schedule I, 7.7[1]
    - Schedule R, 7.7[1]
    - Schedule SSA, 7.7[1]
  - funding policy, 6.8
  - identification for mergers/acquisitions, 9.3[1][a]
  - individual service fees, 6.4
  - in-service withdrawals, 3.6
  - investment options, 6.4[4]
  - matching contributions, ineligibility for permitted
    - disparity rules, 4.4[1]
  - minimum top-heavy benefits, 4.5[3][c]
  - multiple employer, 6.1
  - mutual fund investments, short-term
    - trading rules, 6.5
  - professional employer organizations, 6.1
  - Roth accounts, 3.7[1]
  - salary reduction contributions, for highly compensated employees, 4.3[3][e]
  - single-participant, sole proprietors, 4.2[1]
  - summary plan description, 7.2
  - termination, preclosing action, 9.8[1]
  - third-party administrator, 6.4
  - total accrued benefit, 7.11
  - trust
    - external trustee, 6.4
    - self-trust, 6.4
  - types, 2.1 (*See also* Defined benefit plans; Defined contribution plans)
  - vested benefits, 7.11
  - 401(m) plans, determining employees benefiting under plan, 4.3[3][d]
  - Functionality test, fiduciary determination, 5.2[1]
  - Funding
    - policy for, 6.8
    - source, in summary plan description, 7.2
    - sources, for ESOP sale, 1.9[4][d]
    - underfunding determination, 7.31[17]
  - Fund manager, 6.8
  - Funeral expenses, as immediate and heavy financial need, 3.6[1]
- G**
- Generally accepted accounting principles (GAAP), 7.7[2]
  - Goods and services, furnishing between plan and party-in-interest, 5.4[2]
- H**
- Hardship withdrawals, 3.6[1], 3.6[4], 6.4
    - allocation of expenses, 5.3[2]
    - amount of distributions, 3.6[2]
    - immediate and heavy need, 3.6[1][a]
    - taxation, 3.6[2]
  - Health insurance
    - COBRA continuation health coverage, 1.12[3]
    - dental, 1.12[3]
    - health maintenance organizations, 1.12[3]
    - health reimbursement arrangements, 1.12[3]
    - Health Savings Accounts, 1.12[3]
    - preferred provider organizations, 1.12[3]
    - prohibited transaction exemptions, 5.4[4]
    - traditional, 1.12[3]
    - types, 1.12[3]
  - Health maintenance organizations (HMOs), 1.12[3]
  - Health reimbursement arrangements (HRAs), 1.12[3]
  - Health Savings Accounts (HSAs), 1.12[3]
  - Highly compensated employees
    - average benefit percentage test, 4.3[5][b]
    - compensation threshold, 4.3[3][e]
    - coverage testing, 4.3[3][e]
    - definition of, 4.3[3][e]
    - divorce, allocation of expenses, 6.4
    - ESOP loan repayment and, 1.9[3][b]
    - minimum coverage testing exclusions, 4.3[1]
    - multiple employer 401(k) plans, 6.1
    - nondiscrimination testing, 2.3[5]
    - actual contribution percentage test, 2.3[5][b]
    - actual deferral percentage test, 2.3[5][a]
    - plan expenses and, 6.4
    - top-paid group, 4.3[3][e]
  - HMOs (health maintenance organizations), 1.12[3]
  - Hostile takeover, fiduciary duties, 5.3[1]
  - Hours counted method, for crediting service, 4.2[5][a]
  - HRAs (health reimbursement arrangements), 1.12[3]
  - Hyperbolic discounting, 1.5
- I**
- Incentive stock options, 6.1
  - Income tax rates, social Security deficit and, 1.5
  - Indemnities, 6.4[1], 9.5
  - Individual account plans
    - determination, 6.9[4]
    - diversification rights notice, 7.13
    - employment termination, transfer of vested balance, 3.4[3]
    - investment alternatives, 6.9[1]
    - model notice of blackout periods under individual account plans, C-19
    - total accrued benefit, 7.11
  - Individual retirement annuities (IRAs)
    - employment termination, transfer of vested balance, 3.4[3]
    - payroll-deduction, 1.12[1]
    - SEPs, 1.12[1]
    - SIMPLE, 1.1, 3.5[2]
    - SIMPLE IRA plans, 1.12[1]

## I-10

## RETIREMENT PLANS FOR SMALL BUSINESSES

[References are to paragraphs (¶) and appendix pages.]

Information, access, multiemployer plan, 7.14  
 Information advice/information education, reasons for  
   contracting, 6.6[4]  
 Information year, 7.26  
 In-service withdrawals, 3.6  
 Insurance, 9.3[2]  
   dental, 1.12[3]  
   disability plans, 1.12[4]  
   health (*See* Health insurance)  
   life, 1.12[2]  
 Insurance companies  
   general asset accounts, 7.7[2]  
   qualifying plan assets, 7.7[2]  
 Integration level, 4.4[2], 4.4[3][a]  
 Internal Revenue Code, 1.12[5], 2.1[1][c]  
 Internal Revenue Service (IRS)  
   designated Roth contribution definition, 2.2[5][c]  
   discrimination determination, age-weighted  
     profit-sharing plans, 2.2[1][b]  
   employee benefit forms, A-1  
   Form 5500, 6.9[1]  
 Investment managers  
   identifying, 6.9[2]  
   proxy voting, 6.7  
 Investments  
   advice/education, 6.6  
     annual audit, 6.6[4]  
     asset allocation model, 6.6[3]  
     fiduciary investment advisor, 6.6[4]  
     investment advice agreement, 6.6[4]  
     investment choice arrangement, 6.6[4]  
     model requirements, 6.6[4]  
     provision for fee, 5.2[4]  
       fiduciary determination, 6.6  
     questionnaires, worksheets,  
       software etc., 6.6[4]  
   alternative, 6.9[2]  
     description, 6.9[2]  
     portfolio, 6.9[2]  
   alternatives, 6.9[1]  
   “choice overload,” 1.5  
   diversification, fiduciary obligations, 5.3[4]  
   grandfathered, 6.9[1]  
   guidelines, 6.8  
   information  
     general financial and investment, 6.6[2]  
     types, 6.6[1]  
   management fees, 6.4  
   options for participants, 6.4[4]  
   of plan assets, 5.4[4]  
   plan-related, fiduciary  
     decision making, 5.3[2]  
   policy statement, 6.7  
   repayment of ESOP loan, 1.9[3][b]  
   risk  
     defined benefit plans, 2.1[1][a]  
     defined contribution plans, 2.1[2][b]  
 IRAs. *See* Individual retirement annuities  
 IRS. *See* Internal Revenue Service

**J**

Joint and survivor annuities (J&S)  
 defined contribution plans, 2.1[2][d]  
 money purchase plans, 2.2[2]  
 pension benefits  
   in summary plan description, 7.2  
   upon participant death, 2.1[1][d]  
   upon retirement, 2.1[1][d]  
 qualified, 3.3[1]

**K**

Keogh plans, for sole proprietors, 4.2[1]  
 Kickbacks, as self-dealing  
   prohibited transactions, 5.4[3]

**L**

Labor Management Relations Act, 1.10[2]  
 Large businesses  
   access to retirement benefit plans, 1.2  
   coverage gap with small businesses, 1.1  
   DOL definition of, 1.2  
 Leasing, employee, 6.1  
 Liability insurance, for fiduciary, 5.5[3]  
 Life insurance plans, 5.4[4]  
   group, 1.12[2]  
   premiums, 1.12[2]  
   purchasing, 1.12[2]  
   survivor income plans, 1.12[2]

## Liquidation

advance reporting, 7.31[17]  
 as reportable event, 7.31[10]

## Loans

amount, 5.5[2]  
 default  
   advance reporting, 7.31[17]  
   as reportable event, 7.31[15]  
 duration, 5.5[2]  
 ESOP, 1.9[3][a]  
   repayment, 1.9[3][b]  
   taking out, 1.9[3][a]  
 in-service withdrawals, 3.6[2]  
 participant, qualifying plan assets, 7.7[2]  
 with parties-in-interest, 5.5[2]  
 between plan and party-in-interest, 5.4[2]  
 plan to plan, 5.4[4]  
 purchase with plan assets, 5.5[2]  
 repayment, as fiduciary  
   self-correction, 5.5[2]

**M**

Managed accounts, qualified default investment  
 alternative, 6.9[1]  
 Matching employer contributions  
   disaggregated for coverage testing, 4.3[3][f]  
   401(k) plans, ineligibility for permitted disparity  
     rules, 4.4[1]  
 Matching principle, 1.6  
 Maximum excess allowance, 4.4[3][a]  
 Maximum offset allowance, 4.4[3][b]

[References are to paragraphs (¶) and appendix pages.]

- Medical care expenses, as immediate and heavy financial need, 3.6[1]
  - Medical child support orders, allocation of expenses, 5.3[2]
  - Merged and successor plan documents, 7.2
  - Mergers
    - covenants, 9.6
    - due diligence, 9.3
      - accelerated payments, 9.3[3]
      - foregoing, 9.3[4]
      - funded status assessment, 9.3[2]
      - identifying existing plans and compensation arrangements, 9.3[1]
    - indemnities, 9.5
    - minimal coverage testing, transitional, 4.3[2]
    - negotiations, 9.7
    - postclosing, 9.8[2]
    - preclosing, 9.8[1]
    - preliminary determinations, 9.2
    - representations and warranties, 9.4
    - summary plan description, 7.2
  - MERP (multiple employer 401(k) plan), 6.1
  - Minimum funding standards, multiple employer retirement plans, 8.6[6]
  - Minimum funding waiver
    - advance reporting of application, 7.31[17]
    - application of, 7.31[14]
  - Minimum participation requirements, 4.2
    - break in service rules, 4.2[6]
    - exclusion classifications, 4.2[3]
    - methods of crediting service, 4.2[5]
      - elapsed time method, 4.2[5][c]
      - equivalency method, 4.2[5][b]
      - hours counted method, 4.2[5][a]
    - minimum age and service rule, 4.2[2]
    - minimum number of participants in defined benefit plans, 4.2[7]
    - participants must be employees, 4.2[1]
    - six-month rule, 4.2[2]
    - year of service, 4.2[4]
  - Minimum required distribution rules, 3.5[2]
  - Missing participants
    - diligent search requirement, 7.28
    - filing Schedule MP, 7.28
    - missing participants—filing instructions and forms, C-157
  - Money purchase plans, 2.2[2]
    - deduction rules, 2.2[2]
    - identification for mergers/acquisitions, 9.3[1][a]
    - in-service withdrawals, 3.6
    - joint and survivor annuity, 2.2[2]
    - minimum funding rules, 3.7[3]
    - vs. defined benefit plans, 2.2[2]
    - vs. profit-sharing plans, 2.2[2]
  - Multiemployer plans, 9.3[2]
    - annual report, 7.7[2]
    - funding notice
      - contents, 7.25
      - model notice, 7.25
      - time frame, 7.25
    - information access, 7.14
    - minimum funding rules, 7.7[2]
    - model notice of pending election of multiemployer plan status, C-21
    - premiums
      - payment, 7.18
      - types, 7.19
    - reportable event rules, 7.31[2]
  - Multiple employer 401(k) plan (MERP), 6.1
  - Multiple employer retirement plans
    - deduction limits, 8.6[7]
    - minimum funding standards, 8.6[6]
    - vesting rules, 8.6[5]
  - Mutual funds, 6.3
    - expense ratio, 6.3
    - qualifying plan assets, 7.7[2]
    - scandals, 6.5
    - short-term trading rules, 6.5
- N**
- Nondiscrimination classification test, 2.3[5], 4.3[5][a], 6.4
    - actual deferral percentage test, 2.3[5][a]
    - allocation of expenses, 6.4
  - Nonqualified deferred compensation arrangements
    - employer payments, matching principle, 1.6
    - pay-as-you-go basis, 1.2
  - Nonqualified plans. *See also specific nonqualified plans*
    - contributions, employer deductions, 1.6
    - distributions, restrictive rules, 1.6
    - employer default, 1.5
    - employer payments, matching principle, 1.6
    - identification for mergers/acquisitions, 9.3[1][b]
    - restrictions, 1.1
    - taxation, 1.2
    - underfunded, 9.3[2]
    - vs. qualified plans, 1.1
      - tax consequences, 1.6
  - Nonresident aliens, excludable employees, 4.3[3][b]
  - Notice/notification
    - of benefit limitations, 7.27
    - defined benefit plan funding, 7.25
    - distress termination, 7.32
    - ERISA Section 4065—annual notice, 7.16
    - failure to provide, notice of benefit limitations, 7.27
    - of failure to satisfy IRC minimum funding standards, 7.1
    - financial advisor, disclosure of fees and compensation, 6.6[4]
    - freedom to diversify securities, 7.13
    - of plan eligibility, 6.9[1]
    - plan termination of plan, 7.18
    - premium payment, 7.24
      - extension of time period, 7.24
      - who receives notice, 7.24
    - reportable events, general information, 7.31[1]
- O**
- Offset plan, 4.4[3][b]
  - One year holdout rule, 4.2[6]

## I-12

## RETIREMENT PLANS FOR SMALL BUSINESSES

[References are to paragraphs (¶) and appendix pages.]

- Outsourcing relationships
  - employee leasing, 6.1
  - professional employer organizations, 6.1
  - temporary staffing services, 6.1
- Overtime compensation, for highly compensated employees, 4.3[3][e]
- Owners
  - ESOP sales, feasibility study, 1.9[4][a]
  - filing of form 5500, 7.7[1]
  - five percent, 4.3[3][e]
  - minority, ESOP sales and, 1.9[4][a]
  - as party-in-interest, 5.4[2]
  - substantial
    - definition, 7.15
    - determination of, 7.31[6]
    - distribution to, 7.31[6], 7.31[7]
- P**
- Parent-subsidiary controlled groups
  - defined, 8.2
  - entity under common control, 8.3
  - stock, 8.2
- Participants
  - active, 7.23
    - for reportable events, 7.31[3]
  - deceased, 7.23
  - definition of, 7.23
  - exercise of control, causal connection with claim, 6.9[4]
  - exercising control of assets, 6.9[1]
  - inactive, 7.23
  - independent control, 6.9[3]
  - information
    - requests for, 6.9[2]
    - on rights/obligation of fiduciary, 6.9[4]
  - investment control, 6.9[2]
  - legally incompetent, 6.9[3]
  - minimum number, for defined benefit plans, 4.2[7]
  - missing (*See* Missing participants)
  - nonvested, break in service rules, 4.2[6]
  - notice
    - of premium payment, 7.24
    - QDIA investment, 6.9[1]
  - one-year break in service, 7.11
  - reportable events
    - active, 7.31[3]
    - exception, 7.31[4]
  - request for benefit statement, 7.11
  - required information for, 6.9[2]
  - rights
    - failure to inform, 6.9[4]
    - limitations in benefit statements, 7.11
    - terminated vested, allocation of expenses, 6.4
- Parties-in-interest, 5.4[4], 5.4[5]
- Partnerships
  - entity under common control, 8.3
  - filing of form 5500, 7.7[1]
  - as party-in-interest, 5.4[2]
  - professional employer organization, 6.1
  - stock, attribution from, 8.2
- Part-time employees, minimum participation requirements, 4.2[2]
- Party-in-interest
  - contracts and reasonable agreements, 6.3
  - definition, 5.4[2]
  - self-dealing, 5.4[4]
  - transactions
    - exemptions, 5.4[4]
    - prohibited, 5.4[2]
- PBGC. *See* Pension Benefit Guaranty Corporation
- Penalties
  - failure to file form 5500, 7.7[1]
  - technical violations of ERISA, 7.6
- Pension actuary
  - contribution obligation, 2.1[1][c]
  - defined benefit plan funding determination, 2.1[1][c]
- Pension Benefit Guaranty Corporation (PBGC), 7.1
  - disclosure to, 7.15
  - distress termination notification, 7.32
  - ERISA Section 4065—annual notice, 7.16
  - ERISA Section 4063—withdrawal of substantial employer, 7.17
  - filing extensions, 7.30
  - Form 1, 7.18, 7.23
  - Form 10, 7.31[4]
  - Form 200, 7.31[2], 7.31[12]
  - Form 10-A, 7.31[17]
  - Form 1-ES, 7.23
  - Form 1-ES extension, 7.31[4]
  - Form 1 extension, 7.31[4]
  - Form 5500 extension, 7.31[4]
  - Form 1-EZ, 7.18, 7.23
  - guarantee
    - defined benefit plan, 2.1[1][c]
    - defined contribution plan, 2.1[2][b]
  - information provided to, 7.26
  - insurance of qualified defined benefits plans, 1.2
  - missing participant benefits, 7.28
  - model annual funding notice, C-29
  - model participant notice, C-26
  - notification
    - by contributing sponsor, 7.26
    - by contributing sponsor controlled group, 7.26
    - exemptions, 7.26
    - of failure to make required contributions, 7.31[12]
    - loan default extensions, 7.31[15]
    - of reportable events, 7.31[10]
  - PBGC model separate interest QDRO, C-38
  - PBGC model shared payment QDRO, C-34
  - penalty, for late filing, 7.30
  - postdistribution certification filing, 7.28
  - proposed filing regulations, 7.20
  - Regulations Section 4043.27, waivers, 7.31[7]
  - reportable event notification filing
    - general information, 7.31[1]
    - PBGC Form 10, 7.31[2]
  - reportable events, changes in contributing sponsor or controlled group, 7.31[8]
  - reporting to, 7.15



[References are to paragraphs (¶) and appendix pages.]

- sample QDRO procedures, C-42
  - special filings-ERISA Section 4010, 7.26
  - statutory nonextendable deadlines, 7.30
  - Technical Update 06-4, 7.31[18]
  - waiver of reporting requirements, 7.26
  - Pension Funding Equity Act of 1004, 7.31[18]
  - Pension plans
    - coverage rates, 1.1
    - DOL requirements, 1.10[2]
  - Pension Protection Act (PPA)
    - benefit limitations, 7.27
    - benefit statement requirement, 7.11
    - changes
      - ERISA section 404(c), 6.9[1]
      - PBGC proposed filing regulations, 7.20
    - ERISA-Section 4010 reporting requirement, 7.26
    - investment advice, 6.6[4]
    - reasons for contracting investment advice, 6.6[4]
  - PEOs (professional employer organizations), 6.1
  - Performance fee arrangements, 6.3
  - Permitted disparity
    - excess plan, defined benefit plan, 4.4[3][a]
    - offset plan, 4.4[3][b]
    - requirements
      - defined benefit plan, 4.4[3]
      - defined contribution plan, 4.4[2]
  - Personal property, transfer by party-in-interest
    - to plan, 5.4[2]
  - Personal savings
    - education, 1.5
    - obstacles to retirement planning, 1.5
    - “three-legged stool” principle and, 1.5
  - Plan administrator, 3.4[3], 3.5[1]
    - civil penalties, for failure/refusal to provide timely blackout notice, 7.10
    - correction of form 5500 filing defects, 7.7[1]
    - defined benefit plan, benefit statement requirements, 7.11
    - determination of DRO qualification, 3.6[3]
    - determination of immediate and heavy financial need, 3.6[1]
    - discretionary authority and responsibility, 5.2[1]
    - ERISA Section 4065—annual notice, 7.16
    - functions, retention of tax-qualified status, 6.4
    - furnishing of benefit statement, 7.11
      - exceptions, 7.11
      - required, 7.11
      - time frame, 7.11
    - hardship withdrawals, determination of amount, 3.6[2]
    - legal responsibility, reportable events notification, 7.31[2]
    - liability, for failure to provide requested documents, 7.6
    - multiemployer plan, disclosure requirements, 7.14
    - penalties, failure to provide diversification rights notice, 7.13
    - procedure for benefit statement requests, 7.11
    - reportable event filing, bankruptcy, 7.31[9]
    - reportable events, obligation to report, 7.31[3]
    - reporting and disclosure requirements, 7.1
    - search, for missing participants, 7.28
  - Plan expenses, 5.2[6]
    - allocation
      - hardship withdrawals, 6.4
      - nondiscrimination testing, 6.4
      - per capita method, 6.4
      - pro rata method, 6.4
      - reasonableness, 6.4
    - annual operating, 6.9[2]
  - Plan prototype, amendment,
    - preclosing action, 9.8[1]
  - PPA. *See* Pension Protection Act
  - PPA 2006, 7.31[18]
  - Preferred provider organizations (PPOs), 1.12[3]
  - Premiums
    - filing
      - dates for, 7.20
      - where to file, 7.21
    - payment, 7.18
      - hardship waiver, 7.23
      - late, 7.23
      - notice to participants, 7.24
      - safe harbor rules, 7.23
    - payments, how to pay, 7.22
    - rate regulations, definition of participant, 7.23
    - types, 7.19
    - variable rate, 7.20
  - Pretax employee deferrals, 3.6
  - Primary insurance, percentage, offset plan and, 4.4[3][b]
  - Professional employer organizations (PEOs), 6.1
  - Professional service employer, definition, 7.15
  - Profit-sharing plans, 3.3[1]
    - age-weighted, 2.2[1][b]
    - contributions, 2.2[1]
      - allocation of, 2.2[1][b]
      - amounts, 2.2[1][a]
      - disaggregated for coverage testing, 4.3[3][f]
      - recurring and substantial, 2.2[1][a]
    - cross-tested, 2.2[1][b]
    - delayed distributions, 1.6
    - expense, 2.3[1]
    - flexibility, 2.2[1][a]
    - identification for mergers/acquisitions, 9.3[1][a]
    - in-service withdrawals, 3.6
    - nondiscriminatory testing, 2.3[5]
  - Prospectus, 6.9[2]
  - Proxy voting, 6.7, 6.9[2]
  - Prudence standard, under ERISA, 5.3[2]
  - Public companies, valuation, 1.9[4][b]
- Q**
- QDROs. *See* Qualified domestic relations order
  - QJSAs (qualified joint and survivor annuities), 3.3[1]
  - Qualified default investment
    - alternative (QDIA), 6.9[1]
    - participant notice, 6.9[1]
    - requirements, 6.9[1]

[References are to paragraphs (¶) and appendix pages.]

- Qualified defined benefit plans
    - disclosure to PBGC, 7.15
    - PBGC insurance, 1.2
    - reporting to PBGC, 7.15
  - Qualified defined contribution plans, hardship
    - distributions, 3.6[2]
  - Qualified domestic relations order (QDRO), 7.6
    - administration, 3.6[3]
    - allocation of expenses, 5.3[2], 6.4
    - divorce situations, 6.4
    - alternate payee, 3.6[3]
    - definition, 3.6[3]
    - PBGC model separate interest QDRO, C-38
    - PBGC model shared payment QDRO, C-34
    - requirements, 3.6[3]
    - sample QDRO procedures, C-42
    - in summary plan description, 7.2
  - Qualified joint and survivor annuities (QJSAs), 3.3[1]
  - Qualified medical child support order (QMCSO), allocation of expenses, 6.4
  - Qualified plans *See specific qualified plans*
    - administrative costs, 1.1
    - advantages, 1.1
    - benefit formula, 1.3
    - contracts and agreements, reasonableness, 6.3
    - contributions
      - annual additions, 2.3[4]
      - employer deductions, 1.6
    - coverage gap, 1.1
    - deduction rules, 2.3[4]
    - design
      - adoption agreement, 2.3[6]
      - expense, 2.3[1]
      - individual, 2.3[6]
      - nondiscrimination testing, 2.3[5]
      - plan documentation, 2.3[6]
      - prototypes, 2.3[6]
      - Section 404 deduction limits, 2.3[3]
      - Section 401(a)(17) limit, 2.3[2]
      - Section 415 limits, 2.3[4]
    - distributions (*See Distributions*)
    - employee confidence in, 1.5
    - employer financial condition and, 1.5
    - employer sponsorship, 1.1
    - entry dates, 4.2[2]
    - excess parachute payments, 9.3[3]
    - golden parachute provisions, 9.3[3]
    - identification for mergers/acquisitions, 9.3[1][a]
    - income from investment returns, 1.6
    - in-service loans, 3.6[2]
      - amount, 3.6[2]
      - legal enforcement, 3.6[2]
      - repayment, 3.6[2]
    - intent, 3.1
    - minimum participation requirements (*See Minimum participation requirements*)
    - participation, nondiscriminatory
      - testing, 2.3[5]
    - reasons small businesses decline
      - sponsorship, 1.1
    - requirements, 1.1
    - retirement qualification requirements, 1.3
    - service requirements
      - methods of crediting service, 4.2[5]
      - minimum age and service rule, 4.2[2]
      - year of service, 4.2[4]
    - simplified options (*See Savings Incentive Match Plan for Employees; Simplified Employee Pensions*)
    - sponsorship
      - economies of scale, 1.7
      - financial security and, 1.4
      - government incentives, 1.5
      - individual saving behavior and, 1.5
      - tax incentives, 1.5
      - worker productivity and, 1.4
    - tax advantages, 1.6
    - tax efficiency, 1.5
    - types, 1.3
    - vs. nonqualified plans, 1.1
    - tax consequences, 1.6
  - Qualified preretirement survivor annuity (QPSA), 3.3[1]
  - Qualified stock purchase plans, 6.1
  - Qualified transportation plans, 4.3[3][c], 6.1
  - Qualifying plan assets, 7.7[2]
- R**
- Rabbi trust arrangements, 9.3[2]
  - Ratio percentage test, 4.3[4]
    - excludable employees, 4.3[3][c]
    - minimum coverage rules, multiple employer retirement plans, 8.6[3]
  - Real property
    - of qualified employer, acquisition, sale or lease, 5.4[4]
    - transfer by party-in-interest to plan, 5.4[2]
  - Records
    - electronic, 7.3
    - single employer employee benefit plan, 7.11
      - duration of maintenance period, 7.11
      - reasonable order in safe and accessible place, 7.11
  - Recruitment, retirement benefits and, 1.2
  - Reemployment commencement date, in elapsed time
    - method, 4.2[5][c]
  - Relatives, as party-in-interest, 5.4[2]
  - Reportable events
    - active participation reduction, 7.31[3]
    - advance notice of reportable event— filing
      - instructions and forms, C-47
    - advance reporting, 7.31[17]
    - application of minimum funding waiver, 7.31[14]
    - bankruptcy or similar settlement, 7.31[9]
    - changes in contributing sponsor or controlled group, 7.31[8]
    - currently unable to pay benefits, 7.31[5]
    - distribution to substantial owner, 7.31[6]
    - exception, 7.31[4]

[References are to paragraphs (¶) and appendix pages.]

- extraordinary dividend or stock redemption, 7.31[16]
  - cash distribution, 7.31[16][a]
  - combined distributions, 7.31[16][c]
  - extensions, 7.31[16][c]
  - noncash distribution, 7.31[16][b]
  - waiver conditions, 7.31[16][c]
- failure to make required minimum funding payment, 7.31[11]
- filing
  - deadline, 7.31[2]
  - liquidation, 7.31[10]
- general information, 7.31[1]
- liquidation, 7.31[10]
- loan default, 7.31[15]
  - notice content, 7.31[15]
  - waiver conditions, 7.31[15]
- notification filing
  - PBGC Form 10, 7.31[2]
  - waivers, 7.31[2]
- post-event notice of reportable events— filing
  - instructions and forms, C-59
- projected to be unable to pay benefits, 7.31[5]
- transfer of benefit liabilities, 7.31[7], 7.31[13]
- waivers, 7.31[7]
- Reports/reporting
  - accountant, filing, 7.7[2]
  - advance notice
    - events subject to, 7.31[17]
    - extension, 7.31[17]
  - annual, Schedule SSA, 7.8
  - Form 5500, additional requirements, 7.7[2]
  - to PBGC, 7.15
  - requirements, for plans with fewer than 100 participants, 7.7[2]
  - sanctions, 7.6
- Residence, principal
  - damage repair expenses, as immediate and heavy financial need, 3.6[1]
  - eviction, as immediate and heavy financial need, 3.6[1]
  - foreclosure, as immediate and heavy financial need, 3.6[1]
  - purchase, as immediate and heavy financial need, 3.6[1]
- Retirement
  - age, 1.8
  - income, increased life expectancy and, 1.8
  - needs, calculation of, 1.5
  - planning
    - hyperbolic discounting and, 1.5
    - motivation, 1.5
    - obstacles, 1.5
    - overconfidence and positive outcome bias, 1.5
- Retirement plans, 1.1. *See specific types of plans*
  - access, 1.2
  - administration (*See Administration*)
  - allocation of plan expenses
    - per capita method, 5.3[2]
    - pro rata method, 5.3[2]
  - amendment, as settlor function, 5.2[5]
  - “choice overload,” 1.5
  - controlled groups, 8.5
  - employer-sponsored retirement plans
    - responsibility for retirement income, 1.5
    - “three-legged stool” principle and, 1.5
  - establishment
    - compensation for office space, legal and accounting services, 5.4[4]
    - as settlor function, 5.2[5]
  - expenses, reasonable costs of administration, 5.3[2]
  - maintenance of tax-qualified status, 5.2[6]
  - multiple employer, 8.6
    - discrimination rules, 8.6[2]
    - exclusive benefit test, 8.6[4]
    - minimum coverage rules, 8.6[3]
    - participation rules, 8.6[1]
    - termination rules, 8.6[2]
  - restrictions, in summary plan description, 7.2
  - sale, exchange or lease, with
    - party-in-interest, 5.4[2]
  - termination, as settlor function, 5.2[5]
  - underfunding determination, 7.31[4]
- Revenue-sharing arrangements
  - failure to disclose/account for payments, 6.3
  - service provider, 6.3
- Rollovers, 3.7[2]
  - absence in defined benefit plans, 2.1[1][f]
  - defined contribution plans, 2.1[2][d]
  - direct between plans, 3.7[2]
  - disability accounts, 3.3[2]
  - ineligible, 3.7[2]
  - paid to participant, 3.7[2]
  - Roth accounts, 3.7[1]
  - rules, 3.7[2]
- Room and board fees, as immediate and heavy financial need, 3.6[1]
- Roth IRA accounts, 3.7[1]
  - age 59½, 3.7[1]
  - rollovers, 3.7[2]
  - vs. designated Roth contributions, 2.2[5][c]
- S**
  - Safe harbor provisions, 6.9[4]
    - default investment alternative, 6.9[1]
    - for defined benefit offset plans, 4.4[3][b]
    - for immediate and heavy financial need, 3.6[1]
    - minimum top-heavy benefits, employees with multiple plans, 4.5[3][d]
    - nondiscrimination test, 4.3[5][a]
    - 401(k) plans, 4.5[3][c]
    - rules, late premium payments, 7.23
    - safe harbor test, 6.4
  - Salary
    - deductions, for payroll-deduction IRAs, 1.12[1]
    - deferrals, 401(k) contributions, 2.2[5][a]
  - Salary continuation arrangements, 1.11
  - Salary reduction contributions, for highly compensated employees, 4.3[3][e]

## I-16

## RETIREMENT PLANS FOR SMALL BUSINESSES

[References are to paragraphs (¶) and appendix pages.]

- Sales and purchase agreements, 9.4
  - indemnity provisions, 9.5
  - negotiations, 9.7
- Sanctions, 7.6
- SARs. *See* Summary annual reports
- SARSEP (simplified employee pension), 4.4[1]
- Savings Incentive Match Plan for Employees IRAs (SIMPLE IRAs)
  - advantages, 1.1, 1.12[1]
  - age requirement, 3.6[4]
  - minimum required distributions, 3.5[2]
- Schedule A, 7.7[1]
- Schedule B, 7.7[2]
- Schedule C, 7.7[1]
- Schedule D, 7.7[1]
- Schedule E, 7.7[1]
- Schedule E (ESOP Annual Information), 7.7
- Schedule G, 7.7[1]
- Schedule H, 7.7[1]
- Schedule I, 7.7[1]
- Schedule MP, 7.28
  - certification, commercial delivery service, 7.29
  - filing, 7.28
    - commercial delivery service, 7.29
    - date, 7.29
    - mailbox rule, 7.29
    - methods, 7.29
- Schedule R, 7.7[1]
- Schedule SSA (Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits), 7.7, 7.7[1], 7.8
- Seasonal employees, minimum participation requirements, 4.2[2]
- Secretary of Labor, 7.7[2]
- Section 410(b), nondiscrimination testing, 2.3[5]
- Securities Act of 1934, ESOP sales, 1.9[2]
- Securities and Exchange Commission (SEC), 6.5
- Self-dealing transactions, fiduciary prohibitions, 5.4[3]
- Seller representations and warranties, 9.4
- Separation from service, deferred vested benefits, Schedule SSA, 7.8
- SEPs. *See* Simplified employee pensions
- Serious consideration test, 5.3[1]
- Service organizations, 8.4
- Service providers
  - joint venturer, as party-in-interest, 5.4[2]
  - as non fiduciary, 5.2[2]
  - as party-in-interest, 5.4[2]
  - prohibited transactions, 6.3
- Services
  - break in service rules, 4.2[6]
  - compensation, reasonableness, 6.3
  - contract or arrangement
    - notice requirement, 6.3
    - reasonableness, 6.3
  - definition of, 6.3
  - minimum, excludable employees, 4.3[3][b]
  - service spanning rules, 4.2[5][c]
- Service spanning rules, 4.2[5][c]
- Settlor functions, 5.2[5], 5.2[6]
- Severance
  - arrangements, 9.3[2]
    - administrative scheme determination, 1.10[1]
    - calculation formulas, 1.10
    - ERISA rules, 1.10[1]
    - identification for mergers/acquisitions, 9.3[1][c]
    - one-year-period, 7.11
    - payment methods, 1.10
    - purpose, 1.10
    - tax consequences, 1.10[3]
    - welfare benefit plans ERISA requirements, 1.10[2]
  - from employment, 3.4[1]
  - from service date, in elapsed time method, 4.2[5][c]
- Shareholders, as party-in-interest, 5.4[2]
- SIMPLE IRA (Savings Incentive Match Plan for Employees IRA), 1.1, 3.5[2]
- SIMPLE IRAs. *See* Savings Incentive Match Plan for Employees IRAs
- Simplified employee pensions (SEPs)
  - employer requirements, 1.1
  - limitations, 1.12[1]
  - salary reduction contributions, 4.4[1]
- Single employer plans
  - funding notice, contents, 7.25
  - premiums, 7.19
  - records, 7.11
- Single-life annuity
  - benefits, 3.3[1]
    - money purchase plans, 2.2[2]
    - unmarried participants, 2.1[1][d]
- Six month rule, 4.2[2]
- Small businesses
  - access to employer-provided health benefits, 6.1
  - access to retirement benefit plans, 1.2
  - coverage gap with large businesses, 1.1
  - definition, 7.19
  - ESOP sale, 1.9
    - major concerns of, 1.1
    - moral obligations, 1.5
    - owner, ESOP sale and, 1.9[2]
  - qualified plan sponsorship
    - ability to hire and, 1.2
    - advantages, 1.2
    - employee retention, 1.3
    - productivity and, 1.4
    - reasons for declining, 1.1
  - turnover costs, 1.3
  - valuation, for ESOP sale, 1.9[4][b]
- SMMs. *See* Summary of material modifications
- Social Security Administration, open group unfunded obligation, 1.5
- Social Security benefits
  - amount of retirement income, 1.5
  - cuts in, 1.5
  - deficit, 1.5
  - disability insurance plans and, 1.12[4]
  - minimum top-heavy benefits, 4.5[3][a]

[References are to paragraphs (¶) and appendix pages.]

- permitted disparity, 4.4
  - trust fund deficit, benefit cutting and, 1.2
  - wage base, permitted disparity
    - rules, 4.4[2], 4.4[3][a]
  - Social Security Code, permitted disparity rules, 2.2[1][b]
  - Social Security system
    - “three-legged stool” principle and, 1.5
    - trust benefit exhaustion, 1.5
  - Sole proprietors, 4.2[1]
  - SPD. *See* Summary plan description
  - Spin-off retirement plans, 6.1
  - Stable value funds, 6.9[1]
  - Statute of limitations, civil actions asserting breach of fiduciary duty, 5.5[1]
  - Statutory exemptions, 6.3
  - Stock
    - advance reporting of redemption, 7.31[17]
    - attribution from corporations, brother-sister controlled group, 8.2
    - attribution from spouse, brother-sister controlled group, 8.2
    - defined, 8.2
    - ownership rules, for controlled groups, 8.2
    - redemption, 7.31[16]
  - Stock bonus plans, 2.2[4]
    - delayed distributions, 1.6
    - identification for mergers/acquisitions, 9.3[1][a]
    - in-service withdrawals, 3.6
  - Stock market, defined benefit plan funding and, 2.1[1][c]
  - Substantial compliance theory, 6.9[3]
  - Summary annual reports (SARs)
    - content, style and form, 7.9
    - contents, 7.7[2]
    - disclosures, 7.1
    - electronic format, 7.3
    - notice in foreign language, 7.9
    - time for filing, 7.9
  - Summary of material modifications (SMMs)
    - disclosures, 7.1
    - electronic format, 7.3
    - in summary plan description, 7.2
  - Summary plan description (SPD)
    - allocation of expenses, 6.4
    - content, 7.4
    - contents, 7.2
    - distribution method, 7.2
    - electronic, 7.3
    - format, 7.2
    - 401(k) plan, 7.2
    - glossary, 7.2
    - language, 7.2
      - ambiguous, 7.4
      - contradictory, 7.4
    - modifications/amendments, 7.2
    - omissions, 7.4
    - requirements, 7.2
      - legal, 7.2
    - sanctions, 7.6
    - updating, 7.2
  - Summary plan descriptions (SPDs), 7.1
  - Survivor income plans, 1.12[2]
- T**
- Target benefit plans
    - advantages, 2.2[3]
    - definition, 2.2[3]
    - minimum funding rules, 3.7[3]
  - Taxes
    - benefits of ESOP sales, 1.9[1]
    - deferrals, for qualified plans, 1.2
    - distributions, 3.6[4]
    - hardship withdrawals, 3.6[2]
    - nonqualified plans, 1.2
    - payroll-deduction IRAs, 1.12[1]
    - rollovers, 3.7[2]
    - Roth accounts, 3.7[1]
    - SEP deductions, 1.12[1]
    - severance arrangements, 1.10[3]
  - Tax-qualified plans. *See* Qualified plans
  - Tax subsidy, qualified plan benefits, 1.1, 1.2
  - Temporary staffing services, 6.1
  - Termination of employment, distributions, 3.7[2]
  - Termination of plan
    - distress termination—filing instructions and forms, C–120
    - distress termination notification, 7.32
    - model notice of plan termination, C–2
    - premiums, payment, 7.18
    - prototype plans, 2.3[6]
    - severance arrangements (*See* Severance arrangements)
    - standard termination—filing instructions and forms, C–86
    - summary plan description, 7.2
    - in summary plan description, 7.2
  - Testing date, 7.31[4]
  - Third-party administrators (TPAs)
    - fiduciary duty of prudence, 5.3[2]
    - 401(k) plan, 6.4
    - indemnity, 6.4[1]
    - as non fiduciary, 5.2[1]
  - “Three-legged stool” principle, 1.5
  - Top-heavy plans
    - definition, 4.5
    - key employees, 4.5[2]
    - minimum benefits, 4.5[3]
      - defined benefit plans, 4.5[3][a]
      - defined contribution plans, 4.5[3][b]
      - employees with multiple plans, 4.5[3][d]
      - 401(k) plans, 4.5[3][c]
    - minimum vesting, 4.5[4]
    - non-key employees, 4.5[2]
  - PEO plans, 6.1
  - top-heavy test, 4.5[1]
    - permissive aggregation group, 4.5[1][b]
    - required aggregation group, 4.5[1][a]

[References are to paragraphs (¶) and appendix pages.]

- Top-heavy test, 6.4
  - TPAs. *See* Third-party administrators
  - Transition rules, diversification rights, 7.13
  - Trustees
    - discretionary authority and responsibility, 5.2[1]
    - loyalty to participants, 5.3[1]
    - qualifying plan assets, 7.7[2]
  - Trusts
    - as party-in-interest, 5.4[2]
    - stock, attribution from, 8.2
  - Tuition, as immediate and heavy financial need, 3.6[1]
- V**
- Vesting
    - administering/maintaining accounts, allocation of expenses, 5.3[2]
    - benefit statement, 7.11
    - in benefit statement, 7.11
    - computation period, 7.11
    - funded vested percentage of plan, 7.31[17]
    - minimum top-heavy, 4.5[4]
- in PEO 401(k), 6.1
  - requirements, 6.4
  - rules for multiple employer retirement plans, 8.6[5]
  - in summary plan description, 7.2
  - Voluntary Fiduciary Correction Program, 5.5[3]
  - Voting of proxies, 6.7, 6.9[2]
- W**
- Welfare benefit plans
    - administrators, 1.10[2]
    - ERISA requirements, 1.10[2]
    - funded, 1.10[2]
    - vs. pension plans, 1.10[2]
  - Workers compensation, risk management, professional employer organization, 6.1
  - Work schedules, minimum participation requirements, 4.2[2]
- Y**
- Years of service, determination method, in summary plan description, 7.2