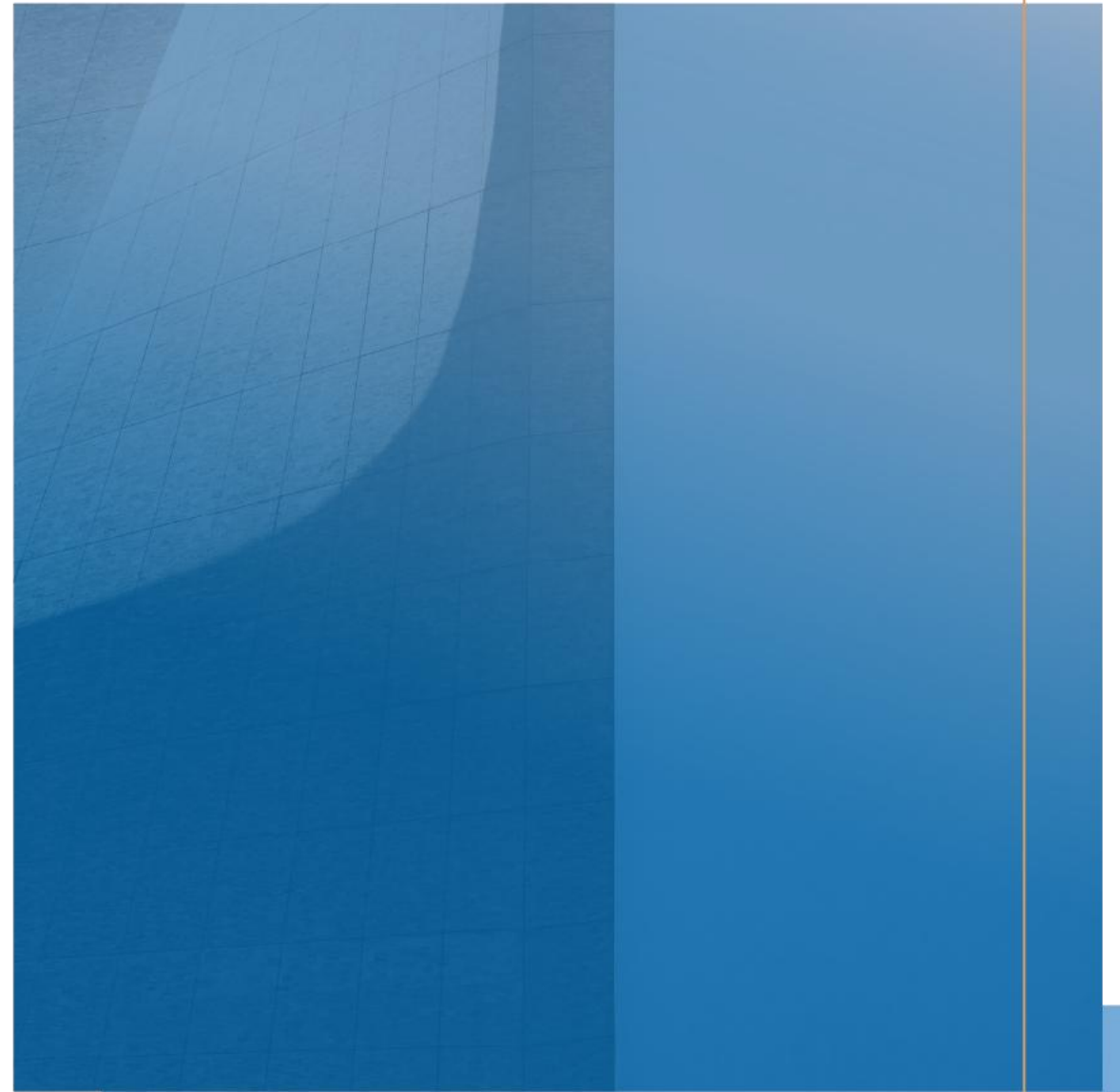


# Creative Retirement Solutions for Small Businesses

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# Introduction and Objectives



## Importance of Providing Retirement Plan Benefits

Benefits to attract, motivate, and retain employees and provide for long-term financial security



## Overview of Traditional and Innovative Retirement Options

Traditional retirement plans, equity compensation, and alternative equity arrangements



## Key Takeaways

How to use the appropriate planning tools for your client

# Traditional Retirement Plan Options



## 401(k) Plans

Most common retirement planning vehicle in the market



## Defined Benefit Plans

Less emphasis based on employer liability exposure, but current termination issues exist



## Simplified Employee Pension Plans (SEPs)

Good for small business, mimic a scaled down pension plan



## Simple IRAs

Good for small business, mimic a scaled down defined contribution plan

# 401(k) Plans / Solo 401(k)s

## Tax Advantages

- Traditional contributions
- Roth contributions

## Employer and Employee Dollars

- Deferrals, matching, and profit sharing
- 402(g) limit - \$23,500 (2025)
- 415 annual allocation - \$70,000 (2025)

## Compliance/Discrimination Testing

- Required notices and reporting obligations
- Coverage testing, general non-discrimination, ADP/ACP test, top heavy, deferral limits, and annual allocations

# Defined Benefit Plans

## Traditional Defined Benefit Plans (Pension Plans)

- Counterpart to defined contribution plan
- Promises a specified monthly benefit upon retirement
- No employee contributions

## Cash Balance Plans

- A type of defined benefit plan that is increasing popularity
- Hybrid between a defined contribution plan and defined benefit

# Simplified Employee Pension Plan (SEP)

## Contributions to an IRA

- Simplified pension plan
- IRA is owned by the participant
- Governed by other IRA rules
- Only employer contributions

## General Requirements

- Must provide to those who are at least 21, have worked three of the past five years, and received at least \$750 in compensation
- Contribution limit the lesser of 415 limit (\$70,000 in 2025) or 25% of individual's compensation

## Good Option for Small Businesses

- Relief from ERISA's reporting and disclosure requirements
- Recommended to use IRS Form (Form 5305-SEP)

# Simple IRAs

## Contributions to an IRA

- IRA is owned by the participant
- Governed by other IRA rules
- Employer and employee contributions

## General Requirements

- Must provide to those who received at least \$5,000 in compensation during any two prior years (can be less restrictive)
- Must satisfy one of two matching contributions

## Good Option for Small Businesses

- Relief from ERISA's reporting and disclosure requirements
- Recommended to use IRS Form (Form 5304-SIMPLE)

# Recommendations on Traditional Retirement Plans

## 401(k) Plans

- Keep simple
- Provide flexibility
- May have administration and compliance considerations depending on the number of participants and plan features

## Simplified Employee Pension Plan (SEP)

- Low cost of administration
- Low compliance burden
- Employer dollars that can function as a small pension plan

## Simple IRA

- Low cost of administration
- Low compliance burden
- Employer and employee dollars that can function as a small defined contribution plan

# Equity-Based Retirement Alternatives

## Restricted Equity (Restricted Stock)

A promise to transfer equity to an individual at a designated point in the future after vesting

## Options (Stock Options or Unit Options)

A promise to transfer equity to an individual upon exercise of the option after vesting

# Restricted Equity

## Can use with different types of entities

- Typically used with corporations and limited liability companies
- Can be used with partnerships, but not common

## Structure and design

- Restricted equity agreement
- Vesting terms
- Transfer terms
- Interplay with governing corporate documents

## Tax considerations

- Generally, no tax consequences upon grant
- Consider filing an 83(b) election
- Tax consequences arise upon vesting/transfer

# Stock Options and Unit Options

## Non-Qualified Options (Non-Statutory or NSO)

- More common than ISOs
- Flexibility with design
- Tax considerations

## Incentive Stock Option (ISO)

- Limited – can only be used with corporations
- Specific design requirements
- Provide more beneficial tax treatment

# Utilizing Equity Compensation as a Retirement Planning Tool

## Create a market to sell closely held equity

- Owning equity in closely held business to sell at retirement or beyond creates a market to monetize ownership

## Capital asset to generate revenue

- Diversify portfolio
- May provide dividend income in the future
- Upon a sale of equity at retirement or beyond can have capital gains tax treatment

## Remain associated with the business

- Equity may retain voting rights
- Scaled back participation in company

# Innovative Retirement Planning Options

## Phantom Equity

Contractual right to monetary payment that mirrors actual equity ownership without providing true equity

## Equity Appreciation Rights

Contractual right to monetary payment that measures the appreciation (or increase) in the company's underlying equity

## Non-Qualified Deferred Compensation

Cash compensation to be paid at some point in the future – may include salary deferrals and/or company contributions

# Phantom Equity

## Plan Design and Administration

- Agreement for one person or a plan for multiple participants
- Likely requires an on-going administrative scheme
- Incentivize ownership mentality without actual equity

## Legal and Regulatory Issues

- Typically subject to Code Section 409A
- Employee/employer income tax consequences
- Application of ERISA

## Advantages and Disadvantages

- Mirror equity ownership – align interests with owners
- Provide immediate value
- No rights and privileges as a true equity owner
- No dilution of equity, but have economic dilution
- Generally, no economic outlay
- Limited flexibility after implementing

# Equity Appreciation Rights

## Plan Design and Administration

- Agreement for one person or a plan for multiple participants
- Likely requires an on-going administrative scheme
- Incentivize company growth

## Legal and Regulatory Issues

- May be Subject to Code Section 409A
- Employee/employer income tax consequences
- Application of ERISA

## Advantages and Disadvantages

- Beneficial for high growth industries
- Less benefit than phantom equity – no value at grant
- No rights and privileges as a true equity owner
- No dilution of equity, but have economic dilution
- No economic outlay
- Flexibility if exempt from 409A

# Traditional Deferred Compensation

## Plan Design and Administration

- Agreement for one person or a plan for multiple participants
- Likely requires an on-going administrative scheme
- Typically incentivizing achieving individual performance/company performance metrics/KPIs

## Legal and Regulatory Issues

- Typically subject to Code Section 409A
- Employee/employer income tax consequences
- Application of ERISA

## Advantages and Disadvantages

- No rights and privileges as a true equity owner
- No dilution of equity, but may have economic dilution
- Structure to incentivize specific behaviors
- Income tax deferral
- Limited flexibility after implementing

# Using Innovative Approaches to Retirement

## Tailored specifically to retirement

- Payment triggers to contemplate retirement
- Payment timing to ease income tax burden in retirement

## Don't give up equity ownership

- Current owners do not need to give up actual equity
- Recipient incentivized to think like an owner

## W-2 compensation payments

- Ordinary income tax treatment upon payment – no capital gains tax treatment
- Company gets deduction upon payment

## Compliance considerations

- Typically, Code Section 409A will apply so may be difficult to modify
- Be aware of ERISA and the “top hat” plan exception

# Questions?

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