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FINANCIAL EXECUTIVES INTERNATIONAL
- DALLAS

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**GOING BEYOND ERISA:
EXECUTIVE DEFERRED COMPENSATION PLANS**



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EXECUTIVE NONQUALIFIED DEFERRED COMPENSATION PLANS

AGENDA

- What Is An Executive Nonqualified Deferred Compensation Plan
- How Executive Nonqualified Deferred Compensation Plans Differ From ERISA Plans
- How To Best Utilize An Executive Nonqualified Deferred Compensation Plan To Attract, Reward, Retain, And Retire Mission-critical Employees
- Q & A

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EXECUTIVE NONQUALIFIED DEFERRED COMPENSATION PLANS

WHAT IS AN EXECUTIVE NONQUALIFIED DEFERRED COMPENSATION PLAN?

A **Nonqualified Deferred Compensation Plan** is a negotiated deferred compensation arrangement between an employer and an employee

- Permits highly compensated employees to voluntarily defer otherwise currently taxable compensation
- Dollars deferred grow tax-free until a future specified date or event
- Distributions would be subject to tax at the time of receipt

Not a retirement plan governed by Employee Retirement Income Security Act (ERISA)

Governed by IRC 409A

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EXECUTIVE NONQUALIFIED DEFERRED COMPENSATION PLANS

COMPANY BENEFITS

- Increased retirement savings opportunities for highly-compensated employees (HCEs)
- Align employee incentives with employer goals and objectives
- Reward a select group of long-term loyal employees
- Protect the employer from the loss of mission-critical employees

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EXECUTIVE NONQUALIFIED DEFERRED COMPENSATION PLANS

COMPANY CONSIDERATIONS

- The plan must be unfunded
 - Assets may not be set aside for the payment of future nonqualified plan benefits
 - Participant accepts the risk of not knowing whether the company will have the ability to meet the future obligation
- The plan must be primarily for the purpose of providing deferred compensation
 - The plan should not be designed to provide health or welfare benefits, such as post-employment medical care or long-term care insurance
- Selected Groups
 - ERISA does not contain statutory terms for *select group, highly-compensated, or management*
 - Courts have *generally* upheld that to meet the requirements, participants should:
 - Possess the ability to negotiate and influence plan design
 - Earn 2-3x more than excluded employees
 - As a group, comprise no more than 10%-15% of total employees

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EXECUTIVE NONQUALIFIED DEFERRED COMPENSATION PLANS

REPORTING & DISCLOSURES

- Department of Labor
 - Top Hat Plan Statement Within 120 Days Of Plan Inception
- Internal Revenue Service
 - W-2 And 1099 For Tax Treatment
- Securities & Exchange Commission
 - Annual Reports
- Accounting
 - Recording And Reporting Liabilities

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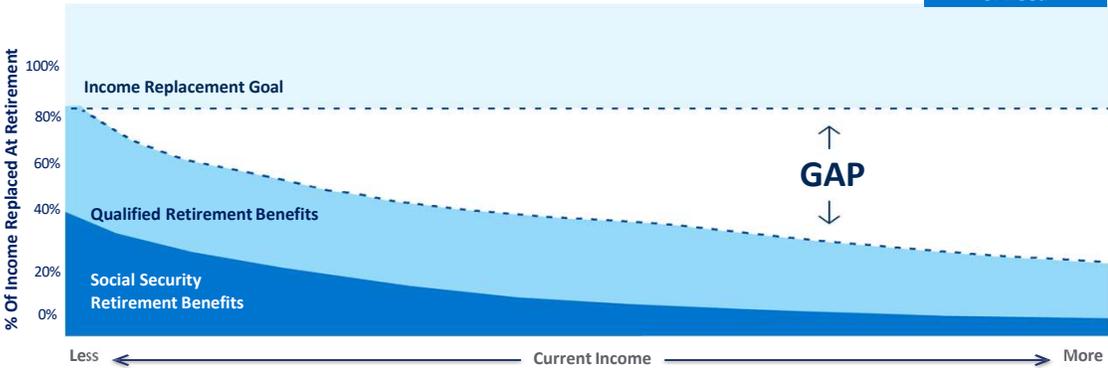


EXECUTIVE NONQUALIFIED DEFERRED COMPENSATION PLANS

PARTICIPANT BENEFITS

- Build significant savings on a tax-deferred basis
- Avoid constraints of qualified plan deferral limits

Retirement savings gap could be between 40%-60% of need



This information is from the Principal Financial Group® Replacement Ratio Calculator with source information from the Annual Statistical Supplements to the Social Security Bulletin (www.ssa.gov). It is intended to demonstrate the potential impact of Social Security and 401(k) plan benefits at various income levels. For more information on your individual circumstances, please speak with your financial or tax professional. © 2022 Principal Financial Services, Inc.

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EXECUTIVE NONQUALIFIED DEFERRED COMPENSATION PLANS

PARTICIPANT CONSIDERATIONS

- Substantial risk of forfeiture
- Plan assets subject to claims of creditors
- Deferral elections must be made prior to year compensated
- Rollovers and loans not permitted

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HOW EXECUTIVE NONQUALIFIED DEFERRED COMPENSATION PLANS DIFFER FROM ERISA PLANS

UNDERSTAND THE DIFFERENCES

- ERISA Requirements
- Deferral Elections
- Contributions And Vesting
- Coverage And Discrimination
- Funding
- Distributions And Loans

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HOW EXECUTIVE NONQUALIFIED DEFERRED COMPENSATION PLANS DIFFER FROM ERISA PLANS

ERISA REQUIREMENTS

Qualified Plan	Nonqualified Deferred Compensation Plan
<ul style="list-style-type: none">• Subject to ERISA<ul style="list-style-type: none">– Coverage– Vesting– Funding– Fiduciary requirements– Reporting	<ul style="list-style-type: none">• Exempt from ERISA:<ul style="list-style-type: none">– Coverage– Vesting– Funding– Fiduciary requirements are simplified

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HOW EXECUTIVE NONQUALIFIED DEFERRED COMPENSATION PLANS DIFFER FROM ERISA PLANS

WHO IS COVERED?

Qualified Plan	Nonqualified Deferred Compensation Plan
<ul style="list-style-type: none">• All employees must be covered• Discrimination tests required to ensure that the plan does not primarily benefit highly compensated employees	<ul style="list-style-type: none">• Only a select group can be covered, known as the “Top hat group”• All other employees must be excluded

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HOW EXECUTIVE NONQUALIFIED DEFERRED COMPENSATION PLANS DIFFER FROM ERISA PLANS

WHO MIGHT BE IN THE TOP HAT GROUP?

Position	Eligible
President & CEO	90%
Vice Presidents	75%
Board of Directors	21%
Director Level	45%
Division or Unit Managers	14%
Other	29%

Survey Question: "In your organization, which positions are eligible to participant in a nonqualified plan?"

Source: Newport Group Compensation, Retirement, and Benefits Trends Report, Executive Summary, 2022 Edition



HOW EXECUTIVE NONQUALIFIED DEFERRED COMPENSATION PLANS DIFFER FROM ERISA PLANS

DEFERRAL ELECTIONS

Qualified Plan

- **Deferral elections may be:**
 - Started at any time
 - Changed at any time
 - Stopped at any time

Nonqualified Deferred Compensation Plan

- Deferral elections **must be made** prior to the calendar year in which compensated
 - May **not change** deferral election after election is declared



HOW EXECUTIVE NONQUALIFIED DEFERRED COMPENSATION PLANS DIFFER FROM ERISA PLANS

CONTRIBUTIONS AND VESTING

Qualified Plan

- Salary deferrals are limited to the \$402(g) contribution limit (\$22,500 for 2023)
- Total annual contribution is limited to the \$415 Annual additions limit (\$66,000 for 2023)
- Vesting schedules must meet IRS standards

Nonqualified Deferred Compensation Plan

- No salary deferral limit
- No annual limit on employer contributions
- No limits or minimum requirements for the Design of vesting schedules

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HOW EXECUTIVE NONQUALIFIED DEFERRED COMPENSATION PLANS DIFFER FROM ERISA PLANS

COVERAGE AND DISCRIMINATION

Qualified Plan

- May not discriminate in favor of HCEs
 - Plan intended to be as inclusive as possible
- Generally, may not exclude groups of employees

Nonqualified Deferred Compensation Plan

- Must discriminate in favor of a select group of management employees
 - No minimum coverage requirement

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HOW EXECUTIVE NONQUALIFIED DEFERRED COMPENSATION PLANS DIFFER FROM ERISA PLANS

FUNDING

Qualified Plan

- Strict funding rules apply:
 - Employee & employer contributions must be made in a timely manner
 - Plan assets held exclusively for participants
- Plan assets values reflect actual investment

Nonqualified Deferred Compensation Plan

- No required employee or employer contributions
- Plan assets subject to claims of creditors
- Benefit value is equal to compensation and Earnings at a declared rate

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HOW EXECUTIVE NONQUALIFIED DEFERRED COMPENSATION PLANS DIFFER FROM ERISA PLANS

DISTRIBUTIONS AND LOANS

Qualified Plan

- In-service distributions limited to hardship
 - 10% excise (penalty) tax on distributions prior to age 59½ years of age
- Minimum distribution requirements apply
- Rollovers and loans permitted

Nonqualified Deferred Compensation Plan

- In-service distributions are permitted
 - 10% excise (penalty) tax prior to age 59½ does **not** apply
- **No** minimum distribution requirements apply
- Rollovers and loans **not** permitted

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HOW TO BEST UTILIZE AN EXECUTIVE NONQUALIFIED DEFERRED COMPENSATION PLAN TO ATTRACT, REWARD, RETAIN, AND RETIRE MISSION-CRITICAL EMPLOYEES

- Use performance-based contributions and performance-based vesting to motivate key performers
- Customize contribution and vesting schedules to use as performance rewards for key employees
- Attract top talent via signing bonuses tied to tenure or performance
- Restore company match benefits you're unable to make in qualified plans due to testing or compensation limits
- Use employer contributions or phantom stock to incent employee Performance
 - Employee participates in increases or decreases in the valuation of the company, which creates an ownership-like experience without stock dilution

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EXECUTIVE NONQUALIFIED DEFERRED COMPENSATION PLANS

Q & A

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CONTACT INFORMATION

Thank you!



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