

**Employee Benefit Plan
Miscellaneous Provisions
(Worksheet Number 4 – Determination of Qualification)**

INSTRUCTIONS — All items must be completed. A “Yes” answer generally indicates a favorable conclusion is warranted, while a “No” answer indicates a problem exists. Please use the space on the worksheet to explain any “No” answer. See Publication 6392, Explanation Number 4, for guidance in completing this form. Note: Questions I.b. and II.a. and b. are not applicable to government plans, nonelecting church plans, and other plans described in IRC 410(c).

The technical principles in this worksheet may be changed by future regulations or guidelines.

Name of Plan

I. Merger and Termination Provisions

Plan Reference	Yes	No	N/A
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a. Does the plan expressly provide that upon plan termination or partial termination (or, in the case of a profit-sharing, stock bonus, or other plan described in Code section 412(h), a complete discontinuance of contributions), a participant’s interest will be nonforfeitable? [0402]

b. Does the plan provide that after its merger, transfer of assets or liabilities, or consolidation, benefits will be no less than before the merger or consolidation or transfer if the plan then terminates? [0403]

c. If this plan is a defined benefit plan, have any of the participants in this plan been covered by another defined benefit plan of the employer which has been, or is to be, terminated with excess plan assets returned to the employer? [0405 or 0412 & 0413]

If the answer is “Yes,” complete (i) and (ii).

(i) Have cash distributions or guaranteed annuity contracts been provided for all accrued benefits of all participants in the terminating plan? [0406 or 0412 & 0413]

(ii) If this plan grants credit for past service for the period during which an employee was covered by the terminating plan, has the IRS granted approval for a change in funding method in connection with the unfunded past service liability for this plan? [0407 or 0412 & 0413]

Note: If (i) or (ii) is “No,” any favorable determination letter issued on this plan must be caveated. (See Part I., lines c. and d. of Explanation No. 4.)

d. If this plan is a defined benefit plan, has it received or transferred assets or liabilities, subject to Code section 414(i), in a transaction with another defined benefit plan which has been, or is to be, terminated with excess plan assets having been, or to be, returned to the employer? [0408 or 0412 & 0413]

If I.d. is “Yes,” complete (i) - (iii).

(i) Are the accrued benefits of all participants in this plan fully vested and nonforfeitable as of the date of termination of the other plan? [0409 or 0412 & 0413]

(ii) Have guaranteed annuity contracts been purchased to provide for all accrued benefits of all participants in this plan as of the date of termination of the other plan? [0410 or 0412 & 0413]

Note: If (ii) is “No,” any favorable determination letter issued on this plan must be caveated. (See Part I., lines c. and d. of Explanation No. 4.)

(iii) Has the IRS granted approval for a change in funding method for this plan? [0411 or 0412 & 0413]

Note: If (iii) is “No,” any favorable determination letter issued on this plan must be caveated. (See Part I., lines c. and d. of Explanation No. 4.)

e. If I.c. or I.d. is “Yes,” has the employer, in the past 15 years, previously received a reversion of assets upon termination of a defined benefit plan which covered some or all of the same employees who are covered by this plan? [0415]

II. Benefits	Plan Reference	Yes	No	N/A
a. Does the plan prohibit the assignment or alienation of an employee's interest that is more than the statutory limits? [0421]				
b. Do benefits under the plan begin, unless the participant otherwise chooses in writing, no later than the 60th day after the latest of the close of the plan year in which (1) the participant either reaches age 65 or the plan's normal retirement age, whichever comes first, (2) occurs the 10th anniversary of the year in which the participant began participation under the plan, or (3) the participant terminates service with the employer? [0422]				
c. If this is a pension plan, are distributions not to be made before the participant reaches normal retirement age, terminates service, dies, or becomes disabled? [0424]				
d. If the plan provides an early retirement benefit for participants who meet certain age and service requirements, does it provide that a participant who meets the service requirement, but separates from service before meeting the age requirement, will be entitled to receive the benefit when the age requirement is satisfied? [0425]				
e. Does the plan allow distributees to elect to have eligible rollover distributions transferred directly to an eligible retirement plan? [0426]				
f. <i>(Complete only if the plan provides for mandatory distributions)</i> Does the plan provide that, in the event of a mandatory distribution greater than \$1,000 where the participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover or to receive the distribution directly, that the plan administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the plan administrator? [0427]				
III. General Qualification Issues				
a. Does the trust prohibit the trust funds' diversion or a return of employer contributions except for those permitted by the statute or Rev. Rul. 91-4? [0431]				
b. Does the plan provide that an employee's right to his or her normal retirement benefit is nonforfeitable on attainment of normal retirement age (as defined in Code section 411(a)(8))? [0432]				
c. If the plan is a profit-sharing plan, are employer contributions allocated to participants' accounts under a predetermined formula? [0433]				
d. If the plan is a pension plan, does it provide for definitely determinable benefits? [0434]				
e. If the plan is a defined benefit plan, does it expressly state the actuarial assumptions (for example, interest and mortality) or other methods (such as the conversion rates applied in a particular insurance contract) that will be used to determine the amount or level of any optional forms that are the actuarial equivalent of the normal retirement benefit payable under the plan? [0436]				
f. Are death benefits provided by the plan "incidental" within the meaning of section 1.401-1(b)(1) of the Income Tax Regulations, taking into account the qualified joint and survivor annuity and the qualified preretirement survivor annuity, if required, under Code section 401(a)(11)? [0437]				
g. If the plan is a pension or annuity plan that includes a section 401(h) account for retiree medical benefits, does the plan limit the amount of contributions to such account, when added to actual contributions for life insurance, to the 25 percent of the total actual contributions made to the plan (other than contributions to fund past service) after the later of the adoption or effective date of the section 401(h) arrangement? [0438]				
h. Has the plan requested consideration under section 420? (If "Yes," see section 16 and appendix of Rev. Proc. 2006-6, 2006-1 C.B. 204.)				
i. If the plan is a defined contribution plan, is there a provision for valuation of the trust assets annually and adjusting participant's accounts accordingly? [0439]				
j. If any corrective amendment made after the end of a plan year is being taken into account for purposes of determining whether the plan satisfies the minimum coverage or nondiscrimination requirements for such year, have the conditions permitting the amendment to be given retroactive effect been satisfied? [0440]				

III. General Qualification Issues <i>(continued)</i>	Plan Reference	Yes	No	N/A
k. If the plan allows employees to make voluntary employee contributions to a separate account or annuity established under the plan which meets the applicable requirements of section 408 (traditional IRA) or section 408A (Roth IRA), does the plan (i) restrict the commingling of deemed IRA assets with non-plan assets and (ii) provide that the trust must maintain a separate account for each deemed IRA, if deemed IRAs are held in a single trust that includes the defined contribution plan? [0441]				
IV. Compensation Limit				
a. Does the plan limit the compensation that may be taken into account in determining benefits or contributions on behalf of any employee to no more than the annual compensation limit? [0442]				
b. If this is a defined benefit plan, does the plan determine a section 401(a)(17) employee's accrued benefit by applying the fresh-start rules? [0445]				
V. Amendments Relating to ESOPs				
a. Does the plan document formally designate the plan as an ESOP and does the plan state that it is designed to invest primarily in qualifying employer securities? Reg. 54.4975-11(a)(2) [0446] [0447]				
b. Does the plan provide that the proceeds of an exempt loan must only be used for: (i) the acquisition of qualifying employer securities, (ii) to repay such loan, and/or (iii) to repay a prior loan? Reg. 54.4975-7(b)(4) [0448]				
c. Does the plan provide that the exempt loan must be without recourse against the ESOP and that the only assets that may be given as collateral on such loans are qualifying employer securities of two classes, (i) those acquired with the proceeds of an exempt loan, and (ii) those that were used as collateral on a prior exempt loan and repaid with the proceeds of the current exempt loan? Reg. 54.4975-7(b)(5) [0449]				
d. Does the plan provide that the exempt loan must bear a reasonable interest rate and must be for a definite period of time and cannot be payable at the demand of any person, except in the case of default? Reg. 54.4975-7(b)(7) & (13) [0450]				
e. Does the plan provide that if a portion of the account is forfeited, qualifying securities must be forfeited only after other assets? Reg. 54.4975-11(d)(4) [0451]				
f. Does the plan provide that the employer securities acquired by the ESOP with the proceeds of an exempt loan must be added to and maintained in a suspense account? Reg. 54.4975-11(c) [0452]				
g. Does the plan provide for the release from encumbrance qualifying employer securities under either the "general rule" or "special rule"? Reg. 54.4975-7(b)(8) [0453]				
h. Does the plan provide that each participant is entitled to direct the plan in the manner in which securities allocated to his account are to be voted? [0454] With regard to non-registration securities, does the plan provide that each participant is entitled to direct the plan to vote the allocated securities with respect to the corporate matters specified in section 409(e)(3)? [0455]				
i. Does the plan, if sponsored by a C corporation, provide that a participant has a right to demand distributions in the form of employer securities? [0456] Code §409(h)(1)(A) In the case of an S corporation ESOP, if the plan does not give participants the right to demand stocks, does it provide for a cash distribution instead? Code §409(h)(2)(B) [0457]				
j. Does the plan provide that, where the employer is required to repurchase employer securities distributed to a participant which are not readily tradable, the amount to be paid for a total distribution is paid in substantially equal periodic payments over not more than 5 years after the exercise of the put option; and if distribution is made in installments, the initial payment is made not later than 30 days after the exercise of the put option? Reg. 54.4975-7(b)(10) [0458]				

V. Amendments Relating to ESOPs (continued)	Plan Reference	Yes	No	N/A
k. Does the plan provide that valuation of employer securities which are not readily tradable are made by an independent appraiser pursuant to section 401(a)(28)(C)? [0459]				
l. Does the plan provide that a participant is entitled to diversify a portion of his or her accounts' investment in employer securities as required by section 401(a)(28)(B)? [0460]				
m. Does the plan provide that a participant may elect to commence distribution of his or her account balance after attaining normal retirement age, or after death, disability or separation from service not later than required by section 409(o)? [0461]				
n. If the employer (a C corporation) chooses to exclude forfeitures and interest from the calculation of annual additions, does the plan provide that forfeitures and interest payments may be excluded only if no more than 1/3 of the employer contributions deductible under section 404(a)(9) for the year are allocated to highly compensated employees? Code §415(c)(6) [0462]				
o. If the plan is applying under section 409(n) with respect to transactions under section 1042, does the plan provide that the assets of the plan attributable to employer securities acquired by the plan in a sale to which section 1042 applies cannot accrue for the benefit of the persons specified in section 409(n) during the nonallocation period? [0463]				
p. Does the ESOP, if holding stock in an S corporation, provide that no portion of the plan attributable to (or allocable in lieu of) such stock may, during a nonallocation year (as described in section 409(p)(3)), accrue (or be allocated directly or indirectly under any plan of the employer qualified under section 401(a)) for the benefit of any disqualified person (as described in section 409(p)(4))? Code §409(p) [0464]				
q. For an S corporation ESOP, does such plan define the following terms: nonallocation year (in accordance with section 409(p)(3) and the associated regulations) [0465], disqualified person (in accordance with section 409(p)(4) and the associated regulations) [0466], deemed-owned shares (in accordance with section 409(p)(4)(C) and the associated regulations) [0467] and synthetic equity (in accordance with section 409(p)(6)(C) and the associated regulations)? [0468] Code §409(p)				
r. If the plan, sponsored by a C corporation, provides for the reinvestment of dividends on employer securities allocated to participant accounts for purposes of taking the deduction described in section 404(k), does it provide an election for the participants between (a) either (i) the payment of dividends in cash to participants or (ii) the payment to the plan and distribution in cash to participants not later than 90 days after the close of the plan year in which the dividends are paid by the employer and the payment of dividends to the plan and reinvestment in employer securities? The plan may also offer participants a choice among both of the options described in (a) and reinvestment in employer securities. In addition, are the participants fully vested in the reinvested dividends? Code §404(k) [0469]				