

## Employee Stock Ownership Plan Review Worksheet

Use this worksheet as a tool to help design ESOP documents that meet the applicable requirements.

	Plan Cite	Yes	NA
1. Does the plan document formally designate the plan as an ESOP and provide that it will invest primarily in Qualifying Employer Securities (“QES”)? Reg. 54.4975-11(a)(2) & 11(b).			
2. Does the plan define QES in accordance with IRC 409(1)?			
3. If the employer chooses to exclude forfeitures and interest from the calculation of annual additions, does the plan provide that such may only be excluded if no more than 1/3 of the employer stock is allocated to a highly compensated employee and applicable to an exempt loan? IRC 415(c)(6).			
4. Does the plan give each participant the right to direct the trustee to vote the allocated securities in accordance with IRC 409(e)(3)?			
5. Does the plan provide that a participant has a right to demand distributions in the form of employer securities? IRC 409(h)(1)(A).			
6. Does the plan provide that an employee is entitled to diversify a portion of his or her account as required by IRC 401(a)(28)(B)? Note: <a href="#">Response to Technical Assistance Request #2</a> (Nov. 3, 2009).			
7. Does the plan comply with IRC 401(a)(28)(C) with respect to non-readily tradable stock? If the plan has contributions subject to IRC 401(k) or (m) or if the ESOP constitutes a portion of another plan, does it comply with IRC 401(a)(35)?			
8. Does the plan define the term “loan” and “Exempt Loan”? Reg. 54.4975-7(b)(1)(ii) and (iii). A “loan” refers to a loan made to an ESOP by a disqualified person (“DQ”) or a loan to an ESOP which is guaranteed by a DQ. “Exempt Loan” refers to a loan that satisfies the provisions of Reg. Section 54.4975-7(b). <input type="checkbox"/> reasonable interest rate; <input type="checkbox"/> specific term & not payable on demand; <input type="checkbox"/> primarily for the benefit of participants; <input type="checkbox"/> used only to acquire QES, repay loan or prior loan; <input type="checkbox"/> securities not subject to a put, call or other option or buy/sell arrangement; <input type="checkbox"/> without recourse & only collateral = QES acquired with loan(s); <input type="checkbox"/> no right to assets other than collateral, contributions & earnings on collateral; <input type="checkbox"/> contributions and earnings accounted for separately until loan is repaid; <input type="checkbox"/> securities acquired will be added/maintained in suspense account; and <input type="checkbox"/> shares are released from encumbrance using general rule or special rule.			

<p>9. Sale of stock in suspense account. Does the plan <b>not</b>:</p> <p>___ provide for an exempt loan to be paid off prematurely by the sale of stock held in the suspense account?</p> <p>___ contain language relating to the allocation of the “excess” amounts remaining after the payoff of the loan?</p> <p>___ contain language relating to whether the “excess” amounts shall or shall not be treated as annual additions?</p>			
<p>10. Does the plan provide that a participant is entitled to elect to commence distribution after attaining NRA, death, or disability (within 1 year) or separation from service (within 5 years) no later than required by IRC 409(o)? Exception for portion account with financed shares – until loan is repaid in full (but not past RMD date).</p>			
<p>11. Does the plan provide that if a portion of the account is forfeited, qualifying employer securities must be forfeited only after other assets? If more than one class, must forfeit the same proportion of each such class. Reg. section 54.4975-11(d)(4).</p>			
<p>12. If a C corp ESOP allows for the distribution and or reinvestment of dividends into employer securities, is the participant fully vested in those securities? If a plan sponsored by a C or S corp allows the use of dividends/S corp distributions for the loan pay down, does the plan provide for the reimbursement of the dividends/S corp distributions on allocated stock by allocating stock of equal value to the participant's account?</p>			
<p>13. Does the plan provide that when a participant is entitled to a distribution from a plan whose stock is not readily tradable on an established market, the participant <b>has a right</b> to require the Employer to repurchase the stock under a fair valuation (Put Option)? IRC 409(h)(1)(B) &amp; (5) and Reg. 54.4975-7(b)(10).</p> <p>___ exercisable 60 days following distribution and additional 60 days next year;</p> <p>___ substantially equal periodic payments (annually) beginning not later than 30 days and not exceeding 5 years; and</p> <p>___ adequate security and interest.</p> <p>For S corps, see <a href="#">Response to Technical Assistance Request #1</a> (Nov. 3. 2009).</p>			
<p>14. If the plan allows the employer the right of first refusal, is it in accordance with Reg. 54.4975-7(b)(9)? Does it lapse no later than 14 days?</p>			
<p>15. Does the plan provide that the protections and rights regarding the put option and buy-sell arrangements are non-terminable? Reg. 54.4975-11(a)(3)(ii).</p>			
<p>16. Does the plan contain reshuffling or rebalancing provisions? If so, do they follow the guidelines? Note: <a href="#">Response to Technical Assistance Request #4</a> (Feb. 23, 2010).</p>			
<p>17. If an S-Corp; does the plan comply with IRC 409(p)? Define (include) the following:</p> <p>___ Disqualified person;</p> <p>___ Member of the Family;</p> <p>___ Attribution rules of IRC 318(a) (as modified);</p> <p>___ Prohibited allocation;</p> <p>___ Non-allocation Year;</p>			

<p> <input type="checkbox"/> Deemed owned shares;  <input type="checkbox"/> Deemed 10% shareholder;  <input type="checkbox"/> Synthetic Equity;  <input type="checkbox"/> Impermissible Allocation; and  <input type="checkbox"/> Impermissible Accrual.            Note: <a href="#">Response to Technical Assistance Request #3</a> (Dec. 9, 2009).         </p>			
<p>           18. If an S-Corp, does the plan contain language for prevention of a nonallocation year that provides for the transfer of stock from the ESOP to a non-ESOP portion of the plan or to another plan (language which conforms to final Regs. under IRC 409(p))?            Note: <a href="#">Response to Technical Assistance Request #5</a> (October 8, 2010). If the plan is silent, offer plan sponsor the chance to add appropriate language.         </p>			