

## **Information and Document Request – Employee Stock Ownership Plan (ESOP)**

Each of the listed items has a purpose in the examination process, so all are important. If any requested information or document presents a problem for you, or is available in electronic or other form, please contact me to let me know and discuss possible alternatives.

Each request relates to the year(s) under examination unless otherwise specified.

Please have each of these items available for review during the examination. It is not necessary for you to make copies of everything. If I need copies of items for my file, I will let you know.

The initial review will be more efficient for both of us if the requested information and documents are complete and well organized. For example, it will be helpful if the information and documents are numbered to correspond to the numbered items below.

Please feel free to contact me about any questions that arise when you are getting the information and documents together.

### **Please have the following items available during the examination:**

- A. To document plan provisions and ensure that the plan is qualified in form and to verify filings:**
1. The plan document, the trust document, and all amendments that relate to the year(s) under examination.
  2. The most recent IRS determination letter that applies to the year(s) under examination, and the related Forms 5300 and 5309 and any special demonstrations submitted with your determination letter application.
  3. Forms 5500 series returns, *Annual Return/Report of Employee Benefit Plan*, for each year under examination, the preceding year and succeeding year. Please be sure to include all applicable schedules and attachments such as Schedule E, *ESOP Annual Information*.
  4. Forms 5500 series returns, *Annual Return/Report of Employee Benefit Plan*, for any other qualified retirement plan sponsored by the employer for the year(s) under examination.
  5. If applicable, any Forms 5330, *Return of Excise Taxes Related to Employee Benefit Plans*, for the year(s) under examination.

6. If applicable, any Forms 990-T, *Exempt Organization Business Income Tax Return*, for the year(s) under examination. This return applies only if the plan had unrelated business taxable income for the year(s) under examination.
7. The summary plan description (SPD), summaries of all material modifications (SMM), and the summary annual report (SAR).
8. Other:

**B. To determine if the plan satisfies the eligibility and coverage requirements of Internal Revenue Code (IRC) section 410, please provide the following:**

1. The employer's records that were used to determine employees' eligibility to take part in the plan for the year(s) under examination; such as payroll records, time cards, personnel records, and employment contracts. Also include a copy of the Forms 940, *Employer's Annual Federal Unemployment Tax Return*; Forms 941, *Employer's Quarterly Federal Tax Return*; Forms W-2, *Wage and Tax Statement*; and related Forms W-3, *Transmittal of Income and Tax Statements*.

**These records must show the dates of hire, participation, re-hire and hours worked during the eligibility computation period.**

2. Participant allocation schedules, employee census reports and participant account statements.
3. A list of all plan participants for the plan year(s) ending \_\_\_\_\_, as well as a list of all employees employed during the year who are not participating in the plan and the reason why they are not.
4. A demonstration outlining how the plan satisfied the minimum coverage requirements of IRC 410(b).
5. Identification/documentation of any controlled group members or other related entities.
6. Other:

**C. To determine if the plan satisfies the vesting, and distribution requirements of IRC sections 401(a)(9), 401(a)(11), 401(a)(31), 411, 417 and the unique ESOP requirements of IRC section 409:**

1. Please provide documentation that indicates which plan participants were active participants (received an allocation) in the prior year but were not active in the year under examination. If possible, also submit a list of such participants.

2. The Form 5500, Schedule H, Part II, line 2e(1) (or Schedule I, Part I, line 2e) indicates that \$ \_\_\_\_\_ was paid to plan participants:
  - a. Please provide a list of these participants,
  - b. their dates of hire, dates of birth and dates of termination,
  - c. proof of payment and/or proof of rollover,
  - d. spousal consent forms to waive the Qualified Joint & Survivor Annuity form of benefit, if required,
  - e. any Qualified Domestic Relations Order requests received or QDRO distributions made for the plan year under examination.
3. Forms 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, for distributions from the plan for the year(s) under examination.
4. Please provide the participant election forms to demonstrate compliance with IRC sections 409(h) and 409(o). Also, the participant election forms should demonstrate compliance with the diversification requirements of IRC section 401(a)(28)(B).
5. Other:

**D. To demonstrate how the plan satisfies the deductible limits of IRC section 404:**

1. Form \_\_\_ 1120, \_\_\_ 1120S, \_\_\_ 1040, \_\_\_ 1065, \_\_\_ 990 - Tax return of the plan sponsor, which covers all or a part of the year(s) under examination.
2. Cancelled checks, fund transfers or other documentation verifying contributions made to the plan and deductions taken on the tax return(s) for the year(s) under examination. Please **reconcile** the deductions taken under IRC sections 404(a)(3), (a)(7), (a)(9) and 404(k) on the tax return to the contributions made to the plan.
3. Other:

**E. To demonstrate that the plan is in compliance with the nondiscrimination requirements, contribution limitations and top-heavy requirements of IRC sections 401(a)(4), 415 and 416, respectively:**

1. Please provide an allocation schedule for the year under examination and the prior plan year for this plan and any other defined contribution plan. The schedule should include the participant's compensation, the allocation of the employer contributions, forfeitures and income.

Note: If other than gross compensation is used, please identify those elements included and excluded from compensation.

2. Please provide the top-heavy ratio calculation as defined in IRC section 416(g).
3. Provide a list of the Highly Compensated Employees as defined in IRC section 414(q).
4. Please demonstrate how the plan satisfies either a Safe Harbor (Income Tax Regulations 1.401(a)(4)-2(b)) or the General Test (Income Tax Regulations (1.401(a)(4)-2(c)).
5. If the plan is a leveraged ESOP under IRC section 4975(e)(7), please demonstrate how the number of shares of stock allocated to the participants in the plan were made in accordance with Income Tax Regulation 54.4975-11(d)(1) and (2).
6. Other:

**F. The following items are being requested to examine the operation of the trust including determining the ownership, existence and fair market value of trust assets, and whether the provisions of IRC sections 72, 401(a)(2), 513, 514 and 4975 are being complied with:**

1. Evidence of a fidelity bond for all people handling trust assets as required by ERISA section 412(a).
2. Supporting documents for all plan assets and liabilities, such as broker's statements, bank statements, insurance contracts, loan documents, stock certificates, deeds, etc. and verification of how assets are valued.
3. If the plan is a leveraged ESOP under IRC section 4975(e)(7), please provide the loan contract and encumbrance account, supporting documents for all plan assets and liabilities, the original security agreement between the lender and the employer-guarantor and the ESOP loan amortization schedule.
4. Corporate minutes; trustee or administrator reports; ledgers; journals; trustee, administrator and investment committee meeting minutes; certified audit report(s); and other financial reports for the trust. Any other financial reports including receipt and disbursement statements, a detailed income statement and a detailed balance sheet. In addition, records related to the ESOP securities and employer stock accounts should be available.
5. Please provide the independent appraisal valuation report (within the meaning of IRC section 170(a)(1)) as required by IRC section 401(a)(28)(C), if employer securities acquired by the ESOP are not readily tradable on an established securities market. This is needed for the year under examination, the prior year and the subsequent year.
6. If the ESOP holds preferred stock of the employer, please provide the corporate charter documents that stipulate the conversion formula.