

<h2 style="text-align: center;">ESOP Checklist <small>(rev. 4-22-14)</small></h2>	Plan Cite	Yes	NA
<p>1. Does the plan document formally designate the plan as an ESOP and provide that it will invest primarily in Qualifying Employer Securities or similar term (such as stock, company stock, employer securities) per Reg. 54.4975-11(a)(2) & 11(b)?</p>			
<p>2. Does the plan define Qualifying Employer Securities (or similar term such as stock, company stock, employer securities) in accordance with IRC 409(l)?</p> <p>IRC 409(l) provides that :</p> <ul style="list-style-type: none"> (1) Common stock of the employer which is (publicly traded) readily tradable on an established securities market, or (2) In a privately held company, it is the class of common stock with the greatest voting power and greatest dividend rights <p>*Cannot incorporate IRC 409(l) by reference</p>			
<p>3. If the employer <u>chooses</u> to exclude forfeitures of stock which were acquired by the proceeds of an exempt loan and interest on an exempt loan deductible under IRC 404(a)(9)(B) from the calculation of annual additions under IRC 415, does the plan provide that such may only be excluded if no more than 1/3 of the employer contribution is allocated to highly compensated employees per IRC 415(c)(6)?</p> <p>*Optional provision; only if leveraged ESOP **Not applicable to S-Corps</p>			
<p>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)?</p> <ul style="list-style-type: none"> • For registered securities (publicly traded) the participant can vote the stock in their account on all matters • For non-registered securities (privately held) the participant can vote the stock in the following matters: any corporate matter involving mergers or consolidations, the sale of all (or substantially all) of the company's assets, recapitalization, reclassification, liquidation or dissolution <p>*Cannot incorporate IRC 409(e) by reference</p>			
<p>5. Does the plan provide that a participant has a right to demand distributions in the form of employer securities per IRC 409(h)(1)(A)?</p> <p>Exceptions: (a) corporate charter or company by-laws which restrict the ownership of substantially all of the employer securities to employees or to the trust, (b) if an ESOP is maintained by a S-Corporation, (c) diversified portion of account under IRC 401(a)(28)(B) or 401(A)(35), or (d) the plan sponsor is a bank</p>			

<p>6. Does the plan provide that a qualified participant is entitled to diversify a portion of his or her account in the qualified election period as required by IRC 401(a)(28)(B)?</p> <p>Refer to T/A #2 dated 11/3/09 which addresses the parameters of defining a “qualified participant” such as the requirement of 1,000 hours of service for each year of participation, etc.</p> <p>Also, if the plan has contributions subject to IRC 401(k) or (m) or if the ESOP constitutes a portion of another plan <u>and the stock is publicly traded</u>, does it comply with IRC 401(a)(35)?</p>			
<p>7. Does the plan comply with the independent appraiser requirements under IRC 401(a)(28)(C) with respect to the valuation of non-readily tradable stock (privately held stock)?</p> <p>*Provision cannot be incorporated by reference, but the plan <u>can</u> reference an independent appraiser meeting the requirements under IRC 170(a) instead of IRC 401(a)(28)(C)</p>			
<p>8. Does the plan define the “Exempt Loan” per Reg. 54.4975-7(b)(1)(iii). An “Exempt Loan” refers to a loan that satisfies the provisions of Reg. Section 54.4975-7(b).</p> <p><input type="checkbox"/> Must be a reasonable interest rate</p> <p><input type="checkbox"/> Must be a specific term & not payable on demand</p> <p><input type="checkbox"/> Must be primarily for the benefit of participants</p> <p><input type="checkbox"/> Proceeds used only to acquire QES, repay loan or prior loan</p> <p><input type="checkbox"/> Securities cannot be subject to a put, call or other option or buy/sell arrangement</p> <p><input type="checkbox"/> Must be without recourse & only collateral = QES acquired with loan(s)</p> <p><input type="checkbox"/> No person has the right to assets other than collateral, contributions & earnings on collateral</p> <p><input type="checkbox"/> Payments made on EL must not exceed an amount equal to the sum of such contributions/earnings received during or prior to the year less such payments in prior years</p> <p><input type="checkbox"/> Contributions and earnings must be accounted for separately until loan is repaid</p> <p><input type="checkbox"/> Securities acquired with proceeds must be added/maintained in suspense account</p> <p><input type="checkbox"/> Shares are released from encumbrance using general rule or special rule</p> <p>*Cannot incorporate these provisions by reference see Memo dated 1/5/10</p>			
<p>9. Language pertaining to what will happen with any proceeds (i.e. gain on the sale) received from the sale of stock <u>in the suspense account</u>. Does the plan not:</p> <p><input type="checkbox"/> Provide for an exempt loan to be paid off prematurely by the sale of stock held in the suspense account?</p> <p><input type="checkbox"/> Contain language relating to the allocation of the “excess” amounts remaining after the payoff of the loan?</p> <p><input type="checkbox"/> Contain language relating to whether the “excess” amounts shall or shall not be treated as annual additions?</p> <p>*Considered a hypothetical transaction and language must be removed from the plan</p>			

<p>10. Does the plan provide that a participant is entitled to elect to commence distribution of his or her account in the timeframes under IRC 409(o)?</p> <ul style="list-style-type: none"> • IRC 409(o)(1)(A)(i) provides distribution will commence not later than one year after the close of the plan year in which the participant separates from service by reason of attainment of NRA, death or disability • IRC 409(o)(1)(A)(ii) provides distribution will commence not later than one year after the close of the fifth plan year in which the participant separates from service by a reason other than attainment of NRA, death or disability <p>*Exception for portion of account with financed shares – account balance of a participant shall not include any stock acquired by an EL until loan is repaid in full (but not past 401(a)(9) or 401(a)(14) date) – this exception is an optional provision but must be in the plan if they want to use it</p>			
<p>11. Does the plan provide that, unless the participant elects otherwise, the distribution of a participant’s account balance will be in substantially equal period payments (not less frequently than annually) over a period <u>not longer than five years</u> per IRC 409(o)(1)(C)?</p> <p>Optional – Does the plan provide that the distribution period is increased from 5 years plus one additional year (up to 5 additional years) for each <u>\$160,000</u> (as adjusted for colas) when the account balance exceeds <u>\$800,000</u> (as adjusted for colas)</p>			
<p>12. Does the plan provide that if a portion of the account is forfeited, qualifying employer securities must be forfeited only after other assets?</p> <p>If more than one class, must forfeit the same proportion of each such class per Reg. section 54.4975-11(d)(4)?</p> <p>Note - S Corp will have only 1 class of stock</p>			
<p>13. Does the plan provide that dividends can be either (a) paid in cash to the participants in the plan, (b) paid to the ESOP first and then distributed no later than 90 days after the close of the plan in which they were paid, (c) reinvested in employer securities or (d) used to make payments on an exempt loan?</p> <p>If a C-Corp ESOP allows for the reinvestment of dividends of stock, is the participant fully vested in those securities per IRC 404(k)(7) and Notice 2002-2?</p> <p>If a plan sponsored by a C-Corp allows the use of dividends or a plan sponsored by a S-Corp allow the use of distributions (a.k.a. dividends) to repay the exempt loan, does the plan provide for the reimbursement of the dividends or S-Corp distributions <u>on allocated stock</u> by releasing stock from the unallocated suspense account equal to the fair market value of the dividends that would have been paid to the participant’s accounts?</p> <p>Dividend deduction under IRC 404(k) is only applicable to C-Corps *Optional provisions but if the plan provides for, then any of these items needs to be correct</p>			

<p>14. Does the plan provide the participant has the right to require the employer to repurchase any stock distributed under a put option based upon the most recent valuation per IRC 409(h)(1)(B) & (5) and Reg. 54.4975-7(b)(10)?</p> <p>___ Put option must be exercisable within the 60 days following the distribution of the stock and an additional 60 days in the following plan year</p> <p>___ Payments must be in substantially equal periodic payments (annually) beginning not later than 30 days and <u>not exceeding 5 years</u></p> <p>___ <u>Adequate security and interest</u> must be paid on any installment payments</p> <p>Note: TA #1 *Cannot be incorporated by reference</p>			
<p>15. 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 per Reg. 54-4975-7(b)(9)?</p> <p>*Optional provision</p>			
<p>16. Does the plan provide that the assets of the plan attributable to employer securities acquired by the plan in a sale which section 1042 applies, cannot be allocated to certain participants as specified in section IRC 409(n)(1) during the nonallocation period?</p> <p>*Not applicable to S-Corps</p>			
<p>17. Does the plan provide that the protections and rights regarding the put option and buy-sell arrangements are non-terminable per Reg. 54.4975-11(a)(3)(ii)?</p>			
<p>18. Does the plan contain an rebalancing provision, generally applied annually, which provides for the same proportion of employer securities for each participant?</p> <p>Does the plan contain a reshuffling provision (a.k.a. segregation or liquidation of the stock in the terminated participant's accounts) ? If so, do they follow the guidelines in TA#4?</p> <p>-No discretion in selecting accounts impacted by transaction permitted</p> <p>-Provide how the transfer of stock/cash will occur between accounts</p> <p>-Provide when this will occur</p> <p>*Optional provision</p>			
<p>19. If an S-Corp (or plan contains language pertaining to 409(p)), does the plan comply with IRC 409(p)? Define the following terms and <u>they cannot be incorporated by reference</u>: Note: TA #3 – optional language if C-Corp but if lang is in plan then it must be correct</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>___ Deemed owned shares</p> <p>___ Synthetic Equity – including nonqualified deferred compensation</p> <p>___ Impermissible Allocation</p> <p>___ Impermissible Accrual</p>			

<p>20. If an S-Corp, (or if the plan contains language regarding final regs. under 409(p)), does the plan ONLY contain the transfer prevention language which provides for the transfer of stock from disqualified persons accounts in the ESOP to a non-ESOP portion of the plan or to another qualified plan (language must conform to final Regs. for 409(p))?</p> <p>Sample language was released in EP Newsletter dated 7/1/08</p>			
<p>21. Miscellaneous Issues:</p> <p>_____ No “Transfer Back” prevention language</p> <p>_____ No Reshuffling language to prevent nonallocation year under 409(p) per T/A #5</p> <p>_____ No other IRC 409(p) prevention language except for the transfer method</p> <p>_____ Waiver of participation, if language in plan, it must be irrevocable</p> <p>_____ No “Lien on Distribution” language</p> <p>_____ No “Price Protection” language</p> <p>_____ No “Warrants, Rights or Options” language</p> <p>_____ No “Forgiveness of Debt” language</p> <p>_____ If the plan includes both S and C-Corp language, does it also provide the employer status in the preamble or other definition within the plan?</p> <p>_____ Did you complete the appropriate short cycle worksheets?</p>			