

Form 8385 (March 2010)		Department of the Treasury – Internal Revenue Service Employee Benefit Plan Top-Heavy Requirements (Worksheet Number 7 – Determination of Qualification)			Date	
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. If the employer has not requested a determination letter as to a particular item, the question related to that item should be answered "N/A." See Publication 7002, Explanation Number 7 for guidance in completing this form.				The technical principles in this worksheet may be changed by future regulations or guidelines		
				Name of Plan		
I.	Applicability of the Top-Heavy Provisions	Plan Reference	Yes	No	N/A	
	a. Is the plan a collectively-bargained plan and not top-heavy?					
	b. Is the plan a governmental plan as defined in section 414(d) of the Code?					
	c. Is the plan a "Simple" plan that satisfies section 401(k)(11) of the Code and that allows no contributions other than those required under section 401(k)(11)?					
	d. Is the plan a "safe harbor" plan under section 401(k)(12) or 401(k)(13) of the Code, not treated as a top heavy plan under section 416(g)(4)(H)?					
II.	Provisions Which, If Present, Will Satisfy the Requirement of Section 416	Plan Reference	Yes	No	N/A	
	a. Does the plan contain a vesting schedule at least as favorable as three-year 100% vesting or six-year graded vesting? [707]					
	b. Provisions applicable only to defined benefit plans:					
	(i) Does the plan provide a minimum benefit for each non-key employee that consists of --					
	(a) The product of the employee's average compensation from the employer for the five highest consecutive years; and [710]					
	(b) The lesser of 20% per year of service? [711]					
	(ii) Does each non-key employee obtain a minimum benefit if such non-key employee has 1,000 hours of service (or the equivalent) during an accrual computation period --					
	(a) Regardless of the non-key employee's level of compensation [713]					
	(b) Regardless of whether a non-key employee declines to take mandatory contribution to a plan that generally requires such contributions; and [714]					
	(c) Regardless of whether a non-key employee is employed on specified date, such as the last day of the year? [715]					

II.	Provisions Which, If Present, Will Satisfy the Requirement of Section 416 - Continued	Plan Reference	Yes	No	N/A
	(iii) Does the plan preclude the forfeiture of a minimum benefit due to the withdrawal of a mandatory contribution? [716]				
	c. Provision applicable only to defined contribution plans:				
	(1) Does the plan provide for a minimum contribution (i.e., allocation) of not less than 3% of compensation per year, or if less than 3%, the highest rate allocated (including elective deferrals) to any key employee? [718]				
	(2) Does the plan provide that each non-key employee will receive a minimum contribution if the participant has not separated from service at the end of the plan year --				
	(a) Regardless of whether the non-key employee has less than 1,000 hours of service (or the equivalent): [721]				
	(b) Regardless of the non-key employee's level of compensation; and [722]				
	(c) Regardless of whether the non-key employee declines to make a mandatory contribution to a plan that generally requires such contributions? [723]				
	(3) Does the plan preclude the forfeiture of account balances attributable to required minimum contributions if a non-key employee withdraws a mandatory contribution? [724]				
	d. Is compensation to be used for purposes of determining all minimums properly defined? [760 and 761]				
	e. Are the provisions described in subsections a, b, c and d operative for each year of the plan regardless of whether the plan is top heavy? (if the answer is "Yes", skip the remainder of this worksheet. If the answer is "No", proceed to part III.)				
	III. Tests for Top-Heaviness	Plan Reference	Yes	No	N/A
	a. Are the following terms defined in the plan:				
	(1) Determination date [731]				
	(2) Valuation date [732]				
	(3) Required aggregation group [733]				

	III. Tests for Top-Heaviness – Continued	Plan Reference	Yes	No	N/A
	a. Are the following terms defined in the plan:				
	(4) Permissive aggregation group [734]				
	(5) Top-heavy ratio [735 and 736]				
	(6) Key employee [763 and 764]				
	(7) Non-key employee [739]				
	b. Does the plan provide that the accrued benefits and account balances that are to be taken into account in determining top-heaviness relate to the proper determination date? [740]				
	c. If the plan is a defined benefit plan, does the plan specify the actuarial assumptions used to determine the present value of accrued benefits? [741]				
	d. Are the actuarial assumptions identical for all defined benefit plans being tested for top heaviness? [742]				
	e. Are proportional subsidies ignored when testing for top-heaviness in a defined benefit plan? [743]				
	f. Are non-proportional subsidies considered when testing for top-heaviness in a defined benefit plan? [744]				
	g. Does the plan provide that, for purposes of determining whether the plan is top-heavy, a participant's accrued benefit in a defined benefit plan will be determined under a uniform accrual method which applies in all defined benefit plans maintained by the employer or, where there is no such method, under the fractional rule? [745]				
	IV. Employer Maintaining Multiple Plans – Coordination of Top-Heavy Minimums	Plan Reference	Yes	No	N/A
	a. Does this plan provide the minimum benefit (<i>contribution</i>) if it is a defined benefit (<i>contribution</i>) plan? [746]				
	b. If both defined contribution and defined benefit plans exist, does the defined benefit plan provide the defined benefit minimum or does a floor offset arrangement apply where the floor is the defined benefit minimum? [747, 748 and 749]				
	c. If both defined contribution and defined benefit plans exist, is the minimum contribution comparable to the minimum benefit? [747, 748 and 749]				
	d. If both defined contribution and defined benefit plan exist, is a minimum contribution of 5% of compensation provided for each non-key employee participating in both plans? [747, 748 and 749]				