

- Paired Plan Provisions, General Instructions -

PART III - PAIRED PLAN PROVISIONS

[June 6, 2001]

Statement of Requirement: (Rev. Proc. 2000-20, §4.13, Section 7.)

General Instructions:

Paired plans are either a combination of two defined contribution standardized form plans or a combination of one or two defined contribution standardized form plans and one defined benefit standardized form plan, (for example, a money purchase pension plan, a profit-sharing plan and a unit benefit or flat benefit pension plan), so designed that if any single plan, or combination of plans, is adopted by an employer, each plan by itself, or the plans together, will meet the nondiscrimination rules set forth in § 401(a)(4) of the Code, the contribution and benefit limitations set forth in § 415, and the top-heavy provisions set forth in § 416. Paired plans must have the same sponsoring organization. While a sponsor is not limited in the number of sets of paired plans it may adopt, each set must be limited to two different basic plan documents (one for defined contribution plans and one for a defined benefit plan). In addition, only one of the paired plans that an employer adopts may allow for permitted disparity. If one of the paired plans is a defined benefit plan that includes a final pay limitation as described in § 401(a)(5)(D), then the paired defined contribution plans may not provide for disparity in contributions. (See Rev. Proc. 2000-20, sections 4.13 and 7.)

If you are pairing a defined benefit plan with one or two defined contribution plans, refer to the Defined Benefit Specific Instructions that begin immediately below.

Defined Benefit - Specific Instructions:

A. Section 415 Requirements:

(Note to reviewer: The combined plan limit under Code § 415(e) is repealed for Limitation Years beginning after December 31, 1999. For Limitation Years beginning before January 1, 2000, the benefits under a defined benefit plan in a combination of paired plans are limited by the requirements of § 415(e) of the Code relating to the aggregation of defined benefit and defined contribution

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plans. Adjustments to satisfy the requirements of § 415(e) may only be provided in the defined benefit plan with respect to benefits thereunder. (See Rev. Proc. 2000-20, section 7.01.) The sample language below can be used to satisfy this requirement.)

(Note to reviewer: A plan (including a paired plan) may elect under section 4.12 of Rev. Proc. 2000-20 to continue to apply the combined plan limitations of section 2.2 of LRM 40 to participants in Limitation Years beginning after December 31, 1999, and prior to the plan's adoption date of its GUST restatement. However, in the case of a paired plan, the employer will not have reliance on its opinion letter for this period, without a determination letter. Language is not provided for such continued application of the combined plan limitations of section 2.2 of LRM 40. See Q&A-8 of Notice 99-44, relating to qualification requirements that may not be satisfied if a plan continues to limit benefits after the first day of the first limitation year beginning on or after January 1, 2000, using the pre-SBJPA § 415(e) limitations.)

93. Document Provision:

Statement of Requirement: Benefit reduction resulting from aggregation, IRC §415(e).

Sample Defined Benefit Plan Language:

Section 1. Notwithstanding any other provision to the contrary, for Limitation Years beginning before January 1, 2000, the maximum Annual Benefit that a participant may receive (or accrue) under this plan is the lesser of the Maximum Permissible Benefit defined in section _____ of the plan, or the § 415(e) aggregated limitation. For purposes of this paragraph, the § 415(e) aggregated limitation is the product of:

(i) one minus the participant's Defined Contribution Plan Fraction (as defined in section _____ of the plan); and

(ii) the lesser of 125% of the Defined Benefit Dollar Limitation applicable to the participant (adjusted as required under section _____ of the plan), or 140% of

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the Defined Benefit Compensation Limitation applicable to the participant (as defined in section _____ of the plan).

(Note to reviewer: The 1st blank should be filled in with the section number of the plan corresponding to section 5.11 of LRM #40. The 2nd blank should be filled in with the section number of the plan corresponding to section 5.7 of LRM #40. The 3rd blank should be filled in with the section number of the plan corresponding to section 5.11 of LRM #40. The 4th blank above should be filled in with the section number of the plan corresponding to section 5.4 of LRM #40.)

Section 2. For Limitation Years beginning on or after January 1, 2000, the maximum benefit that a participant may receive under this plan is the Maximum Permissible Benefit defined in section _____ of the plan.

(Note to reviewer: The blank above should be filled in with the section number of the plan corresponding to section 5.11 of LRM #40.

B. Uniformity Requirement-Specific Instructions

The design based safe harbors under Regulations Sections 1.401(a)(4)-2 and -3 require that defined contribution plans provide a uniform allocation formula and that defined benefit plans provide a uniform benefit formula. In order to assure that paired plans will continue to provide uniform allocation or benefit formulas when they become top-heavy, paired plans must include language that will comply with one of the following two options: Option A; or Option B. Plan language complying with one of these options (Option A or Option B) may be included in the basic plan document. Alternatively, the plan may allow the employer to elect in the adoption agreement which of the two options will apply to the employer's plan.

(1) Option A. A plan can provide the full top-heavy minimum in each of the paired plans. For Limitation Years beginning before January 1, 2000, if the sponsor wishes to preserve the employer's ability to use the higher § 415(e) limits when the plan is top-heavy

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(i.e., to use 1.25 as opposed to 1.0 in computing the denominators of the Defined Benefit Plan Fraction and

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Defined Contribution Plan Fraction under § 415(e)), then the plan must retain a mechanism that will allow the employer to provide the higher top-heavy minimums required by § 416(h) under each of the paired plans.

(2) Option B. A plan can include language requiring that each of the paired plans benefit the same participants and that one of the paired plans will provide the top-heavy minimum. Pursuant to Regulations section 1.410(b)-3, a participant benefits under a plan for the plan year if the participant receives an allocation or an accrual for that plan year, or in the case of a plan subject to §§ 401(k) or 401(m), a participant is eligible to make elective deferrals or to make employee contributions. Therefore, to ensure that the same participants benefit under each paired plan adopted by the employer, the employer must make identical minimum participation requirement elections (i.e. minimum age and service, and entry date) and coverage elections (i.e., the exclusion of employees under Regulations section 1.410(b)-6 who are not employed on the last day of the plan year or who have not completed more than 500 hours of service) in all paired plans. Furthermore, the sponsor must have restrictive language in the adoption agreement to ensure that the employer makes identical elections in all paired plans. If Option B is provided in the adoption agreement or basic plan document, Option A must also be provided as a default in the event that the paired plans do not cover the same participants.

(3) Two methods used under each option (Option A or Option B). Under Option A and Option B, two methods (Method 1 and Method 2) are used for coordinating the requirements of § 416(h) with the provisions of § 415(e). Since these methods are inconsistent with each other, the employer can elect only one method in a single plan. Because § 415(e) and § 416(h) are both repealed as of the first day of the first Limitation Year beginning on or after January 1, 2000, Method 1 and Method 2 will only be used for Limitation Years beginning before 2000.

For Limitation Years beginning before January 1, 2000,
Method (1) applies when the plan uses a 1.0 factor

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instead of a 1.25 factor times (i) the Defined Benefit Dollar Limitation in the § 415(e) Defined Benefit Plan Fraction denominator and (ii) the Defined Contribution Dollar Limitation in the Defined Contribution Plan Fraction denominator, for any year that the plan is top-heavy.

For Limitation Years beginning before January 1, 2000, Method (2) provides the higher top-heavy minimums required by § 416(h) of the Code if, for purposes of § 415(e) calculations, the plan uses the 1.25 factor times (i) the Defined Benefit Dollar Limitation in the denominator of the Defined Benefit Plan Fraction, and (ii) the Defined Contribution Dollar Limitation in the denominator of the Defined Contribution Plan Fraction, for any year the plan is top-heavy but not super top-heavy. (If the plan is super top-heavy, additional top-heavy minimums are not required (as the plan cannot use the 1.25 factors described above), but the plan could continue to provide the additional benefits.)

(Note to reviewer: Because sections 415(e) and 416(h) are repealed for Limitation Years beginning after 1999, Methods 1 and 2 will only be used for Limitation Years beginning before 2000. As a result, the LRMs below will only apply for Limitation Years beginning before 2000.)

- LRM 94 (Option A, Method 1, adjustments to the Defined Benefit Plan Fractions and the Defined Contribution Plan Fractions for top-heavy plans)
- LRM 96 (Option A, Method 2, adjustments to the Defined Benefit Plan Fractions and the Defined Contribution Plan Fractions for super top-heavy plans)
- LRM 97 (Option A, Method 2, minimum top-heavy contributions and benefits)
- LRM 98 (Option B, Method 1, adjustments to the Defined Benefit Plan Fractions and the Defined Contribution Plan Fractions for top-heavy plans)
- LRM 100 (Option B, Method 2, adjustments to the Defined Contribution Plan Fractions and the Defined Benefit Plan Fractions for super top-heavy plans)
- LRM 101 (Option B, Method 2, minimum top-heavy contributions and benefits)

- LRM 94, Top-Heavy Adjustment to DC and DB Fraction -

OPTION A. (FULL TOP-HEAVY MINIMUM PROVIDED IN EACH PAIRED PLAN)

Method 1. -- (For section 415(e) calculations, the 1.25 factor is reduced to 1.0 when the plans are top-heavy (i.e., the top-heavy ratio exceeds 60%).)

(Note to reviewer: Sections 415(e) and 416(h) are repealed effective with respect to Limitation Years beginning after December 31, 1999. Accordingly, Method 1 does not apply for Limitation Years beginning on or after January 1, 2000.)

94. Document Provision: (Option A, Method 1)

Statement of Requirement: Adjustments in Defined Contribution Plan Fraction and Defined Benefit Plan Fraction when the top-heavy ratio exceeds 60%, IRC §416(h).

Sample Defined Benefit and Defined Contribution Plan Language:

For Limitation Years beginning before January 1, 2000, in any plan year in which the paired plans are top-heavy, i.e., the top-heavy ratio exceeds 60%, the denominators of the Defined Benefit Plan Fraction (as defined in section _____ of the plan) and Defined Contribution Plan Fraction (as defined in section _____ of the plan) shall be computed using 100 percent of the dollar limitation instead of 125 percent.

(Note to reviewer: For defined benefit plans, the 1st and 2nd blanks above should be filled in with the plan section numbers corresponding, respectively, to sections 5.6 and 5.7 of LRM 40. For defined contribution plans, the 1st and 2nd blanks above should be filled in with the plan section numbers corresponding, respectively, to sections 5.3 and 5.5 of LRM 31.)

- LRM 94, Top-Heavy Adjustment to DC and DB Fraction -

(Note to reviewer: If Option A, Method 1 has been selected, both the following Sample Defined Benefit Plan Language and

- LRM 95, Minimum Top-Heavy Contributions and Benefits -

the Sample Defined Contribution Plan Language is required in the respective DB or DC plan(s)).

95. Document Provision: (Option A)

Statement of Requirement: Minimum top-heavy contributions and benefits for defined contribution plan(s) paired with a defined benefit plan, Rev. Proc. 2000-20, §4.13,

§7.03.

Sample Defined Contribution Plan Language:

When the paired plans are top-heavy, the top-heavy requirements set forth in sections _____ of this plan shall apply.

(Note to reviewer: The blank should be filled in with the plan section numbers corresponding to DC LRMs #61-#64.)

Sample Defined Benefit Plan Language:

When the paired plans are top-heavy, the top-heavy requirements set forth in sections _____ of this plan shall apply.

(Note to reviewer: The blank should be filled in with the plan section numbers corresponding to DB LRMs #69-#73.)

Method 2. -- (For section 415(e) calculations, the 1.25 factor is reduced to 1.0 only when the plans are super top-heavy (i.e., the top-heavy ratio exceeds 90%).)

(Note to reviewer: Sections 415(e) and 416(h) are repealed effective with respect to Limitation Years beginning after December 31, 1999. Accordingly, Method 2 does not apply for Limitation Years beginning on or after January 1, 2000.)

96. Document Provision: (Option A, Method 2)

Statement of Requirement: Adjustments in Defined Contribution Plan Fraction and Defined Benefit Plan Fraction when the top-heavy ratio exceeds 90%, IRC §416(h).

Sample Defined Benefit and Defined Contribution Plan Language:

For Limitation Years beginning before January 1, 2000, in any plan year in which the top-heavy ratio exceeds 90% (i.e., becomes super top-heavy) the denominators of the Defined Benefit Plan Fraction (as defined in section _____ of the plan) and Defined Contribution Plan Fraction (as defined in section _____ of the plan) shall be computed using 100 percent of the dollar limitation instead of 125 percent.

(Note to reviewer: For defined benefit plans, the blanks above should be filled in with the plan section numbers corresponding, respectively, to sections 5.6 and 5.7 of LRM 40. For defined contribution plans, the blanks above should be filled in with the plan section numbers corresponding, respectively, to sections 5.3 and 5.5 of LRM 31.)

(Note to reviewer: If Option A, Method 2 has been selected, both the following Sample Defined Benefit Plan Language and the Sample Defined Contribution Plan Language is required in the respective DB and DC plan(s)).

- LRM 97, Minimum Top-Heavy Contributions and Benefits -

97. Document Provision: (Option A, Method 2)

Statement of Requirement: Minimum top-heavy contributions and benefits for defined contribution plan(s) paired with a defined benefit plan, IRC §416(h)(1); Rev. Proc. 2000-20, §7.02,

§7.03.

Sample Defined Contribution Plan Language:

For Limitation Years beginning before January 1, 2000, when the paired plans are top-heavy, but are not super top-heavy, the employer will provide each non-key employee who participates in this plan a minimum contribution of 4% of compensation.

When the paired plans are super top-heavy, the top-heavy requirements set forth in section _____ of the plan shall apply.

(Note to reviewer: The blank should be filled in with the plan section numbers corresponding to DC LRMs #61-#64.)

Sample Defined Benefit Plan Language:

For Limitation Years beginning before January 1, 2000, when the paired plans are top-heavy, but are not super top-heavy, the top-heavy minimum contribution requirement set forth in section ____ of this plan shall apply except that the minimum accrued benefit shall be 3% of the highest 5-consecutive year average compensation for each non-key employee who participates in this plan, not to exceed a cumulative accrued benefit of 30%.

When the paired plans are super top-heavy, the top-heavy requirements set forth in section _____ of this plan shall apply.

(Note to reviewer: The blank should be filled in with the plan section numbers corresponding to DB LRMs #69-#73.)

- LRM 98, Top-Heavy Adjustments to DC and DB Fraction -

OPTION B. (PAIRED PLANS BENEFIT THE SAME PARTICIPANTS; ONE PAIRED PLAN IS DESIGNATED TO PROVIDE THE TOP-HEAVY MINIMUM.)

(Note to reviewer: If Option B is provided in the adoption agreement or basic plan document, Option A must also be provided as a default. The following adoption agreement language satisfies this requirement.)

Sample Adoption Agreement Language:

If the employees who benefit in this plan are identical to the employees who benefit in each plan paired with this plan, section ____ of the plan applies; otherwise, section ____ of the plan applies.

(Note to reviewer: The first blank should be filled in with the plan section number corresponding to the appropriate Option B section. The second blank should be filled in with the plan section number corresponding to the appropriate Option A section.)

Method 1. -- (For section 415(e) calculations, 1.25 factor is reduced to 1.0 when the plans are top-heavy (i.e., the top-heavy ratio exceeds 60%).)

(Note to reviewer: Sections 415(e) and 416(h) are repealed effective with respect to Limitation Years beginning after December 31, 1999. Accordingly, Method 1 does not apply for Limitation Years beginning on or after January 1, 2000.)

98. Document Provision: (Option B, Method 1)

Statement of Requirement: Adjustments in Defined Contribution Plan Fraction and Defined Benefit Plan Fraction when the top-heavy ratio exceeds 60%, IRC §416(h).

Sample Defined Benefit and Defined Contribution Plan Language:

For Limitation Years beginning before January 1, 2000, in any plan year in which the paired plans are top-heavy, i.e., the top-heavy ratio exceeds 60%, the denominators of the Defined Benefit Plan Fraction (as defined in section _____ of the plan) and Defined Contribution Plan Fraction (as defined in section _____ of the plan) shall be computed using 100 percent of the dollar limitation instead of 125 percent.

(Note to reviewer: For defined benefit plans, the blanks above should be filled in with the plan section numbers corresponding, respectively, to sections 5.6 and 5.7 of LRM #40. For defined contribution plans, the blanks above should be filled in with the plan section numbers corresponding, respectively, to sections 5.3 and 5.5 of LRM 31.)

(Note to reviewer: If Option B, Method 1 has been selected, the following Sample Defined Benefit Plan Language or the Sample Defined Contribution Plan Language is required in either the DB or DC plan(s), or the sponsor may include both provisions in the respective Adoption Agreements and permit the employer to select in which plan will provide the minimum.

99. Document Provision: (Option B)

Statement of Requirement: Minimum top-heavy contributions and benefits for defined contribution plan(s) paired with a defined benefit plan, Rev. Proc. 2000-20, §7.03.

Sample Defined Contribution Plan Language:

When the paired plans are top-heavy, the top-heavy requirements set forth in sections _____ of this plan shall apply, except that each non-key employee shall receive a minimum contribution of 5% of such employee's compensation.

- LRM 98, Top-Heavy Adjustments to DC and DB Fraction -

- LRM 99, Minimum Top-Heavy Contributions and Benefits -

(Note to reviewer: The blank should be filled in with the plan section numbers corresponding to DC LRMs #61-#64.)

Sample Defined Benefit Plan Language:

When the paired plans are top-heavy, the top-heavy requirements set forth in sections _____ of this plan shall apply.

(Note to reviewer: The blank should be filled in with the plan section numbers corresponding to DB LRMs #69-#73.)

Method 2. -- (For section 415(e) calculations, the 1.25 factor is reduced to 1.0 only when the plans are super top-heavy (i.e., the top-heavy ratio exceeds 90%).)

(Note to reviewer: Sections 415(e) and 416(h) are repealed effective with respect to Limitation Years beginning after December 31, 1999. Accordingly, Method 2 does not apply for Limitation Years beginning on or after January 1, 2000.)

100. Document Provision: (Option B, Method 2)

Statement of Requirement: Adjustments in Defined Contribution Plan Fraction and Defined Benefit Plan Fraction when the top-heavy ratio exceeds 90%, IRC §416(h).

Sample Defined Benefit and Defined Contribution Plan Language:

For Limitation Years beginning before January 1, 2000, in any plan year in which the top-heavy ratio exceeds 90% (i.e., becomes super top-heavy) the denominators of the Defined Benefit Plan Fraction (as defined in section _____ of the plan) and Defined Contribution Plan Fraction (as defined in section _____ of the plan) shall be computed

- LRM 99, Minimum Top-Heavy Contributions and Benefits -

using 100 percent of the dollar limitation instead of 125 percent.

- LRM 101, Minimum Top-Heavy Contributions and Benefits -

(Note to reviewer: For defined benefit plans, the blanks above should be filled in with the plan section numbers corresponding, respectively to sections 5.6 and 5.7 of LRM 40. For defined contribution plans, the blanks above should be filled in with the plan section numbers corresponding, respectively, to sections 5.3 and 5.5 of LRM 31.)

(Note to reviewer: If Option B, Method 2 has been selected, the following Sample Defined Benefit Plan Language or the Sample Defined Contribution Plan Language is required in either the DB or DC plan(s), or the sponsor may include both provisions in the respective Adoption Agreements and permit the employer to select in which plan will provide the minimum.

101. Document Provision: (Option B, Method 2)

Statement of Requirement: Minimum top-heavy contributions and benefits for defined contribution plan(s) paired with a defined benefit plan, IRC §416(h)(1); Rev. Proc. 2000-20, §7.03.

Sample Defined Contribution Plan Language:

For Limitation Years beginning before January 1, 2000, when the paired plans are top-heavy, but not super top-heavy, the employer will provide each non-key employee a minimum contribution of 7 ½% of compensation.

When the paired plans are super top-heavy, the top-heavy requirements set forth in section _____ of the plan shall apply, except that each non-key employee shall receive a minimum contribution of 5% of each employee's compensation.

(Note to reviewer: The blank should be filled in with the plan section numbers corresponding to DC LRMs #61-#64.)

Sample Defined Benefit Plan Language:

For Limitation Years beginning before January 1, 2000, when the paired plans are top-heavy, but not super top-heavy, the top-heavy requirements set forth in section _____ of the

- LRM 101, Minimum Top-Heavy Contributions and Benefits -

plan shall apply, except that the minimum accrued benefit shall be 3% of the highest 5-consecutive year average compensation for each non-key employee, not to exceed a cumulative accrued benefit of 30%.

When the paired plans are super top-heavy, the top-heavy requirements set forth in sections _____ of this plan shall apply.

(Note to reviewer: The blank should be filled in with the plan section numbers corresponding to DB LRMs #69-#73.)