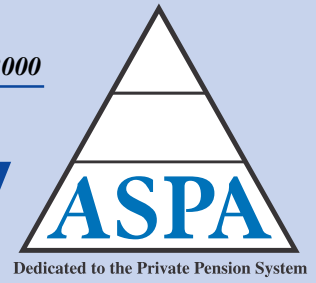


THE Pension Actuary



Confirmation of Operational Compliance after SBJPA, TRA'97, and RRA'98

by Janice M. Wegesin, CPC, QPA

Plan Name: _____ Last Amendment Date: _____

HCE Definition

For Plan Years beginning after 1996, an employer may elect whether or not to make the following elections:

- Top-paid group (20% rule)
- Calendar year data
- Calendar year calculation (for 1997 plan years only)

Complete the table below to indicate **whether the top-paid group election was made for plan years beginning after 1996:**

Plan Year Begins	YES	NO	n/a	Comments
___/___/97				
___/___/98				
___/___/99				
___/___/00				

Complete the table below to indicate **whether the calendar year data election was made for plan years beginning after 1996:**

Plan Year Begins	YES	NO	n/a	Comments
___/___/97				
___/___/98				
___/___/99				
___/___/00				

Complete the table below to indicate **whether the calendar year calculation election was made for plan years beginning in 1997:**

Plan Year Begins	YES	NO	n/a	Comments
___/___/97				

Family Aggregation

Did the pre-SBJPA family aggregation rules continue to apply for any purpose for plan years beginning after 1996?

NO YES

If YES, explain application _____

If rules subsequently discontinued, indicate when rule no longer applies: _____

NOTE: Family aggregation *cannot* be used for *any* nondiscrimination testing after 1996 plan years.

§401(k)/(m) Nondiscrimination Testing

SBJPA permits the employer to use the ADP and/or ACP of NHCEs for the prior year or the **current year** in determining whether the plan satisfies the nondiscrimination tests.

Complete the table below to indicate **which test results were used in each plan year beginning after 1996:**

Plan Year Begins	ADP	ACP	Comments
___/___/97	<input type="checkbox"/> Current year <input type="checkbox"/> Prior year	<input type="checkbox"/> Current year <input type="checkbox"/> Prior year	
___/___/98	<input type="checkbox"/> Current year <input type="checkbox"/> Prior year	<input type="checkbox"/> Current year <input type="checkbox"/> Prior year	
___/___/99	<input type="checkbox"/> Current year <input type="checkbox"/> Prior year	<input type="checkbox"/> Current year <input type="checkbox"/> Prior year	
___/___/00	<input type="checkbox"/> Current year <input type="checkbox"/> Prior year	<input type="checkbox"/> Current year <input type="checkbox"/> Prior year	

For a new §401(k)/(m) provision, the employer may utilize a rule that deems the prior year ADP/ACP to be 3%.

Complete the table below to indicate **whether the “deemed 3%” rule was elected for any plan year beginning after 1996:**

Plan Year Begins	NO	YES	Test	Comments
___/___/97			<input type="checkbox"/> ADP <input type="checkbox"/> ACP	
___/___/98			<input type="checkbox"/> ADP <input type="checkbox"/> ACP	
___/___/99			<input type="checkbox"/> ADP <input type="checkbox"/> ACP	
___/___/00			<input type="checkbox"/> ADP <input type="checkbox"/> ACP	

QNECs

Complete the table below to indicate whether QNECs were made for any plan year beginning after 1996:

Plan Year Begins	NO	YES	Test	QNEC Formula [Flat \$, Flat %, etc]
___/___/97			<input type="checkbox"/> ADP <input type="checkbox"/> ACP	
___/___/98			<input type="checkbox"/> ADP <input type="checkbox"/> ACP	
___/___/99			<input type="checkbox"/> ADP <input type="checkbox"/> ACP	
___/___/00			<input type="checkbox"/> ADP <input type="checkbox"/> ACP	

QNECs . . .date of deposit affects year of deduction, year counted as §415 annual addition, etc.

Plan Year Begins	Date of Deposit	§404/year of deduction	§415 annual addition year	NHCE Only?
___/___/97				<input type="checkbox"/> YES <input type="checkbox"/> NO
___/___/98				<input type="checkbox"/> YES <input type="checkbox"/> NO
___/___/99				<input type="checkbox"/> YES <input type="checkbox"/> NO
___/___/00				<input type="checkbox"/> YES <input type="checkbox"/> NO

Corrective Measures

For purposes of §401(k)/(m) discrimination testing, an employer may utilize various corrective measures to satisfy nondiscrimination tests. Complete the table below to indicate **the method utilized for each test for each plan year beginning after 1996:**

Plan Year Begins	ADP	ACP	MUT	Explanation of "Other"
___/___/97	<input type="checkbox"/> Refunds <input type="checkbox"/> Other	<input type="checkbox"/> Refunds <input type="checkbox"/> Other	<input type="checkbox"/> Refunds <input type="checkbox"/> 401k <input type="checkbox"/> Match <input type="checkbox"/> Other	
___/___/98	<input type="checkbox"/> Refunds <input type="checkbox"/> Other	<input type="checkbox"/> Refunds <input type="checkbox"/> Other	<input type="checkbox"/> Refunds <input type="checkbox"/> 401k <input type="checkbox"/> Match <input type="checkbox"/> Other	
___/___/99	<input type="checkbox"/> Refunds <input type="checkbox"/> Other	<input type="checkbox"/> Refunds <input type="checkbox"/> Other	<input type="checkbox"/> Refunds <input type="checkbox"/> 401k <input type="checkbox"/> Match <input type="checkbox"/> Other	
___/___/00	<input type="checkbox"/> Refunds <input type="checkbox"/> Other	<input type="checkbox"/> Refunds <input type="checkbox"/> Other	<input type="checkbox"/> Refunds <input type="checkbox"/> 401k <input type="checkbox"/> Match <input type="checkbox"/> Other	

Note: MUT = Multiple Use Test

401(k)/(m) Safe Harbor

For plan years beginning after 1998, the employer may implement safe harbor provisions under §401(k)(12) and §401(k)(11). Indicate whether the plan has elected safe harbor status. If YES, complete the separate safe-harbor checklist.

Plan Year Begins	§401(k)	§401(m)
___/___/99		
___/___/00		

Disaggregation

[Note: may require additional line 21 attachment for Form 5500 reporting purposes for plan years beginning before 1999. See Schedule T for 1999 Form 5500; new format!]

For purposes of §401(k)/(m) discrimination testing, an employer may separately test the portion of the plan that applies to employees who do not otherwise satisfy the statutory maximum eligibility requirements of §410(a). Practitioners disagree with regard to the application of the “entry date” provisions defined in the plan when such disaggregation is utilized. See §410(b)(4) and regulations thereunder.

Beginning with 1999 plan years, Section 401(k)(3)(F) permits an employer to permissively disaggregate all eligible employees (OTHER than HCEs) who have not met the minimum age and service requirements of §410(a). The IRS has stated that application of this disaggregation rule is without regard to any entry date defined in the plan. In other words, if an employee meets the age and service requirements of the plan as of the last day of the plan year, the employee is not in the disaggregated group for testing purposes.

Complete the table below to indicate **whether disaggregation for otherwise excludable employees was utilized for any plan year beginning after 1996; for plan years beginning after 1998, indicate the disaggregation rule being followed:**

Plan Year Begins	NO	YES	Test	Comments [Explain entry date rule applied]
___/___/97			<input type="checkbox"/> ADP <input type="checkbox"/> ACP	
___/___/98			<input type="checkbox"/> ADP <input type="checkbox"/> ACP	
___/___/99			<input type="checkbox"/> ADP <input type="checkbox"/> 401(k)(3)(F) <input type="checkbox"/> 401(b)(4) <input type="checkbox"/> ACP <input type="checkbox"/> 401(k)(3)(F) <input type="checkbox"/> 401(b)(4)	
___/___/00			<input type="checkbox"/> ADP <input type="checkbox"/> 401(k)(3)(F) <input type="checkbox"/> 401(b)(4) <input type="checkbox"/> ACP <input type="checkbox"/> 401(k)(3)(F) <input type="checkbox"/> 401(b)(4)	

Shifting

For purposes of §401(k)/(m) discrimination testing, an employer may shift percentages from ADP to ACP, or, if matching contributions satisfy the distribution restrictions of §401(k) deferrals, from ACP to ADP.

Complete the table below to indicate **whether shifting was utilized for any plan year beginning after 1996:**

Plan Year Begins	NO	YES	Test	Comments
___/___/97			<input type="checkbox"/> ADP <input type="checkbox"/> ACP <input type="checkbox"/> MUT	
___/___/98			<input type="checkbox"/> ADP <input type="checkbox"/> ACP <input type="checkbox"/> MUT	
___/___/99			<input type="checkbox"/> ADP <input type="checkbox"/> ACP <input type="checkbox"/> MUT	
___/___/00			<input type="checkbox"/> ADP <input type="checkbox"/> ACP <input type="checkbox"/> MUT	

Mandatory Cash-Outs

For plan years beginning after 08/05/97, should the \$3,500 cash-out limit be increased to \$5,000?

NO YES, effective _____

30-Day Waiver

For an annuity Plan in existence prior to October 23, 1996, provide plan distributions prior to the expiration of the 30-day waiting period (*Reg. 1.417(e)-1T(b)(3)*)?

NO YES, effective _____

Suspension of Loan Repayments

Does the employer permit the suspension of loan repayments due to qualified military leave?

NO YES

Distributions under §401(a)(9)

If the plan existed prior to 1997, should the SBJPA rules be added?

NO YES, and ADD SBJPA rules

Effective: _____

Add option to defer commencement of benefits for participants still employed (other than 5% owners) who attain age 70½ after 1995 (*see IRS Announcements 97-24 and 97-70 and Notice 97-75*).

Effective: _____

Add option to suspend distributions to participants who are still employed (other than 5% owners) who reach age 70½ prior to 1996.

Will there be a new annuity starting date upon commencement of distributions?

YES NO

Effective: _____

Provide for the elimination of pre-retirement distributions to participants (other than 5% owners) who reach age 70½ after the later of 1998, or the year in which an amendment eliminating the old provisions is adopted (*Reg. 1.411(d)-4, Q-10*).

Hardship Distributions as Eligible Rollovers?

For hardship distributions of elective deferrals made after 12/31/98, the plan sponsor may delay adoption of the new rules until January 1, 2000. The employer will NO longer treat hardship distributions of elective deferrals as eligible rollover distributions effective as of:

January 1, 1999 January 1, 2000 Other _____

Extension of Remedial Amendment Period

Section 19.04 of Rev. Proc. 2000-20 provides that a plan sponsor that certifies, in writing, its intention to adopt a specific M&P or volume submitter plan must amend or restate its plan by adopting GUST-approved M&P or volume submitter specimen plan (or ANOTHER GUST-approved M&P or volume submitter plan, or individually designed GUST amendments) and, if required for reliance request a determination letter by the end of the 12th month following IRS approval of the M&P or volume submitter plan.

The Plan Sponsor [check one]

WILL will NOT require a certification.

Note: Certification is *not* needed if the employer is currently using (or is deemed to be using) the current (pre-GUST) version of the prototype or volume submitter document.

Date of Plan Sponsor's certification: _____

GUST restatement must be completed by: _____

Completed and/or reviewed by:

Plan Year Begins	Signature/Date
___/___/97	
___/___/98	
___/___/99	
___/___/00	

Janice M. Wegesin, CPC, QPA, is President of JMW Consulting, Inc., in Palatine, IL. Ms. Wegesin has served on many ASPA committees and also as a member of the Board of Directors. She is a frequent speaker at ASPA's conferences and a co-speaker at the 401(k) Daily Valuation workshops. She is the editor of the Daily Valuation Manual and the co-author of the Form 5500 Preparer's Manual.