

Form <b>8397</b> (March 2010)	Department of Treasury – Internal Revenue Service <b>Employee Plans Deficiency Checksheet</b> <b>Attachment #7</b> <b>Top-Heavy Plans</b>	Date
<i>For IRS Use</i>	Please furnish the amendment(s) requested in the section(s) checked	
707 II.a.	Section _____ of the plan should be amended to provide for the use of a vesting schedule at least as favorable as three-year 100% vesting or six-year graded vesting for a plan year for which the plan is top-heavy. <i>IRC section 416(b) and Regs. section 1.416-1, V-1 through V-7</i>	
710, 711 II.b(i)(a) and (b)	A defined benefit plan must, for a year that the plan is top-heavy, provide a minimum annual benefit equal to the lesser of 20%, or 2% per year of service, of each non-key employee's average compensation from the employer for the five highest consecutive years. Section _____ of the plan should be amended accordingly. <i>Regs. section 1.416-1, M-1 through M-6</i>	
713 II.b(ii)(a)	Each non-key employee who is a plan participant and who has completed at least 1,000 hours of service (or the equivalent) during an accrual computation period must accrue a minimum benefit in accordance with the top-heavy rules regardless of the non-key employee's level of compensation. Section _____ of the plan should be amended accordingly. <i>Regs. section 1.416-1, M-1 through M-6</i>	
714 II.b(ii)(b)	Each non-key employee who is a plan participant and who has completed at least 1,000 hours of service (or the equivalent) during an accrual computation period must accrue a minimum benefit in accordance with the top-heavy rules regardless of whether a non-key employee declines to make a mandatory contribution to a plan that generally requires such contributions. Section _____ of the plan should be amended accordingly. <i>Regs. section 1.416-1, M-1 through M-6</i>	
715 II.b(ii)(c)	Each non-key employee who is a plan participant and who has completed at least 1,000 hours of service (or the equivalent) during an accrual computation period must accrue a minimum benefit in accordance with top-heavy rules regardless of whether a non-key employee is employed on a specified date, such as the last day of the year. Section _____ of the plan should be amended accordingly. <i>Regs. sections 1.416-1, M-1 through M-6</i>	
716 II.b(iii)	Section _____ of the plan should be amended to preclude the forfeiture of a minimum benefit due to the withdrawal of a mandatory employee contribution. <i>Regs. sections 1.416-1, M-1 through M-6</i>	
718 II.c.(1)	Section _____ of the plan should be amended to provide for a minimum contribution (i.e., allocation) for a year in which the plan is top-heavy of not less than 3% of compensation per year (within the meaning of section 415), or, if less than 3%, the highest rate allocated (including elective deferrals) to any key employee. <i>Regs. sections 1.416-1, M-7, M-10, and M-11</i>	

**CYCLE E**

721	Section _____ of the plan should be amended to provide that for a year in which the plan is top-heavy, each non-key employee will receive a minimum contribution if the participant has not separated from service at the end of the plan year, regardless of whether the non-key employee has less than 1,000 hours of service (or the equivalent).
II.c.(2)(a)	<i>Regs. sections 1.416-1, M-7, M-10, and M-11</i>
722	Section _____ of the plan should be amended to provide that for a year in which the plan is top-heavy, each non-key employee will receive a minimum contribution if the participant has not separated from service at the end of the plan year, regardless of the non-key employee's level of compensation.
II.c.(2)(b)	<i>Regs. sections 1.416-1, M-7, M-10, and M-11</i>
723	Section _____ of the plan should be amended to provide that for a year in which the plan is top-heavy, each non-key employee will receive a minimum contribution if the participant has not separated from service at the end of the plan year, regardless of whether the employee declines to make a mandatory contribution to the plan that generally requires such a contribution.
II.c.(2)(b)	<i>Regs. sections 1.416-1, M-7, M-10, and M-11</i>
724	Section _____ of the plan should be amended to preclude the forfeiture of account balances attributable to required minimum contributions if a non-key employee withdraws mandatory contributions.
II.c.(3)	<i>Regs. sections 1.416-1, M-7, M-10, and M-11</i>
760, 761	Compensation to be used for determining a minimum benefit or a minimum contribution is the compensation described in the regulations under section 415. Compensation includes amounts contributed by the employer pursuant to a salary reduction arrangement and any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125, 132(f)(4) or 457. Section _____ of the plan should be amended to properly define compensation.
II.d.	<i>IRC section 416(c)(2)(A), 416(i)(1)(D)</i>
731	Section _____ of the plan should be amended to properly define determination date. A determination date is the last day of the preceding plan year, or in the case of the first plan year, the last day of such year. Key employee and top-heavy tests are made with reference to the determination date.
III.a.(2)	<i>IRC section 416(g)(4)(C) and Regs. sections 1.416-1, T-22, and T-23</i>
732	Section _____ of the plan should be amended to properly define valuation date. A valuation date is the annual date on which plan assets must be valued for the purpose of determining the value of account balances or the date on which liabilities and assets of a defined benefit plan are valued. For the purposes of the top-heavy test, the valuation date for a defined benefit plan must be the same valuation date used for computing plan costs for minimum funding. The valuation date for a defined contribution plan must be the most recent valuation date within a 12-month period ending on the determination date.
III.a.(2)	<i>Regs. sections 1.416-1, T-24, and T-25</i>

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<p align="center">733 III.a.(3)</p>	<p>Section _____ of the plan should be amended to properly define required aggregation group. Each plan of an employer in which a key employee participates (in the plan year containing the determination date or any of the four preceding plan years) and each other plan which, during this period, enables any plan in which a key employee participates during the period tested to meet the requirements of section 401(a)(4) or 410(b), are required to be aggregated for top-heavy testing purposes and are considered the required aggregation group. All employers aggregated under Code sections 414(b), (c), or (m) are considered a single employer for this purpose. <i>IRC section 416(g)(2)(A)(i), Regs. sections 1.416-1, T-6, T-9, and T-10</i></p>
<p align="center">734 III.a.(4)</p>	<p>Section _____ of the plan should be amended to properly define permissive aggregation group. A permissive aggregation group is one or more plans that are not required to be aggregated but which may be aggregated with a required aggregation group. A plan may be permissively aggregated only if the resulting aggregation group satisfies the requirements of sections 401(a)(4) and 410. <i>IRC section 416(g)(2)(A)(ii), Regs. sections 1.416-1, T-7, T-8, and T-11</i></p>
<p align="center">735, 736 III.a.(5)</p>	<p>Section _____ of the plan should be amended to properly define top-heavy ratio. A defined benefit plan is top-heavy when the ratio of the present value of accrued benefits for key employees to the present value of accrued benefits for all employees exceeds 60%. A defined contribution plan is top-heavy when the ratio of account balances for key employees to account balances for all employees exceeds 60%. If there is more than one plan, the top-heavy ratios must be consolidated by adding together the numerators and then adding together the denominators to form one ratio. <i>IRC section 416(g)(1) and Regs. sections 1.416-1, T-1, T-23 through T-32, and T-39</i></p>
<p align="center">763, 764 III.a.(6)</p>	<p>Section _____ of the plan should be amended to properly define key employee. As defined in IRC section 416(i), a key employee is any employee or former employee who at any time during the plan year containing the determination date, is or was:</p> <ul style="list-style-type: none"> <li>(1) an officer of the employer having annual compensation greater than \$130,000 (as adjusted under section 416(i)(1) for plan years beginning after 12/31/02.)</li> <li>(2) a five-percent owner of the employer; or</li> <li>(3) a one-percent owner of the employer who has annual compensation of more than \$150,000.</li> </ul> <p>For purposes of determining five-percent and one-percent owners, the rules of subsections (b), (c) and (m) of section 414 do not apply. Beneficiaries of an employee acquire the character of the employee who performed service for the employer. Also, inherited benefits will retain the character of the benefits of the employee who performed services for the employer. <i>IRC section 416(i), Regs. sections 1.416-1, T-12 through T-21</i></p>
<p align="center">739 III.a.(7)</p>	<p>Section _____ of the plan should be amended to properly define non-key employee. A non-key employee is any employee who is not a key employee. Non-key employees include employees who are former key employees. <i>IRC section 416(i)(2), Regs. sections 1.416-1, T-1 and T-12</i></p>
<p align="center">740 III.b.</p>	<p>Section _____ of the plan should be amended to 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. <i>IRC section 416(g), Regs. sections 1.416-1, T-22 through T-25</i></p>

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741 III.c.	Section _____ of the plan should be amended to specify the actuarial assumptions used to determine the present value of accrued benefits for purposes of the top-heavy test. <i>Regs. section 1.416-1, T-26</i>
742 III.d.	Section _____ of the plan should be amended to provide that if an aggregation group includes two or more defined benefit plans, the same actuarial assumptions must be used with respect to all such plans and must be specified in such plans. <i>Regs. section 1.416-1, T-26, T-36</i>
743 III.e.	Section _____ of the plan should be amended to provide that proportional subsidies are ignored when testing for top-heaviness in a defined benefit plan. <i>Regs. sections 1.416-1, T-26 and T-27</i>
744 III.f.	Section _____ of the plan should be amended to provide that non-proportional subsidies are considered when testing for top-heaviness in a defined benefit plan. <i>Regs. sections 1.416-1, T-26 and T-27</i>
745 III.g.	Section _____ of the plan should be amended to 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, as if such benefit accrued not more rapidly than the slowest rate of accrual permitted under the fractional rule of section 411(b)(1)(C). <i>IRC section 416(g)(4)(F)</i>
746 IV.a.	Section _____ of the plan should be amended to provide the appropriate top-heavy minimums. If an employer maintains more than one plan, non-key employees covered under only a defined benefit plan must receive the defined benefit minimum. Non-key employees covered only by a defined contribution plan must receive the defined contribution minimum. Where all plans involved are defined contribution plans, only one plan need provide the minimum contribution for all participants of the required aggregation group. <i>IRC section 416(f), Regs. sections 1.416-1, M-8, and M-12</i>
747, 748, 749 IV.b., c. and d.	Section _____ of the plan should be amended to provide that if an employer maintains more than one plan covering non-key employees the top-heavy minimums must be properly coordinated by a specified approach . If both defined contribution and defined benefit plans exist, the top-heavy minimums may be coordinated by one of the approaches described below: <ol style="list-style-type: none"> <li>1. Provide appropriate minimums in each plan, IRC section 416(f) and Regs. section 1.416-1, M-8, M-12; or</li> <li>2. Provide a defined benefit minimum in the defined benefit plan, which is offset by the benefits provided under the defined contribution plan, Regs. section 1.416-1, M-12 and Rev. Rul. 76-259, 1976-2 C.B. 111; or</li> <li>3. Make a comparability analysis to prove that the plans are providing benefits at least equal to the minimum defined benefit, Regs. section 1.416-1, M-12; or</li> <li>4. Provide a safe harbor minimum defined contribution. If contributions and forfeitures under the defined contribution plan equal 5 percent of compensation for each year the plan is top-heavy, such minimum will be presumed satisfy the section 416 minimum.</li> </ol> <i>Regs. sections 1.416-1, M-12, M-13, and M-15</i>