NEW COMPARABILITY PROFIT SHARING CONTRIBUTION

A New Comparability or Cross-Tested 401(k) Plan design allows a plan sponsor to contribute and allocate an employer profit sharing contribution to the older, presumably Key and Highly Compensated participants while allocating a much lower contribution to the younger and presumably lower paid participants. If the employer's demographics support this type of plan design, the overall contribution percentage allocated to the ownership group will be considerably higher than that allocated to the non-ownership group. Furthermore, this design will yield far better results for the ownership group than an allocation utilizing permitted disparity or a prorata allocation based on compensation.

The new comparability design divides plan participants into separate and distinct groups defined in the plan document. Examples of Groups are:

- Group 1 - Owner 1
- Group 2 - Spouse/Family Member of Owner 1
- Group 3 - Owner 2
- Group 4 - Spouse/Family Member of Owner 2
- Group 5 - Highly Compensated Participants
- Group 6 - Non-Highly Compensated Participants

The employer's profit sharing contribution allocation is converted to a projected benefit at retirement, much like a defined benefit plan. If the projected benefit at retirement passes required nondiscrimination tests, the contribution allocation is acceptable for that plan year. Bear in mind that if the employee demographics "swing" too much from year to year, the results of nondiscrimination tests could be affected.

Since the employer's profit sharing contribution is more favorable to the Key and Highly Compensated participants and those participants receive the majority share of the overall contribution, the Non-Highly Compensated participants must receive a minimum gateway contribution equal to the lesser of:

- 5% of compensation

  or
- A percentage equal to 1/3 of the highest percentage allocated to any Highly Compensated participant.

This type of plan design can help achieve the retirement goals of the owners and Key employees while allowing the employer's contribution to remain discretionary from one plan year to the next.