

## The Perfect Retirement Plan

By Robert Mand, Esq.

A qualified retirement plan is one of the most valuable opportunities for business owners to defer paying a significant portion of their income tax for many years. Because plan contributions are tax deductible, and investments grow untaxed while in the plan, there are extremely powerful tax and financial incentives to establishing such a plan. However, not all retirement plans are created equal. The IRS-approved, **OCPP**<sup>®</sup> (“One Category Per Participant”) plan design helps the business owner get the maximum retirement plan benefit by sheltering as much income as possible from taxes and by maximizing the amount of contributions that are retained by the owners, their family members, and perhaps other key employees. This article discusses **retirement plan design**, which determines how much of a company contribution is made for each employee. The investment options that are available once the plan is funded are beyond the scope of this discussion.

The challenge in developing the ideal retirement plan is that the tax law requires that qualified retirement plans not discriminate in favor of “highly compensated” employees (including owners and their family members). A plan that fails to provide the appropriate level of benefits for “non-highly compensated” employees will violate the non-discrimination rules and will lose its tax qualification. The law does not, however, require a specific method to be used for discrimination testing. This is part of the plan design, and is written into the retirement plan document.

Most qualified retirement plans do not deal well with changing business situations. Typically, plan designs “hard-wire” the rules for participant contribution levels and non-discrimination testing methods in the plan document. That is, the plan requires specific and fixed rules to be followed year after year. Unfortunately, in a changing

business environment, the exact same approach will likely not be the best one every year. Furthermore, a plan may not be amended after the end of the year to specify the ideal contribution rules for that year. Nevertheless, it is frequently after the end of the year that these decisions are best made.

The business owner's qualified retirement plan solution to these difficulties may be the **OCPP**<sup>®</sup> ("One Category Per Participant") plan design, which has received IRS approval and is directly responsive to the needs of an owner-centric plan, including adaptability to employee demographic changes as well as other numerous changes that regularly occur in business. An **OCPP**<sup>®</sup> 401(k) profit sharing plan design permits different profit sharing contribution rates for every plan participant. The contribution rates are not defined in the plan document; rather, the contribution is declared each year by the business owner and does not need to be made until the due date (including extensions) of his or her income tax return.

Although the contribution made on behalf of each participant is subject to discrimination testing, the **OCPP**<sup>®</sup> plan design document does not specify the discrimination testing method that must be used to satisfy legal requirements. As a result, based upon the particular circumstances in a given year, such as employee demographics, compensation level of business owners or cash flow, **a discrimination testing method is selected that will best meet the business owner's objectives for that year.** Because the allocation formula is not stated in the plan document, **the plan sponsor has maximum flexibility in determining the amounts to be contributed on behalf of each participant,** subject only to satisfying the legal requirements for the specific discrimination testing method being used for that year. Furthermore, **the contribution pattern in any particular year does not have to be repeated in a subsequent year, thereby allowing even more flexibility.**

The following common problems may be solved by the **OCPP**<sup>®</sup> plan design without the need for a plan amendment:

**Employee Changes.** Assume that because an employer has several younger employees, a particular plan design has allowed maximum business owner contributions at an acceptable employee contribution cost. If such younger employees terminate employment and are not replaced in the plan by similarly-aged employees, the allocation formula "hard-wired" into the plan document will result in a substantially increased employee contribution expense. The increase may be so large that the employer's only viable option is to eliminate the entire profit sharing contribution for the year in question. The **OCPP**<sup>®</sup> plan design document solves that problem by allowing

contributions to be declared at different rates for select, favored employees, and also by permitting any discrimination testing method to be used that will satisfy IRS regulations.

***Family Members in Business.*** A business owner's spouse and/or children often work in the business. Because family attribution rules treat the spouse and children as highly compensated employees (regardless of actual compensation or lack of documented ownership), family members' ages and compensation levels create challenges to achieving business owners' contribution objectives. An **OCPP<sup>®</sup>** plan design document allows family members to be included in the plan with the largest permissible contribution.

Tax qualified retirement plans are among the most powerful financial and tax planning techniques available to business owners. A well-designed plan will meet the owner's objective in several respects: flexibility in the amount of the contribution, the ability to provide larger benefits for favored employees, and its responsiveness to changing circumstances. The **OCPP<sup>®</sup>** plan design offered through The MandMarblestone Group llc is the best approach currently available to satisfy these objectives.

OCPP<sup>®</sup> is a registered service mark of The MandMarblestone Group llc, a Philadelphia, PA legal/consulting/third party administration firm that obtained IRS approval of the OCPP<sup>®</sup> plan design for its retirement plan clients.

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