Department of the Treasury
Internal Revenue Service

Instructions for Form 5300

(Revised February 1990)

Application for Determination for Employee Benefit Plan

(Section references are to the Internal Revenue Code unless otherwise noted.)

General Information

Paperwork Reduction Act Notice.—We ask for this information to carry out the Internal Revenue laws of the United States. We need it to determine whether you meet the legal requirements for plan approval. If you want to have your plan approved by IRS, you are required to give us this information.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping _____ 22 hrs., 14 min.

Learning about the law or the form _____ 6 hrs., 36 min.

Preparing the form _____ 9 hrs., 7 min.

Copying, assembling, and sending the form to IRS _____ 32 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to the **Internal Revenue Service,** Washington, DC 20224, Attention: IRS Reports Clearance Officer, T:FP; or the **Office of Management and Budget,** Paperwork Reduction Project (1545-0197), Washington, DC 20503.

Public Inspection.—The application is open to public inspection if there are more than 25 participants. Therefore, it is important that the total number of participants be shown on line 4e. See the Specific Instructions for a definition of "participant."

Disclosure Requested by Taxpayer.—The Tax Reform Act of 1976 permits a taxpayer to request IRS to disclose and discuss his or her return and/or return information with any person(s) the taxpayer designates in a written request. **Form 2848,** Power of Attorney and Declaration of Representative, or **Form 2848-D,** Tax Information Authorization and Declaration of Represenative, are designed to be used for this purpose. As an alternative, you may submit privately designed authorization forms, but they must contain the basic requirements regarding the scope of authority granted and specify the tax matter to which the authority relates. The privately designed form must provide the following:

1. Your name, address, employer identification number, and plan number(s).

2. A paragraph that clearly identifies the person or persons you have authorized to receive the return and/or return information. This must include the name, address, telephone number(s), and social security number(s) of the authorized person(s).

3. A paragraph that clearly and explicitly describes the return and/or return information that you authorize IRS to disclose.

4. Your signature as the taxpayer making the authorization.

Signature.—The application must be signed by the employer, plan administrator, or an authorized representative. An application made by a representative on behalf of an employer or plan administrator must comply with the Power of Attorney requirements above.

General Instructions

Purpose of Form.—Form 5300 is used to request a determination letter from the IRS for the qualification of a defined benefit or a defined contribution plan, and the exempt status of any related trust.

Practitioners and employers may rely on regulations for the Tax Reform Act of 1986 to the extent specified in those regulations.

A **Defined Contribution Plan** is a plan that provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, any income, expenses, gains and losses, and any forfeitures of accounts of other participants that may be allocated to the participant's account.

A **Defined Benefit Plan** is any plan that is not a defined contribution plan.

Note: *A qualified plan must contain provisions which satisfy section 401(a) and which include, but are not limited to, participation, vesting, nondiscriminatory contributions and benefits, distributions, and contribution and benefit limitations.*

Determination applications are screened for completeness by computer. Incomplete applications will be returned to the applicant. For this reason, it is important that an appropriate response be entered for each line item (except as indicated in 5 below). In completing the application, pay careful attention to the following:

1. N/A (not applicable) is accepted as a response only if an N/A block is provided.

2. If an item requests a numeric response, a number must be entered.

3. If an item provides a choice of boxes to be checked, only one box should be checked unless instructed otherwise.

4. If an item provides a box or boxes to be checked, written responses are not acceptable.

5. If the governmental or church plan box is checked in item 7, certain line items need not be completed. See General Instruction B, "What To File."

6. All applications must include the appropriate user fee and **Form 8717,** User Fee for Employee Plan Determination Letter Request.

7. The IRS may, at its discretion, require additional information any time it is deemed necessary.

A. Who May File

This form may be filed by:

1. Any employer, including a sole proprietor, a partnership, a plan sponsor or a plan administrator that has adopted an individually designed plan desiring a determination letter on an initial qualification, amendment, partial termination of a plan, affiliated service group status, or the effect of section 414(m) on the plan.

2. Any plan sponsor or plan administrator desiring a determination letter for a determination request that involves a plan of a controlled group of corporations (section 414(b)), or trades or businesses under common control (section 414(c)), or affiliated service group status (section 414(m)) or leased employee status (section 414(n)).

3. Any plan sponsor or plan administrator desiring a determination letter for a determination request of a multiple-employer plan (a plan maintained by more than one employer but not a controlled group, or an affiliated service group).

4. Any employer, plan sponsor, or plan administrator desiring a determination letter for compliance with the applicable requirements of a foreign situs trust for the taxability of beneficiaries (section 402(c)) and deductions for employer contributions (section 404(a)(4)).

Note: *This form may not be filed by anyone desiring approval of a plan that:*

a. Includes employees covered by a collective bargaining agreement;

b. Is a master or prototype plan; or

c. Is a regional prototype plan.

B. What To File

I. All Plans

1. User Fees

As of February 1, 1988, all applications for determination letters must be accompanied by the appropriate fee. In addition, Form 8717 should be filed. Form 8717 may be

obtained by contacting your local IRS District office or by calling 1-800-424-FORM. For multiple employer plans, the fee is based on the number of participating employers.

2. Form 5302, Employee Census

All applications for determination letters, in addition to the requirements stated in II below, must include a Form 5302. One copy of the form must accompany each plan of an employer

3. Two copies of page 1 of Form 5300. One copy must be an original (printed in special red ink). The other copy may be a reproduction or carbon, except the signature.

4. The first page of this application must be typed. Use 10 pitch type except that you may use 12 pitch or Elite, Courier 12 or Titan 12 type. **Contact your key district office if you wish to computer generate this application form.**

II. Specific Plans—Additional Requirements

a. For Initial Qualification

For initial qualification of a plan (Rev. Proc. 80-30, 1980-1 C.B. 685), file one copy of all instruments constituting the plan.

b. For Amendments Only

When requesting a determination letter on amendments to a plan (Rev. Proc. 81-19, 1981-1 C.B. 689), file the following (see below for request on restated plan):

(i) One copy of previous determination letter, including caveats;

(ii) One copy of plan amendments; and

(iii) A statement as to how the amendments affect or change the plan or any other plan maintained by the employer

c. For Amended Plan (Restated Plan)

A restated plan is required if four or more amendments have been made since the last restated plan was submitted. For restatement purposes, an amendment making only non-substantive plan changes need not be counted as a plan amendment.

When requesting a determination letter on the entire plan as amended after initial qualification (Rev. Proc. 81-19), file the following:

(i) One copy of the plan that incorporates the amendments;

(ii) One copy of the latest determination letter, including caveats; and

(iii) A statement that:

(1) the copy of the plan submitted is complete in all respects; and

(2) a determination letter is being requested on qualification of the entire plan.

d. For Partial Termination

For partial termination (Rev. Proc. 80-30), file the following:

(i) The application form and the appropriate documents and statements.

(ii) Attach a statement indicating whether a partial termination may have occurred or might occur as a result of proposed actions.

Partial Termination Worksheet	19...	19...	Year of partial termination 19...	19...
(i) Participants employed: (a) Number at beginning of plan year				
(b) Number added during the plan year				
(c) Total, add lines (a) and (b)				
(d) Number dropped during the plan year				
(e) Number at end of plan year subtract (d) from (c)				
(f) Total number of participants in this plan separated from service without full vesting				
(ii) Present value (as of month/day ___/___ during the year of):				
(a) Plan assets				
(b) Accrued benefits				
(c) Vested benefits				

(iii) Submit a description of the actions that may have resulted or might result in a partial termination. Include an explanation of how the plan meets the requirements of section 411(d)(3).

(iii) Using the format above, submit a schedule of information for the plan year in which the partial (or potential partial) termination began. Also, submit a schedule for the next plan year, as well as for the two prior plan years, to the extent the information is available. If this is a plan maintained by more than one employer (when all employers in each affiliated service group or controlled group are considered one employer), in addition to completing (i)(e) of the Partial Termination Worksheet, above, for the entire plan, on an attached sheet show this information for each such single employer in the same format as (i) on the Partial Termination Worksheet.

e. For Affiliated Service Group Status

For an affiliated service group (Rev. Proc. 85-43, 1985-2 C.B. 501), file:

(i) The application, and

(ii) A copy of the appropriate documents and statements listed in the Specific Instructions for line 6a.

f. Controlled Groups and Affiliated Service Groups

For plans of controlled groups of corporations, trades or businesses under common control, and affiliated service groups, submit the documents and statements listed above, if applicable. In addition, attach a list of the member employers. Explain in detail their relationship, the types of plans each member has and the plans common to all member employers.

g. For Multiple Employer

(NOT Collective Bargaining)

For a multiple-employer plan that does not involve collective bargaining, file the following:

(i) One application for the plan,

(ii) A Form 5300 (complete lines 1-12 only) for each employer who adopts the plan (all employers in each affiliated service group or controlled group are considered one employer). The Form 5300 must be signed by the respective employers, and

(iii) A Form 5302 for each employer who adopts the plan (all employers in each affiliated service group or controlled group are considered one employer). The applications for the individual employers must be signed by the respective employers.

h. For Governmental and Church Plans

For a governmental or church plan, a plan administrator may request a determination letter by filing the following:

(i) For a plan that is subject to ERISA, complete all items of Form 5300.

(ii) For a plan that is not subject to ERISA, file Form 5300 omitting items 9 and 14.

i. For Merger, Consolidation, or Transfer of Plan Assets or Liabilities

If this application is intended to satisfy the notice requirement of section 6058(b), file the information requested by line 16f of the Specific Instructions.

j. For Terminations

If you are terminating your plan, file **Form 5310,** Application for Determination Upon Termination; Notice of Merger, Consolidation or Transfer of Plan Assets or Liabilities; Notice of Intent to Terminate, to request a determination letter for the complete termination of a defined benefit or a defined contribution plan. Form 5303 should be filed to request a determination letter involving the complete termination of a multiemployer plan covered by the PBGC insurance program. Do not file Form 5300 for a complete termination.

If you wish to cease benefit accruals or making contributions to your plan and your trust will continue, your plan will not be considered terminated. If you want to receive a determination letter, you must use Form 5300. You may not file Form 5310 if your trust will continue.

Note: *If a defined benefit plan is amended to become a defined contribution plan, or if the merger of a defined benefit plan with a defined contribution plan results solely in a defined contribution plan, the defined benefit plan is considered terminated.*

C. Where To File

File this form as follows:

1. Single Employer Plans.—Send the form to the District Director for the key district in which the employer's or employee organization's principal place of business is located.

2. Plan Maintained by More Than One Employer.—Send the form to the District Director for the key district in which the principal place of business of the plan sponsor is located. This means the principal place of business of the association, committee, joint board of trustees, or other similar group or representatives of those who established or maintain the plan.

3. Domestic Employers Using Foreign Situs Trust.—Send the form to the District Director for the key district in which the principal place of business of the employer is located.

4. Foreign Employers.—Send the form to the District Director of the Baltimore Key District.

5. Industry Plans with Employers in More Than One Key District.—Send the form to the District Director for the key district where the trustee's principal place of business is located. If the plans have more than one trustee, the request should be filed with the Director for the key district where the trustees usually meet.

If entity is in this IRS District ▼	Send fee and request for determination letter or notification letter to this address ▼
Albany, Augusta, Boston, Brooklyn, Buffalo, Burlington, Hartford, Manhattan, Portsmouth, Providence	Internal Revenue Service EP/EO Division P O. Box 1680, GPO Brooklyn, NY 11202
Baltimore, District of Columbia, Newark, Philadelphia, Pittsburgh, Richmond, Wilmington, any U S possession or foreign country	Internal Revenue Service EP/EO Division P.O. Box 17010 Baltimore, MD 21203
Cincinnati, Cleveland, Detroit, Indianapolis, Louisville, Parkersburg	Internal Revenue Service EP/EO Division P O. Box 3159 Cincinnati, OH 45201
Albuquerque, Austin, Cheyenne, Dallas, Denver, Houston, Oklahoma City, Phoenix, Salt Lake City, Wichita	Internal Revenue Service EP/EO Division Mail Code 4950 DAL 1100 Commerce Street Dallas, TX 75242
Atlanta, Birmingham, Columbia, Ft Lauderdale, Greensboro, Jackson, Jacksonville, Little Rock, Nashville, New Orleans	Internal Revenue Service EP/EO Division P.O. Box 941 Atlanta, GA 30370
Honolulu, Laguna Niguel, Las Vegas, Los Angeles, San Jose	Internal Revenue Service EP Application Receiving Room 5127 P.O. Box 536 Los Angeles, CA 90053-0536
Aberdeen, Chicago, Des Moines, Fargo, Helena, Milwaukee, Omaha, St Louis, St Paul, Springfield	Internal Revenue Service EP/EO Division 230 S Dearborn DPN 20-6 Chicago, IL 60604
Sacramento, San Francisco	Internal Revenue Service EP Application Receiving Stop SF 4446 P.O. Box 36001 San Francisco, CA 94102
Anchorage, Boise, Portland, Seattle	Internal Revenue Service EP Application Receiving P.O. Box 21224 Seattle, WA 98111

Specific Instructions

The following instructions are keyed to the line items on the form.

1a. Enter the name, address, and telephone number of the plan sponsor "Plan Sponsor" means:

(1) in the case of a plan that covers the employee of one employer the employer;

(2) in the case of a plan maintained by two or more employers (other than a plan sponsored by a group of entities required to be aggregated under section 414(b), (c) or (m)), the association, committee, joint board of trustees or other similar group of representatives of those who established or maintain the plan;

(3) in the case of a plan sponsored by two or more entities required to be aggregated under sections 414(b), (c) or (m), one of the members participating in the plan; or

(4) in the case of a plan that covers the employees and/or partner(s) of a partnership, the partnership.

The plan sponsor should be the same name as was used or will be used when Form 5500 series returns/reports are filed for the plan.

1b. Enter the 9-digit employer identification number (EIN) assigned to the plan sponsor This should be the same EIN that was used or will be used when Form 5500 series returns/ reports are filed for the plan. In the case of a multiple employer plan, the EIN should be the same that was used or will be used by the participating employer when Form 5500-C/R is filed by the employer (Please do not use a social security number.) An EIN may be secured by using **Form SS-4,** Application for Employer Identification Number, which may be obtained by calling 1-800-424-FORM.

The plan of a group of entities required to be aggregated under section 414(b), (c), or (m) whose sponsor is more than one of the entities required to be aggregated should enter only the EIN of one of the sponsoring members. This EIN must be used in all subsequent filings of determination letter requests. This is also the EIN used for filing annual returns/reports unless there is a change of sponsor

1c. Enter two digits representing the month the employer's tax year ends. This is the employer whose EIN was used on line 1b. For plans of more than one employer enter N/A.

2. Enter the name, address, and telephone number of the person to contact for additional information if other than the applicant. However, you may leave blank any items that are the same as line 1a. This person will receive copies of all correspondence as authorized in a power of attorney or other written designation (explanation follows). This item must be completed as described; a reference such as 'see attached' is not acceptable. If there is no other person to contact, please leave this item blank. A taxpayer may request IRS to disclose and discuss his or her return and/or return information with any person(s) the taxpayer designates in a written request.

If you want to designate a person or persons to represent you before the IRS in connection with an application for a determination, see "Disclosure Requested by Taxpayer " in the General Information section on page 1.

3a. In the box at left margin, you must enter the number(s) that correspond to the request(s) being made.

Enter 1, if IRS has not issued a determination letter for this plan.

Enter 2, if this application is for an amendment to a plan for which the IRS has issued a determination letter

Enter 3, if a determination letter is desired with regard to the effect of section 414(m) on the plan being submitted. This box should also be checked if a determination letter is desired because of a change in the affiliated service group membership.

Enter 4, if you are uncertain as to whether or not you have leased employees, and attach the following information:

(1) A description of the nature of the business of the recipient organization;

(2) A copy of the relevant leasing agreement(s);

(3) A description of the function of all leased employees within the trade or business of the recipient organization (including data as to whether all leased employees are performing services on a substantially full-time basis) and whether it is not unusual for the services to be performed by employees of organizations in the recipient organization's business field in the United States; and

(4) If the recipient organization is relying on any qualified plan(s) maintained by the employee leasing organization for purposes of qualification of the recipient organization's plan, a description of such plan(s) (including a description of the contributions or benefits provided for all leased employees that are attributable to services performed for the recipient organization, plan eligibility, and vesting).

Enter 5, if a determination letter is desired on the effect of a potential partial termination on the plan's qualification.

In addition, enter the date the plan or amendment was signed. If a determination is requested based on a proposed plan or amendment, enter 9/9/99. Enter the effective date where requested. The term 'Date effective" means the date the plan, amendment, affiliated service group status, or partial termination becomes operative, takes effect, or changes.

3b. If a determination letter has been received, check "Yes' and attach a copy of the latest letter to this application. If you do not have a copy of the latest determination letter, explain this in the cover letter

3c. Section 3001 of the Employee Retirement Income Security Act of 1974 states that the applicant must provide evidence that each employee who qualifies as an interested party has been notified of

the filing of the application. If you check "Yes," it means that you have notified each employee as required by regulations under section 7476 or you have a one-person plan. Rules defining "interested parties" and providing for the form of notification are contained in the regulations. An example of an acceptable format is found in Rev. Proc. 80-30, 1980-1 C.B. 685. If you checked 'No, or you leave this item blank, your application will be returned.

3d. If your plan contains provisions for a cash or deferred arrangement (CODA) under section 401(k), or for employee or matching contributions described in section 401(m), check "Yes." Otherwise, "No' must be checked.

4a. Enter the name you designated for your plan.

4b. You should assign and enter a three digit number beginning with "001" and continuing in numerical sequence for each plan you adopt. This numbering will differentiate your plans. The number that is assigned to a plan must not be changed or used for any other plan.

4c. Plan year means the calendar, policy, or fiscal year on which the records of the plan are kept. Enter four digits in month-day order For example, March 31 would be 0331.

4d. Enter the date the plan **originally** became effective. Enter six digits in month-day-year order

4e. Enter the total number of participants. The term "participant" includes retirees and other former employees and the beneficiaries of both who are receiving benefits under the plan or will at some future time receive benefits under the plan. Enter on this line the total of: (1) the number of employees who are participating in the plan, including employees under a Code section 401(k) qualified cash or deferred arrangement who are eligible but do not make elective deferrals, (2) former employees who are receiving benefits under the plan or will at some future date receive benefits under the plan, and (3) beneficiaries of former employees who are receiving benefits under the plan. (This means one beneficiary for each former employee regardless of the number of individuals receiving benefits. For example, payment of a former employee's benefit to three children is considered as a payment to one beneficiary.)

5a. Complete either line 5a or line 5b. If this is a defined benefit plan, enter the number for the type of benefit in the box at the left margin.

5b. If this is a defined contribution plan, enter the number for the type of plan in the box at the left margin.

6. If the plan sponsor is a member of a controlled group of corporations, trades or businesses under common control, or an affiliated service group, all employees of the group will be treated as employed by a single employer for purposes of certain qualification requirements such as coverage. If the plan sponsor is a member of such a group, attach a statement showing in detail all members of the group, their relationship to the plan sponsor the type of plans each member has, and the plans common to all members.

6a. If the employer is a member of an affiliated service group, enter 1. If not, enter 2. If you are uncertain as to whether or not you are a member of an affiliated service group, attach the following information:

(1) A description of the nature of the business of the employer, specifically discussing whether it is a service organization or an organization whose principal business is the performance of management functions for another organization, including the reasons therefor

(2) The identification of other members (or possible members) of the affiliated service group,

(3) A description of the nature of the business of each member (or possible member) of the affiliated service group describing the type of organization (corporation, partnership, etc.) and indicating whether such member is a service organization or an organization whose principal business is the performance of management functions for the other group member(s),

(4) The ownership interests between the employer and the members (or possible members) of the affiliated service group (including ownership interests as described in section 414(m)(2)(B),

(5) A description of services performed for the employers by the members (or possible members) of the affiliated service group, or vice versa (including the percentage of each member's or possible member's gross receipts and service receipts provided by such services, if available, and data as to whether their services are a significant portion of the member's business) and whether or not, as of December 13, 1980, it was unusual for the services to be performed by employees of organizations in that service field in the United States,

(6) A description of how the employer and the members (or possible members) of the affiliated service group associate in performing services for other parties,

(7) A description of management functions, if any, performed by the employer for the member(s) (or possible member(s)) of the affiliated service group, or received by the employer from any other member(s) (or possible member(s)) of the group (including data as to whether such management functions are performed on a regular and continuous basis) and whether or not it is unusual for such management functions to be performed by employees of organizations in the employer's business field in the United States,

(8) If management functions are performed by the employer for the member(s) (or possible member(s)) of the affiliated service group, a description as to what part of the employer's business constitutes the performance of management functions for the member(s) (or possible member(s)) of the group (including the percentage of gross receipts derived from management activities as compared to the gross receipts from other activities),

(9) A brief description of any other plan(s) maintained by the member(s) (or possible member(s)) of the affiliated service group, if such other plan(s) is designated as a unit for qualification purposes with the plan for which a determination letter has been requested, and

(10) A description of how the plan(s) satisfies the coverage requirements of section 410(b) if the member(s) (or possible member(s)) of the affiliated service group is considered part of an affiliated service group with the employer

6b. If the employer is a member of a controlled group, enter 1. If not, enter 2.

7. Enter 1 if this is a governmental plan or church plan not subject to ERISA.

Enter 2 if this is a multiple employer plan described in section 413(c). A multiple employer plan is a plan maintained by more than one employer, but which is NOT maintained pursuant to a collective bargaining agreement. Under this plan type, contributions from each employer must be available to pay benefits of any participant, even if employed by another employer In addition, enter the number of employers adopting the plan.

Enter 3 if this plan is not described above. Most plans will enter 3.

8a. If you maintain any other qualified plan(s), **attach** a list for each plan which includes the following information: name of plan, type of plan, form of plan (standardized or nonstandardized) and indicate if the plan is paired, rate of employer contributions, allocation formula, benefit formula, monthly benefit, and number of participants (if paired, indicate the letter serial number of the paired plan).

8b. See M-12 of Regulations section 1.416-1.

8c. See Regulations sections 1.415-7 and 1.415-8.

9. COVERAGE. **Note:** *In completing items 9, 10 and 11, include all employees of all employers aggregated with the employer under section 414(b), (c) or (m). In addition, include all self-employed individuals, common law employees and leased employees within the meaning of section 414(n) of any of the entities above, other than those excluded by reason of section 414(n)(5). In the case of multiple employer plans within the meaning of section 413(c), each unrelated participating employer must be tested for coverage separately. Therefore, if this plan is a multiple employer plan, submit the coverage data requested for item 9 separately for each unrelated employer participating in the multiple employer plan.*

The part of a plan that is an ESOP must be treated as an independent plan that must separately satisfy the coverage rules. If this plan contains an ESOP component, submit a demonstration that the ESOP component separately satisfies the coverage rules. For the purposes of testing the rest of the plan, disregard the ESOP.

9a. In general, if the employer operates separate lines of business or operating units within the meaning of section 414(r) for a year, the employer may apply the coverage requirements separately for employees in each separate line of business. Attach a demonstration using applicable regulations, revenue rulings or revenue procedures that shows the separate lines of business are qualified separate lines of business satisfying the rules of sections 414(r) and 410(b)(5).

In addition, if this plan, or any plan aggregated with this plan for purposes of satisfying the coverage requirements, covers employees in more than one separate line of business or operating unit, submit the coverage data requested in item 9 separately for each separate line of business or operating unit.

9c. In general, if the plan satisfies one of the tests on at least one day in each quarter of the year being tested, the plan will be deemed to pass the coverage tests for the entire year provided that the quarterly testing dates reasonably represent the coverage of the plan over the entire plan year Enter the date for which the coverage data is submitted on line 9c.

9d. Divide the number of nonexcludable employees who benefit and who are not highly compensated employees, within the meaning of section 414(q), by the total number of nonexcludable nonhighly compensated employees; express the quotient as a percentage and enter it on line 9d.

Generally, a qualified plan may exclude from coverage all employees who have not attained age 21 and completed one year of service. However, if a plan covers any such excludable employee, it must test coverage based on the lowest minimum age and service requirements for any employee under this or any other plan aggregated with this plan for the purpose of satisfying the coverage rules. To compute the percentage on line 9d, exclude employees who have not attained the lowest age and service requirements for any employee under this or any other plan aggregated with this plan for the purpose of satisfying the coverage requirements.

On the other hand, employees who have not attained age 21 and completed one year of service may be tested for coverage separately. If you elect this alternative, demonstrate in an attachment that the group of employees who have not attained age 21 and one year of service, but have attained the lowest age and service requirements under this or any other plan aggregated with this plan for the purposes of satisfying the coverage requirements, independently passes one of the coverage tests.

When testing a plan covering noncollectively bargained employees for coverage, employees who are included in a unit of employees covered by an agreement (within the meaning of section 7701(a)(46)) that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers are generally excluded if there is evidence that the retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

To compute the percentage on line 9d, exclude employees that are covered by a collective bargaining agreement described above including such employees covered under this plan. However, do not exclude any employee covered under a collective bargaining agreement if more than 2 percent of the employees who are covered under the collective bargaining agreement are professionals within the meaning of section 1.410(b)-9(g) of the Proposed Regulations.

In computing the percentage on line 9d, exclude the total number of nonresident aliens who receive no earned income (within the meaning of section 911(d)(2)) from the employer that constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

To compute the percentage on line 9d, exclude employees who fail to accrue a benefit or to receive an allocation solely because they do not satisfy a minimum hour of service or a last day of the plan year requirement under the plan, they do not have more than 500 hours of service, and they are not employed on the last day of the plan year Do **not** exclude any employees who have more than 500 hours of service merely because they are not employed on the last day of the plan year

In general, an employee is treated as benefiting for purposes of the coverage tests, only if the employee receives an allocation of contributions or forfeitures, or accrues a benefit under the plan for the plan year Certain other employees are treated as benefiting if they fail to receive an allocation of contributions and/or forfeitures, or to accrue a benefit solely because the employee is subject to plan provisions that limit plan benefits, such as a provision for maximum years of service, maximum retirement benefits, or limits designed to satisfy section 415. (For the first plan year beginning in 1989, all participants who fail to accrue a benefit or receive an allocation solely because they do not satisfy a minimum hour of service requirement of 1,000 hours or less, or a last day of the plan year requirement, may be treated as benefiting under the plan.)

An employee is treated as benefiting under a plan (or part of a plan) to which elective contributions or after-tax employee contributions and matching contributions subject to section 401(k) or 401(m) may be made if the employee is currently eligible to make such elective or after-tax employee contributions, whether or not the employee actually makes the contributions. However, for purposes of line 9d, do not treat these employees as benefiting solely because they are eligible under a plan (or part of a plan) subject to section 401(k) or (m). Data for these employees will be entered on lines f and g.

9e. In computing the ratio on line 9e, divide the number of nonexcludable employees who benefit under the plan and are not highly compensated, within the meaning of section 414(q), by the total number of nonexcludable nonhighly compensated employees; put the quotient in the numerator Divide the number of nonexcludable employees who benefit under the plan and who are highly compensated by the total number of nonexcludable highly compensated employees; put the quotient in the denominator

See the instructions to line 9d to determine which employees are nonexcludable employees and which employees benefit under the plan. For purposes of line 9e, do not include employees who are treated as benefiting solely because they are eligible under a plan (or part of a plan) subject to section 401(k) or (m). Data for these employees will be entered on lines f and g.

9f. If the plan (or part of the plan) contains a CODA component, enter the ratio (described above in line 9e) for the CODA component in line 9f. Note that the instructions to line 9d contain a special definition of who is benefiting under a CODA.

9g. If the plan (or part of the plan) consists of employee and/or matching contributions subject to section 401(m), enter the ratio for this portion on line 9g. Note that the instructions to line 9d contain a special definition of who is benefiting under the plan or portion of a plan that consists of employee and matching contributions.

9h. If this plan does not, by itself, satisfy the coverage requirements, certain other qualified plans may be aggregated with this plan for purposes of satisfying the coverage requirements. Note that the following plans may not be aggregated: an ESOP with a non-ESOP a collectively bargained plan with a noncollectively bargained plan, and a plan that contains a CODA (section 401(k)), or employee or matching contributions (section 401(m)) with a plan that does not include such a feature.

If any other plan is considered in combination with this plan, complete item 9 as though the combined plans were a single plan. Also attach a description, including the allocation or benefit formula, of the other plan(s) along with a demonstration in accordance with applicable regulations, revenue rulings or revenue procedures that shows the aggregated plans provide comparable benefits and together satisfy section 401(a)(4).

9i. If any one of lines e, f or g, if applicable, are less than .7, the plan must satisfy the average benefit test to pass coverage. A plan satisfies the average benefit test if it satisfies both the nondiscriminatory classification test and the average benefit percentage test.

9i.(i) Nondiscriminatory classification test

A plan satisfies the classification test if benefiting employees are defined by objective business criteria set out in the plan and such classification is nondiscriminatory. A classification will be deemed nondiscriminatory if the ratio on lines 9e, f or g, above, whichever is applicable, is equal to or greater than the safe harbor percentage.

The safe harbor percentage is 50 percent, reduced by 3/4 of a percentage point for each percentage point by which the nonhighly compensated employee concentration percentage exceeds 60

percent. The nonhighly compensated employee concentration percentage is the percentage of all the employees of the employer who are not highly compensated employees. Enter the safe harbor percentage on line 9i(i). See Proposed Regulations section 1.410(b)-4.

9i.(ii) Average benefit percentage test

A plan satisfies the average benefit percentage test if the average benefit percentage for nonhighly compensated employees is at least 70 percent of the average benefit percentage for highly compensated employees.

All qualified plans (or parts of plans) of the employer including CODAs and plans containing employee or matching contributions (section 401(k) or (m)) are aggregated in determining the average benefit percentage. Do not aggregate plans that may not be aggregated for purposes of satisfying the ratio percentage test, other than plans subject to section 401(k) or (m). See the instructions for line 9h.

In addition, all nonexcludable employees, including those with no benefit under any qualified plan of the employer are included in determining the average benefit percentage. Enter the average benefit percentage on line 9i(ii). In addition, attach a demonstration in accordance with applicable regulations, revenue rulings or revenue procedures that shows the plan satisfies the average benefit percentage test.

10. PARTICIPATION.

Caution: At the time Form 5300 and its instructions went to print, changes in the Proposed Regulations under section 401(a)(26) were being considered. If the regulations are revised, IRS will publish guidance, as needed, regarding any changes to Form 5300 and its instructions.

Section 401(a)(26) requires a qualified plan to meet certain minimum participation requirements. For the purpose of this requirement, each separate current benefit structure under a plan is treated as a separate plan. In addition, a defined benefit plan must satisfy certain requirements with respect to its prior benefit structure. Certain plans are deemed to satisfy the participation rules of section 401(a)(26) if they meet one of the exceptions specified under section 401(a)(26) of the Proposed Regulations.

10a and **b.** In general, each current benefit structure included in the plan must benefit at least the lesser of 50 employees or 40 percent of the nonexcludable employees of the employer A plan contains separate current benefit structures to the extent there are differences in the bases and conditions applicable to the determination of an employee's contribution allocation under a defined contribution plan and the bases and conditions applicable to an employee's normal retirement benefit, early retirement benefit (to the extent such benefit is reduced by less than 3 percent for each year of early commencement), or joint and survivior annuity benefit, and any accrual, availability, and eligibility conditions related to these normal retirement, early retirement, or joint and survivor annuity benefits. See the Proposed Regulations under section 401(a)(26).

In performing the participation tests, the employees who are excludable are generally the same as those who are excludable for the purposes of performing the coverage tests. See item 9 and Proposed Regulations under section 401(a)(26). In addition, for most plans the definition of who is benefiting under the plan for purposes of the participation test is the same as the definition of benefiting employees for purposes of the coverage tests. See item 9 and Proposed Regulations under section 401(a)(26).

Answer 'Yes" to line 10a only if you wish to receive a determination as to whether the plan satisfies the participation test under section 401(a)(26) with respect to each of the plan's current benefit structures. If you answer "Yes," attach a demonstration in accordance with applicable regulations, revenue rulings or revenue procedures that show each current benefit structure satisfies the requirements of section 401(a)(26) or that the plan is deemed to satisfy section 401(a)(26).

10b. The minimum current accrual rate is:

(i) In the case of a unit benefit plan, 75 percent of compensation if compensation under the plan is averaged over 5 years or less, or 1.1 percent of compensation if compensation under the plan is averaged over more than 5 years.

(ii) In the case of a fixed or flat benefit plan, the level accrual required to provide a benefit at normal retirement age of 30 percent of compensation if compensation under the plan is averaged over 5 years or less, or 45 percent of compensation if compensation under the plan is averaged over more than 5 years.

10c. If the answer to line 10b is "No," attach a demonstration in accordance with applicable regulations, revenue rulings or revenue procedures that shows the plan satisfies one of the other prior benefit structure tests in the Proposed Regulations under section 401(a)(26) or that the plan is deemed to satisfy section 401(a)(26) under the Proposed Regulations.

11. If you wish to receive a determination as to whether the plan satisfies the coverage or participation tests with respect to former employees, attach a demonstration showing how the plan satisfies such tests with respect to its former employees. See section 1.410(b)-2(c) of the Proposed Regulations and the Proposed Regulations under section 401(a)(26).

12. PERMITTED DISPARITY

12a. If you answered "Yes' to this question, answer lines 12b through 12f. If you answered 'No, answer lines 12b through 12f and also submit a demonstration in accordance with applicable regulations, revenue rulings or revenue procedures that shows the plan is nondiscriminatory under section 401(a)(4).

12b. A defined contribution plan satisfies the permitted disparity requirements of section 401(l) if the excess contribution percentage does not exceed the base contribution percentage by more than a uniform amount that does not exceed the maximum excess allowance. The excess benefit percentage is the percentage of compensation at which employer contributions (and forfeitures) are allocated to the accounts of participants with respect to compensation above the plan's integration level. The base contribution percentage is the percentage of compensation at which employer contributions (and forfeitures) are allocated to the accounts of participants with respect to compensation at or below the plan's integration level. The maximum excess allowance is the lesser of the plan's base contribution percentage; or 5.7 percent if the plan's integration level is 100 percent of the taxable wage base in effect as of the beginning of the plan year (TWB); 5.4 percent if the plan's integration level is more than 80 percent of TWB but less than TWB; 4.3 percent if the plan's integration level is more than the greater of $10,000 or 20 percent of TWB, but not more than 80 percent of TWB; or 5.7 percent if the plan's integration level is equal to or less than the greater of $10,000 or 20 percent of TWB. For profit sharing plans with definite contribution formulas and for money purchase plans, enter the base contribution percentage and the excess contribution percentage. For profit sharing plans with discretionary contribution formulas, enter a base contribution percentage of 5.7 percent and the excess contribution percentage that would be provided under the plan if a contribution was made to the plan sufficient to provide a base contribution percentage of 5.7 percent. Target benefit plans must complete line 12c or d below, whichever is applicable, and line 12e.

12c. In general, a defined benefit excess plan satisfies the permitted disparity requirements of section 401(l) if the excess benefit percentage exceeds the base benefit percentage by a uniform amount not in excess of the maximum excess allowance. The excess benefit percentage is the percentage of compensation at which employer-derived benefits are accrued with respect to compensation of participants above the plan's integration level. The base benefit percentage is the percentage of compensation at which employer-derived benefits are accrued with respect to compensation of participants at or below the plan's integration level. Enter the excess benefit percentage and the base benefit percentage either as an annual accrual (unit basis) or as a total career benefit (fixed or flat basis). The maximum excess allowance is, with respect to employer-derived benefits provided under the plan for any year of credited service, the lesser of 3/4 of 1 percent of compensation or the base benefit percentage. With respect to total employer-derived benefits provided under the plan for **all** years of credited service, the maximum excess allowance is limited to the 3/4 of 1 percent limitation multiplied by the participant's total years of credited service (not to exceed 35). Thus, the maximum excess allowance may not exceed 26.25 percent of compensation for any participant in any plan year reduced pro rata for each year of credited service less than 35. Employer-derived benefits must be based upon the participant's highest compensation from the employer when averaged over a period of at least 3 consecutive years. Note that the maximum excess allowance may be reduced if the plan's integration level is other than covered compensation (see section 1.401(l)-3(d) of the Proposed Regulations and Notice 89-70, 1989-1 C.B. 730).

Further reductions are required in the maximum excess allowance for certain benefits commencing before social security retirement age (see line 12f).

Benefits attributable to employee contributions are not taken into account in determining whether the excess benefit percentage exceeds the base benefit percentage by more than the maximum excess allowance. If the plan provides benefits attributable to employee contributions, complete line 12c based only upon employer-derived benefits and attach a demonstration showing how the portion of the accrued benefit attributable to employee contributions was computed under section 411(c) of the Code or under the uniform factor in section 1.401(l)-3(g)(2) of the Proposed Regulations. Include a demonstration of how the attained age requirement and the nondiscrimination requirement are satisfied, if applicable. See section 1.401(l)-3(g) of the Proposed Regulations.

12d. In general, a defined benefit offset plan satisfies the permitted disparity requirements of section 401(l) if the offset, expressed as a percentage of final average compensation, is uniform with respect to all participants and no participant's benefit is reduced by an offset that exceeds the maximum offset allowance. Final average compensation is the average of the participant's annual compensation from the employer for the 3-consecutive-year period ending with or within the plan year The maximum offset allowance is, with respect to employer-derived benefits provided under the plan for any year of credited service, the lesser of: (1) 3/4 of 1 percent multiplied by the participant's final average compensation (up to covered compensation), or (2) one-half of the employer derived benefit that would be provided, prior to the application of the offset, with respect to the participant's average annual compensation not in excess of the participant's final average compensation (up to covered compensation). With respect to total employer-derived benefits provided under the plan for **all** years of credited service, the maximum offset allowance is limited to the 3/4 of 1 percent limitation multiplied by the participant's total years of credited service (not to exceed 35). Thus the maximum offset allowance may not exceed 26.25 percent of final average compensation for any participant for any year reduced pro rata for years of credited service less than 35. Note that the maximum offset allowance may be reduced if the amount of final average compensation used in determining the offset is other than covered compensation (see section 1.401(l)-3(d) of the Proposed Regulations and Notice 89-70, 1989-1 C.B. 730). Further reductions are required in the maximum offset allowance for certain benefits commencing before social security retirement age (see line 12f).

Benefits attributable to employee contributions are not taken into account in determining whether the offset exceeds the maximum offset allowance. If the plan provides benefits attributable to employee contributions, complete line 12d based only upon employer-derived benefits and attach a demonstration showing how the portion of the accrued benefit attributable to employee contributions was computed under section 411(c) of the Code or under the uniform factor in section 1.401(l)-3(g)(2) of the Proposed Regulations. If applicable, include a demonstration of how the minimum percentage test or the ratio test was satisfied. See section 1.401(l)-3(g) of the Proposed Regulations.

12e. Enter the plan's integration level (in the case of an offset plan, enter the compensation used in determining the offset (the offset level)), the formula for determining the integration (or offset) level, or identify the table used for determining the integration (or offset) level.

Note that in the case of a defined benefit plan, if the integration level is a uniform dollar amount, demographic tests may have to be satisfied. If this is a plan required to satisfy the demographic tests, submit a demonstration that shows this plan satisfies the demographic tests. See sections 1.401(l)-3(b)(4) and 1.401(l)-3(c)(4) of the Proposed Regulations, and Notice 89-70.

12f. Defined benefit plans must reduce the 3/4 of 1 percent factor in the maximum excess allowance or the maximum offset allowance by 1/15 for each of the first 5 years, 1/30 for each of the next five years and actuarially thereafter for benefits commencing before social security retirement age, other than qualified disability benefits as defined in section 1.401(l)-3(e)(4) of the Proposed Regulations.

13a. Check either box (i), (ii), (iii), or (iv). If you check box (iv), specify which employees are eligible to participate in this plan.

13b. If your plan requires a minimum number of years of service to participate in the plan, enter the number If your plan does not require a minimum number of years of service to participate, check the box labeled N/A (not applicable).

13c. If your plan requires that an employee attain a minimum age to participate in the plan, enter the age. If your plan does not require a minimum age to participate, check the box labeled N/A (not applicable).

14. Check one box to indicate the regular (non-top heavy) vesting schedule used by the plan. If "Other" is checked, attach a schedule showing your vesting schedule.

15a. If your plan is a defined benefit plan, specify the accrual rule that the plan satisfies, the benefit formula at normal retirement age, the benefit formula at early retirement age, and the normal form of retirement benefit.

15b. If your plan is a profit sharing or stock bonus plan, check one of the boxes in (i). If it is a money purchase plan, enter the rate of contribution. If it is a target benefit plan, state the target benefit formula.

16a. Section 411(d)(6) protected benefits include the accrued benefit of a participant as of the later of the amendment's adoption date or effective date, any early retirement benefit, retirement type subsidy or optional form of benefit with respect to benefits attributable to service before such amendment. If the answer is 'Yes, attach an explanation of how the amendment satisfies one of the exceptions to the prohibition or reduction or elimination of section 411(d)(6) protected benefits.

16b. If other than "total compensation' within the meaning of section 414(s) is used to allocate contributions and benefits, the plan definition of compensation may be discriminatory. If "No" is checked, attach an explanation of how contributions or benefits are allocated.

16c. In a defined contribution plan, if forfeitures are not allocated on the basis of total compensation, check "No" and attach an explanation of how forfeitures are allocated under the plan.

16d. In a defined contribution plan, if trust earnings and losses are allocated on the basis of account balances, check "Yes." Otherwise, check "No," and attach an explanation of how trust earnings and losses are allocated.

16e. If the plan or trust is under examination or if there is an issue related to the plan or trust pending before IRS, the Department of Labor or the Pension Benefit Guaranty Corporation or any court, check 'Yes," and attach an explanation detailing the specific nature of the matter and the details of who is considering the matter Otherwise, check "No."

16f. This form may be used for applications for a determination letter only in the situations provided in line 3a. However, in the case of a merger, consolidation, or transfer of plan assets or liabilities, a plan sponsor may request a determination letter on a plan involved in such transaction and may simultaneously give notice of the merger, consolidation, or transfer of plan assets or liabilities as required by section 6058(b). Each sponsor or administrator of a plan involved in a merger, consolidation, or transfer of plan assets or liabilities must provide the notice 30 days before such event takes place. If the plan sponsor does not desire a determination letter on such a plan, Form 5310 must be filed to provide this notice. A plan sponsor who requests a determination letter on the qualified status of a plan that was involved in a merger consolidation, or transfer of plan assets or liabilities may use Form 5300 or 5303 to simultaneously give the required notice and request a determination letter for that plan by:

(1) submitting this application not less than 30 days prior to the date of the merger, consolidation, or transfer of plan assets or liabilities, and

(2) attaching a statement containing the plan name(s) and number(s), the name(s) of the plan sponsor(s), and the employer identification number(s) for the other plan(s) involved in the merger consolidation, or transfer The statement should include the date of the transaction and, for a defined benefit plan, an actuarial statement of valuation for the plan showing compliance with the requirements of sections 401(a)(12) and 414(l) and the related regulations.

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