

Instructions for Form 5300

(Rev. April 2011)

Application for Determination for Employee Benefit Plan



Department of the Treasury
Internal Revenue Service

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

What's New for 2011

The form and the instructions have undergone changes. Some of the changes were made because of the changes required by Rev. Proc. 2007-44, 2007-28 I.R.B. 54 available at www.irs.gov/irb/2007-28_IRB/index.html. Review these documents before completing the application.

Lines 13 and 14 **must be completed** to indicate whether or not a ruling is being requested for:

1. a determination regarding the ratio percentage test under Regulations section 1.410(b)-2(b)(2);
2. a determination regarding one of the special requirements under Regulations section 1.410(b)-2(b)(5), (6), or (7), or
3. a determination regarding the nondiscrimination designed-based safe harbors of section 401(a)(4).

Complete Schedule Q (Form 5300), Elective Determination Requests, if you want to broaden the scope of a determination letter (DL) by requesting a determination that your plan satisfies certain qualification requirements relating to minimum participation, coverage, and nondiscrimination. Schedule Q is no longer mandatory.

Disclosure Request by Taxpayer.

The Tax Reform Act of 1976 permits a taxpayer to request the IRS to disclose and discuss the taxpayer's return and/or return information with any person(s) the taxpayer designates in a written request. Use Form 2848, Power of Attorney and Declaration of Representative, and/or Form 8821, Tax Information Authorization, for this purpose.

Public Inspection. Form 5300 is open to public inspection if there are more than 25 plan participants. The total number of participants must be shown on line 4e. See the instructions for line 4e for a definition of participant.

General Instructions

Purpose of Form

File Form 5300 to request a DL from the IRS for the initial qualification of a defined benefit or a defined contribution plan and the exempt status of any related trust. See *Type of*

Determination Letter Requested later for more information.

Note. The application should be filed in accordance with Rev. Proc. 2007-44.

File Form 5307, Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans, instead of Form 5300 if this is a Master and Prototype (M&P) or volume submitter plan. However, use Form 5300 instead of Form 5307 if you are also requesting a determination on affiliated service group status, leased employee status, or a partial termination.

Type of Plan

A **Defined Contribution Plan** (DCP) is a plan that provides an individual account for each participant and for benefits based only:

1. On the amount contributed to the participant's account, and
2. Any income, expenses, gains and losses, and any forfeiture of accounts of other participants that may be allocated to the participant's account.

A **Defined Benefit Plan** (DBP) is any plan that is not a DCP.

Note. A qualified plan must satisfy section 401(a) including, but not limited to, participation, vesting, nondiscriminatory contributions or benefits, distributions, and contribution and benefit limitations.

Who May File

This form may be filed by any:

• **Employer**, including a sole proprietor, partnership, plan sponsor, or a plan administrator that has adopted an individually designed plan to request a DL on:

1. Initial qualification of a plan;
2. Qualification of an entire plan as amended;
3. Partial termination of a plan;
4. Affiliated Service Group (ASG) status (section 414(m)); or
5. Leased employee status (section 414(n)).

• **Plan sponsor or plan administrator** to request a DL for a plan maintained by an employer that is part of a controlled group of corporations (section 414(b)), or trades or businesses under common control (section 414(c)), or an ASG (section 414(m)).

• **Plan sponsor or plan administrator** to request a DL for a multiemployer or multiple-employer plan (a plan maintained by more than one employer considering all employers combined under section 414(b), (c), or (m) as one employer).

• **Employer, plan sponsor, or plan administrator** to request a DL 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 401(a)(4)).

Note. This application will be processed in accordance with Rev. Proc. 2007-44.

Who May Not File

This form may not be filed by an adopter of:

- A collectively bargained plan, where a Form 5307 is applicable, or
- A master or prototype plan where the applicant is not requesting a determination on ASG status, leased employee status, or a partial termination (instead, file Form 5307).

Where To File

File Form 5300 at the address indicated below:

Internal Revenue Service
P.O. Box 12192
Covington, KY 41012-0192

Requests shipped by express mail or a delivery service should be sent to:

Internal Revenue Service
201 West Rivercenter Blvd.
Attn: Extracting Stop 312
Covington, KY 41011

Private delivery services. In addition to the United States mail, you can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. The list of designated private delivery services includes only the following:

- DHL Express (DHL): DHL Same Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air

A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell you how to get written proof of the mailing date.

How To Complete the Application

Applications are screened for completeness. The application must be signed by the employer, plan administrator, or authorized representative.

Note. Stamped signatures are not acceptable; see Rev. Proc. 2011-4, 2011-1 I.R.B. 123 available at www.irs.gov/irb/2011-01_IRB/index.html.

Incomplete applications may be returned to the applicant. For this reason, it is important that an appropriate response be entered for each item. In completing the application, pay careful attention to the following:

- N/A (not applicable) is accepted as a response **only** if an N/A block is provided.
- If a number is requested, a number must be entered.
- If an item provides a choice of boxes to check, check only one box unless instructed otherwise.
- If an item provides a box to check, written responses are not acceptable.
- Governmental plans and non-electing church plans do not have to complete lines 10 and 12a.
- The application has formatted fields that will limit the number of characters entered per field.
- All data input will need to be entered in Courier 10 point font.
- Alpha characters should be entered in capital letters.
- Enter spaces between any words. Spaces do count as characters.
- All date fields are entered as an eight-digit field (MMDDYYYY).
- Rev. Proc. 2007-44 requires a plan restatement and the IRS may, at its discretion, require additional information any time it is deemed necessary. See section 7.05 of Rev. Proc. 2011-6, 2011-1 I.R.B. 195 available at www.irs.gov/irb/2011-01_IRB/index.html.

Note. Rev. Proc. 2011-6 publishes the guidance under which the DL program is administered. It is updated annually and can be found in the Internal Revenue Bulletin (I.R.B.). **Example:** Rev. Proc. 2011-6 superseded Rev. Proc. 2010-6.

What To File

Note. Payments for sanction fees, compliance fees, etc. should be submitted on separate checks.

1. A check for the appropriate user fee, if applicable, and Form 8717, User

Partial Termination Worksheet		Year	Year	Year of partial termination	Year
1	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				
2	Present value (as of month ___ / ___ day during the year of				
a	Plan assets				
b	Accrued benefits				
c	Vested benefits				
3	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).				

Fee for Employee Plan Determination, Opinion, and Advisory Letter Request. Please submit a separate check for each application. Make checks payable to the "United States Treasury."

2. A completed Form 5300, which consists of pages 1–11.

3. Schedule Q (Form 5300), if any elective determinations are being requested, and any additional schedules or demonstrations required by these instructions or by the instructions for Schedule Q.

4. A copy of the plan's last DL.

5. A copy of the plan and all required attachments and statements.

6. A copy of all amendments, including a copy of the Good Faith Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) amendments and all interim amendments.

7. Any other information or material required by the IRS.

8. A copy of any compliance statement or closing agreements entered into in regards to this plan.

(See the Procedural Requirements Checklist on Form 5300 to ensure that your submitted package is complete.)

Type of Determination Letter Requested

Initial Qualification

For **initial qualification** of a plan file one copy of all instruments that make up the plan.

Entire Plan as Amended

When requesting a DL on the entire plan as amended after initial qualification file:

1. One copy of the restated plan and trust plus all amendments made to date;
2. One copy of the latest DL, including caveats; and
3. A statement explaining how any amendments made since the last DL affect this or any other plan of the employer.

Other Amendments

• **Complex amendments.** Use Form 5300, as described under *Entire Plan as Amended* on this page, for complex amendments, including amendments with significant changes to plan benefits or coverage.

Note. Rev. Proc. 2007-44 requires that all plan documents must be restated for the current cumulative list.

• **Partial termination.** For a **partial termination** you must:

1. File the application form and the appropriate documents and statements.
2. Attach a statement indicating if a partial termination may have occurred or might occur as a result of proposed actions.
3. Using the format in the Partial Termination Worksheet 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 2 prior plan years, to the extent information is available.

If the plan has more than one benefit computation formula, complete the Partial Termination Worksheet. Also

attach a sheet showing the information separately in the same format as lines 1a through 1f of the worksheet for each benefit computation formula.

4. Submit a description of the actions that may have resulted in a partial termination.

5. Include an explanation of how the plan meets the requirements of section 411(d)(3).

• **Termination of Plan.** If you are **terminating** your plan, file Form 5310, Application for Determination for Terminating Plan, to request a DL for the complete termination of a DBP or a DCP. This form should be filed to request a DL involving the complete termination of a multi-employer plan covered by the Pension Benefit Guaranty Corporation (PBGC) insurance program.

In addition, include:

1. One copy of the plan;
2. One copy of the latest DL;
3. A copy of all actions taken to terminate the plan; and
4. If necessary, Form 6088, Distributable Benefits From Employee Pension Benefit Plans. Form 6088 is required if the plan is a DBP or if the plan is an underfunded DCP that benefits non-collectively bargained employees or more than 2% of the employees who are covered under a Collective Bargaining Agreement (CBA) are professional employees. (See Regulations section 1.410(b)-9 for definitions.)

If you wish to stop benefit accruals or stop making contributions to your plan, and your plan trust will continue, the plan will not be considered terminated. If you want to receive a DL, you must use Form 5300. Do not file Form 5310 if the plan trust will continue.

Note. If a DBP is amended to become a DCP, or if the merger of a DBP with a DCP results solely in a DCP, the DBP is considered terminated.

Specific Plans — Additional Requirements

See the *Procedural Requirements Checklist* on Form 5300.

• For a determination on an **ASG** status, submit:

1. A copy of the appropriate documents, and
2. Statements listed in the instructions for lines 3a and 6.

• For plans of **controlled groups of corporations or trades or businesses under common control**, submit the statement specified in the instructions for line 6.

• For **multiple employer plans** that do not involve collective bargaining, submit:

1. One application for the plan and any additional required schedules or demonstrations, and

2. Form 5300 (lines 1 through 8 only) for each employer who adopts the plan (all employers in each ASG or controlled group are considered one employer). Form 5300 must be signed by the respective employers.

Note. If the employer has no employees, the taxpayer cannot submit as the sponsor of the plan.

• For a **governmental or non-electing church plan**, skip lines 10 and 12a. A **non-electing church plan** is a plan for which an election under section 410(d) has not been made.

• For an **Employee Stock Ownership Plan (ESOP)**, attach Form 5309, Application for Determination of Employee Stock Ownership Plan.

Specific Instructions

Line 1a. If not applicable, leave blank.

Line 1b through 1g. Enter the name, address, and telephone number of the plan sponsor/employer.

A plan sponsor means:

1. In the case of a plan that covers the employees of one employer, the employer;
2. In the case of a plan sponsored by two or more entities required to be combined under sections 414(b), (c), or (m), one of the members participating in the plan; or
3. In the case of a plan that covers the employees and/or partner(s) of a partnership, the partnership.

Notes.

- Line 1b is limited to 70 characters. Enter a space between all words.
- The name of the plan sponsor/ employer should be the same name that was or will be used when the Form 5500, Annual Return/Report of Employee Benefit Plan; Form 5500-EZ, Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan; or Form 5500-SF, Short Form Annual Return/Report of Small Employee Benefit Plan is filed for the plan.
- Address should include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the plan has a P.O. Box, show the box number instead of the street address. The address should be the address of the sponsor/employer.

Line 1h. Enter the 9-digit employer identification number (EIN) assigned to the plan sponsor/employer. This should be the same EIN that was or will be used when the Form 5500 series annual returns/reports are filed for the plan. For a multiple employer plan, the EIN should be the same EIN that was or will be used by the participating employer when Form 5500 is filed by the employer.



Do not use a social security number or the EIN of the trust.

The plan sponsor/employer must have an EIN. A plan sponsor/employer without an EIN can apply for one.

• **Online**—Generally, a plan sponsor/ employer can receive an EIN from the Internet and use it immediately to file a return. Go to the IRS website at www.irs.gov/businesses/small and click on Employer ID Numbers (EINs).

• **By telephone**—Call 1-800-TAX-FORM (829-4933).

• **By mail or fax**—Send in a completed Form SS-4, Application for Employer Identification Number, to apply for an EIN.

Note. Form SS-4 can also be obtained at Social Security Administration (SSA) offices.

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

Line 1k. Enter the two digits representing the month the employer's tax year ends. This is the employer whose EIN was entered on line 1h.

Line 2. The contact person will receive copies of all correspondence as authorized in a Form 2848 or Form 8821. Either complete the contact's information on this line, or check the box and attach a completed Form 2848 or Form 8821.

Line 3a. Enter the number(s) that corresponds to the request(s) being made. The first box must contain a 1 or 2. Please use the second box if a special ruling is requested under 3 - 6 below.

- **Enter 1** if the IRS has not issued a DL for this plan. Enter the number of subsequent amendments signed after the initial plan on line 3e. Enter the date(s) the amendment(s) was signed along with date(s) the amendment(s) was effective on lines 3f and 3g.
- **Enter 2** if the IRS has previously issued a DL for this plan. Enter the date(s) the restatement was signed along with the effective date of the restatement on lines 3b(i) and 3b(ii).

Note.

- If amendments are substantial, see section 7.04 of Rev. Proc. 2011-6.
- **Enter 3** if requesting a letter concerning the effect of section 414(m), a change in the ASG membership or if you are not certain that you are a member of an ASG, attach the following information:

1. A description of the nature of the business of the employer. Specifically state whether it is a service organization or an organization whose

principal business is the performance of management functions for another organization, including the reason for performing the management function or service.

2. The identification of other members (or possible members) of the ASG.

3. A description of the nature of the business of each member (or possible member) of the ASG including the type of organization (corporation, partnership, etc.) and indicate 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 ASG (including ownership interests as described in section 414(m)(2)(B)(ii) or 414(m)(6)(B)).

5. A description of services performed for employers by the members (or possible members) of the ASG, or vice versa. Include 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 31, 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 ASG associate in performing services for other parties.

7.

a. A description of management functions, if any, performed by the employer for the members (or possible members) of the ASG, or received by the employer from any other members (or possible members) 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.

b. If management functions are performed by the employer for the members (or possible members) of the ASG, describe what part of the employer's business constitutes the performance of management functions for the members (or possible members) of the group (including the percentage of gross receipts derived from management activities as compared to the gross receipts from other activities).

8. A brief description of any other plan maintained by the members (or possible members) of the ASG, if such other plan is designated as a unit for

qualification purposes with the plan for which a DL has been requested.

9. A description of how the plan(s) satisfies the coverage requirements of section 410(b) if the members (or possible members) of the ASG are considered part of an ASG with the employer.

10. A copy of any ruling issued by the national office on whether the employer is an ASG; a copy of any prior DL that considered the effect of section 414(m) on the qualified status of the employer's plan; and, if known, a copy of any such ruling or DL issued to any other member (or possible member) of the same ASG, accompanied by a statement as to whether the facts upon which the ruling or DL was based have changed.

• **Enter 4** if you are not certain whether or not you have leased employees, 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 in 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);

4. A description of facts and circumstances relevant to a determination of whether such leased employees' services are performed under primary direction or control of the recipient organization (including whether the leased employees are required to comply with instructions of the recipient about when, where, and how to perform the services, whether the services must be performed by particular persons, whether the leased employees are subject to the supervision of the recipient, and whether the leased employees must perform services in the order or sequence set by the recipient); and

5. 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 the plan(s) (including a description of the contributions or benefits provided for all leased employees that are for services performed for the recipient organization, plan eligibility, and vesting).

• **Enter 5** if this is a request for the effect a potential partial termination will have on the plan's qualification. The "effective date" means the date the partial termination occurred. Enter this date on line 3c.

• **Enter 6** if a DL is requested on the termination of a multi-employer plan covered by PBGC insurance. Also enter the date the termination is effective on line 3d.

Note. Pre-approved plans that are submitting a determination request under 3, 4, 5, (as shown in line 3a) or a volume submitter multiple employer plan will be reviewed as if it had been filed on Form 5307. An IRS review of the application will not consider changes in the qualification requirements subsequent to the 2004 Cumulative List. See Announcement 2008-23, 2008-14 I.R.B. 731.

Line 3f. If more than four amendments, list amendments on a separate piece of paper using the same format as shown on the form and label as an "attachment to #3f." If a plan or amendment is proposed, enter 9/9/9999 for the signature date but include the intended effective date.

Line 3g. If an amendment has more than one effective date, use the earliest effective date.

Line 3h. If you do not have a copy of the latest DL, or if no DL has ever been received by the employer, include copies of the prior plan or adoption agreement and all subsequent amendments and/or restatements with the application request.

Line 3i. If 3h is "Yes," enter the date of the last DL. The number of amendments should include any proposed amendments being submitted.

Line 3k. If the relationship with the pre-approved sponsor was terminated, please provide the date the relationship was terminated.

Line 3n. Section 3001 of the Employee Retirement Income Security Act of 1974 (ERISA) requires that applicants subject to section 410 provide evidence that each employee who qualifies as an interested party has been notified of the filing of the application. If "Yes" is checked, it means that each employee has been notified as required by Regulations section 1.7476-1, this is a one-person plan, or the plan is not subject to section 410. A copy of the notice is not required to be attached. If "No" is checked or this line is blank, your application will be returned.

Rules defining "interested parties" and the form of notification are in Regulations section 1.7476-1. For an example of an acceptable format, see Rev. Proc. 2011-6.

Line 3u. If the parent has made the election to use their EIN for determining your remedial amendment cycle under Rev. Proc. 2007-44 provide the name and EIN of the parent.

Line 3w. Even if a ruling is not being requested on Schedule Q, Demo 8, submit a copy of the pertinent plan provisions regarding the offset.

Line 4a. Due to space restrictions this field is limited to 70 characters, including spaces. Please complete this item with how the plan name should read on the DL to the extent permitted.

Due to this restriction, please keep in mind that "Employees" and "Trust" are not needed and will be left off if space does not permit.

Line 4b. Enter the three-digit number, beginning with "001" and continuing in numerical order for each plan you adopt (001-499). The numbering will differentiate your plans. The number assigned to a plan cannot be changed or used for any other plan. This should be the same number that was or will be used when the Form 5500, Form 5500-EZ, or Form 5500-SF is filed for the plan.

Line 4c. Plan year means the calendar, policy, or fiscal year on which the records of the plan are kept. Enter the two-digit month (mm) on which the plan year ends.

Line 4e. Enter the total number of participants. A participant means:

1. The total number of employees participating in the plan including employees under a section 401(k) qualified cash or deferred arrangement who are **eligible** but do not make elective deferrals,
2. Retirees and other former employees who have a nonforfeitable right to benefits under the plan, and
3. The beneficiary of a deceased employee who is receiving or will in the future receive benefits under the plan. Include one beneficiary for each deceased employee regardless of the number of individuals receiving benefits.

Example. Payment of a deceased employee's benefit to three children is considered a payment to one beneficiary.

Line 5.

• **Cash balance plan.** For this purpose, a "cash balance" formula is a benefit formula in a defined benefit plan by whatever name (for example, personal account plan, pension equity plan, life cycle plan, cash account plan, etc.) that rather than, or in addition to, expressing the accrued benefit as a life annuity commencing at normal retirement age, defines benefits for each employee in terms more common to a defined contribution plan such as a single sum distribution amount (for example, 10 percent of final average pay times years of service, or the amount of the employee's hypothetical account balance).

• **For an ESOP.** If the plan contains the loan language for a leveraged ESOP, then the application should be marked as such, even though in operation the plan has not utilized this provision.

Lines 6a and 6b. If the employer is a member of a controlled group of corporations, trades or businesses under common control, or an ASG, all employees of the group will be treated as employed by a single employer for purposes of certain qualification

requirements. Attach a statement which provides the following in detail:

1. All members of the group;
2. The relationship of each member to the plan sponsor;
3. The type(s) of plan(s) maintained by each employer;
4. Plans common to all members; and
5. If the member of the controlled group is a foreign entity.

Line 6c. If the election to use Cycle A under Rev. Proc. 2007-44 was made submit a copy of the signed and dated election. Include a copy of the controlled group election with each submission of that controlled group.

Note. If you want to apply for a DL to determine if you are a member of an ASG, leave this line blank and enter "3" on line 3a and attach the information per the instructions for this item.

Line 7f. If the plan has been involved in a merger, attach a statement which provides the following:

1. Name of the plan(s) involved;
2. Type of plan(s) involved;
3. Date(s) of merger(s); and
4. Verification that each plan involved was qualified at the time of merger (copy of prior DL, if any, otherwise provide a signed and dated copy of most recent restatement and subsequent amendments).

Notes.

- The plan and amendments submitted to verify that plans were qualified prior to the merger are for information purposes only and will not be ruled on.
- If applicable, file Form 5310-A, Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business, 30 days prior to the merger, consolidation, or transfer of assets or liabilities.

Line 7g. If the plan has been restated to change the type of plan under Regulations section 1.401-1, answer this question "Yes" and attach a statement explaining the change.

Line 7h. A **multiple employer plan** is a plan maintained by more than one employer, but which is **NOT** maintained under 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. Also, enter the total number of employers adopting the plan. Include a statement in each plan that was submitted that includes the sponsor name(s) and EIN(s) of all the cases that were submitted. See section 413(c).

Line 7i. Attach a statement indicating the plan sponsor name and EIN of all cases submitted with the lead plan.

Line 7k. A **multi-employer plan** (as described in section 414(f)) is one to

which more than one employer is required to contribute and which is maintained under one or more collective bargaining agreements between one or more employee organizations and more than one employer.

Line 7l. See Rev. Proc. 2011-6 and the Appendix thereto.

Line 7m. A foreign trust is a trust that was not created or organized in the United States. If you have a Puerto Rican plan, was the irrevocable election in ERISA section 1022(i) made? If "Yes," provide the election or provide the statement making the election with the DL that the election is made in accordance with ERISA section 1022(i).

Line 8a. If "Yes" is checked, attach a statement for each plan with the following information:

1. Name of plan,
2. Type of plan,
3. Form of plan (standardized, nonstandardized, volume submitter, or individually designed),
4. Plan number,
5. Vesting schedule, and
6. Whether the plan has received a DL or an application for a letter is pending with IRS.

Lines 8b and 8c. See M-8, M-12, and M-14 of Regulations section 1.416-1.

Line 12a. 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; and
- Any early retirement benefit, retirement-type subsidy, or optional form of benefit for benefits from service before such amendment.

If "Yes," attach a statement which provides how the amendment satisfies one of the exceptions to the prohibition on reduction or elimination of section 411(d)(6) protected benefits.

Line 13. This question may be used to request a determination regarding the ratio percentage test under Regulations section 1.410(b)-2(b)(2).

Notes.

- If "No" is checked and a request for a determination regarding the average benefit test is not made on Schedule Q, the DL for the plan will not be a determination regarding section 410(b).
- If "No" is checked but a request for a determination regarding the average benefit test is made on Schedule Q, the DL for the plan will also be a determination regarding the average benefit test.
- Plans using the qualified separate lines of business rules of section 414(r) must file Schedule Q if a determination is desired that the plan satisfies the gateway test of section 410(b)(5)(B) or the special requirements for employer wide plans.
- If "Yes" and 13(l) is 70% or more, then a request cannot be made for

purposes of 410(b) using a Schedule Q and Demo 5.

Line 13a. If answered “Yes,” you must complete lines 13b through 13n with respect to each disaggregated portion of the plan. Attach additional schedules as necessary to identify the other disaggregated portions of the plan. Provide the requested coverage information, in the same format as line 13, separately with respect to the other portions of the plan, or to otherwise show that the other portions of the plan separately satisfy section 410(b).

Example. If this plan benefits the employees of more than one qualified separate line of business (QSLOB), the portion of the plan benefiting the employees of each QSLOB is treated as a separate plan maintained by that QSLOB and must separately satisfy section 410(b) unless the employer-wide plan testing rule in Regulations section 1.414(r)-1(c)(2)(ii) applies.

Note. If a determination is being requested for a section 401(k) and/or 401(m) plan, you must complete lines 13c-13l for the portion of the plan that is not a section 401(k) or a 401(m) plan. Complete line 13m(1) to report the ratio percentage for the section 401(k) portion of the plan and line 13m(2) to report the ratio percentage for the section 401(m) portion of the plan.

Line 13c. If, for purposes of satisfying the minimum coverage requirements of section 410(b), you are applying the daily testing option in Regulations section 1.410(b)-8(a)(2) or the quarterly testing option in Regulations section 1.410(b)-8(a)(3), or, if you are using single-day “snapshot” testing as permitted under section 3 of Rev. Proc. 93-42, 1993-2 C.B. 540, enter the most recent eight-digit date (MMDDYYYY) for which the coverage data is submitted. If you are applying the annual testing option in Regulations section 1.410(b)-8(a)(4), enter the year for which the coverage data is submitted.

Line 13d. Include all employees of all entities combined under sections 414(b), (c), (m), or (o). Also include all self-employed individuals, common law employees, and leased employees as defined in section 414(n) of any of the entities above, other than those excluded by section 414(n)(5). Certain individuals may also be required to be counted as employees. See the definition of employee in Regulations section 1.410(b)-9. Also see Regulations section 1.410(b)-6(i), which may permit the employer to exclude certain former nonhighly compensated employees.

Line 13e(1). Enter the number of employees who are excluded because

they have not attained the lowest minimum age and service requirements for any employee under this plan. If the employer is separately testing the portion of a plan that benefits otherwise excludable employees, attach a separate schedule describing which employees are treated as excludable employees on account of the minimum age and service requirements under each separate portion of the plan.

Line 13e(2). Enter the number of employees who are excluded because they are collectively bargained employees as defined in Regulations section 1.410(b)-6(d)(2), regardless of whether those employees benefit under the plan. For this purpose, an employee covered under a CBA is not considered a collectively bargained employee if more than 2% of the employees who are covered under the agreement are professional employees as defined in Regulations section 1.410(b)-9.

Line 13e(3). Enter the number of employees who do not receive an allocation or accrue a benefit under the plan only because they do not satisfy a minimum hours of service requirement or a last day of the plan year requirement, provided they do not have more than 500 hours of service, and they are not employed on the last day of the plan year.

Note. Do not enter on this line any employees who have more than 500 hours of service, even if they are not employed on the last day of the plan year.

Line 13e(4). If this plan benefits the employees of one QSLOB, enter on this line the number of employees of the employer’s other QSLOBs. This is not applicable if the plan is tested under the special rule for employer-wide plans in Regulations section 1.414(r)-1(c)(2)(ii).

Line 13e(5). Enter the number of employees who are nonresident aliens who receive no earned income (as defined in section 911(d)(2)) from the employer that constitutes income from sources within the United States (as defined in section 861(a)(3)).

Line 13g. “Nonexcludable employees” are the employees who cannot be excluded from the plan for statutory (for example, age and service) or regulatory reasons and must be included even though they might not benefit under the plan.

Line 13h. Enter the number of nonexcludable employees on line 13g who are highly compensated employees (HCEs) as defined in section 414(q).

Line 13i. In general, an employee is treated as benefiting under the plan for

coverage tests purposes 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 they are subject to plan provisions that uniformly limit plan benefits, such as a provision for maximum years of service, maximum retirement benefits, application of offsets or fresh start wear-away formulas, or limits designed to satisfy section 415. An employee is treated as benefiting under a plan to which elective contributions under section 401(k) or employee contributions and matching contributions under section 401(m) may be made if the employee is currently eligible to make such elective or employee contributions, or to receive a matching contribution, whether or not the employee actually makes or receives such contributions (Regulations section 1.401(k)-1(g)(4) and 1.401(m)-1(f)(4)). However, do not apply this rule to determine if an employee is to be counted as benefiting for the portion of the plan that is not a 401(k) or 401(m) plan.

Line 13k. See the instructions for line 13i for the meaning of “benefiting under the plan.”

Line 13l. To obtain the ratio percentage:

Step 1. Divide the number on line 13k (nonexcludable NHCEs benefiting under the plan) by the number on line 13j (nonexcludable NHCEs).

Step 2. Divide the number on line 13i (nonexcludable HCEs benefiting under the plan) by the number on line 13h (nonexcludable HCEs).

Step 3. Divide the result from Step 1 by the result from Step 2.

Note. If the ratio percentage entered on line 13l and/or line 13m is less than 70%, the plan does not satisfy the ratio percentage test. In this case, the plan must satisfy the average benefit test. A determination regarding the average benefit test can be requested using Schedule Q.

Line 13m. To determine the ratio percentages for the section 401(k) and all section 401(m) (matching and employee contribution) portions of the plan, follow the steps described in the instructions for lines 13d through 13l, but treat an employee as benefiting under the rules for section 401(k) plans and section 401(m) plans described in the instruction for line 13i.

Design-Based Nondiscrimination Safe Harbors

Line 14. This question may be used by certain plans to request a determination regarding the design-based safe harbor under section 401(a)(4).

Note. This item should be marked "No" if:

- this is a section 401(k) and/or section 401(m) plan that does not contain a provision for nonelective employer contributions;
- any disaggregated plan relies on a non-design based safe harbor or a general test;
- this plan has been restructured into component plans.

Line 14a. Check "Yes" if the plan is intended to satisfy the permitted disparity requirements of section 401(l).

Line 14b. To satisfy section 401(l), a plan must provide that the overall permitted disparity limits are not exceeded and specify how employer-provided contributions or benefits under the plan are adjusted, if necessary, to satisfy the overall permitted disparity limits. See Regulations section 1.401(l)-5.

Note. The plan will not satisfy the safe harbor requirements of 401(a)(4) if it does not satisfy section 401(l).

Line 14c. This line provides a list of the design-based nondiscrimination safe-harbor regulations.

How To Get Forms, Publications, and Assistance

Internet. You can access the IRS website 24 hours a day, 7 days a week at IRS.gov to:

- Download forms, instructions, and publications;
- Order IRS products on-line;
- Research your tax questions on-line;
- Search publications on-line by topic or keyword; and
- Sign up to receive local and national tax news by email.

DVD for Tax Products. You can order Pub. 1796, IRS Tax Products DVD, and obtain:

- Current year forms, instructions, and publications;
- Prior year forms, instructions, and publications;
- Tax Map: An electronic research tool and finding aid;

- Tax Law frequently asked questions;
- Tax Topics from the IRS telephone response system;
- Fill-in, print, and save features for most tax forms;
- Internal Revenue Bulletins; and
- Toll-free and email technical support.

The DVD is released twice during the year. The first release will be shipped at the beginning of January 2011 and the final release will be shipped at the beginning of March 2011.

Purchase the DVD from the National Technical Information Service (NTIS) at www.irs.gov/cdorders for \$30 (no handling fee), or call 1-877-CDFORMS (1-877-233-6767) toll-free to buy the DVD for \$30 (plus a \$6 handling fee). *Price is subject to change.*

By phone and in person. You can order forms and publications by calling 1-800-TAX-FORM (1-800-829-3676). You can also get most forms and publications at your local IRS office.

For questions regarding this form, call the Employee Plans Customer Service, toll-free, at 1-877-829-5500.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. Under sections 401, 403, 409, 4975 and their regulations it is our legal right to ask for this information. Section 6109 requires you to provide your identifying number. You are not required to have your plan approved by the IRS. However, if you want to have your plan approved by the IRS, you are required to give us the information on this form. We need it to determine whether you meet the legal requirements for plan approval. Your failure to provide all of the information requested may prevent processing of this form. Providing false information may subject you to penalties. We may disclose to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths or possessions for use in the administration of their tax laws. We may also disclose this information to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

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

	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form
Form 5300	33 hr., 57 min.	10 hr., 7 min.	17 hr., 38 min.	1 hr., 52 min.
Sch. Q (Form 5300)	4 hr., 4 min.	12 hr., 49 min.	22 hr., 45 min.	2 hr., 40 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Products Coordinating Committee, 1111 Constitution Ave., NW, IR-6526, Washington, DC 20224

Do not send any of these forms or schedules to this address. Instead, see *Where To File* earlier.
