

EDUCATION AND EXAMINATION COMMITTEE  
OF THE  
SOCIETY OF ACTUARIES

COURSE EA-2, SEGMENT B, STUDY NOTE

**TAX FORMS**

The Education and Examination Committee provides study notes to persons preparing for the examinations of the Society of Actuaries. They are intended to acquaint candidates with some of the theoretical and practical considerations involved in the various subjects. While varying opinions are presented where appropriate, limits on the length of the material and other considerations sometimes prevent the inclusion of all possible opinions. These study notes do not, however, represent any official opinion, interpretations or endorsement of the Society of Actuaries or its Education and Examination Committee. The Society is grateful to the authors for their contributions in preparing the study notes.

**Application for Determination  
 for Terminating Plan**  
 (Under section 401(a) of the Internal Revenue Code)  
 (See separate instructions.)

OMB No. 1545-0202  
**For IRS Use Only**

See the **Procedural Requirements Checklist** on page 7 before submitting this application.

1a Name of plan sponsor (employer if single-employer plan)			1b Employer identification number
Number, street, and room or suite no. (If a P.O. box, see page 2 of the instructions.)			1c Employer's tax year ends—Enter (MM)
City	State	ZIP code	1d Telephone number ( )
2a Person to contact if more information is needed. (See page 2 of the instructions.) (If Form 2848 or Form 8821 is attached, check box and do not complete this line.)			1e Fax number ( )
Name			
Number, street, and room or suite no. (If a P.O. box, see page 2 of the instructions.)			2b Telephone number ( )
City	State	ZIP code	2c Fax number ( )

If more space is needed for any item, attach additional sheets the same size as this form. Identify each sheet with the plan sponsor's name and EIN and identify each item.

3a Have interested parties (as defined in Treasury Regulations section 1.7476-1(b)(5)) been given the required notification of this application? Yes  No

b If line 3a is "Yes," enter date of notification (MMDDYYYY) Date ▶ / /

c Has the plan received a determination letter? Date of letter ▶ / / Yes  No

(1) If "Yes," submit a copy of the latest letter and subsequent amendments. Number of amendments ▶

(2) If "No," submit all prior plan(s) and/or adoption agreement(s). (See page 3 of the instructions.)

d Does the plan have a cash or deferred arrangement (section 401(k))? Yes  No

e Does the plan have matching contributions (section 401(m))? Yes  No

f Does the plan have after-tax employee voluntary contributions (section 401(m))? Yes  No

4a Name of Plan (Plan name may not exceed 66 characters, including spaces):

b ..... Enter 3-digit plan number

c ...../..... Enter date plan year ends (MMDD)

d ..... Enter plan's original effective date (MMDDYYYY)

e ..... Enter number of participants (See page 3 of the instructions.)

5 Indicate type of plan by entering the number from the list below.

<input type="checkbox"/> (1)—profit sharing and/or section 401(k)	(4)—defined benefit but not cash balance	(7)—non-leveraged ESOP
<input type="checkbox"/> (2)—money purchase	(5)—cash balance	(8)—stock bonus
<input type="checkbox"/> (3)—target benefit	(6)—leveraged ESOP	(9)—safe harbor section 401(k)

6a Is the employer a member of an affiliated service group? Yes  No

b Is the employer a member of a controlled group of corporations or a group of trades or businesses under common control? Yes  No

If line(s) 6a and/or 6b is "Yes," see page 3 of the instructions for the required statement.

7 Attach copies of records of all actions taken to terminate the plan (see page 3 of the instructions).

a Proposed date of plan termination (MMDDYYYY) / /

b Will funds be distributed as soon as administratively feasible? Yes  No

c Will any funds be, or have any funds been, returned to the employer? (See page 3 of the instructions.) Yes  No

(1) If "Yes," enter the estimated amount ▶ \$

(2) If "Yes," has the employer established or intend to establish a Qualified Replacement Plan? Yes  No

	Yes	No
8a Is this a governmental plan?		
If "Yes," is the plan a state level plan?		
b Is this a nonexempt church plan?		
c Is this a collectively bargained plan? (See Regulations section 1.410(b)-9.)		
d Is this a section 412(l) plan?		
e Is this a multiple employer plan?		
If "Yes," enter number of participating employers ▶		

Under penalties of perjury, I declare that I have examined this application, including accompanying statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature ▶ Title ▶ Date ▶

	Yes	No
9a Have any of the amendments altered the plan's vesting provisions?		
9b Have any of the amendments (including the termination) decreased plan benefits for any participant?		

10 Reason for termination. Check only one box to indicate primary reason for termination.

a  Change in ownership by merger

b  Liquidation or dissolution of employer

c  Change in ownership by sale or transfer

d  Adverse business conditions (See page 3 of the instructions and attach explanation.)

e  Adoption of new plan. Enter type of new plan ▶ .....

f  Other (specify) ▶ .....

11 Last employer/sponsor contribution to the plan:

(a) Date (MMDDYYYY) (b) Amount \$ (c) For plan year ending (MMDDYYYY) ▶

12a Name(s) of trustee(s) or custodian(s) 12b Telephone number ( )

Address (number and street)

City or town, state, and ZIP code

13 Coverage

- Complete only lines 13a through 13n if the plan satisfied the ratio percentage test for the year of termination.
- Complete only line 13o if the plan satisfied the average benefit test for the year of termination.
- Complete only line 13p if the plan satisfied coverage using one of the special requirements of Regulations section 1.410(b)-2(b)(5), (6), or (7). Plans that use the qualified separate line of business rules of section 414(f) must attach Demo 1. See Guidelines for Demonstrations on page 6 of the instructions.

	Yes	No
a Is this plan disaggregated into two or more separate plans that are not section 401(k), 401(m), or profit sharing plans? If "Yes," see page 3 of the instructions and attach separate schedules for each disaggregated portion.		
b Does the employer receive services from any leased employees as defined in section 414(n)?		
c Coverage date (MMDDYYYY) (See page 3 of the instructions.)	/	/
d Total number of employees (employer-wide) (include self-employed individuals)		
e Statutory and regulatory exclusions under this plan (do not count an employee more than once):		
(1) Number of employees excluded because of the minimum age or years of service required		
(2) Number of employees excluded because of their inclusion in a collective bargaining unit		
(3) Number of employees excluded because they terminated employment with less than 501 hours of service and were not employed on the last day of the plan year		
(4) Number of employees excluded because they were employed by other qualified separate lines of business (QSLOBs)		
(5) Number of employees excluded because they were nonresident aliens with no earned income from sources within the United States		
f Total statutory and regulatory exclusions. Add lines 13e(1) through 13e(5)		
g Nonexcludable employees. Subtract line 13f from line 13d		
h Number of nonexcludable employees on line 13g who are highly compensated employees (HCEs)		
i Number of nonexcludable HCEs on line 13h benefiting under the plan		
j Number of nonexcludable employees who are nonhighly compensated employees (NHCEs). Subtract line 13h from line 13g		
k Number of nonexcludable NHCEs on line 13j benefiting under the plan.		
l Ratio percentage (See page 4 of the instructions.)		
m Enter the ratio percentage for the following, if applicable:		
(1) Section 401(k) part of the plan		
(2) Section 401(m) part of the plan		

	Yes	No
n Are the results on line 13l or 13m based on the aggregate coverage of more than one plan? If "Yes," see Guidelines for Demonstrations on page 6 of the instructions and submit a Demo 4.		
o (1) Did the plan use the average benefit test to satisfy section 410(b) for the year of termination?		
(2) If "Yes," did the plan receive a favorable determination letter in the three plan years immediately preceding the date of termination that contained a determination regarding the average benefit test?		
(3) If line 13o(2) is "Yes," are the facts (including benefits provided and employee demographics) upon which the determination was based materially unchanged? If line 13o(2) or 13o(3) is "No," see Guidelines for Demonstrations on page 6 of the instructions and submit Demo 5.		

- p If the plan satisfied coverage using one of the special requirements of Regulations section 1.410(b)-2(b)(5), (6) or (7), enter the number from the list below for the Regulations section that identifies the special rule . . . . .
- (1)—1.410(b)-2(b)(5)—No NHCEs employed (3)—1.410(b)-2(b)(7)—Collectively bargained only  
 (2)—1.410(b)-2(b)(6)—No HCEs benefit

Note: If you completed line 13p, skip line 14.

14 Nondiscrimination—Section(s) 401(k) and/or 401(m) plans that do not contain a provision for discretionary contributions, skip line 14. Complete lines 14a through 14d if the plan satisfied a nondiscrimination safe harbor for the year of termination. Complete line 14e if the plan satisfied a general test for the year of termination. If this plan has been disaggregated or restructured, see **Guidelines for Demonstrations** on page 6 of the instructions and submit **Demo 4**.

- a Does the plan provide for disparity in contributions or benefits that is intended to meet the permitted disparity requirements of section 401(l)? . . . . .
- If "Yes," answer line 14b. Otherwise, skip to line 14c.
- b Do the provisions of the plan ensure that the overall permitted disparity limits will not be exceeded? . . . . .
- c Enter the number from the list below for the Regulations section that identifies the safe harbor intended to be satisfied. . . . .
- (1)—1.401(a)(4)-2(b)(2) defined contribution plan with uniform allocation formula (4)—1.401(a)(4)-3(b)(4)(i)(C)(2) flat benefit DB plan  
 (2)—1.401(a)(4)-3(b)(3) unit credit defined benefit plan (5)—1.401(a)(4)-3(b)(5) Insurance account  
 (3)—1.401(a)(4)-3(b)(4)(i)(C)(1) unit credit DB fractional rule plan (6)—1.401(a)(4)-8(b)(3) target benefit plan  
 (7)—1.401(a)(4)-8(c)(3)(iii)(B) cash balance plan
- d List the plan section(s) that satisfy the safe harbor (including, if applicable, the permitted disparity requirements) here ▶ . . . . .
- e (1) Did the plan use a non-design based safe harbor or a general test to satisfy section 401(a)(4) for the year of termination? . . . . .
- (2) If "Yes," did the plan receive a favorable determination letter in the three plan years immediately preceding the date of termination that contained a determination regarding the non-design based safe harbor or general test? . . . . .
- (3) If "Yes," are the facts (including benefits provided and employee demographics) upon which the determination was based materially unchanged? . . . . .
- If line 14e(2) or 14e(3) is "No," see **Guidelines for Demonstrations** on page 6 of the instructions and submit **Demo 6**.

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

15a Enter the total number of participants employed at any time during the current plan year and each of the 5 prior plan years on the schedule below. If all such participants were fully vested at all times during such period, do not complete lines 15a(1) through 15a(5). Instead, enter -0- in each column next to line 15a(6).

	Plan Year End	Plan Year End	Plan Year End	Plan Year End	Plan Year End	Current Plan Year
(Enter Plan Year End in MMDDYYYY format.)	.....	.....	.....	.....	.....	.....
(1) Number at end of prior plan year . . . . .						
(2) Number added during the plan year . . . . .						
(3) Total. Add lines (1) and (2) . . . . .						
(4) Number dropped during the plan year . . . . .						
(5) Number at end of plan year. Subtract line (4) from line (3). . . . .						
(6) Total number of participants in this plan separated from vesting service during the plan year without full vesting . . . . .						

15b If line 15a(6) shows that a participant(s) separated without full vesting in the current year or any of the past 5 years, attach the following information.

- (1) Name of participant (4) Years of participation (7) Amount of distribution  
 (2) Date of hire (5) Vesting percentage (8) Date of distribution  
 (3) Date of termination (6) Account balance or accrued benefit at the time of separation from service (9) Reason for termination

	Total number
16 Summary of participants or claimants by category:	
a Retirees and beneficiaries (including disability retirees) receiving benefits . . . . .	
b Active participants . . . . .	
c Participants separated from service with deferred vested benefits . . . . .	
d Total. Add lines 16a through 16c . . . . .	

17 Miscellaneous:		Yes	No	N/A
a	As a result of the termination, are accrued benefits or account balances nonforfeitable as required under section 411(d)(3)?			
b	If annuity contracts are distributed on plan termination, are the applicable consent, present value, waiver and other rights and benefits protected by sections 401(a)(11) and 417 included in the annuity contracts?			
c	Do the accrued benefits for each participant upon termination include the subsidized benefits that the participant may become entitled to receive subsequent to the termination? (See page 5 of the instructions.)			
d	Were any funds contributed in the form of, or invested in, obligations or property of the employer or any controlled group of corporations or group of trades or businesses under common control?			
e	Will distributions include property other than cash and/or readily tradable marketable securities?			
	If "Yes,"			
	(1) were all participants given the option of taking this type of distribution?			
	(2) what is the section number of the plan which allows for this type of distribution? ▶			
	(3) attach a statement explaining how assets were valued and how assets will be allocated.			
f	If this is a defined benefit or money purchase plan, do you estimate there will be an accumulated funding deficiency as of the end of the plan year during which the proposed termination date occurs if no additional plan contributions are made and no additional funding waiver is granted? (See page 5 of the instructions.)			
	If "Yes," complete the following:			
	(1) Estimated accumulated funding deficiency ▶ \$			
	(2) Was a Form 5330 filed?			
	(3) Was a funding waiver granted?			
	(4) Have you attached a copy of Form 5330 or a waiver ruling?			
g	(1) If there are unallocated funds which can be reallocated to participants without exceeding the limitations of section 415, have these funds been reallocated to participants?			
	(2) If line 17g(1) is "Yes," did the plan originally contain a provision allowing this reallocation?			
	(3) If line 17g(2) is "No," was the plan amended to provide for this reallocation?			
h	If any funds will be or have been returned to the employer, complete lines 17h(1) through 17h(10) below:			
	(1) Has the terminating plan been involved in a spinoff or other transfer of assets or liabilities, subject to section 414(f), within 60 months preceding the proposed date of termination?			
	If "Yes," attach a list and an explanation of the transaction(s) involved.			
	(2) If line 17h(1) is "Yes," was proper notice filed with the IRS on Form 5310-A?			
	(3) Was the only transaction in line 17h(1) a transfer of assets before any employer reversions?			
	(4) If line 17h(1) is "Yes," answer (A) and (B):			
	(A) Are the accrued benefits of all participants, in the other plan(s) included in line 17h(1), fully vested and nonforfeitable as of the date of this plan termination? (See page 5 of the instructions.)			
	(B) Have cash distributions or guaranteed annuity contracts been provided for all accrued benefits, as of the date of this plan termination, of all participants in the other plan(s) included in line 17h(1)? (See instructions.)			
	<b>Note:</b> Distributions generally may not be made to employed participants in nonterminating plans.			
(5)	Have cash distributions or guaranteed annuity contracts been provided for all accrued benefits of all participants in this plan?			
(6)	Attach a statement providing the dates and amounts of these cash distributions or purchases of annuity contracts.			
(7)	If this is a defined benefit plan, is it intended, or is it a fact, that any or all of the participants in the terminating plan will be covered by a new or existing defined benefit plan of the employer?			
(8)	If "Yes," does the new plan give full prior service credit for vesting and entitlement purposes?			
(9)	If line 17h(1) or 17h(7) is "Yes," then —			
	(A) Has a Form 5300 been submitted for a determination letter for the other plan(s) involved?			
	If "Yes," attach plan numbers.			
	(B) Has the IRS granted approval for a change in funding method in connection with this termination for the other plan(s) involved? If "Yes," attach a copy of the approval letter(s)			
(10)	Did the employer previously receive a reversion of assets upon termination of a defined benefit plan in the past 15 years? If "Yes," attach explanation			

17 (continued)

- i Is this plan or trust currently under examination or is any issue related to this plan or trust currently pending before:
  - the Internal Revenue Service, . . . . .
  - the Department of Labor, . . . . .
  - the Pension Benefit Guaranty Corporation, or . . . . .
  - any court? . . . . .
 If "Yes," attach a statement explaining the issues involved, the contact person's name (IRS Agent, DOL Investigator, etc.) and their telephone number.  
*Note: Do not answer "Yes" if the plan has been considered under the Employee Plans Compliance Resolution System (EPCRS), but there is no other currently pending issue relating to this plan or trust.*
- j Did any plan participant during the current plan year or in the 5 prior plan years, receive a single-sum distribution (see page 5 of the instructions) or have an annuity contract purchased by the plan from an insurance company on his or her behalf? . . . . .  
 If "Yes," state the largest amount so distributed or applied to purchase an annuity contract ▶ \$ \_\_\_\_\_
- k (1) Does the value of plan assets at termination exceed the present value of a plan's liabilities within the meaning of section 401(a)(2)? . . . . .  
 (2) If the answer to line 17k(1) is "Yes," is the excess value the result of a change in the plan provisions other than the mere termination of the plan? . . . . .
- l If the plan has been top-heavy, have top-heavy minimum benefits accrued or minimum contributions been made for non-key employees? . . . . .
- m Do you maintain any other qualified plan under section 401(a)? . . . . .  
 If "Yes," provide a description as to the type of plan. (See page 5 of the instructions.)

Yes	No	N/A

18 If this is a defined contribution plan, enter the information for the current plan year and the 5 prior plan years on the following schedule:

(Enter Plan Year End in MMDDYYYY format.)	Plan Year End	Plan Year End	Plan Year End	Plan Year End	Plan Year End	Current Plan Year
a Employer contributions . . . . .						
b Forfeitures . . . . .						
c Qualified Transfer/Rollover amount(s) received, . . . . .						

- 19a Indicate how distributions will be made on termination (check applicable box(es)):
  - (1)  Single-sum distribution, including direct rollovers
  - (2)  Participating annuity contract(s)
  - (3)  Non-participating annuity contract(s)
  - (4)  Transfer of assets and liabilities to another plan
  - (5)  Other (specify) ▶ \_\_\_\_\_

b Will all distributions be made according to plan provisions and have proper consents been obtained, when applicable? . . . . .

Yes	No

20 Statement of net assets available to pay benefits as of the proposed date of plan termination or latest valuation date.

<b>Assets</b>		Date ▶	
a	Total noninterest-bearing cash (Attach explanation.) . . . . .	20a	
b	Receivables:		
	(1) Employer contributions . . . . .	20b(1)	
	(2) Participant contributions . . . . .	20b(2)	
	(3) Income . . . . .	20b(3)	
	(4) Other (Attach explanation.) . . . . .	20b(4)	
	(5) Allowance for doubtful accounts . . . . .	20b(5)	( )
	(6) Total. Combine lines 20b(1) through 20b(5) . . . . . ▶	20b(6)	
c	General Investments:		
	(1) Interest-bearing cash (including money market funds) . . . . .	20c(1)	
	(2) Certificates of deposit . . . . .	20c(2)	
	(3) U.S. Government securities . . . . .	20c(3)	
	(4) Corporate debt instruments . . . . .	20c(4)	
	(5) Corporate stocks . . . . .	20c(5)	
	(6) Partnership/joint venture interests . . . . .	20c(6)	
	(7) Real estate:		
	(A) Income-producing . . . . .	20c(7)(A)	
	(B) Nonincome-producing . . . . .	20c(7)(B)	
	(8) Loans (other than to participants) secured by mortgages . . . . .	20c(8)	
	(9) Loans to participants (See page 6 of the instructions.) . . . . .	20c(9)	
	(10) Other loans (See page 6 of the instructions.) . . . . .	20c(10)	
	(11) Value of interest in registered investment companies . . . . .	20c(11)	
	(12) Value of funds held in insurance company general account . . . . .	20c(12)	
	(13) Other (Attach explanation.) . . . . .	20c(13)	
	(14) Total. Add lines 20c(1) through 20c(13) . . . . . ▶	20c(14)	
d	Employer-related investments:		
	(1) Employer securities . . . . .	20d(1)	
	(2) Employer real property . . . . .	20d(2)	
e	Buildings and other property used in plan operation . . . . .	20e	
f	Total assets. Add lines 20a, 20b(6), 20c(14), 20d(1), 20d(2), and 20e . . . . . ▶	20f	
<b>Liabilities</b>			
g	Benefit claims payable . . . . .	20g	
h	Operating payables . . . . .	20h	
i	Acquisition indebtedness . . . . .	20i	
j	Other liabilities (Attach explanation.) . . . . .	20j	
k	Total liabilities. Add lines 20g through 20j . . . . . ▶	20k	
<b>Net Assets</b>			
l	Net assets. Subtract line 20k from line 20f . . . . . ▶	20l	

## Procedural Requirements Checklist

### Form 5310

Use this list to assure that your application package is complete before you submit it. Failure to supply the appropriate information may result in a delay in processing the application.

- 1  Is Form 8717, User Fee for Employee Plan Determination Letter Request, attached to your application?
- 2  Is the appropriate user fee for your application attached to Form 8717, if applicable?
- 3  If appropriate, is Form 2848, Power of Attorney and Declaration of Representative, Form 8821, Tax Information Authorization, or a privately designated authorization attached? (For more information, see Disclosure Request by Taxpayers in the instructions and Rev. Proc. 2006-4.)
- 4  Is a copy of your plan's latest determination letter, if any, attached?
- 5  Is the Employer Identification Number (EIN) of the plan sponsor/employer (NOT the trust's EIN) entered on line 1b?
- 6  Does line 4d list the plan's original effective date?
- 7  Is page one of the application signed and dated?
- 8  Have interested parties been given the required notification of this application?
- 9  Have you included a copy of the Board of Director's Resolution or other documentation formally terminating the plan?
- 10  If you answered "Yes" to line(s) 6a and/or 6b, have you included the information requested on page 3 of the instructions?
- 11  Have you included a copy of the plan, trust, and all amendments since your last determination letter?
- 12  If the plan uses the QSLOB rules of section 414(r), has Demo 1 been attached?
- 13  If line 13n is answered "Yes," has Demo 4 been attached?
- 14  If line 13o(2) or (3) is answered "No," has Demo 5 been attached?
- 15  If line 14e(2) or (3) is answered "No," has Demo 6 been attached?
- 16  If line 15a(6) shows that a participant(s) separated without full vesting in the current year or any of the past 5 years, have you attached the required information?
- 17  If line 17e is answered "Yes," have you included the required statement?
- 18  If you are requesting additional determinations, is the Schedule Q (Form 5300), Elective Determination Requests, attached?
- 19  If filing a Schedule Q (Form 5300), are all appropriate demonstrations attached?  
(See the Instructions for Schedule Q (Form 5300).)
 

<input type="checkbox"/> Demo 3	<input type="checkbox"/> Demo 8	<input type="checkbox"/> Demo 10
<input type="checkbox"/> Demo 7	<input type="checkbox"/> Demo 9	<input type="checkbox"/> Demo 11
- 20  If appropriate, have you included a copy of Form 8905, Certification of Intent To Adopt a Pre-approved Plan?



# Instructions for Form 5310

(Rev. April 2006)



## Application for Determination for Terminating Plan

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

### What's New

All applications must be accompanied by new Form 8905, Certification of Intent To Adopt a Pre-approved Plan, if an employer intends to switch from the five-year remedial amendment cycle to the six-year remedial amendment cycle by meeting one of the eligibility requirements for the six-year remedial amendment cycle. For more information, see Rev. Proc. 2005-66, 2005-37 I.R.B. 509.

### Public Inspection

Form 5310 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.

### Disclosure Request by Taxpayers

A taxpayer can authorize 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, if the representative is qualified to sign, or Form 8821, Tax Information Authorization, for this purpose. See Pub. 947, Practice Before the IRS and Power of Attorney, for more information.

### How To Get Forms and Publications

**Internet.** You can access the IRS website 24 hours a day, 7 days a week at [www.irs.gov](http://www.irs.gov) to:

- Order IRS products on-line.
- Download forms, instructions, and publications.
- See answers to frequently asked tax questions.
- Search publications on-line by topic or keyword.
- Send us comments or request help by email.
- Sign up to receive local and national tax news by email.

You can also reach us using file transfer protocol at [ftp.irs.gov](ftp://irs.gov).

**CD-ROM.** You can order Pub. 1796, IRS Tax Products CD, and get:

- A CD that is released twice so you have the latest products. The first release ships in late December and the final release ships in late February;
- 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 (FAQs);
- 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.

Buy the CD-ROM from the National Technical Information Service (NTIS) on the Internet at [www.irs.gov/cdorders](http://www.irs.gov/cdorders) for \$25 (no handling fee), or call 1-877-CDFORMS (1-877-233-6767) toll-free to buy the CD-ROM for \$25 (plus a \$5 handling fee).

**By phone and in person.** You can order forms and publications 24 hours a day, 7 days a week, 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.

## General Instructions

### Purpose of Form

Use Form 5310 to request an IRS determination as to the qualified status (under section 401(a) or section 403(a)) of a pension, profit-sharing, or other deferred compensation plan upon plan termination.

This form can no longer be used to determine whether an employer is a member of an Affiliated Service Group status (ASG).

### Type of Letter

- Determination Letter – issued to a specific employer.
- Sponsor Letter:
  1. Advisory – issued to a sponsor of a volume submitter plan.
  2. Opinion – issued to a sponsor of a prototype plan.

### Type of Plan

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

1. The amount contributed to the participant's account and
  2. 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 (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

Any plan sponsor or administrator of any pension, profit-sharing, or other deferred compensation plan (other than a multi-employer plan covered under PBGC insurance) may file this form to ask the IRS to make a determination on the plan's qualification status at the time of the plan's termination.

Use Form 5300, Application for Determination for Employee Benefit Plan, instead of Form 5310 if the plan sponsor or administrator is filing for a determination but will continue to maintain the trust after termination.

### Who May Not File

This form may not be filed for:

- A multi-employer plan covered by PBGC insurance.
- A request on a determination on the plan's qualification status for a partial termination.
- A plan sponsor who is not certain if they are a member of an ASG.

In these cases, use Form 5300 instead of Form 5310.

### What To File

All applications must contain an original signature and must be accompanied by the following applicable items:

- The appropriate user fee and Form 8717, User Fee for Employee Plan Determination Letter Request. Please submit a separate check for each application. For multiple employer

plans, the fee is based on the number of participating employers.

- A copy of the plan document.
- A copy of all amendments made since the last determination letter.
- A statement explaining how the amendments affect or change this plan or any other plan maintained by the employer.
- All applications for plans that have, at any time in the past, received a favorable determination letter must include a copy of the plan's latest determination letter. See *Line 3c* under *Specific Instructions*.
- A copy of the latest opinion letter for a standardized master or prototype plan, if any.
- A copy of the latest opinion or advisory letter for a master or prototype plan or volume submitter plan on which the employer is entitled to rely, if applicable.
- Copies of all records of all actions taken to terminate the plan.
- Schedule Q (Form 5300) if an elective determination is being requested, and any additional schedules or demonstrations required by these instructions or the instructions for Schedule Q.
- Form 8905, Certification of Intent To Adopt a Pre-approved Plan, if an employer intends to switch from the five-year remedial amendment cycle to the six-year remedial amendment cycle by meeting one of the eligibility requirements for the six-year remedial amendment cycle.

**Note.** See *Guidelines for Demonstrations* on page 6 regarding the content of the demonstrations that may be required by these instructions. The numbers assigned to the demonstrations that may be required by these instructions are the numbers of the corresponding demonstrations under Schedule Q (Form 5300) and, therefore, are not consecutive.

- A copy of all required attachments and statements.
- Form 6088, Distributable Benefits from Employee Pension Benefit Plans, for all defined benefit or underfunded defined contribution plans.

**Note.** A multiple-employer plan must submit a Form 6088 for each employer who has adopted the plan.

## Where To File

File Form 5310 at the address indicated below:

Internal Revenue Service  
P.O. Box 192  
Covington, KY 41012-0192

**Private Delivery Services.** 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. These private delivery services include only the following.

- DHL Express (DHL): DHL Same Day Service, DHL Next Day 10:30 am, DHL Next Day 12:00 pm, DHL Next Day 3:00 pm, and DHL 2nd Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and 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. Incomplete applications may be returned to the applicant. For this reason, it is important that an appropriate response be entered for each line item (unless instructed otherwise). 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.
- The IRS may, at its discretion, require additional information any time it is deemed necessary.

**Note.** Rev. Proc. 2006-6, 2006-1 I.R.B. 204 publishes the guidance under which the determination letter program is administered. It is updated annually and can be found in the Internal Revenue Bulletin (I.R.B.).

## Specific Instructions

**Line 1a.** Enter the name, address, and telephone number of the plan sponsor/ employer.

A plan sponsor means:

- In the case of a plan that covers the employees of one employer, the employer;
- 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 combined 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;

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

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

**Address.** 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. This address should be the address of the sponsor/employer.

**Line 1b.** 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 by Internet and use it immediately to file a return. Go to the IRS website at [www.irs.gov/businesses/small](http://www.irs.gov/businesses/small) and click on Employer ID Numbers.
- By telephone—Call 1-800-829-4933.
- By mail or fax—Send in a completed Form SS-4, Application for Employer Identification Number.

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 determination letter requests, and for filing annual returns/reports unless there is a change of sponsor.

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

**Line 2.** The contact person will receive copies of all correspondence as authorized in a Power of Attorney and Declaration of Representative, Form 2848, or Tax Information Authorization, 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.** Section 3001 of ERISA requires the applicant to provide evidence that each employee who qualifies as an interested party has been notified of the filing of this application. If "Yes" is checked, it means that each employee has been notified as required by regulations under Section 7476 or this is a one person plan. A copy of the notice is not required to be attached to this application. If "No" is checked or this line is blank, the application may 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. 2006-6, 2006-1 I.R.B. 204.

**Line 3c.** If you do not have a copy of the latest determination letter, or if no determination letter has ever been received by the employer, submit copies of the initial plan, or the latest plan for which you do have a determination letter, and any subsequent amendments and/or restatements, including all adoption agreements.

If you check "Yes," also attach a statement explaining how the amendments affect or change this or any other plan of the employer.

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

**Line 4c.** Plan year means the calendar, policy, or fiscal year on which the records of the plan are kept.

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

**Line 5. Cash balance or similar 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).

**Line 6.** If the plan employer/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. Attach a statement showing in detail:

1. All members of the group,
2. Their relationship to the plan sponsor,
3. The type(s) of plan(s) each member has, and
4. Plans common to all members.

**Note.** If you want to apply for a determination letter to determine if you are a member of an affiliated service group, do not file this form. File Form 5300.

**Line 7.** Attach copies of records of all actions taken to terminate the plan, such as board of directors' resolutions.

**Line 7b.** Assets must be distributed as soon as administratively feasible after the date of termination. See Rev. Rul. 89-87, 1989-2 C.B. 81.

**Line 7c.** Check "No" only if you are certain that there will be no reversion of plan assets to the employer.

**Line 10d.** If you checked adverse business conditions as the reason for filing for termination, attach an explanation detailing the conditions that require termination of the plan.

**Line 13.** Complete this line to indicate how the plan satisfied section 410(b). Complete lines 13a through 13n if the plan satisfied the ratio percentage test for the year of termination. Complete line 13o if the plan satisfied the average benefit test for the year of termination. Complete line 13p if the plan satisfied coverage using one of the special requirements of Regulations section 1.410(b)-2(b)(5), (6), or (7). Plans that use the qualified separate lines of business rules of section 414(r) must attach Demo 1. See *Guidelines for Demonstrations*.

**Line 13a.** If the plan is disaggregated into two or more separate plans that are other than profit sharing and/or

section(s) 401(k) and/or 401(m) plan(s), complete lines 13b through 13o with respect to each disaggregated portion of the plan. Attach additional schedules as necessary to identify the other disaggregated portions of the plan and to 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.

Section(s) 401(k) and/or 401(m) plan(s) must complete line 13(l) for the portion of the plan that is not a section 401(k) or a 401(m) plan. Also complete line 13(m)(1) to report the ratio percentage for the section 401(k) portion of the plan and line 13(m)(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 section 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 other 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(l), which may permit the employer to exclude certain former nonhighly compensated employees.

**Note.** This note applies only to plans that include a qualified cash or deferred arrangement under section 401(k) or employee or matching contributions under section 401(m).

If there are any contributions under the plan that are not subject to the

special rule for section 401(k) plans and section 401(m) plans in Regulations section 1.401(a)(4)-1(b)(2)(ii)(B) (such as nonelective contributions), complete lines 13e through 13k with respect to the portion of the plan that includes these contributions and enter the ratio percentage for this portion of the plan on line 13l.

Otherwise, complete lines 13e through 13k with respect to the section 401(k) part of the plan (or the section 401(m) plan if there is no section 401(k) arrangement) and leave line 13l blank. In all cases, enter the ratio percentages for the section 401(k) and the section 401(m) parts of the plan, as applicable, on line 13m. These percentages should be based on the actual nonexcludables in the sections 401(k) and 401(m) portions, respectively. It is suggested that these calculations be submitted with the application, but this is optional.



**CAUTION** Do not base the calculations on lines 13(m)(1) and (2) on the nonexcludable employees reported on line 13(g) unless all of the disaggregated plans (profit sharing, section 401(k), and section 401(m)) have the same nonexcludable employees with the same age and service requirements.

**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 Collective Bargaining Agreement (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. 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.** Subtract the total of lines 13(e)(1) through 13(e)(5) as reported on line 13(f) from the total employees reported on line 13(d). The result is the number of "nonexcludable employees." These are the employees who cannot be excluded from the plan for statutory or regulatory reasons and must be considered in the calculation of the ratio percentage even though they might not "benefit" under the plan. If they meet the age and service requirements of section 410 and are not otherwise excludable employees, they must be included in this number.

**Line 13h.** Enter the number of 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 sections 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 lines 13i and 13k if, in accordance with the note following the instruction

for line 13d, the information provided in lines 13e through 13k relates to the portion of the plan that is not subject to the rule in Regulations section 1.401(a)(4)-1(b)(2)(ii)(B).

**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 HCEs).

**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 on line 13o by submitting a Demo 5.

**Line 13m.** See the Note following the instructions for line 13d. 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 13i, 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.

**Line 13o.** Plans that use the average benefit test to satisfy section 410(b) for the year of termination must attach a Demo 5 (see *Guidelines for Demonstrations*) unless the plan has received a favorable determination regarding the average benefit test in the 3 years preceding the date of termination and the plan has not experienced a material change in the facts (including benefits provided and employee demographics) on which the determination was based.

**Line 14.** Do not complete line 14 if line 13p is completed. Complete line 14 to indicate how the plan satisfied the requirements of section 401(a)(4). Complete this line as of the date entered in line 13c. If this plan has been disaggregated into separate plans or restructured into component plans, attach a Demo 4 indicating how each separate disaggregated plan or restructured component plan satisfies the nondiscrimination in amount requirement of Regulations section 1.401(a)(4)-1(b)(2).

If any restructured component plan or disaggregated plan relies on a nondesign-based safe harbor or a general test, leave line 14c blank.

**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.

**Line 14e.** Plans that use a nondesign-based safe harbor or a general test to satisfy section 401(a)(4) for the year of termination must attach a Demo 6 (see *Guidelines for Demonstrations*) unless: (1) the plan has received a favorable determination regarding the nondesign-based safe harbor or general test in the 3 years preceding the date of termination, and (2) the plan has not experienced a material change in the facts (including benefits provided and employee demographics) on which the determination was based.

**Line 15a(4).** A dropped participant means any participant who has terminated employment even if their benefits have not been distributed.

**Line 15a(6).** Enter the number of participants separated from vesting service with less than 100% vesting in their accrued benefit or account balance.

**Line 15b.** Attach a schedule with the following information for each participant who has separated from vesting service with less than 100% vesting:

1. Name of participant,
2. Date of hire,
3. Date of termination,
4. Years of participation,
5. Vesting percentage,
6. Account balance/account benefit at the time of separation from service,
7. Amount of distribution,
8. Date of distribution, and
9. Reason for termination.

If there is a 20% reduction in participants, explain why this would not constitute a partial termination.

**Line 17b.** Regulations section 1.401(a)-20, Q&A-2 provides, in part, that the requirements of sections 401(a)(11) and 417 apply to the payments under annuity contracts, not to the distributions of annuity contracts.

**Line 17c.** The accrued benefits of a plan participant may not be reduced on plan termination. A plan amendment (including an amendment terminating a plan) that effectively eliminates or reduces an early retirement benefit or a retirement type subsidy for benefits attributable to pre-amendment service is treated as reducing the accrued benefit of a participant if subsequent to termination the participant could satisfy

the conditions necessary to receive such benefits. See section 411(d)(6) and Regulations section 1.411(d)-3 and Rev. Rul. 85-6, 1985-1 C.B. 133.

**Line 17d.** Answer "Yes" if any funds were contributed in the form of, or invested in, obligations or property of the employer (including any entity related to the employer under section 414(b) or 414(c)).

**Line 17f.** If there is a contribution receivable that the employer intends to make by the required due date for section 412, and no funding deficiency will exist after the contribution is made, this line should be answered "No."

**Line 17h(1).** Provide a description of the transaction(s) and attach a statement which must include the:

1. Name(s) of the sponsor(s) involved,
2. Employer identification number(s) of the sponsor(s),
3. Plan administrator's name(s) and EIN, and
4. Plan name(s) and plan numbers.

**Line 17h(4)(A).** All plan liabilities must be satisfied before assets can revert to the employer upon termination of the plan. All liabilities will not be satisfied if the value of retirement-type subsidies are not provided participants who, after the date of the proposed termination, satisfy certain pre-termination conditions necessary to receive such benefits. See section 401(a)(2), Regulations section 1.401-2(a)(1) and Rev. Rul. 85-6.

**Line 17h(4)(B).** The annuity contracts purchased must be guaranteed for each participant. However, in order to maintain qualification of a continuing pension plan, the contracts covering participants' accrued benefits in the plan must not be distributed except in accordance with Regulations section 1.401-1(b)(1)(i).

**Line 17h(7).** Answer "Yes" if your plan is a defined benefit plan and you intend that any or all of your participants will be covered by a new or existing defined benefit plan of the employer.

**Line 17h(10).** If the answer to this item is "Yes," attach a list that includes the:

1. Name(s) of the plan sponsor(s),
2. Employer or sponsor's EINs,
3. Administrator's identification number(s),
4. Plan number(s), and
5. An explanation of the termination(s) including:
  - a. The amount(s) of the reversion(s),
  - b. The date(s) of termination, and
  - c. The reason(s) for termination.

**Line 17j.** For this question only, "single-sum distribution" will mean a single payment of the value of a participant's benefits or a series of payments that do not provide

substantially equal payments (either alone or in conjunction with other benefit payments) over the life of the participant.

**Line 17l.** Section 416 provides that plan participants in a top-heavy plan who are non-key employees must accrue a minimum benefit or receive a minimum contribution.

**Line 17m.** If "Yes" is checked, attach a list for each plan with the following information:

1. Name of plan,
2. Type of plan,
3. Plan number, and
4. Indicate if another application is simultaneously being submitted with this application.

**Line 18.** Complete this only for defined contribution plans. Enter the date of the current plan year and the prior 5 plan-years in the columns indicated.

**Line 18b.** Enter the amount of forfeitures for each of the plan years entered. If these forfeitures resulted from a cashout for a year not listed on line 15a, attach a statement indicating the year of the cashout.

**Line 18c.** Enter the amount of transfers and rollovers received from qualified plans (under section 401(a) and/or conduit IRAs) for each of the plan years entered.

**Line 19.** Check the box or boxes that indicate the form(s) of distribution of benefits for your plan upon termination. Submit a statement that all distributions have been or will be made in accordance with plan provisions and proper spousal consents will be secured, when applicable.

**Line 20.** Complete the statement showing the estimated fair market value of the plan assets and liabilities as of the proposed date of termination or the latest valuation date.

Include and clearly identify all liabilities (other than liabilities for benefit payments due after the date of plan termination) that are unpaid as of the proposed termination date or that are paid or payable from plan assets after the proposed date of plan termination under the provisions of the plan. Liabilities include expenses, fees, other administrative costs, and benefit payments due and not paid before the proposed termination date or latest valuation date.

**Line 20c(4).** Include investment securities issued by a corporate entity at a stated interest rate repayable on a particular future date such as most bonds, debentures, convertible debentures, commercial paper and zero coupon bonds. Do not include debt securities of governmental units or municipalities.

**Line 20c(7)(A).** Include the current value of real property owned by the

plan which produces income from rentals, etc. Do not include this property in line 20e (buildings and other property used in plan operations).

**Line 20c(7)(B).** Include the current value of real property owned by the plan which is not producing income or used in plan operations.

**Line 20c(9) and (10).** Attach a list regarding loans from the plan. Include the following information:

1. Name,
2. Dollar amount of each loan(s),
3. Date of loan,
4. Balance of the loan at the date of termination,
5. Account balance prior to the date of the loan,
6. Identify all disqualified persons as described by section 4975(f), and
7. Amortization and/or repayment schedule.

**Line 20c(12).** Include allocated and unallocated contracts including plan-owned life insurance.

**Line 20i.** "Acquisition indebtedness," for debt-financed property other than real property, means the outstanding amount of the principal debt incurred:

1. By the organization in acquiring or improving the property,
2. Before the acquisition or improvement of the property if the debt was incurred only to acquire or improve the property, or
3. After the acquisition or improvement of the property if the debt was incurred only to acquire or improve the property and was reasonably foreseeable at the time of such acquisition or improvement. For more details, see section 514(c).

## Guidelines for Demonstrations

The following instructions describe additional information that must be included in the demonstrations.

**Note.** Applicants must follow the guidelines in these instructions and indicate in their demonstrations where the elements in the guidelines are addressed. Applicants must explain why any elements have not been addressed.

Information or computations that are used for more than one purpose or provided elsewhere in the application may not be cross-referenced.

### Demo 1 - Qualified Separate Lines of Business

Provide a schedule with the following information, as applicable:

1. The section(s) for which the employer is testing on a separate line of business basis (for example, section 410(b) or section 401(a)(26)),

2. The separate lines of business that have employees benefiting under the plan,

3. A demonstration of how the plan meets the nondiscriminatory classification requirement of section 410(b)(5)(B) and Regulations section 1.414(r)-8(b)(2) on an employer-wide basis, and

4. If the requirements of section 410(b) or section 401(a)(26) are to be applied to this plan on an employer-wide basis under the special rules for employer-wide plans, a demonstration of how the plan meets the requirements of the applicable special rule in Regulations sections 1.414(r)-1(c)(2)(ii) or 1.414(r)-1(c)(3)(ii).

### Demo 4 - Test for Restructuring, Mandatory Disaggregation or Permissive Aggregation

Explain the basis of the disaggregation, permissive aggregation, or restructuring, identifying the aggregated or separate disaggregated plans or component plans, and demonstrate how any restructured component plans satisfy section 410(b) as if they were separate plans.

Any other plan that has been permissively aggregated with this plan should be identified by:

- Name,
- Plan number, and
- Employer Identification Number (EIN).

Describe the benefit or allocation formula of the other plan and indicate if that plan has received or been submitted for a determination letter.

### Demo 5 - Average Benefit Test

1. A demonstration that a plan satisfies the average benefit test must describe compliance with the nondiscriminatory classification test of Regulations section 1.410(b) including, if applicable, the facts and circumstances determination under Regulations section 1.410(b)-4(c)(3).

**Note.** The determination regarding the average benefit test is not available to a plan that satisfies the ratio percentage test.

2. The demonstration for the average benefit test should provide, for each HCE and each NHCE, the compensation used in the test, the allocation or benefit being tested, and the actual benefit percentages. The average benefit percentages for HCEs and NHCEs must be provided.

3. A plan that is deemed to satisfy the average benefit percentage test under the special rule in Regulations section 1.410(b)-5(f) must demonstrate that the plan would satisfy the ratio percentage

test if the excludable employee and mandatory disaggregation rules for collectively bargained and noncollectively bargained employees did not apply.

4. In addition to the above information, the average benefit percentage demonstration must identify and describe the method used for determining employee benefit percentages (see Regulations sections 1.410(b)-5(d) and (e)). Also, include the applicable information listed below, under the heading *All Plans*.

**Note.** The demonstration must include the portion of the coverage test showing the data used in the calculations and the calculations for each participant. Participants need not be identified. However, the IRS may request that additional information be submitted if necessary.

### All Plans

All plans using the average benefit test must also include the following information on Demo 5:

1. The testing period (see Regulations section 1.410(b)-5(e)(5) for an optional averaging rule).
2. The definition of testing service (including imputed and pre-participation service).
3. A description of the testing group (see Regulations section 1.410(b)-7(e)).
4. Whether the employee benefit percentages are determined on a contributions or benefits basis.
5. Whether permitted disparity under Regulations section 1.401(a)(4)-7 is imputed in determining employee benefit percentages.
6. An explanation of how allocation or accrual rates are grouped on the test.
7. A description of how contributions or benefits are normalized on the test, including the actuarial assumptions used.
8. The definition of section 414(s) compensation used in determining plan year compensation or average annual compensation and a demonstration showing the definition as nondiscriminatory. If plan year compensation or average annual compensation is determined using a definition of compensation that satisfies Regulations section 1.414(s)-1(c)(2) or (3), the explanation should state whether the definition satisfies Regulations section 1.414(s)-1(c)(2) or (3). For guidance pertaining to this demonstration, see the guidelines for Demo 9, nondiscriminatory compensation, in the instructions for Schedule Q (Form 5300).
9. A description of the method of determining compensation used in determining employee benefit percentages.



10. The testing age of employees (not applicable to defined contribution plans testing on a contribution basis).

### Plans with Defined Benefits Plans in the Testing Group

Plans with DBPs in the testing group must also provide the following information, if applicable.

11. Show if accruals after normal retirement age are taken into account and, if such accruals are disregarded as provided in Regulations section 1.401(a)(4)-3(f)(3), the basis on which they are disregarded.

12. Show if most valuable rates must be used under Regulations section 1.410(b)-5(d)(7), and, if so, show how those rates are determined.

13. Show if a defined benefit plan disregards offsets described in Regulations section 1.401(a)(4)-3(f)(9), give a description of such offsets, and show how they satisfy Regulations section 1.401(a)(4)-3(f)(9).

14. Show if any disability benefits are taken into account in determining employees' accrued benefits under Regulations section 1.401(a)(9)-3(f)(2), and, if so, cite the plan provisions that permit these disability benefits to be taken into account.

15. Show if any other special rules in testing a plan for nondiscrimination in amounts are applied, for example, the rules applicable to the determination of benefits on other than a plan-year basis described in Regulations section 1.401(a)(4)-3(f)(6), the adjustments for certain plan distributions provided in Regulations section 1.401(a)(4)-3(f)(7), and the adjustment for certain qualified preretirement survivor annuity charges as provided in Regulations section 1.401(a)(4)-3(f)(8).

16. For plans with employee contributions not allocated to separate accounts, give a description of the method for determining the employer-provided accrued benefit under Regulations section 1.401(a)(4)-6(b) and the location of relevant plan provisions. If the method for determining the employer-provided accrued benefit is the composition-of-workforce method, the demonstration must show that the eligibility requirements of Regulations section 1.401(a)(4)-6(b)(2)(ii) are satisfied; if the grandfather rule of Regulations section 1.401(a)(4)-6(b)(4) is used, the demonstration must show, if applicable, that the benefits provided on account of employee contributions at lower levels of compensation are comparable to those provided on account of employee contributions at higher levels of compensation.

### Employee Benefit Percentages Determined Using Cross-Testing

17. Provide a description of the method used to determine equivalent allocations and benefits on the test.

### Demo 6 - General Test

A determination that a plan satisfies any of the general tests in Regulations sections 1.401(a)(4)-2(c), 1.401(a)(4)-3(c), 1.401(a)(4)-8(b)(2), 1.401(a)(4)-8(c)(2), 1.401(a)(4)-8(c)(3)(III)(C), and 1.401(a)(4)-9(b) must include a nondiscrimination test showing that the plan passes the relevant general test, and provide the information listed under *All Plans (unless otherwise noted)* and, if applicable, under *DBPs Only or Cross-Tested Plans Only*. However, the IRS may request that additional information be submitted if necessary.

### All Plans (unless otherwise noted)

All plans must submit the information requested in items 1 through 11.

1. Provide the portion of the nondiscrimination test that provides the data for each participant and demonstrates that the plan satisfies section 401(a)(4). Participants need not be identified by name. Tests that include two or more component plans (such as profit sharing, money purchase, sections 401(k) and 401(m)) should show the allocations or benefits under each component plan.

2. Identify each rate group under the plan and include a demonstration of how each rate group satisfies section 410(b). If the plan is a DBP that is being tested on the basis of the amount of benefits, rate groups must be determined on the basis of both normal and most valuable accrual rates which are expressed as a dollar amount or a percentage of compensation. If the most valuable accrual rate is determined in accordance with the special rule in Regulations section 1.401(a)(4)-3(d)(3)(iv) (floor on most valuable accrual rate), this must be indicated.

3. State whether the plan is being tested on a contributions or benefits basis.

4. Provide the plan year being tested.

5. Provide a description of the method of determining allocation or accrual rates, and if the plan is tested on a benefits basis, the measurement period and definition of testing service (including imputed and pre-participation service).

6. State whether the test is imputing permitted disparity under Regulations section 1.401(a)(4)-7.

7. Provide an explanation of how allocation or accrual rates are grouped.

8. Provide an explanation of how benefits are normalized on the test, including the actuarial assumptions used (not applicable to defined contribution plans testing on a contributions basis).

9. State the definition of section 414(s) compensation used in determining plan year compensation or average annual compensation and a demonstration showing the definition as nondiscriminatory. If plan year compensation or average annual compensation is determined using a definition of compensation that satisfies Regulations section 1.414(s)-1(c)(2) or (3), state whether the definition satisfies Regulations section 1.414(s)-1(c)(2) or (3). See the guidelines for Demo 9, nondiscriminatory compensation, in the Instructions for Schedule Q (Form 5300) for guidance pertaining to this demonstration.

10. Provide the method of determining average annual compensation used in testing the plan for nondiscrimination as defined in Regulations section 1.401(a)(4)-3(e)(2) or give a description of the period used in determining plan year compensation.

11. Provide the testing age of employees, include fractions of year if test is based on fractional age (not applicable to DCPs testing on a contributions basis).

### Defined Benefit Plans Only

All DBPs must also provide the following information if applicable.

12. State whether accruals after normal retirement age are taken into account, and if such accruals are disregarded as provided in Regulations section 1.401(a)(4)-3(f)(3), provide the basis on which they are disregarded.

13. State whether early retirement window benefits are taken into account in determining accrual rates and whether such benefits are being disregarded under Regulations section 1.401(a)(4)-3(f)(4)(ii). Also provide the basis on which they are disregarded.

14. State whether any unpredictable contingent event benefits were taken into account in determining accrual rates under Regulations section 1.401(a)(4)-3(f)(5) and provide the basis on which they are taken into account.

15. State whether the plan disregards offsets described in Regulations section 1.401(a)(4)-3(f)(9), provide a description of such offsets, and show how they satisfy Regulations section 1.401(a)(4)-3(f)(9).

16. State whether any disability benefits are taken into account in determining employees' accrued benefits under Regulations section 1.401(a)(4)-3(f)(2), and if so, cite the plan provisions that permit these

disability benefits to be taken into account.

17. State whether any other special rules in Regulations section 1.401(a)(4)-3(f) are applied in testing a plan for nondiscrimination in amount. For example:

- The rules applicable to the determination of benefits on other than a plan-year basis described in Regulations section 1.401(a)(4)-3(f)(6),
- The adjustment for certain plan distributions provided in Regulations section 1.401(a)(4)-3(f)(7), and
- The adjustment for certain qualified preretirement survivor annuity charges as provided in Regulations section 1.401(a)(4)-3(f)(8).

18. Plans with employee contributions not allocated to separate accounts should include:

- A description of the method for determining whether employee-provided accrued benefits are nondiscriminatory under Regulations section 1.401(a)(4)-6(c),
- The method for determining the employer-provided accrued benefit under Regulations section 1.401(a)(4)-6(b), and
- The location of relevant plan provisions.

If the method for determining the employer-provided accrued benefit is the composition-of-workforce method, the demonstration must show that the eligibility requirements of Regulations section 1.401(a)(4)-6(b)(2)(ii) are satisfied.

If the grandfather rule of Regulations section 1.401(a)(4)-6(b)(4) is used, the demonstration must show, if applicable, that the benefits provided on account of employee contributions at lower levels of compensation are comparable to those provided on account of employee

contributions at higher levels of compensation.

19. If the plan would otherwise fail to satisfy the general test in Regulations section 1.401(a)(4)-3(c)(1), and a determination is being sought that the failure may be disregarded as permitted by the special rule in Regulations section 1.401(a)(4)-3(c)(3), describe the relevant facts and circumstances that support the use of this rule.

#### Cross-Tested Plans Only

20. Provide a description of the method used to determine equivalent allocations and benefits.

21. **Defined Contribution Plans.** The demonstration must list each participant's allocation rate for the plan being tested and list the equivalent benefit accrual rate (including component plans) for each participant. Also, the demonstration must show how the plan satisfies one of the conditions in Regulations section 1.401(a)(4)-8(b)(1)(i)(B) in order to be eligible to test on a benefits basis.

#### Demo 6 - Safe Harbor for Uniform Points Plans

Each demonstration of the safe harbor for uniform points plans in Regulations section 1.401(a)(4)-2(b)(3) should include the following information.

1. Provide a description of the plan's allocation formula and the location of relevant plan provisions.
2. State the definition of section 414(s) compensation used in determining plan year compensation and give a demonstration showing the definition as nondiscriminatory. If the plan determines plan year compensation using a definition of compensation that satisfies Regulations section

1.414(s)-1(c)(2) or (3), state whether the definition satisfies Regulations section 1.414(s)-1(c)(2) or (3).

See the guidelines for Demo 9, nondiscriminatory compensation, in the Instructions for Schedule Q (Form 5300) for guidance pertaining to this demonstration.

3. Provide the portion of the nondiscrimination test that provides the data for each participant and demonstrates that the plan satisfies section 401(a)(4). The data must include the units for each participant being tested and the underlying basis for the units such as age, years of service or compensation. Show the allocation rate for each eligible participant.

Show the average of the allocation rates (determined without imputing permitted disparity) for the highly compensated and for the nonhighly compensated employees benefiting under the plan.

#### Demo 6 - Alternative Safe Harbor for Flat Benefit Plans

Each demonstration of the alternative safe harbor for flat benefit plans in Regulations section 1.401(a)(4)-3(b)(4)(i)(C)(3) must set forth the average of the normal accrual rates for all nonhighly compensated nonexcludable employees and the average of the normal accrual rates for all highly compensated nonexcludable employees. In addition, the demonstration should provide the additional information described under "Demo 6 - General Test," relating to the determination of normal accrual rates, except for the information described in paragraphs numbered 1, 2, 6, 18, and 19.

**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to determine whether you meet the legal requirements for plan approval.

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 the forms listed below will vary depending on individual circumstances. The estimated average times are:

	Recordkeeping	Learning about the law or the form	Preparing, copying, assembling, and sending the form to the IRS
Form 5310	64 hr., 6 min.	21 hr., 36 min.	25 hr., 27 min.
Form 6088	6 hr., 24 min.	1 hr., 12 min.	1 hr., 21 min.

If you have any comments concerning the accuracy of these time estimates or suggestions for making these forms simpler, we would be happy to hear from you. You can write to Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6406, Washington, DC 20224.

Do not send these forms to this address. Instead, see *Where To File* on page 2.



Form 6088

(Rev. March 2008)  
Department of the Treasury  
Internal Revenue Service

### Distributable Benefits From Employee Pension Benefit Plans

OMB No. 1545-0202

▶ Attach to application for determination—regarding a plan termination.

This Form Is NOT Open to Public Inspection

Employer identification number

Name of employer

Line No.	Participant's last name and initials (see instructions)	(b) Check if highly compensated	Fill in columns		Compensation (see instructions)	Accrued Benefit (see instructions)	Distributable Benefits (see instructions)			For defined contribution plans, enter total account balances. For defined benefit plans, see instructions
			(c) Years of participation (see instructions)	(d) Age at plan termination			(1)	(2)	(3)	
1										
2										
3										
4										
5										
6										
7										
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17										
18										
19										
20										
21										
22										
23										
24										
25										
26	Totals for above									
27	Totals for all other participants not listed on lines 1 through 25									
28	Totals for lines 26 and 27									

## General Instructions

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

**Purpose of form.** The Internal Revenue Service (IRS) uses the information on Form 6088 to analyze an application for a determination letter on the qualification of the plan upon termination.

**Who must file.** A plan sponsor or administrator of a defined benefit or an underfunded defined contribution plan that files an application for an IRS determination letter regarding a plan termination must attach Form(s) 6088 to Form 5310, Application for Determination for Terminating Plans or Form 5300, Application for Determination for Employee Benefit Plan, whichever applies.

A plan sponsor or administrator of a collectively bargained underfunded defined contribution plan must file Form 6088 only if the plan benefits employees who are not collectively bargained employees or more than 2% of the employees covered by the plan are professional employees. See Regulations section 1.410(b)-6(d) and 1.410(b)-9 for definitions of collectively bargained employee and professional employee. If this form is required for a collectively bargained underfunded plan that benefits noncollectively bargained employees, file a separate Form 6088 for each employer with noncollectively bargained employees benefiting under the plan as if such noncollectively bargained employees were benefiting under a separate plan. Do not file a Form 6088 for the portion of an underfunded defined contribution plan benefiting collectively bargained employees. If more than 2% of the employees covered by a collectively bargained plan are professional employees, file as if all employees covered by the plan were noncollectively bargained employees.

File a separate Form 6088 for each employer participating in a multiple employer defined benefit or underfunded defined contribution plan described in section 413(c) (all employers in each affiliated service group, controlled group of corporations, or group of trades or businesses under common control are considered one employer).

**Public inspection.** Section 6104(a)(1)(B) provides generally that applications, filed for the qualification of a pension, profit-sharing, or stock bonus plan, will be open to public inspection. However, section 6104(a)(1)(C) provides that information concerning the compensation of any participant will not be open to public inspection. Therefore, Form 6088 will not be made available to the public, plan participants, or other employees of the employer who established the plan.

## Definitions

**Participant.** For purposes of this form, participant means any individual who satisfied the plan participation requirements and is entitled to receive plan benefits upon termination of the plan. This includes employees with accrued nonvested benefits and individuals who are former employees at the time of plan termination who are entitled to future benefits under the plan.

**Compensation.** Compensation, for purposes of completing columns (a) and (e), means section 415 compensation as defined in Regulations section 1.415(c)-2.

**Underfunded defined benefit plan.** Generally, an underfunded defined benefit plan is a defined benefit plan under which, at the time of plan termination, the sum of the value of benefit liabilities for all participants exceeds the value of plan assets available to pay those benefit liabilities. Benefit liabilities include participants' accrued benefits, qualified preretirement survivor annuities, and any other plan benefits payable on or after plan termination.

**Underfunded defined contribution plan.** Generally, an underfunded defined contribution plan is a defined contribution plan in which the sum of the account balances exceeds the plan's assets available to provide the benefits (for example, a money purchase plan terminates before a funding waiver has been fully amortized).

## Specific Instructions

Prepare the participant census as of the date of plan termination or proposed date of plan termination.

For underfunded defined benefit plans (except those benefiting only collectively bargained employees of which not more than 2% are professional employees), provide the information in columns (a) through (h) for all participants. If there are more than 25 participants, attach additional sheets providing the information in the same format as Form 6088.

For defined benefit plans other than those subject to the preceding paragraph, complete all columns on Form 6088 except (g)(1), (g)(2), and (g)(3). If there are fewer than 25 participants, list all of the participants. Otherwise, submit only the first 25 who fall under the priorities specified in the instructions for column (a).

For underfunded defined contribution plans, complete only columns (a), (b), (e), (g)(1), (g)(3), and (h). Provide this information for all participants. If there are more than 25 participants, attach additional sheets providing the information in the same format as the Form 6088.

**Column (a).** First list any participant who at any time during the 5-year period prior to the date of plan termination or proposed plan termination owned directly or indirectly 5% or more of the voting stock or 5% or more of the business. Next list the remaining participants in order of current compensation (see *Definitions* above and the instructions for column (e)) starting with the highest-paid participant followed by the next highest-paid, and so on.

**Column (b).** Check column (b) to indicate that a participant is a highly compensated employee under section 414(q). Enter "NA" if the participant is not a highly compensated employee.

**Column (c).** (Defined benefit plans only.) List years of participation prior to the earliest of plan termination, retirement, or separation from employment. If the accrued benefit described in column (f) is based on years of credited service that is different than years of participation, attach a separate schedule to add this information for each participant.

**Column (d).** (Defined benefit plans only.) List the participant's age as of plan termination.

**Column (e).** For defined contribution plans, enter the participant's compensation for the current 12-month period. The current 12-month period can be the last calendar or plan year ending on or before plan termination. For participants who are no longer employed as of the date of plan termination, compensation is the compensation received for the applicable period immediately before the earlier of retirement or separation from employment. See Regulations section 1.415(c)-2(e)(3) for additional rules.

**For defined benefit plans.** Enter the participant's average compensation for the high 3 years. Average compensation for the "high 3 years" means the participant's average compensation determined on an annual basis for the period of consecutive calendar years (but not more than 3) during which the participant had the greatest aggregate compensation from the employer (or earned income if the participant is self-employed or an owner-employee). For participants no longer employed as of the proposed termination date, use compensation and years of participation prior to the earliest of the proposed date of plan termination, retirement, or separation from employment. If the accrued benefit described in column (f) is based on compensation other than the "high 3 years," please attach a separate schedule to report those amounts for each participant.

**Column (f).** (Defined benefit plans only.) List the accrued benefit, as of the date of plan termination, of each participant (in the normal form payable at normal retirement age under the plan) excluding any benefits attributable to voluntary employee contributions (including rollovers). In lieu of providing the information in the preceding sentence for participants in pay status, the accrued benefit in the form being paid may be entered with an asterisk and the form of the payout described on an attachment. If the accrued benefit is increased or decreased because of top-heaviness, section 415 limitations or offsets, report this in an attachment that includes a detailed calculation of the increased or decreased benefit. However, do not adjust for an election of a majority owner to forego receipt of a distribution under PBGC Regulations section 4041.21(b)(2).

**Column (g).** If the sum of the amounts in columns (g)(1), (g)(2), and (g)(3) does not equal line 20(f) of Form 5310, attach an explanation of the difference.

**For defined contribution plans.** Enter in column (g)(1) the total assets distributable to each participant attributable to mandatory and voluntary employee contributions and rollover contributions. Leave column (g)(2) blank and enter in column (g)(3) the total assets distributable to each participant attributable to employer contributions including elective deferrals to a qualified cash or deferred arrangement (section 401(k) plan) and employer matching contributions.

**For underfunded defined benefit plans.** Enter in column (g)(1) amounts allocated in accordance with section 4044(a)(1) and (2) of the Employee Retirement Income Security Act of 1974. In column (g)(2), enter amounts allocated in accordance with section 4044(a)(3) and (4)(A). In column (g)(3), enter all amounts allocated other than those entered in columns (g)(1) and (g)(2).

**Column (h).** For defined benefit plans, enter the present value of the participant's total benefit liabilities (determined as of the termination date, and whether or not forfeitable) at the date of distribution of the plan assets. Use the date of plan termination for plans to be trustee by the PBGC. For this purpose, present value is the single-sum distribution amount provided under the terms of the plan. However, if the plan does not provide for a single-sum distribution or the participant's benefits are provided by an annuity contract, present value is the cost (or estimated cost if actual cost is not available) of the annuity. Attach a statement explaining how the present values were determined (including the interest rate, lookback month, stability period, and mortality table used). This statement also should indicate the specific interest rates used to compute single-sum distributions. If the sum of the amounts in column (h) does not equal line 20(f) of Form 5310, attach an explanation of the difference.

**User Fee for Employee Plan Determination,  
 Opinion, and Advisory Letter Request**

For  
 IRS  
 Use  
 Only

OMB No. 1545-1772

Amount paid \_\_\_\_\_

▶ Attach to determination letter application.  
 ▶ For the latest information about this form, go to [www.irs.gov/form8717](http://www.irs.gov/form8717).

1 Name of plan sponsor (employer if single-employer plan) \_\_\_\_\_

2 Sponsor's employer identification number \_\_\_\_\_ 3 Plan number \_\_\_\_\_ 4 Plan name \_\_\_\_\_

**Caution.** If you qualify for the exemption from user fees for small business employers, complete only the certification below (see the instructions on page 2 for details). For all other applications, leave the certification blank and check the appropriate box in column A or B of line 5.

**Certification**

I certify that the application for a determination letter on the qualified status of the plan listed above meets the conditions for exemption from user fees described in section 7528(b)(2)(B) of the Internal Revenue Code.

Sign Here ▶ \_\_\_\_\_ Date ▶ \_\_\_\_\_

Type or print name and title ▶ \_\_\_\_\_

	Form Submitted	Fee Schedule	
		A with Demo 5 and/or Demo 6:	B no Demo 5 and no Demo 6:
<b>5a Form 5300:</b>		<input type="checkbox"/> \$ 4,500	<input type="checkbox"/> \$ 2,500
<b>b Form 5307:</b>		<input type="checkbox"/> \$ 1,800	<input type="checkbox"/> \$ 300
<b>c Form 5310:</b>		<input type="checkbox"/> \$ 4,000	<input type="checkbox"/> \$ 2,000
<b>d</b>			
<b>e Multiple employer plans (Form 5300):</b>			
(1) 2 to 10 Forms 5300 submitted . . . . .		<input type="checkbox"/> (1) \$ 5,000	<input type="checkbox"/> (1) \$ 3,000
(2) 11 to 99 Forms 5300 submitted . . . . .		<input type="checkbox"/> (2) \$ 5,000	<input type="checkbox"/> (2) \$ 3,000
(3) 100 to 499 Forms 5300 submitted . . . . .		<input type="checkbox"/> (3) \$ 25,000	<input type="checkbox"/> (3) \$ 15,000
(4) Over 499 Forms 5300 submitted . . . . .		<input type="checkbox"/> (4) \$ 25,000	<input type="checkbox"/> (4) \$ 15,000
<b>f Multiple employer plans (Form 5310):</b>			
(1) 2 to 10 employers maintaining the plan . . . . .		<input type="checkbox"/> (1) \$ 5,000	<input type="checkbox"/> (1) \$ 3,000
(2) 11 to 99 employers maintaining the plan . . . . .		<input type="checkbox"/> (2) \$ 5,000	<input type="checkbox"/> (2) \$ 3,000
(3) 100 to 499 employers maintaining the plan . . . . .		<input type="checkbox"/> (3) \$ 25,000	<input type="checkbox"/> (3) \$ 15,000
(4) Over 499 employers maintaining the plan . . . . .		<input type="checkbox"/> (4) \$ 25,000	<input type="checkbox"/> (4) \$ 15,000
<b>g Volume submitter:</b>			
(1a) Specimen plan (nonmass) with no/one adoption agreement . . . . .			<input type="checkbox"/> (1a) \$ 12,000
(1b) Specimen plan (nonmass) - per each additional adoption agreement . . . . .			<input type="checkbox"/> (1b) \$ 9,500
(2a) Mass submitter specimen plan with no/one adoption agreement . . . . .			<input type="checkbox"/> (2a) \$ 12,000
(2b) Mass submitter - per each additional adoption agreement . . . . .			<input type="checkbox"/> (2b) \$ 1,000
(3) Specimen plan identical to mass submitter specimen plan . . . . .			<input type="checkbox"/> (3) \$ 300
(4) Assumption of sponsorship of an approved specimen plan - per basic plan document . . . . .			<input type="checkbox"/> (4) \$ 300
<b>h Master &amp; Prototype (M&amp;P):</b>			
(1a) Mass submitter - per basic plan document with one adoption agreement . . . . .			<input type="checkbox"/> (1a) \$ 12,000
(1b) Mass submitter - per each additional adoption agreement . . . . .			<input type="checkbox"/> (1b) \$ 1,000
(2) Sponsor's identical adoption of mass submitter basic plan document - per adoption agreement . . . . .			<input type="checkbox"/> (2) \$ 300
(3) Sponsor's minor modification of mass submitter basic plan document - per adoption agreement . . . . .			<input type="checkbox"/> (3) \$ 1,000
(4a) Nonmass submitter - per basic plan document with one adoption agreement . . . . .			<input type="checkbox"/> (4a) \$ 12,000
(4b) Nonmass submitter - per each additional adoption agreement . . . . .			<input type="checkbox"/> (4b) \$ 9,500
(5) Opinion letter for additional optional provisions - per mass submitter basic plan document . . . . .			<input type="checkbox"/> (5) \$ 1,000
(6) Assumption of sponsorship of an approved M&P plan - per basic plan document . . . . .			<input type="checkbox"/> (6) \$ 300
(7) Mass submitter/non-mass submitter sponsor - per trust document in excess of 10 . . . . .			<input type="checkbox"/> (7) \$ 1,000
<b>i Group trust . . . . .</b>			<input type="checkbox"/> \$ 1,000

Attach Check or Money Order Here



## What's New

The user fees were updated by Rev. Proc. 2011-8, 2011-1 I.R.B. 237, corrected by Announcement 2011-8, 2011-5 I.R.B. 446.

### Instructions

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

Generally, a user fee is required with each application for a determination letter. The user fees are shown on page 1. For more information, see Rev. Proc. 2011-6, 2011-1 I.R.B. 195.

### Effective Date

The user fee schedule in Form 8717 is effective for opinion, advisory, and determination letter applications postmarked after January 31, 2011.

### Exemption from User Fee

The exemption from the user fee applies to all eligible employers (defined below) who request a determination letter within the first 5 plan years or, if later, the end of any remedial amendment period with respect to the plan that begins within the first 5 plan years.

A determination letter application that is filed by an eligible employer after January 31, 2011, meets the requirements for exemption if:

(1) the application is filed no later than the last day of the submission period for the plan's current remedial amendment cycle under Rev. Proc. 2007-44, and

(2) the plan was first in effect no earlier than January 1 of the tenth calendar year immediately before the year in which the submission period for the plan's current remedial amendment cycle begins. (If the plan was first in effect before this date, but the application is still filed within a remedial amendment period that began within the first 5 plan years and you are an eligible employer, complete only the *Certification* and attach an explanation of how your application qualifies for exemption under section 7528(b)(2)(B).)

**Example.** An employer maintains an individually designed plan first effective on July 1, 2001. Assume that the plan's 5 year remedial amendment cycle is Cycle A. Therefore, the submission period for the plan's current cycle ends on January 31, 2012. Assume that the employer files a determination letter application for the plan on January 31, 2012. If the employer is an eligible employer, the application is exempt from the user fee requirement because the application is filed by the last day of the submission period for the plan's current remedial amendment cycle and the date the plan was first in effect (July 1, 2001) is not before January 1, 2001 (i.e., January 1 of the tenth calendar year immediately before 2011, the year in which the submission period for the plan's current remedial amendment cycle begins).

A determination letter application that is filed by an eligible employer for a defined benefit plan eligible for the 6-year remedial amendment cycle ending on April 30, 2012, also meets the requirements for exemption if:

## Where To File (Include Form 8717 and user fee with your request or application.)

IF you have this type of request or application . . .	THEN use this address if you send it by:	
	US mail	Express Mail or private delivery service
Determination letter (Form 5307, 5300, 5310, 5310-A, and group trust applications)	Internal Revenue Service P.O. Box 12192 Covington, KY 41012-0192	Internal Revenue Service 201 West Rivercenter Blvd. Attn: Extracting Stop 312 Covington, KY 41011
Volume submitter plan or Master or Prototype plan (Forms 4461, 4461-A, or 4461-B)	Internal Revenue Service P.O. Box 2508 Attn: Pre-approved Plans Coordinator, Room 5106 Cincinnati, OH 45201	Internal Revenue Service 550 Main Street Attn: Pre-approved Plans Coordinator, Room 5106 Cincinnati, OH 45202

(1) the application is filed before May 1, 2012, and

(2) the plan was first in effect no earlier than January 3, 1996.

See Notice 2002-1, 2002-1 C.B. 283 as amplified by Notice 2003-49, 2003-2 C.B. 294 and Notice 2011-86, 2011-45 I.R.B. 698.

An eligible employer as defined in section 408(p)(2)(C)(i)(I) is an employer which had no more than 100 employees who received at least \$5,000 of compensation from the employer for the preceding year. In addition, an eligible employer must have at least one employee who is not a highly compensated employee (as defined in section 414(q)) and is participating in the plan.

The determination of whether an employer is an eligible employer is made as of the date of the request described above. If your application meets these requirements, complete only the *Certification*. Do not complete any part of line 5.

### Payment of User Fee

If you do not meet the conditions for exemption discussed above, a user fee is due.

Check the appropriate box in column A of line 5 if (a) you use the average benefit test to satisfy minimum coverage requirements and/or the general test to show nondiscrimination in the amount of contributions or benefits, and (b) you are requesting a determination letter that covers these issues (i.e., your application includes Schedule Q (Form 5300), Elective Determination Requests and a demonstration labeled Demo 5 and/or Demo 6).

Check the appropriate box in column B of line 5 if you do not want to receive a determination letter that covers the average benefit test and/or the general test (i.e., the plan is not required to use these tests or you do not want these issues considered). A general test plan is a plan that is other than a design-based safe harbor or nondesign-based safe harbor plan.

Attach a check or money order payable to the "United States Treasury" for the full amount of the user fee to Form 8717, if applicable. If you do not include the full amount, your application may be returned. Attach Form 8717 to your determination letter application.

If you have multiple plans, submit a separate determination letter application and Form 8717 for each plan.

**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. If you want to have your plan approved by the IRS, you are required to give us the information. We need it to determine whether you meet the legal requirements for plan approval. Section 7528 authorizes us to charge a user fee; section 6109 requires you to provide your identifying number.

You are not required to provide the information requested on a form 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. However, section 6103 allows or requires us to disclose this information to the Department of Justice and to other federal agencies as provided by law. We may also give it to cities, states, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws. We may give it to certain foreign countries under tax treaties, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

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

**Recordkeeping** . . . . . 8 hrs., 07 min.

**Learning about the law or the form** . . . . . 35 min.

**Preparing, copying, assembling, and sending the form to the IRS** . . . . . 45 min.

If you have comments about the accuracy of this time estimate or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send this form to this address. Instead, see *Where To File* above.

**Notice of Plan Merger or Consolidation, Spinoff, or  
Transfer of Plan Assets or Liabilities; Notice of  
Qualified Separate Lines of Business**

Under sections 6058(b) and 414(r) of the Internal Revenue Code.  
See Who Must File instructions before filling this form.

**1 Reason for filling (see specific instructions for code to enter):**

For Internal Use Only

**Part I All filers must complete lines 1 and 2.**

**2a Name of plan sponsor (employer if single-employer plan)**

**2b Address of plan sponsor (if a P.O. Box, see instructions)**

**2c City**

**2d State**

**2e Zip Code**

**2f Country**

**2g Employer identification number (EIN)**

**2h Telephone number**

**2i Fax number**

**3a Person to contact if more information is needed. (See instructions.)**

(If a Power of Attorney is attached, check box and do not complete this line.)

Contact person's name

**3b Contact person's address**

**3c City**

**3d State**

**3e Zip Code**

**3f Telephone number**

**3g Fax number**

If more space is needed for any item, attach additional sheets the same size as this form. Identify each additional sheet with the plan sponsor's name and EIN and identify each item.

Under penalties of perjury, I declare that I have examined this notice, including accompanying statements and schedules, and to the best of my knowledge and belief, it is true, correct, and complete.

SIGN HERE ► \_\_\_\_\_

Date ►

Type or print name

Type or print title



**Part II** Complete lines 4 through 6 if this is a notice of a plan merger or consolidation, spinoff, or transfer of plan assets or liabilities to another plan.

4a Name of plan (plan name may not exceed 70 characters including spaces):

4b Enter 3-digit plan number:

5a Is this a defined benefit plan? If "Yes," enter "1." If "No," enter "2."

If you enter 1, attach an actuarial statement of valuation showing compliance with the requirements of section 401(a)(12) and the regulations under section 414(l). See instructions.

5b If this is a defined contribution plan, enter the appropriate code. See instructions.

6 Other plan(s) involved in the transaction. See instructions.

a Enter the total number of plans involved in the transaction other than the plan listed on line 4a:

Complete the following information for the other plan. If more than one other plan, see instructions for the required attachment(s).

b If more than one other plan is involved in the transaction, enter the number of this statement (1 of 3, etc.):

c Plan name

d Name of employer

e EIN

f Plan number (3 digits):

g Date of merger or consolidation, spinoff, or transfer of plan assets or liabilities:

h Type of plan (see instructions for code to enter):

**Part III** Complete lines 7 through 12 if you are filing a notice of qualified separate lines of business (QSLOB).

7a Has the employer previously filed a notice of QSLOB? See instructions.

If "Yes," enter "1" and complete lines 7b and 7c. If "No," enter "2" and skip lines 7b and 7c.

b Enter the first day of the first testing year for which such notice applied: ►

c Enter the filing date: ►



8 First testing year for which this notice applies: ►

9 Are you filing this form to give notice that you are revoking a previously filed notice and that you are no longer testing on a QSLOB basis?

If "Yes," enter "1" and complete line 10 and skip lines 11 and 12. If "No," enter "2" and complete lines 10-12.

10 Check the box(es) for the appropriate code section(s) for which the employer is testing on a QSLOB basis (or for which the employer tested, if the answer to line 9 is "Yes").

Section 410(b)     Section 401(a)(26)     Section 129(d)(8)

11 On an attached list, identify each QSLOB operated by the employer. See instructions.

12 Enter the following information relating to each plan maintained by the employer. If more than 1 plan, attach a schedule for each plan showing the information requested on lines 12a through 12e. See instructions.

a Name of plan:

b Date of determination letter, if any: ►

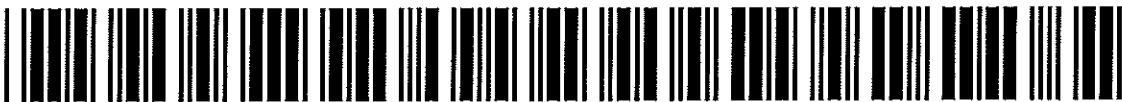
c If this is a pre-approved plan, enter:

(1) Date of the letter ►

(2) Serial or advisory letter number, if any: ►

d Date of the pending determination letter request, if any: ►

e List each QSLOB that has employees benefiting under the plan: See instructions.



# Instructions for Form 5310-A

(Rev. November 2010)



Department of the Treasury  
Internal Revenue Service

## Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business

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

### What's New

The form and instructions have undergone revisions in the format and the information required. Review these documents before completing the notice.

## General Instructions

### Purpose of Form

Form 5310-A is used by employers to give notice of:

- A plan merger or consolidation that is the combining of two or more plans into a single plan.
- A plan spinoff that is the splitting of a single plan into two or more spinoff plans.
- A plan transfer of plan assets or liabilities to another plan that is the splitting off of a portion of the assets or liabilities of the transferor plan and the concurrent acquisition or assumption of these split-off assets or liabilities by the transferee plan.
- Qualified separate lines of business (QSLOBs).

**Note.** An IRS determination letter will not be issued when a Form 5310-A is filed.

### Who Must File

• **Pension plan, profit-sharing plan, or other deferred compensation plan.** Any sponsor or plan administrator of a pension, profit-sharing, or other deferred compensation plan (except a multi-employer plan covered by Public Benefit Guarantee Corporation (PBGC) insurance) should file this form for a plan merger or consolidation, a spinoff, or a transfer of plan assets or liabilities to another plan. See section 6058(b).

**Note.** This form must be filed for each plan with a separate employer identification and plan number if that plan is involved in a merger or transfer of plan assets or liabilities. This includes plans that were not in existence before the plan merger and plans that cease to exist after the plan

merger. In the case of a plan spinoff, file Form 5310-A only for the plan in existence before the spinoff.

• **Qualified separate lines of business.** The employer must file notice that it elects to be treated as operating QSLOBs or that it either modifies or revokes a previously filed notice. Only one notice per employer, within the meaning of sections 414(b), (c), and (m) is required.

### Examples

#### Example One - Initial Notice

Employer A is composed of four separate corporations that are treated as one employer within the meaning of section 414(b). Employer A treats each corporation as a separate line of business. The 2008 testing year is the first year for which Employer A elects to be treated as operating QSLOBs for the purpose of section 410(b) (see *When To File* for a definition of "testing year"). Employer A must file Form 5310-A and provide information on each of the four QSLOBs on or before the notification date for the 2008 testing year (see *When To File* for a definition of "notification date"). If the notice is not timely filed, Employer A is not treated as operating QSLOBs for purposes of the coverage rules for the 2008 testing year (see *Part III*).

#### Example Two - Modification

The facts are the same as in Example One. During the 2009 testing year, Employer A sold QSLOB four. Also, assume that Employer A timely filed Form 5310-A for the 2008 testing year. For the 2009 testing year, Employer A intends to treat QSLOBs one and two as a single QSLOB. Employer A must modify its initial notice by filing Form 5310-A on or before the notification date for the 2009 testing year, including a revised list of QSLOBs for line 11 of the form. If Employer A does not timely provide a new notice, the initial notice filed for the 2008 testing year will be treated as the only notice filed for the 2009 testing year (see *Part III*).

#### Example Three - Revocation

The facts are the same as in Example Two. Assume that Employer A timely

filed a new notice for the 2009 testing year. During 2010, Employer A elects not to treat itself as operating QSLOBs for the 2010 testing year. Employer A must revoke the last notice it filed (that is, the notice for the 2009 testing year). Employer A must revoke the notice filed for the 2009 testing year by filing Form 5310-A for the 2010 testing year and indicating on line 9 of the Form 5310-A that it is revoking a previously filed notice and is no longer testing on a QSLOB basis. If such notice is not filed on or before the notification date for the 2010 testing year, the notice filed for the 2009 testing year will be treated as the only notice filed for the 2010 testing year (see *Part III*).

## Exceptions From Filing Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities

**Direct rollover.** Do not file Form 5310-A for an eligible rollover distribution that is paid directly to an eligible retirement plan in a direct rollover as described in section 401(a)(31).

**Plan merger or consolidation or spinoff.** Do not file Form 5310-A if the plan merger or consolidation or the spinoff complies with Regulations section 1.414(l)-1(d), (h), (m), or (n)(2).

Generally, these requirements will be satisfied in the following four situations:

1. Two or more *defined contribution plans* are merged and all of the following conditions are met:

a. The sum of the account balances in each plan prior to the merger (including unallocated forfeitures, an unallocated suspense account for excess annual additions, and an unallocated suspense account for an ESOP) equals the fair market value of the entire plan assets.

**Example.** Neither plan has an outstanding section 412(d) waiver balance.



b. The assets of each plan are combined to form the assets of the plan as merged.

c. Immediately after the merger, each participant in the plan has an account balance equal to the sum of the account balances the participant had in the plans immediately prior to the merger.

2. There is a spinoff of a *defined contribution plan* and all of the following conditions are met:

a. The sum of the account balances in the plan prior to the spinoff equals the fair market value of the entire plan assets.

**Example.** The plan does not have an outstanding section 412(d) waiver balance.

b. The sum of the account balances for each of the participants in the resulting plan(s) equals the account balances of the participants in the plan before the spinoff.

c. The assets in each of the plans immediately after the spinoff equal the sum of the account balances for all participants in that plan.

**Example.** The plan does not have unallocated accounts.

3. Two or more *defined benefit plans* are merged into one defined benefit plan and both of the following conditions are met:

a. The total liabilities (the present value of benefits whether or not vested) that are merged into the larger plan involved in the merger are less than 3% of the assets of the larger plan. This condition must be satisfied on at least 1 day in the larger plan's plan year during which the merger occurs. All previous mergers (including transfers from another plan) occurring in the same plan year are taken into account in determining the percentage of assets described above.

**Example.** Assume that a merger involving almost 3% of the assets of the larger plan occurs in the first month of the larger plan's plan year. In the fourth month of the larger plan's plan year, a second merger occurs involving liabilities equal to 2% of the assets of the larger plan. The total of both mergers exceeds 3% of the assets of the larger plan. As a result of the second merger, both mergers must be reported on Form 5310-A. Enter the date of the second merger on line 6g.

Also, mergers occurring in previous plan years are taken into account in determining the percentage of assets above if the series of mergers is, in substance, one transaction with the merger occurring during the current plan year.

Aggregating mergers may cause a merger, for which a Form 5310-A was not initially required to be filed, to

become reportable as a result of a subsequent merger. In this case, the merger(s) must be reported on the Form 5310-A filed for the subsequent merger.

b. The provisions of the larger plan that allocate assets at the time of termination must provide that, in the event of a spinoff or termination of the plan within 5 years following the merger, plan assets will be allocated first for the benefit of the participants in the other plan(s) to the extent of their benefits on a termination basis just prior to the merger.

4. There is a spinoff of a *defined benefit plan* into two or more defined benefit plans and both of the following conditions are met:

a. For each plan that results from the spinoff, other than the spunoff plan with the greatest value of plan assets after the spinoff, the value of the assets spun off is not less than the present value of the benefits spun off (whether or not vested).

b. The value of the assets spun off to all the resulting spunoff plans (other than the spunoff plan with the greatest value of plan assets after the spinoff) plus other assets previously spun off (including transfers to another plan) during the plan year in which the spinoff occurs is less than 3% of the assets of the plan before the spinoff as of at least 1 day in that plan's plan year.

**Example.** Assume that a spinoff involving almost 3% of the assets of the plan occurs in the first month of the plan year. In the fourth month of the plan year a second spinoff occurs involving liabilities equal to 2% of the assets of the plan. The total of both spinoffs exceeds 3% of the plan assets. As a result of the second spinoff, Form 5310-A must be filed to report both spinoffs. Enter the date of the second spinoff on line 6g.

Spinoffs occurring in previous or subsequent plan years are taken into account in determining the percentage of assets spun off if such spinoffs are, in substance, one transaction with the spinoff occurring during the current plan year.

Aggregating spinoffs may cause a spinoff, for which a Form 5310-A was not initially required to be filed, to become reportable as a result of a subsequent spinoff. In this case, report the spinoff(s) on the Form 5310-A filed for the subsequent spinoff. Enter the date of the subsequent spinoff on line 6g.

**Transfer of Plan Assets or Liabilities.** A transfer of plan assets or liabilities is considered a combination of separate plan spinoffs and mergers.

Do not file Form 5310-A for:

- The transferor plan in a transfer transaction if the assets transferred satisfy the spinoff conditions in 2 or 4 above.
- The transferee plan in a transfer transaction if the plan liabilities transferred satisfy the merger conditions in 1 or 3 above.

**Note.** In some situations, the transferor plan may have to file Form 5310-A but not the transferee plan, or the transferee plan may have to file but not the transferor plan.

## Examples

### Transfer of Plan Assets or Liabilities

Plans A, B, and C are separate plans within the meaning of section 414(l). A portion of the assets and liabilities of both Plan B and Plan C will be transferred to Plan A. None of the plans are excluded from filing under the exceptions from filing listed above. In this situation all 3 plans must:

- File a completed Form 5310-A.
- Enter code 4 (notice of a transfer of plan assets or liabilities) as the reason for filing.
- Complete all parts of Part I and II of the form.

For Plan A, line 6 of the form will show information regarding Plan B and an attached statement with the line 6 information for Plan C. Plan B and Plan C will each enter the information regarding Plan A on line 6.

### Plan Merger

Plans A, B, and C are separate plans within the meaning of section 414(l). Plans A, B, and C are being merged. Assets and liabilities from each plan will be merged into Plan D, a new plan that was established for the purpose of effecting the merger. None of the plans are excluded from filing under the exceptions from filing above.

In this situation, four separate Forms 5310-A must be filed. Because Plan D is receiving assets from Plans A, B, and C, Plan D must file a complete Form 5310-A, enter code 2 (notice of a plan merger) as the reason for filing, and complete all of Parts I and II of the form. Line 6 of the form will show information regarding Plan A and an attached statement with the line 6 information for Plans B and C. Plans A, B, and C are merging with Plan D. Plans A, B, and C will each file a separate Form 5310-A completed as follows: Enter code 2 as the reason for filing, complete all of Parts I and II, and enter the information regarding Plan D on line 6.

## When To File

- File Form 5310-A at least 30 days prior to a plan merger or consolidation, spinoff, or transfer of plan assets or liabilities to another plan.
- If you are filing Form 5310-A to notify the IRS that the employer treats itself as operating QSLOBs or the employer is modifying or revoking a previously filed notice, file Form 5310-A on or before the notification date for the testing year. The "notification date" for a testing year is the later of: (a) October 15 of the year following the testing year, or (b) the 15th day of the 10th month after the close of the plan year of the plan of the employer that begins earliest in the testing year. "Testing year" means the calendar year.

## Penalties

There is a penalty for the late filing of a Form 5310-A to report a plan merger or consolidation, spinoff, or transfer of plan assets or liabilities. The penalty is \$25 a day for each day the Form 5310-A is late (up to a maximum of \$15,000). The form is late if it is not filed at least 30 days before the plan merger or consolidation, spinoff, or transfer of plan assets or liabilities.

## Where To File

File Form 5310-A 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.  
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. These private delivery services include only the following.

- DHL Express (DHL): DHL Same Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and 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.

## Signature



*Stamped signatures are not acceptable; see Rev. Proc. 2010-4, which is on page 122 of Internal Revenue Bulletin 2010-1 at [www.irs.gov/pub/irs-irbs/irb10-01.pdf](http://www.irs.gov/pub/irs-irbs/irb10-01.pdf).*

In general, the employer or plan administrator must sign the form. For single employer plans the plan administrator and the employer are generally the same person. When the plan administrator is a joint employer — union board or committee — at least one employer representative and one union representative must sign. A Form 5310-A filed with the IRS by a representative on behalf of an employer or plan administrator must be accompanied by:

1. A power of attorney specifically authorizing such representation in this matter (you may use Form 2848, Power of Attorney and Declaration of Representative), or
2. A written declaration that the representative is a currently qualified attorney, certified public accountant, enrolled actuary, or is currently enrolled to practice before the IRS (include either the enrollment number or the expiration date of the enrollment card) and is authorized to represent the employer or plan administrator.

## How To Complete the Notice

Form 5310-A is screened for completeness. Incomplete notices will be returned. Here are some tips to help you complete the form correctly.

1. The notice has formatted fields that will limit the number of characters entered per field.
2. All data input will need to be entered in Courier size 10 font.
3. Alpha characters should be entered in all capital letters.
4. Enter spaces between any words. Spaces will count as a character.
5. All data fields are entered as an 8 digit field in MMDDYYYY format.
6. If a number is requested, a number must be entered.
7. For questions regarding this form, call the Employee Plans Customer Service at 1-877-829-5500.

The IRS may, at its discretion, require additional information or the submission of a Form 5300, Application for Determination for Employee Benefit Plan, when it is deemed necessary.

## Specific Instructions

**Line 1 — Reason for filling.** Enter the appropriate code that describes the reason you are filing Form 5310-A.

Enter 1 for a notice of qualified separate lines of business.

Enter 2 for a notice of a plan merger or consolidation.

Enter 3 for a notice of a plan spinoff.

Enter 4 for a notice of a transfer of plan assets or liabilities to another plan.

## Part I — All Filers Must Complete Part I

**Lines 2a and 2b.** Enter the name and address of the employer or plan sponsor. 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 aggregated 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 partners of a partnership, the partnership.

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, series returns/reports are filed for the plan.

**Address.** 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. This address should be the address of the sponsor/employer.

**Line 2g.** 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 when Form 5500 is filed.



*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 by Internet and use it immediately to file a return. Go to the IRS website at [www.irs.gov/businesses/small](http://www.irs.gov/businesses/small) and click on Employer ID Numbers.
- By telephone—Call 1-800-829-4933.

• 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 be obtained at Social Security Administration (SSA) offices or by calling 1-800-TAX-FORM.

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

**Line 3.** The contact person will receive copies of all correspondence as authorized in a Form 2848, or Tax Information Authorization, Form 8821. Either complete the contact's information on this line, or check the box and attach a completed Form 2848 or Form 8821.

## Part II—Plan Merger, Consolidation, Spinoff, or Transfer

**Line 4a.** Enter the name you designated for your plan. Due to space restrictions, this field is limited to 70 characters, including spaces. Due to this restriction, "Employee" and "Trust" are not necessary in the plan name.

**Line 4b.** Enter the 3-digit number, beginning with "001" and continuing in numerical order for each plan you adopt (001–499). The number assigned to a plan must not be changed or used for any other plan. This should be the same number that was or will be used when the Form 5500 series returns/reports are filed for the plan.

**Lines 5a.** Attach an actuarial statement of valuation showing compliance with section 414(l). The statement must (1) identify the type of transaction involved (for example, merger or consolidation, spinoff, or transfer of plan assets or liabilities), and (2) provide information verifying compliance with the requirements of sections 401(a)(12) and 414(l). This statement need not be signed by an actuary.

**Line 5b.** Enter the code that describes your plan.

- Enter 1 for a profit-sharing plan.
- Enter 2 for a stock bonus plan.
- Enter 3 for a money purchase plan.
- Enter 4 for a target benefit plan.
- Enter 5 for a profit-sharing/401(k) plan.
- Enter 6 for an ESOP plan.

Enter 7 for other and specify the type of plan.

**Line 6a.** Enter the total number of plans, other than the plan named on line 4a, involved in this transaction.

**Lines 6c through 6h.** Complete lines 6c through 6h for the other plan(s) involved in the merger or consolidation, spinoff, or transfer of plan assets or liabilities with the plan named on line 4a. If there is more than one other plan, attach a separate statement showing the information requested for lines 6c through 6h.

**Example:** Plans A, B, and C are merging with Plan D. Plan D would complete a Form 5310-A, reporting information about itself on line 4. Plan D would then complete the line 6 information for Plan A and attach two statements showing the line 6 information for Plans B and C. In addition, Plans A, B, and C must each file a separate Form 5310-A (see the example of a plan merger).

**Line 6h.** Enter the code that describes the other plan.

- Enter 1 for a defined benefit plan.
- Enter 2 for a profit-sharing plan.
- Enter 3 for a profit-sharing/401(k) plan.
- Enter 4 for a stock bonus plan.
- Enter 5 for an ESOP plan.
- Enter 6 for a money purchase plan.
- Enter 7 for a target benefit plan.

## Part III—Qualified Separate Lines of Business

Rev. Proc. 93-40, 1993-2 C.B. 535, contains procedures relating to the notification requirements of section 414(r)(2)(B).

Notice given by an employer applies to all plans maintained by the employer for plan years beginning in the testing year. Once the notification date (see *When To File*) for a testing year has passed, the employer is deemed to have irrevocably elected to apply the specified section(s) on the basis of QSLOBs for all plan years beginning in the testing year.

In addition, after the notification date, notice cannot be modified, withdrawn, or revoked, and will be treated as applying to subsequent testing years unless the employer takes timely action to provide new notice (see examples under *Who Must File*). Timely action will be deemed to have been taken any time prior to the notification date for any subsequent testing year.

**Line 7a.** If you previously filed a notice of QSLOB for a testing year, enter the

first testing year for which such notice applied on line 7b. Enter the date the notice was filed on line 7c.

**Line 8.** Enter the first testing year for which this notice applies. See *When To File* for the definition of "testing year."

**Line 9.** Indicate whether you are filing this form to give notice that you are no longer testing on a QSLOB basis. If your answer to line 9 is "Yes," complete line 10 and skip lines 11 and 12. Answer line 10 based on the previously filed notice that you are now revoking. If your answer to line 9 is "No," complete lines 10 through 12. See *Who Must File* for an example of a revocation.

**Line 10.** Section 414(r) provides rules for determining whether an employer operates QSLOBs for purposes of applying sections 410(b) (relating to minimum coverage), 401(a)(26) (relating to minimum participation rules), and 129(d)(8) (relating to dependent care assistance programs). If you are treated as operating QSLOBs under section 414(r), you will be permitted to apply the aforementioned Code provisions separately for the employees in each QSLOB. Check the appropriate box(es) for the section(s) you are testing on a QSLOB basis. See instructions for line 9 to determine how to answer this question if you answered "Yes" to line 9.

**Line 11.** Attach a list identifying the part or parts of the employer that make up each QSLOB of the employer. The list should include, for example, the type of business or industry in which the QSLOB is involved, the business unit (such as corporation, partnership, or division) the qualified line of business comprises, and the name (formal or informal) of the QSLOB.

**Line 12.** Enter the information requested on lines 12a through 12e. If there is more than one plan, attach a separate statement showing the information requested on lines 12a through 12e for each plan.

**Line 12b.** Enter the date of the determination letter, if any. Otherwise, leave blank.

**Line 12c.** If the plan is a master or prototype or volume submitter plan, enter the date of the letter and the serial number or the advisory letter number, as applicable.

**Line 12d.** Enter the appropriate date of any pending letter request. If this question is not applicable, leave blank.

**Line 12e.** List on this line the QSLOBs identified on line 11 that have employees benefiting under the plan. If you need additional space to list the QSLOBs, use the area below line 12e.

## How To Get Forms and Publications

**Internet.** You can access the IRS website 24 hours a day, 7 days a week at [IRS.gov](http://IRS.gov) to:

- Download forms, including talking tax forms, instructions, and publications.
- Order IRS products online.
- Research your tax questions online.
- Search publications online by topic or keyword.
- 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.
- 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.

Buy the DVD from the National Technical Information Service (NTIS) at [www.irs.gov/cdorders](http://www.irs.gov/cdorders) for \$30 (no handling fee), or call 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.

**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. Our legal right to ask for this information is in sections 401, 403, 410, 411, 412, and 414 and their regulations. Section 6109 requires you to provide your identifying number. This form must be filed for any plan with a separate employer identification and plan number if that plan is involved in a merger or transfer of plan assets or liabilities. Failure to provide all of the information requested may prevent processing of this form. In addition, failing to file this form timely and in accordance with its instructions, or providing false information, may subject you to penalties. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for administering 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 the form is listed below and will vary depending on individual circumstances. The estimated average time is:

	Recordkeeping	Learning about the law or the form	Preparing, copying, assembling, and sending the form to the IRS
Part I	2 hr., 9 min.	1 hr., 3 min.	2 hr., 20 min.
Part II	3 hr., 21 min.	35 min.	40 min.
Part III	4 hr., 32 min.	35 min.	42 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 Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224.

Do not send the form to this address. Instead, please see *Where To File*.