

# Instructions for Form 5310

(Rev. November 2002)



Department of the Treasury  
Internal Revenue Service

## Application for Determination for Terminating Plan

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

### A Change To Note

**Schedule Q (Form 5300)**, Elective Determination Requests, is no longer required to be filed. Questions regarding the requirement under section 401(a)(4) that a plan be nondiscriminatory in the amount of contributions or benefits, including the general test, and questions regarding the minimum coverage requirements of section 410(b), including the average benefit test, are now included on Form 5310. File Schedule Q (Form 5300) only to broaden the scope of the determination letter to include other nondiscrimination requirements addressed by the questions on Schedule Q (Form 5300).

### 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

The Tax Reform Act of 1976 allows a taxpayer to request the IRS to disclose and discuss the 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, for this purpose.

### How To Get Forms and Publications

**Personal computer.** You can access the IRS Web Site 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 e-mail.
- Sign up to receive local and national tax news by e-mail.

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

**CD-ROM.** Order **Pub. 1796**, Federal Tax Products on CD-ROM, and get:

- Current year forms, instructions, and publications.
  - Prior year forms, instructions, and publications.
  - Popular tax forms that may be filled in electronically, printed out for submission, and saved for recordkeeping.
  - The Internal Revenue Bulletin.
- Buy the CD-ROM on the Internet at [www.irs.gov/cdorders](http://www.irs.gov/cdorders) from the National Technical Information Service (NTIS) for \$22 (no handling fee), or call 1-877-CDFORMS (1-877-233-6767) toll free to buy the CD-ROM for \$22 (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 between 8:00 a.m. and 6:30 p.m. Eastern Time.

## 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 approved by the Washington, D.C. office.

### 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 Specific Instructions for line 3c.
- 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.

**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

Requests shipped by Express Mail or a delivery service should be sent to:

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

**Private Delivery Services.** You can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. The most recent list of designated private delivery services was published by the IRS in September 2002 and includes only the following:

- Airborne Express (Airborne): Overnight Air Express Service, Next Afternoon Service, Second Day Service.
- DHL Worldwide Express (DHL): DHL "Same Day" Service, DHL USA Overnight.

- 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. 2002-6, 2002-1 I.R.B. 203 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. **Do not use a social security number or the EIN of the trust.** 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.

Use **Form SS-4**, Application for Employer Identification Number, to apply for an EIN. Form SS-4 can be obtained at Social Security Administration (SSA) offices or by calling 1-800-TAX-FORM.

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, Form 2848, or other written designation. Either complete the contact's information on this line, or check the box and attach a Power of Attorney.

**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. 2002-6.

**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 (e.g., 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 (e.g., 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(i), 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.

**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 NHCEs).

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

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

**Note.** If the ratio percentage entered on line 13l and/or line 13m is less than 70%, the plan does not satisfy the ratio percentage test. In this case, the plan must satisfy the average benefit test. A determination regarding the average benefit test can be requested 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 13l, but treat an employee as benefiting under the rules for section 401(k) plans and section 401(m) plans described in the instruction for line 13i.

**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 non-design 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 non-design 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 non-design 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 17i.** 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 (i.e., 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, e.g., 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
<b>Form 5310</b>	64 hr., 5 min.	21 hr., 35 min.	25 hr., 27 min.
<b>Form 6088</b>	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 the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001.

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

---