



# Instructions for Form 5310

(Revised June 1997)

## Application for Determination for Terminating Plan

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

**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	47 hr., 35 min.	4 hr., 35 min.	9 hr., 9 min.
Form 6088	5 hr., 44 min.	1 hr., 5 min.	1 hr., 14 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 the instructions for **Form 8717**.

### Public Inspection

Form 5310 is open to public inspection if there are more than 25 plan participants. Therefore, it is important that the total number of participants 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 permits you to request the IRS to disclose and discuss your return and/or return information with any person(s) you designate in a written request. Use **Form 2848**, Power of Attorney and Declaration of Representative, for this purpose.

**Signature.**— The application must be signed by the employer, plan administrator or an authorized representative.

### General Instructions

#### Note

All applicants must attach new **Schedule Q (Form 5300)**, Nondiscrimination Requirements. However, certain lines on Schedule Q may not have to be completed. See instructions for Schedule Q for more information.

#### 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. A multiemployer plan covered by PBGC insurance must use **Form 5303**, Application for Determination for Collectively Bargained Plan, instead of Form 5310.

#### Completing the Application

Applications are screened for completeness. 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.
- All applications must include **Schedule Q (Form 5300)**, Nondiscrimination Requirements. However, certain lines on Schedule Q may not have to be completed. See the Specific Instructions for Schedule Q for more information.
- All applications must include the appropriate user fee and **Form 8717**, User Fee for Employee Plan Determination Letter Request. Please submit a separate check for each application.
- The IRS may, at its discretion, require additional information any time it is deemed necessary.

#### Who May File

Any plan sponsor or administrator of any pension, profit-sharing or other deferred compensation plan (other than a multiemployer 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.

**Note:** To request a determination as to the plan's qualification status for a partial termination, file **Form 5300**, Application for Determination for Employee Benefit Plan, or **Form 5303**, as applicable. Do NOT file Form 5310.

**Note:** Use Form 5300 or Form 5303 instead of Form 5310 if the plan sponsor or administrator is filing for a determination but will continue to maintain the trust after termination.

#### What To File

An original Form 5310, page 1 MUST be submitted. The original is the pink shaded (scanable) product prepared by the Internal Revenue Service. Photocopies or black and white versions CANNOT be accepted as the original.

In addition, all plans must attach the following:

- **Form 8717**, User Fee for Employee Plan Determination Letter Request. For multiple employer plans, the fee is based on the number of participating employers. Please submit a separate

check for each application. Form 8717 may be obtained by contacting your local IRS District Office or by calling 1-800-TAX-FORM (1-800-829-3676).

- Attach a duplicate copy of Form 5310, page 1 to the original Form 5310. The duplicate copy may be a reproduction or carbon; however, the signature must be original on both the original page 1 and the duplicate page 1.
- A copy of all required attachments.
- 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.
- Copies of all records of all actions taken to terminate the plan.
- A copy of the plan's latest determination letter, if any (or a copy of the latest opinion or notification letter for a standardized master or prototype or regional prototype plan).
- Schedule Q (Form 5300), Nondiscrimination Requirements, and any additional schedules required by these instructions or the instructions for Schedule Q.
- Form 6088, if required.

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

## Where To File

For information on where to file, see the instructions for **Form 8717**, User Fee for Employee Plan Determination Letter Request. Form 8717 may be obtained by contacting your local IRS District Office or by calling 1-800-TAX-FORM (1-800-829-3676).

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## Specific Instructions

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

A plan sponsor for:

- A plan that covers the employees of one employer is the employer.
- 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)), is the association, committee, joint board of trustees or other similar group of representatives of those who established or maintain the plan.
- A plan sponsored by two or more entities required to be aggregated under section 414(b), (c), or (m) is one of the members participating in the plan.
- A plan that covers the employees and/or partner(s) of a partnership is 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 return/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.

**Line 1b.—Employer identification number.**— Enter the 9-digit 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. Use **Form SS-4**, Application for Employer Identification Number, to apply for an EIN. Form SS-4 can be obtained at most IRS or Social Security Administration (SSA) offices or by calling 1-800-TAX-FORM (1-800-829-3676).

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 also be used in the annual returns/reports filed for the plan 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. Enter "N/A" for plans of more than one employer.

**Line 2.**— The contact person will receive copies of all correspondence as authorized in a power of attorney or other written designation. This line item must be completed as described; a reference such as "see attached" is NOT acceptable.

**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 the application. If you check "Yes," it means that you have notified each employee as required by regulations under section 7476 or you have a one person plan. Rules defining "interested parties" and the form of notification are in Regulations section 1.7476-1. An example of an acceptable format is found in Rev. Proc. 97-6, 1997-1 IRB 153. If "No" is checked or this line is blank, your application will be returned.

**Line 3c.**— If a determination letter, or, if this plan is a standardized Master and Prototype or Regional Prototype plan, and an opinion or notification letter has been received, check "Yes" and attach a copy of the latest letter to this application. If you do not have a copy of the latest letter, explain this in the cover letter.

**Line 3d.**— If you check "Yes" also attach a statement explaining how the amendments affect or change this or any other plan of the employer.

**Line 3e.**— If your plan contains provisions for a cash or deferred arrangement (CODA) under section 401(k), or for employee or matching contributions described in section 401(m), check "Yes." Otherwise, check "No."

**Line 4a.**— Enter a name for your plan.

**Line 4b.**— Assign and enter a three-digit number, beginning with "001" and continuing in numerical order for each plan adopted. This numbering will differentiate your plans. The number assigned to a plan must not be changed or used for any other plan.

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

**Line 4d.**— Enter the year the plan **originally** became effective.

**Line 4e.**— Enter on this line the total of: **(1)** the number of employees who are participating in the plan. Include 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)** beneficiaries of deceased employees who are receiving or will in the future receive benefits under the plan. This means one beneficiary for each deceased employee regardless of the number of individuals receiving benefits. For example, payment of a deceased employee's benefit to three children is considered a payment to one beneficiary.

**Line 5a.**— If the plan is not described in 1, 2, or 3, enter 4 for "other" plan. For example, if this is a cash balance, enter 4 and write "Cash Balance" where noted. A cash balance plan is a defined benefit plan that defines an employee's benefit by reference to hypothetical allocations and interest adjustments.

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

**Line 6.**— If the employer is a member of a controlled group of corporations (section 414(b)), trades or businesses under common control (section 414(c)), or an affiliated service group (section 414(m)), all employees of the group will be treated as employed by a single employer for purposes of certain qualification requirements such as coverage. If the employer is a member of such a group, attach a statement showing in detail all members of the group, their relationship to the employer, the type of plans each member has, and the plans common to all members.

**Line 6a.**— If you are not sure if you are a member of an affiliated service group, attach the following information:

1. A description of the nature of the business of the employer. Specifically state whether it is a service organization or an organization whose principal business is the performance of management functions for another organization, including the reason for performing the management function or service.
2. The identification of other members (or possible members) of the affiliated service group.
3. A description of the nature of the business of each member (or possible member) of the affiliated service group including the type of organization (corporation, partnership, etc.) and indicate whether such member is a service organization or an organization whose principal business is the performance of management functions for the other group member(s).
4. The ownership interests between the employer and the members (or possible members) of the affiliated service group (including ownership interests as described in section 414(m)(2)(B)(ii) or 414(m)(6)(B)).
5. A description of services performed for employers by the members (or possible members) of the affiliated service group, or vice versa. Include the percentage of each member's (or possible member's) gross receipts and service receipts provided by such services, if available, and data as to whether their services are a significant portion of the member's business and whether or not, as of December 13, 1980, it was unusual for the services to be performed by employees of organizations in that service field in the United States.
6. A description of how the employer and the members (or possible members) of the affiliated service group associate in performing services for other parties.
7. A description of management functions, if any, performed by the employer for the members (or possible members) of the affiliated service group, or received by the employer from any other members (or possible members) of the group (including data as to whether such management functions are performed on a regular and continuous basis) and whether or not it is unusual for such management functions to be performed by employees of organizations in the employer's business field in the United States.
8. If management functions are performed by the employer for the members (or possible members) of the affiliated service group, describe what part of the employer's business constitutes the performance of management functions for the members (or possible members) of the group (including the percentage of gross receipts derived from management activities as compared to the gross receipts from other activities).
9. A brief description of any other plan maintained by the members (or possible members) of the affiliated service group, if such other plan is designated as a unit for qualification purposes with the plan for which a determination letter has been requested.
10. A description of how the plan(s) satisfies the coverage requirements of section 410(b) if the members (or possible members) of the affiliated service group are considered part of an affiliated service group with the employer.

**Line 7.**— If more than one plan type applies to the plan, enter the numbers for all applicable plan types.

Enter **1** if this is a governmental plan.

Enter **2** if this is a nonelecting church plan. A nonelecting church plan is a plan for which an election under section 410(d) has not been made.

Enter **3** and also enter the number of employers adopting the plan if this is a multiple employer plan described in section 413(c). A multiple employer plan is a plan maintained by more than one employer, but which is NOT maintained according to a collective bargaining agreement. Under this plan type, contributions from each employer must be available to pay benefits of any participant, even if employed by another employer. Also enter the number of employers adopting the plan.

Enter **4** if this is a section 412(i) plan.

Enter **5** if this plan is not described above. Most plans will enter 5.

**Line 8.**— Attach copies of records of all actions taken to terminate the plan, such as board of directors' resolutions, notification to participants, notification to trustees, etc.

**Line 8b.**— 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 8c.**— Check "No" only if you are certain that there will be no reversion of plan assets to the employer.

**Line 10.**— Check the reason you are terminating your plan.

**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 10e.**— If you checked adoption of a new plan as the reason for termination, attach an explanation describing the new plan.

**Line 10f.**— If you checked "other," as the reason for termination, attach an explanation.

**Line 13.**— Collectively bargained plans do not complete line 13a if, during the 2-year period specified on line 13a: (a) no employees who were not collectively bargained employees (within the meaning of Regulations section 1.410(b)-6(d)) benefited under the plan, and (b) not more than 2% of the employees covered by the plan were professional employees (within the meaning of Regulations section 1.410(b)-9).

**Line 13a.**— Enter an "X" to indicate whether or not your plan met the ratio percentage coverage test under section 410(b)(1)(B) in the 2 years specified on line 13a. If not, attach a separate explanation of how the plan satisfied section 410(b) in those years.

**Line 13b.**— Enter the date of the current plan year and the dates of the prior 5 plan years. Then enter the number of participants requested by lines (1) through (6). For this purpose, the phrase "participants employed" includes employees employed in service covered under the plan and inactive participants employed in noncovered service with the employer (including entities aggregated with the employer under section 414).

**Line 13b(6).**— Enter the number of employees separated from vesting service with less than 100% vesting in their accrued benefit or account balance. If more than 10, enter "10 plus." Attach a schedule with the following information for each employee who has separated from vesting service with less than 100% vesting: name, social security number, vesting percentage, years of participation, vesting at separation, date of hire and date of termination, account balance/accrued benefit at separation from service and reason for termination of participant.

If there is a 20% reduction in participants over 2 consecutive years (or less) explain why this would not constitute a partial termination.

**Line 14.**— Enter the number of participants or claimants as requested.

**Line 15b.**— 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 15c.**— 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 15d.**— 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 15e.**— Answer “Yes” if the distribution will include property other than cash, and attach an explanation.

**Line 15g(1).**— Answer “Yes” if you have unallocated funds that have been reallocated to participants.

**Line 15g(2).**— If you answer “Yes” to line 15g(1), complete line 15g(2).

**Line 15g(3).**— If you answer “No” to line 15g(2), complete line 15g(3).

**Line 15h(1).**— The attachment must include the names of the sponsor(s) involved; the employer identification number(s) of the sponsor(s); the plan administrator's name(s) and employer identification number(s), and the plan name(s) and plan numbers. Also provide a description of the transaction(s).

**Line 15h(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 15h(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 15h(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 15h(10).**— If the answer to this item is “Yes,” attach a list that includes the name(s) of the plan sponsor(s), employer or sponsor's identification number(s); administrator's identification number(s), plan number(s) and an explanation of the termination(s) including the amount(s) of the reversion(s), the date(s) of termination and the reason(s) for termination.

**Line 15i.**— If the plan or trust is under examination or if there is an issue related to the plan or trust pending before the Internal Revenue Service, the Department of Labor or the Pension Benefit Guaranty Corporation, or any court, check “Yes” and attach an explanation detailing the specific nature of the matter. Also specify which agency or court is considering the matter. Otherwise, check “No.” Do not answer this question “Yes” merely because the plan has been considered under the IRS's Voluntary Compliance Resolution Program.

**Line 15j.**— 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 15l.**— Code 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 16.**— Complete this only for defined contribution plans. Enter the dates of the current plan year and the prior 5 plan years in the columns indicated.

**Line 16a.**— Enter the amount of employer contributions made for each of the plan years.

**Line 16b.**— Enter the amount of the forfeitures allocated for each of the plan years.

**Line 17.**— Check the box(es) that indicates the form(s) of distribution of benefits for your plan upon termination.

**Line 18.**— Complete the statement showing the estimated fair market value of the plan assets and liabilities as of the proposed date of termination.

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.

**Line 18c(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.

“Preferred” means any of the above securities that are publicly traded on a recognized securities exchange and the securities have a rating of “A” or above. If the securities are not “Preferred” they are listed as “Other.”

**Line 18c(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 18e (buildings and other property used in plan operations).

**Line 18c(7)(B).**— Include the current value of real property owned by the plan which is not producing income or used in plan operations.

**Line 18i.—Acquisition Indebtedness.**— “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 Code section 514(c).