



# Instructions for Form 5300

(Rev. August 2004)

## Application for Determination for Employee Benefit Plan

(including Collectively Bargained Plans formerly filed on Form 5303)

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

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

### Disclosure Request by Taxpayer.

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

## General Instructions

### Purpose of Form

File Form 5300 to request a determination letter from the IRS for the initial qualification of a defined benefit or a defined contribution plan and the exempt status of any related trust. See *Types of Determination Letters* on page 2 for more information.

This form may also be filed to request a determination letter on the qualified status of a plan at any time subsequent to initial qualification even if the plan has not been amended.

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

File Form 6406, Short Form Application for Determination for Minor Amendment of Employee Benefit Plan, instead of Form 5300 to apply for a determination letter on a minor plan amendment to a plan that has already filed Form 5300 and received a favorable determination letter for GUST. Form 6406 generally

may not be used to apply for a determination on GUST, except as provided in section 3.05 of Rev. Proc. 2000-27, 2000-26 I.R.B., 1272. You can find Rev. Proc. 2000-27 on page 1272 of Internal Revenue Bulletin 2000-26 at <http://www.irs.gov/pub/irs-irbs/irb00-26.pdf>.

### Type of Plan

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

1. On the amount contributed to the participant's account, and
2. Any income, expenses, gains and losses, and any 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. A qualified plan must satisfy section 401(a) including, but not limited to, participation, vesting, nondiscriminatory contributions or benefits, distributions, and contribution and benefit limitations.

### Who May File

This form may be filed by any:

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

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

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

• Plan sponsor or plan administrator to request a determination letter for a

multiemployer or multiple-employer plan (a plan maintained by more than one employer considering all employers combined under section 414(b), (c), or (m) as one employer).

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

### Where To File

File Form 5300 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.** In addition to the United States mail, you can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. The 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.
- Governmental plans and nonelecting church plans do not have to complete lines 10 and 12a.
- The IRS may, at its discretion, require a plan restatement or additional information any time it is deemed necessary.

- Completion of page 4 of Form 5300 is optional. Complete page 4 for: (a) a request for a determination regarding the ratio percentage test under Regulations section 1.410(b)-2(b)(2), (b) a determination regarding one of the special requirements under Regulations section 1.410(b)-2(b)(5), (6), or (7), or (c) a request for a determination regarding the nondiscrimination design-based safe harbors of section 401(a)(4).



*Revenue Procedure 2004-6 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.). Example. Rev. Proc. 2004-6, 2004-1 I.R.B. 197 superseded Rev. Proc. 2003-6.*

## What To File

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

- A copy of the plan.
- The appropriate user fee, if applicable, and Form 8717, User Fee for Employee Plan Determination Letter Request. Please submit a separate check for each application. Make checks payable to the "United States Treasury."

- 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 and subsequent amendments and/or restatements.
- Schedule Q (Form 5300), Elective Determination Requests, if you want to broaden the scope of a determination letter by requesting a determination that your plan satisfies certain qualification requirements relating to minimum participation, coverage, and nondiscrimination. Schedule Q is optional.



*If Schedule Q is not filed, the determination letter issued for this plan will not consider and may not be relied upon with regard to the general test and certain other provisions under section 401(a)(4), the average benefit test under section 410(b), and the definition of compensation provisions of section 414(s).*

## Types of Determination Letters

**Initial Qualification.** For initial qualification of a plan or when requesting a determination letter after initial qualification for a plan that has not been amended (for example, because of changes in employee demographics), file one copy of all instruments that make up the plan.

**Entire Plan as Amended.** When requesting a determination letter on the entire plan as amended after initial qualification file:

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

**Complex amendments.** Use Form 5300, as described under Entire Plan as Amended above, for complex amendments, including amendments with significant changes to plan benefits or coverage. If there have been four or more amendments to the plan a restated plan is required. For restatement purposes, do not count an amendment making only minor plan changes as a plan amendment.

**Minor amendments.** Use Form 6406, instead of Form 5300 to request a determination letter on the

**Figure 1. Partial Termination Worksheet**

Partial Termination Worksheet	Year	Year	Year of partial termination	Year
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<b>1</b> Participants employed: .....				
<b>a</b> Number at beginning of plan year .....				
<b>b</b> Number added during the plan year .....				
<b>c</b> Total, add lines a and b .....				
<b>d</b> Number dropped during the plan year .....				
<b>e</b> Number at end of plan year, subtract d from c ..				
<b>f</b> Total number of participants in this plan separated from service without full vesting .....				
<b>2</b> Present value (as of month ____/____/____ day during the year of): .....				
<b>a</b> Plan assets .....				
<b>b</b> Accrued benefits .....				
<b>c</b> Vested benefits .....				
<b>3</b> Submit a description of the actions than may have resulted (or might result) in a partial termination. Include an explanation of how the plan meets the requirements of section 411(d)(3).				

effect of a minor amendment on the qualification of a plan. Form 6406 should not be used for plan amendments made to comply with GUST.

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

1. File the application form and the appropriate documents and statements.
2. Attach a statement indicating if a partial termination may have occurred or might occur as a result of proposed actions.
3. Using the format in Figure 1. Partial Termination Worksheet, submit a schedule of information for the plan year in which the partial (or potential partial) termination began. Also, submit a schedule for the next plan year, as well as for the 2 prior plan years, to the extent information is available.

If the plan has more than one benefit computation formula complete the Partial Termination Worksheet for the plan. Also attach a sheet showing the information separately in the same format as lines 1a through 1f for each benefit computation formula.

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

**Termination of Plan.** If you are terminating your plan, file Form 5310, Application for Determination for Terminating Plan, to request a determination letter for the complete termination of a DBP or a DCP.

Form 5300 should be filed to request a determination letter involving the complete termination of a multiemployer plan covered by the PBGC insurance program.

In addition, file:

1. One copy of the plan;
2. One copy of the latest determination letter, including caveats;
3. A copy of all actions taken to terminate the plan; and
4. If necessary, Form 6088, Distributable Benefits From Employee Pension Benefit Plans. Form 6088 is required if the plan is a DBP or if the plan is an underfunded DCP that benefits noncollectively bargained employees or more than 2% of the employees who are covered under a collectively bargained agreement are professional employees. (See

Regulations section 1.410(b)-9 for definitions.)

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



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

## Specific Plans — Additional Requirements

(See Procedural Requirements Checklist.)

- For a determination on an affiliated service group status, submit:
  1. A copy of the appropriate documents and
  2. Statements listed in the instructions for lines 3a and 6.
- For plans of controlled groups of corporations, trades or businesses under common control, and affiliated service groups submit the statement specified in the instructions for line 6.
- For multiple-employer plans that do not involve collective bargaining, submit:

1. One Form 5300 application for the plan, omitting line 3, and
2. One Form 5300 (only lines 1 through 8 and, optionally, 13 and 14) and, optionally, Schedule Q for each other employer that chooses to receive a separate determination letter.

- For a governmental or nonelecting church plan, skip lines 10 and 12a. A nonelecting church plan is a plan for which an election under section 410(d) has not been made.
- For an ESOP, attach Form 5309, Application for Determination of Employee Stock Ownership Plan for an ESOP.

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## Specific Instructions

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

1. In the case of a plan that covers the employees of one employer, the employer;
2. In the case of a plan 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;

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

4. 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 or Form 5500-EZ is 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. The 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 or Form 5500-EZ is filed for the plan. Do not use a social security number or the EIN of the trust. For a multiple-employer plan, the EIN for the application for the plan should be the same EIN that was or will be used when Form 5500 is filed.

File Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can get Form SS-4 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 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 or other written designation.

**Line 3a.** Enter the number(s) that correspond to the request(s) being made.

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

Enter 2 if the IRS has previously issued a determination letter for this plan and enter the date the plan was signed.

In addition, enter the date the plan or amendment was signed. If a plan or amendment is proposed, enter "9/9/9999." Enter the effective date where requested. The term "Date amendment effective" means the date the amendment becomes operative or takes effect.

Enter 3 if requesting a letter concerning the effect of section 414(m) on the plan being submitted or because of a change in the affiliated service group (ASG) membership or if you are not certain if you are a member of an ASG, attach the following information:

1. A description of the nature of the business of the employer. Specifically state whether it is a service organization or an organization whose principal business is the performance of management functions for another organization, including the reason for performing the management function or service,

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

b. 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).

8. 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.

9. 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.

10. A copy of any ruling issued by the National Office on whether the employer is an affiliated service group; a copy of any prior determination letter that considered the effect of section 414(m) on the qualified status of the employer's plan; and, if known, a copy of any such ruling or determination letter issued to any other member (or

possible member) of the same affiliated service group, accompanied by a statement as to whether the facts upon which the ruling or determination letter was based have changed.

Enter 4 if you are not certain whether or not you have leased employees and attach the following information:

1. A description of the nature of the business of the recipient organization;

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

3. A description of the function of all leased employees in the trade or business of the recipient organization (including data as to whether all leased employees are performing services on a substantially full-time basis);

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

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

Enter 5 if this is a request for the effect a potential partial termination will have on the plan's qualification. "Date Effective" means the date the plan amendment, ASG status, or partial termination becomes operative, takes effect, or changes.

Enter 6 if a determination letter is requested on the termination of a multiemployer plan covered by PBGC insurance. Also enter the date the termination is effective.

**Line 3b.** 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.

**Line 3c.** 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 “Yes” is checked, it means that each employee has been notified as required by Regulations section 1.7476-1 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, your application will be returned.

Rules defining “interested parties” and the form of notification are in Regulations section 1.7476-1. For an example of an acceptable format, see Rev. Proc. 2004-6, 2004-1 I.R.B. 197 or the superseding revenue procedure published annually in the Internal Revenue Bulletin.

**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 or Form 5500-EZ is filed for the plan.

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

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

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

**Example:** Payment of a deceased employee's benefit to three

children is considered a payment to one beneficiary.

**Line 5, item 5. Cash balance.** 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 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 employer;
3. The type(s) of plan(s) each member has, and
4. Plans common to all members.



*If you want to apply for a determination letter to determine if you are a member of an affiliated service group, attach the information described on line 3a, item 3 and leave this line blank.*

**Line 7e.** A “multiple-employer plan” is a plan maintained by more than one employer, but which is not maintained under a collective bargaining agreement. Under this plan type, contributions from each employer must be available to pay benefits of any participant, even if employed by another employer. Also, enter the number of employers adopting the plan. See section 413(c).

**Line 7f.** A “multiemployer plan” (as described in section 414(f)) is one to which more than one employer is required to contribute and which is maintained under one or more collective bargaining agreements between one or more employee organizations and more than one employer.

**Line 8a.** 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.

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

**Lines 9b and 9c.** If the plan is a 401(k) plan, complete these line items for the nonelective employer contribution portion of the plan, if applicable.

**Line 12a.** Section 411(d)(6) protected benefits include:

- The accrued benefit of a participant as of the later of the amendment's adoption date or effective date; and
- Any early retirement benefit, retirement-type subsidy or optional form of benefit for benefits from service before such amendment.

If the answer is “Yes,” explain on an attachment how the amendment satisfies one of the exceptions to the prohibition on reduction or elimination of section 411(d)(6) protected benefits.

## Optional Ratio Percentage Test Determination

**Line 13.** This question may be used to request an optional determination regarding the ratio percentage test under Regulations section 1.410(b)-2(b)(2). If “No” is checked and a request for a determination regarding the average benefit test is not made on Schedule Q, the determination letter for the plan will not be a determination regarding section 410(b). If “No” is checked but a request for a determination regarding the average benefit test is made on Schedule Q, the determination letter for the plan will also be a determination regarding the average benefit test. Plans using the qualified separate lines of business rules of section 414(r) must file Schedule Q if a determination is desired that the plan satisfies the gateway test of section 410(b)(5)(B) or the special requirements for employer wide plans.

**Line 13a.** If a determination is being requested and the plan is disaggregated into two or more separate plans, that are other than

profit sharing and/or sections 401(k) and/or 401(m) plans, complete lines 13b through 13n with respect to each disaggregated portion of the plan. Attach additional schedules as necessary to identify the other disaggregated portions of the plan. Provide the requested coverage information, in the same format as line 13, separately with respect to the other portions of the plan, or to otherwise show that the other portions of the plan separately satisfy section 410(b).

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

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

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

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

permit the employer to exclude certain former nonhighly compensated employees.

**Exception.** This exception 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 401(k) and 401(m) portions, respectively. It is suggested that these calculations be submitted with the application but this is optional.



*If the plan provides for nonelective profit-sharing contributions, do not base the calculations on lines 13m(1) and (2) on the nonexcludable employees reported on line 13g unless all of the disaggregated plans (profit sharing, 401(k), and 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 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 13e(1) through 13e(5) as reported on line 13f from the total employees reported on line 13d. The result is the number of “nonexcludable employees.” These are the employees who can not 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 section 1.401(k)-1(g)(4) and 1.401(m)-1(f)(4)). However, do not apply this rule to determine if an employee is to be counted as benefiting for lines 13i and 13k if, in accordance with the exception 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.

**Line 13m.** See the exception 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.

 **TIP** *If the ratio percentage entered on line 13l and/or line 13m is less than 70%, the plan does not satisfy the ratio percentage test.*

*In this case, the plan must satisfy the average benefit test. A determination regarding the average benefit test can be requested using Schedule Q.*

## Design-Based Nondiscrimination Safe Harbors

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

If this is a section 401(k) and/or section 401(m) plan that does not contain a provision for nonelective employer contributions, this option should be marked "No."

If any disaggregated plan relies on a non-design based safe harbor or a general test this option must be marked "No." The Schedule Q may be used to request a determination regarding a non-design based safe harbor or a general test.

If this plan has been restructured into component plans, this option must be marked "No." The Schedule Q may be used to request a determination regarding how each restructured component plan satisfies the nondiscrimination in amount requirement of Regulations section 1.401(a)(4)-1(b)(2).

If "Yes" is checked, or if "No" is checked but a request for a determination regarding a non-design based safe harbor or a general test is made on Schedule Q, the determination letter for the plan will also be a determination regarding the section 401(a)(4) requirement that a plan not discriminate in the amounts of contributions or benefits.

If "No" is checked, and a request for a determination regarding a non-design based safe harbor or a general test is not made on Schedule Q, the determination letter for the plan will not be a determination regarding this requirement, unless the plan is a section 401(k) and/or section 401(m) plan only.

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

## 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:

- 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 e-mail.

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

**CD-ROM for tax products.** You can order Pub. 1796, Federal Tax Products on CD-ROM, and get:

- Current year forms, instructions, and publications.
- Prior year forms, instructions, and publications.
- Frequently requested 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 (plus a \$5 handling fee).

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

For questions regarding this form, call the Tax Exempt and Government Entities Customer Service, toll-free Monday through Friday, at 1-877-829-5500 between 8:00 a.m. and 6:30 p.m. eastern time.

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### 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 6109 requires you to provide your taxpayer identification number

(SSN or EIN). If you fail to provide this information in a timely manner, you may be liable for penalties and interest. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and cities, states, and the District of Columbia for use in administering their tax laws. We may also disclose this information to federal and state or local agencies to enforce federal nontax criminal laws and to combat terrorism. The authority to disclose information to combat terrorism expired on December 31, 2003. Legislation is pending that would reinstate this authority.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction

Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

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

	Form 5300	Sch. Q (Form 5300)
<b>Recordkeeping</b>	41 hr., 7 min.	6 hr., 13 min.
<b>Learning about the law or the form</b>	7 hr., 54 min.	9 hr., 14 min.

<b>Preparing the form</b>	13 hr., 34 min.	9 hr., 45 min.
<b>Copying, assembling, and sending the form to the IRS</b>	1 hr., 20 min.	

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

**Do not** send any of these forms or schedules to this address. Instead, see **Where To File** on page 1.