



# Instructions for Form 5303

(Revised January 1993)

## Application for Determination for Collectively Bargained 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. If you want to have your plan approved by IRS, you are required to give us the information. We need it to determine whether you meet the legal requirements for plan approval.

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

**Recordkeeping** . . . . . 31 hr., 34 min.

**Learning about the law or the form** . . . . . 5 hr., 50 min.

**Preparing the form** . . . . . 10 hr., 20 min.

**Copying, assembling, and sending the form to the IRS** . . . . . 1 hr., 4 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, Washington, DC 20224, Attention: IRS Reports Clearance Officer, T:FP; and the **Office of Management and Budget**, Paperwork Reduction Project (1545-0534), Washington, DC 20503. **DO NOT** send the form to either of these offices. Instead, see **Where To File** on page 2.

**Public Inspection.**—The application is open to public inspection if there are more than 25 participants. Therefore, it is important that the total number of participants be shown on line 4e. "Participant" includes retirees, other former employees, and a beneficiary of a deceased employee who is receiving benefits or will in the future receive benefits under the plan.

**Disclosure Requested by Taxpayers.**—The Tax Reform Act of 1976 permits a taxpayer to request the IRS to disclose and discuss the taxpayer return and/or return information with any person(s) the taxpayer designates in a written request. You may use **Form 2848**, Power of Attorney and Declaration of Representative, or submit a privately designed authorization form. A privately designed authorization form **must** provide the following:

1. Your name, address, employer identification number, and plan number(s).
  2. A paragraph that clearly identifies the person or persons authorized to receive the return and/or return information. This must include the name, address, telephone number(s), and social security number(s) of the authorized person(s).
  3. A paragraph that clearly and explicitly describes the return and/or return information that you authorize IRS to disclose.
  4. Your signature as the taxpayer making the authorization.
- Signature.**—The application must be signed by the employer, plan administrator, or an authorized representative.

## General Instructions

### Purpose of Form

**Form 5303**, Application for Determination for Collectively Bargained Plan, is used to request a determination letter from the IRS for the qualification of a defined benefit or a defined contribution plan and the exempt status of any related trust. The form is also used to inform the IRS of a termination or partial termination.

Practitioners and employers may rely on regulations for the Tax Reform Act of 1986 to the extent specified in those regulations.

### Type Of Plan

1. A **Defined contribution plan** is a plan that provides for an individual account for each participant and for benefits based only on the amount contributed to the participant's account, any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to the participant's account.

2. A **Defined benefit plan** is any plan that is not a defined contribution plan.

**Note:** A *qualified plan must contain provisions which satisfy section 401(a) including, but are not limited to, participation, vesting, nondiscriminatory*

*contributions and benefits, distributions, and contribution and benefit limitations.*

## Completing the Application

Determination applications are screened for completeness by computer. Incomplete applications will be returned to the applicant. For this reason, it is important that an appropriate response be entered for each line item (except as indicated in 5 below). In completing the application, pay careful attention to the following:

1. N/A (not applicable) is accepted as a response **only** if an N/A box is provided.
2. If a numeric response is requested, a number must be entered.
3. If an item provides a choice of boxes to be checked, only one box should be checked unless instructed otherwise.
4. If an item provides a box or boxes to be checked, written responses are not acceptable.
5. If the governmental or church plan box is checked in line 6, certain line items need not be completed. See **What To File**.
6. All applications must include the appropriate user fee and **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).
7. The IRS may, at its discretion, require a plan restatement or additional information any time it is deemed necessary.

## Who May File

This form may be filed by the employer or plan administrator of a plan maintained under a collective bargaining agreement between employee representatives and one or more employers desiring a determination letter for:

- Initial qualification;
- Amendment;
- Partial termination of a plan; or
- Termination of a multi-employer plan covered by Pension Benefit Guaranty Corporation (PBGC) insurance.

## What To File

### All Plans

1. **Form 8717**, User Fee For Employee Plan Determination Letter Request.
2. **DO NOT** file **Form 5302**, Employee Census, with this application UNLESS required by line 3e. See the Specific instructions for line 3e.
3. Two copies of page 1 of Form 5303. One copy must be an original (printed in special red ink). The other

copy may be a reproduction or carbon, however the signature must be original.

4. The first page of this application must be typed. Use 10 pitch type, 12 pitch or Elite, Courier 12, or Titan 12 type. **Contact your key district office if you wish to computer generate this application form.**

5. The appropriate certifications, designations and demonstrations.

### Specific Plans—Additional Requirements

1. For **initial qualification** of a plan (Rev. Proc. 92-6, 1992-1 I.R.B. 105), file one copy of all instruments constituting the plan.

2. When requesting a determination letter on **amendments** to a plan (Rev. Proc. 81-19, 1981-1 C.B. 689), file the following (see below for request on restated plan):

- a. One copy of the plan amendments;
- b. One copy of the latest determination letter, including caveats; and
- c. A statement as to how the amendments affect or change the plan or any other plan maintained by the employer.

3. An **amended plan (restated plan)** is required if four or more amendments have been made since the last restated plan was submitted. For restatement purposes, an amendment making only nonsubstantive plan changes need not be counted as a plan amendment.

When requesting a determination letter on the entire plan as amended after initial qualification (Rev. Proc. 81-19), file the following:

- a. One copy of the plan that incorporates the amendments;
- b. One copy of the latest determination letter, including caveats; and

- c. A statement that:
  - the copy of the plan submitted is complete in all respects; and
  - a determination letter is being requested on qualification of the entire plan.
- 4. For a **partial termination** (Rev. Proc. 92-6), file the following:
  - a. The application form and the appropriate documents and statements.
  - b. Attach a statement indicating whether a partial termination may have occurred or might occur as a result of proposed actions.
  - c. Using the format that follows, 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 two prior plan years, to the extent the information is available.
 

If this is a plan with more than one benefit computation formula, in addition to completing 1e of the Partial Termination Worksheet, below, for the entire plan, attach a sheet showing the information separately in the same format as line 1e for each benefit computation formula.
  - d. Submit a description of the actions that may have resulted or might result in a partial termination.
  - e. Include an explanation of how the plan meets the requirements of section 411(d)(3).

5. For a **governmental or church plan**, a plan administrator may request a determination letter by filing the following:

- a. For a plan that is subject to ERISA, complete all items of Form 5303.
- b. For a plan that is not subject to ERISA, file Form 5303 omitting lines 7 and 10.

c. **Form 5302**, Employee Census, is not required.

6. For a **Termination** of a plan, file **Form 5310**, Application for Determination Upon Termination, to request a determination letter for the complete termination of a defined benefit or a defined contribution plan. Form 5303 should be filed to request a determination letter involving the complete termination of a multi-employer plan covered by the PBGC insurance program.

- In addition, file the following:
- a. One copy of the plan;
  - b. One copy of the latest determination letter, including caveats;
  - c. A copy of all actions taken to terminate the plan; and
  - d. If necessary, **Form 6088**, Distributable Benefits From Employee Pension Benefit Plans. Form 6088 is required if the plan benefits noncollectively bargained employees or more than 2% of the employees who are covered under a collective bargaining agreement are professional employees.

If you wish to stop benefit accruals or making contributions to your plan and your trust will continue, your plan will not be considered terminated. If you want to receive a determination letter, you must use Form 5303.

7. For **ESOPs**, attach **Form 5309**, Application for Determinations of Employee Stock Ownership Plan.

### Where To File

1. **Single Employer Plans.**—File the form where the employer's or employee organization's principal place of business is located.

2. **Plan Maintained by More Than One Employer.**—File the form where the principal place of business of the plan sponsor is located. This means the principal place of business of the association, committee, joint board of trustees, or other similar group or representatives of those who established or maintain the plan.

3. **Domestic Employers Using Foreign Situs Trust.**—File the form where the principal place of business of the employer is located.

4. **Foreign Employers.**—File the form with the Internal Revenue Service, EP/EO Division, P.O. Box 17288, Baltimore, MD 21203.

5. **Industry Plans With Employers in More Than One Key District.**—File the form where the trustee's principal place of business is located. If the plans have more than one trustee, the request should be filed where the trustees usually meet.

Partial Termination Worksheet		19 .....	19 .....	Year of termination or partial termination 19 .....	19 .....
1	Participants employed:				
a	Number at beginning of plan year .				
b	Number added during the plan year				
c	Total, add lines (a) and (b) . . .				
d	Number dropped during the plan year				
e	Number at end of plan year, subtract (d) from (c) . . . . .				
f	Total number of participants in this plan separated from service without full vesting . . . . .				
2	Present value (as of _____ / _____ month/day during the year of):				
a	Plan assets. . . . .				
b	Accrued benefits . . . . .				
c	Vested benefits . . . . .				

If entity is in	Send fee and request for determination letter or notification letter to this address
Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont	Internal Revenue Service EP/EO Division P.O. Box 1680, GPO Brooklyn, NY 11202
Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, any U.S. possession or foreign country	Internal Revenue Service EP/EO Division P.O. Box 17288 Baltimore, MD 21203
Indiana, Kentucky, Michigan, Ohio, West Virginia	Internal Revenue Service EP/EO Division P.O. Box 3159 Cincinnati, OH 45201
Arizona, Colorado, Kansas, Oklahoma, New Mexico, Texas, Utah, Wyoming	Internal Revenue Service EP/EO Division Mail Code 4950 DAL 1100 Commerce Street Dallas, TX 75242
Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee	Internal Revenue Service EP/EO Division P.O. Box 941 Atlanta, GA 30370
Alaska, California, Hawaii, Idaho, Nevada, Oregon, Washington	Internal Revenue Service EP/EO Division McCaslin Industrial Park 2 Cupania Circle Monterey Park, CA 91754-7406
Illinois, Iowa, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wisconsin	Internal Revenue Service EP/EO Division 230 S. Dearborn, DPN 20-6 Chicago, IL 60604

## Specific Instructions

**Line 1a.** Enter the name, address, and telephone number of the plan sponsor. "Plan Sponsor" means a plan:

- a. That covers the employees of one employer, the employer;
- b. 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; or
- c. 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.

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

**Address.**—Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the plan has a P.O. box, show the box number instead of the street address.

**Note:** If a change in address occurs after the application is filed, the plan should use **Form 8822, Change of Address**, to notify the IRS of the new address.

**Line 1b.** Enter the 9-digit employer identification number (EIN) assigned to the plan sponsor. This should be the same EIN that was or will be used when Form 5500 series returns/reports are filed for the plan. For a multiple employer plan, the EIN should be the same that was or will be used by the participating employer when Form 5500 is filed by the employer. (Do not use a social security number.) An EIN may be secured by using **Form SS-4, Application for Employer Identification Number**, which you can order 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 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 used on line 1b. For plans of more than one employer, enter N/A.

**Line 2.** This person will receive copies of all correspondence as authorized in a power of attorney or other written designation. This item must be completed as described; a reference such as "see attached" is not acceptable. If there is no other person to contact, leave this item blank. A taxpayer may request the IRS to disclose and discuss his or her return and/or return information with any person(s) the taxpayer designates in a written request.

If you want to designate a person or persons to represent you before the IRS in connection with an application for a determination, see **Disclosure Requested by Taxpayers** on page 1.

**Line 3a.** In the box in the left margin, enter the number(s) that corresponds to the request(s) being made.

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

**Enter 2**, if this application is for an amendment to a plan for which the IRS issued a determination letter.

**Enter 3**, if a determination letter is requested on the termination of a multi-employer plan covered by PBGC insurance. Also enter the date termination is effective.

**Enter 4**, if a determination letter is requested on the effect of a potential partial termination on the plan's qualification. Also, enter date(s) the partial termination is effective. Also, enter, where applicable, the date the plan or amendment was signed. If a determination is requested based on a proposed plan or amendment, enter

9/9/99. Also enter specific dates where requested. "Date amendment effective," "Date termination effective," or "Date effective" means the date the plan, amendment, or partial termination becomes operative, takes effect, or changes.

**Line 3b.** If you checked "Yes," and do not have a copy of the latest determination letter, explain this in the cover letter.

**Line 3c.** Section 3001 of the Employee Retirement Income Security Act of 1974 requires the applicant to provide evidence that each employee who qualifies as an interested party has been notified of the filing of the application. Rules defining "interested parties" and providing for the form of notification are contained in Regulations section 1.7476-1. For an example of an acceptable format, see Rev. Proc. 92-6. If you check "No" or leave this line blank, your application will be returned.

**Line 3e.** If this plan benefits noncollectively bargained employees or if more than 2% of the employees covered under a collective bargaining agreement are professional employees, check "Yes." If "Yes" is checked, Form 5302 must be completed for such employees and submitted with this application. See the instructions for line 7 for the definition of collectively bargained employee and professional employee.

**Line 4a.** Designate and enter a name for your plan.

**Line 4b.** Assign and enter a three-digit number, beginning with "001" and continuing in numerical sequence for each plan you adopt. 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 four digits in month-day order. For example, March 31 would be 0331.

**Line 4d.** Enter the date the plan originally became effective. Enter six digits in month-day-year order.

**Line 4e.** Enter the total of:  
**a.** the 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, **b.** retirees or former employees, and **c.** a beneficiary of a deceased employee who is receiving or will in the future receive benefits under the plan. (This means one beneficiary for each former employee regardless of the number of individuals receiving benefits. For example, payment of a former employee's benefit to three children is considered as a payment to one beneficiary.)

**Line 6.**

**Enter 3** if this is a multiple-employer-collectively-bargained plan other than a multi-employer plan. Plans making the election in section 414(f)(5) should enter 3 in the space provided.

**Enter 4** if this is a multi-employer plan (as described in section 414(f)). For this purpose, a multi-employer plan 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.

**Enter 6** if this plan is not one described above.

**Line 7. COVERAGE.**

A plan that benefits solely collectively bargained employees for a plan year automatically satisfies the coverage requirements. Generally, a collectively bargained employee is an employee who is included in a unit of employees covered by an agreement that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, provided that there is evidence that retirement benefits were the subject of good faith bargaining between employee representatives and the employer or employers. See Regulations section 1.410(b)-6(d)(2).

**Line 7a.** If the plan benefits any noncollectively bargained employees, the portion of the plan covering noncollectively bargained employees must be treated as one or more independent plans depending on whether the noncollectively bargained employees who benefit under the plan are employed by one or more employers. These independent plans are separately tested for coverage by reference only to each employer's employees.

**Line 7b.** If more than 2% of the employees who are covered under a collective bargaining agreement are professional employees, all of the employees covered under the agreement are treated as not covered by a collective bargaining agreement. Therefore, if the plan benefits any such employees, they must be separately tested for coverage as noncollective bargained employees. In general, the term "professional" includes any individual who, on any day of the plan year, performs professional services for the employer as a certified or other public accountant, actuary, architect, attorney, chiropractor, chiropractor, executive, investment banker, medical doctor, dentist, optometrist, osteopath, podiatrist, engineer, psychologist, stockbroker or veterinarian.

Complete and attach to the application a separate coverage worksheet (see **Coverage Worksheet** in

next column) for the portion of the plan benefiting any noncollective bargaining unit employees, or employees treated as noncollective bargaining unit employees because of the 2% professional rule in the paragraph above. If more than one employer employs individuals described in the preceding sentence, complete and attach a separate coverage worksheet for the portion of the plan that benefits each of the employers' employees. For example, if a plan benefits employees in a unit of employees who are covered under a collective bargaining agreement and it also benefits noncollective bargaining unit employees of three unrelated employers, attach three coverage worksheets, one for the portion of the plan benefiting noncollective bargaining unit employees of each of the three employers.

**Note:** *In completing the coverage worksheet, include all employees of all employers combined with the employer under section 414(b), (c) or (m). 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 reason of section 414(n)(5).*

**Coverage Worksheet Instructions**

**Line a.** In general, if the employer operates qualified separate lines of business as defined in section 414(r) for a year, the employer may apply the coverage requirements separately for employees in each qualified separate line of business. Attach a demonstration using applicable regulations, revenue rulings or revenue procedures that show the separate lines of business are qualified separate lines of business satisfying the rules of sections 414(r) and 410(b)(5). Include the number of employees in each line of business, a description of the nature of each line of business, and a description of the basis on which headquarters employees and other employees who perform services for more than one line of business are divided among the lines of business.

If this plan, or any plan combined with this plan for purposes of satisfying the coverage requirements, covers employees in more than one line of business treated separately by the employer, attach a demonstration using applicable regulations, revenue rulings or revenue procedures that show the coverage test is satisfied for each qualified separate line of business.

**Line c.** In general, a plan must satisfy one of the coverage tests on each day of the year being tested. However, if the plan satisfies one of the tests on at least one day in each quarter of the year being tested, the plan will be considered to pass the coverage tests for the entire year provided the quarterly testing dates reasonably represent the coverage of the

plan over the entire plan year. Enter the date for which the coverage data is submitted on line c.

**Line d.** Divide the number of nonexcludable employees who benefit and who are not highly compensated employees, as defined in section 414(q), by the total number of nonexcludable nonhighly compensated employees; enter the result as a percentage on line d.

Generally, a qualified plan may exclude from coverage all employees who have not reached age 21 and

**Coverage Worksheet (See Coverage Worksheet Instructions above)**

- a. Is the employer applying the separate line of business rules of section 414(r)?  Yes  No
- b. Does the employer receive services from any leased employees as defined in section 414(n)?  Yes  No
- c. Coverage of plan at (give date)  N/A  %
- d. Enter the percentage of nonhighly compensated employees who benefit under the plan, excluding employees who benefit only under a part of the plan containing a CODA or employee or matching contributions. (If 70% or more, do not complete line e)  N/A  %
- e. Divide the percentage of nonhighly compensated employees who benefit under the plan (d) by the percentage of highly compensated employees who benefit under the plan, excluding employees who only benefit under a part of the plan containing a CODA or employee or matching contributions.  N/A
- f. If the plan contains a CODA, compute the ratio in line e above on the basis of employees eligible to make elective deferrals under the CODA portion of the plan  N/A
- g. If the plan provides for employee or matching contributions, compute ratio in line e above on the basis of employees eligible to make employee contributions or to receive matching contributions under the plan  N/A
- h. Are the results in line e, f, or g based on the combined coverage of more than one plan?  Yes  No (If "Yes," see the **Coverage Worksheet Instructions**, above.)
- i. If line e, f, or g is less than .7, does the plan pass the average benefit test?  Yes  No  
 (1) Enter the safe harbor percentage.   
 (2) Enter the average benefit percentage.

completed one year of service. However, if a plan covers any such excludable employee, it must test coverage based on the lowest minimum age and service requirements for any employee under this or any other plan combined with this plan for the purpose of satisfying the coverage rules. To compute the percentage on line d, exclude employees who have not reached the lowest age and service requirements for any employee under this or any other plan combined with this plan for purposes of satisfying the coverage requirements. On the other hand, employees who have not reached age 21 and completed one year of service may be tested for coverage separately. If you elect this alternative, demonstrate in an attachment that the group of employees who have not reached age 21 and one year of service independently passes one of the coverage tests. (See Regulations section 1.410(b)-6(b).)

When testing a plan or portion of a plan covering noncollectively bargained employees for coverage, employees who are included in a unit of employees covered by an agreement between employee representatives and one or more employers are excluded if there is evidence that the retirement benefits were the subject of good faith bargaining between employee representatives and employer or employers.

To compute the percentage on line d, exclude employees covered by a collective bargaining agreement described on page 4 including employees covered under this plan. However, do not exclude any employee covered under a collective bargaining agreement if more than 2% of the employees who are covered under the collective bargaining agreement are professional employees.

In computing the percentage on line d, exclude the total number of nonresident aliens who receive no earned income (as defined in section 911(d)(2)) from the employer that constitutes income from sources in the United States (as defined in section 861(a)(3)).

To compute the percentage on line d, exclude employees who do not accrue a benefit only because they do not satisfy a minimum hour of service requirement under the plan, 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** exclude any employees who have more than 500 hours only because they are not employed on the last day of the plan year or did not have 1,000 hours of service.

In general, an employee is treated as benefiting for purposes of the coverage tests, 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 only because the employee is subject to plan provisions that limit plan benefits, such as a provision for maximum years of service, maximum retirement benefits, or limits designed to satisfy section 415.

An employee is treated as benefiting under a plan to which elective contributions or after-tax employee contributions and matching contributions subject to section 401(k) or 401(m) may be made if the employee is currently eligible to make elective or after-tax employee contributions, whether or not the employee actually makes such contributions. However, for purposes of line d, do not include employees who are treated as benefiting only because they are eligible to make elective deferrals or after-tax contributions. Data for these employees will be entered on lines f and g.

**Line e.** To compute the ratio on line e, divide the number of nonexcludable employees who benefit under the plan and are not highly compensated, as defined in section 414(q), by the total number of nonexcludable nonhighly compensated employees. Enter the result in the numerator. Divide the number of nonexcludable employees who benefit under the plan and who are highly compensated by the total number of nonexcludable highly compensated employees. Enter the result in the denominator. If the result is .7 or greater, do not complete the rest of the coverage worksheet. See the instructions for line d to determine which employees are nonexcludable employees and which employees benefit under the plan. For purposes of line e, do not include employees who are treated as benefiting only because they are eligible to make elective deferrals or after-tax contributions. Data for these employees will be entered on lines f and g.

**Line f.** If the plan (or part of the plan) contains a CODA component, enter the ratio (described above in line e) for the CODA component on line f.

**Note:** *The instructions for line d contain a special definition of who is benefiting under a CODA.*

**Line g.** If the plan (or part of the plan) provides for employee or matching contributions, enter the ratio on line e for the part of the plan containing employee or matching contributions on line g.

**Note:** *The instructions for line d contain a special definition of who is benefiting under the portion of a plan that consists of employee and matching contributions.*

**Line h.** If this plan does not, by itself, satisfy the coverage requirements, certain other qualified plans may be

combined with this plan for purposes of satisfying the coverage requirements.

**Note:** *The following plans may not be combined: an ESOP and a non-ESOP; a plan or part of a plan that benefits a unit of employees covered by a collectively bargained agreement and a plan or portion of a plan that benefits employees who are not in a unit of employees covered by a collectively bargained agreement; and a plan that contains a CODA (section 401(k)), employee or matching contributions (section 401(m)), and a plan that does not include such contributions.*

If any other plan is considered in combination with this plan, complete the coverage worksheet as though the combined plans were a single plan. Also attach a description, including the allocation or benefit formula, of the other plan(s) along with a demonstration using applicable regulations, revenue rulings or revenue procedures that shows that the combined plans provide comparable benefits and together satisfy section 401(a)(4).

**Line i.** If line e, f, or g is less than .7, the plan must satisfy the average benefit test in order to pass coverage. A plan satisfies the average benefit test if it satisfies both the nondiscriminatory classification test and the average benefit percentage test.

**Line i (1).** A plan satisfies the **nondiscriminatory classification test** if benefiting employees are defined by objective business criteria set out in the plan and the classification is nondiscriminatory. A classification will be considered nondiscriminatory if the ratio on line e, f, or g, above, is equal to or greater than the safe harbor percentage.

The safe harbor percentage is 50%, reduced by  $\frac{3}{4}$  of a percentage point for each percentage point by which the nonhighly compensated employee concentration percentage exceeds 60%. The nonhighly compensated employee concentration percentage is the percentage of all the employees of the employer who are not highly compensated employees. Enter the safe harbor percentage on line i(1). See Regulations section 1.410(b)-4.

**Line i (2).** A plan satisfies the **average benefit percentage test** if the average benefit percentage for nonhighly compensated employees is at least 70% of the average benefit percentage for highly compensated employees.

All qualified plans (or parts of plans) of the employer, including CODAs and plans containing employee or matching contributions (section 401(k) or (m)) are combined in figuring the average benefit percentage. Do not combine plans that may not be combined for purposes of satisfying the ratio percentage test, other than plans subject to section 401(k) or (m). See the instructions for line h.

In addition, all nonexcludable employees, including those with no benefit under any qualified plan of the employer, are included in determining the average benefit percentage. Enter the average benefit percentage on line i(2). Also, attach a demonstration using applicable regulations, revenue rulings or revenue procedures that shows that the plan satisfies the average benefit percentage test.

#### **Line 8. PERMITTED DISPARITY**

**Line 8a.** If you answered "No," submit a demonstration that the plan is nondiscriminatory under section 401(a)(4) citing applicable regulations, revenue rulings or revenue procedures.

**Line 8b.** A defined contribution plan satisfies the permitted disparity requirements of section 401(l) if the excess contribution percentage does not exceed the base contribution percentage by more than a uniform amount that does not exceed the maximum excess allowance. The excess benefit percentage is the percentage of compensation at which employer contributions (and forfeitures) are allocated to the accounts of participants for compensation above the plan's integration level. The base contribution percentage is the percentage of compensation at which employer contributions (and forfeitures) are allocated to the accounts of participants for compensation at or below the plan's integration level. The maximum excess allowance is the smaller of the plan's base contribution percentage; or 5.7% if the plan's integration level is 100% of the taxable wage base (TWB) in effect as of the beginning of the plan year; 5.4% if the plan's integration level is more than 80% of TWB but less than TWB; 4.3% if the plan's integration level is more than the larger of \$10,000 or 20% of TWB, but not more than 80% of TWB; or 5.7% if the plan's integration level is equal to or less than the larger of \$10,000 or 20% of TWB.

For profit sharing plans with definite contribution formulas and for money purchase plans, enter the base contribution percentage and the excess contribution percentage. For profit sharing plans with discretionary contribution formulas, enter a base contribution percentage of 5.7% and the excess contribution percentage that would be provided under the plan if a contribution was made to the plan sufficient to provide a base contribution percentage of 5.7%. Target benefit plans must complete line 8c or 8d below, whichever applies, and line 8e.

**Line 8c.** In general, a defined benefit excess plan satisfies the permitted disparity requirements of section 401(l) if the excess benefit percentage exceeds the base benefit percentage by a

uniform amount not in excess of the maximum excess allowance.

The excess benefit percentage is the percentage of compensation at which employer-provided benefits are accrued for compensation of participants above the plan's integration level. The base benefit percentage is the percentage of compensation at which employer-provided benefits are accrued for compensation of participants at or below the plan's integration level. Enter the excess benefit percentage and the base benefit percentage either as an annual accrual (unit basis) or as a total career benefit (fixed or flat basis). With respect to total employer-provided benefits provided under the plan, an employee's cumulative disparity fraction may not exceed 35. An employee's cumulative fraction is the sum of the employee's total annual disparity fractions. The annual disparity fraction for an excess plan is a fraction the numerator of which is the plan's disparity for the plan year and the denominator of which is the maximum excess allowance. If the annual permitted disparity limitation is met, the cumulative permitted disparity limitation will also be satisfied if the total years of credited service taken into account under the plan's benefit formula does not exceed 35. Employer-provided benefits must be based upon the participant's highest compensation from the employer when averaged over a period of at least 3 consecutive years.

**Note:** *The maximum excess allowance may be reduced if the plan's integration level is other than covered compensation (see Regulations section 1.401(l)-3(d). Further reductions are required in the maximum excess allowance for certain benefits commencing before social security retirement age (see line 8f).*

Benefits from employee contributions are not taken into account in determining whether the excess benefit percentage exceeds the base benefit percentage by more than the maximum excess allowance. If the plan provides benefits from employee contributions, complete line 8c based only on employer-provided benefits and attach a demonstration showing how the part of the accrued benefit from employee contributions was computed. See Regulations section 1.401(l)-3(h).

**Line 8d.** In general, a defined benefit offset plan satisfies the permitted disparity requirements of section 401(l) if the gross benefit percentage and the offset, expressed as a percentage of final average compensation, are uniform for all participants and no participant's benefit is reduced by an offset that is greater than the maximum offset allowance.

Final average compensation is the average of the participant's annual compensation from the employer for the

3-consecutive-year period ending with or in the plan year. The maximum offset allowance is, in the case of employer-provided benefits provided under the plan for any year of credited service, the smaller of: **(1)**  $\frac{3}{4}$  of 1% multiplied by the participant's final average compensation (up to covered compensation), or **(2)** one-half of the employer-provided benefit that would be provided, prior to the application of the offset, for the participant's average annual compensation not in excess of the participant's final average compensation (up to covered compensation).

With respect to total employer-derived benefits provided under the plan, an employee's cumulative disparity fraction may not exceed 35. An employee's cumulative fraction is the sum of the employee's total annual disparity fractions. The annual disparity fraction for an offset plan is a fraction whose numerator in the plan's disparity for the plan year and whose denominator is the maximum offset allowance. If the annual permitted disparity limitation is met, the cumulative permitted disparity limitation will also be satisfied if the total years of credited service taken into account under the plan's benefit formula does not exceed 35.

**Note:** *The maximum offset allowance may be reduced if the amount of final average compensation used in determining the offset is other than covered compensation (see Regulations section 1.401(l)-3(d) and Notice 89-70, 1989-1 C.B. 730). Further reductions are required in the maximum offset allowance for certain benefits commencing before social security retirement age (see line 8f).*

Benefits from employee contributions are considered in determining whether the offset is greater than the maximum offset allowance. If the plan provides benefits from employee contributions, complete line 8d based only upon employer-provided benefits and attach a demonstration showing how the portion of the accrued benefit from employee contributions was computed. See Regulations section 1.401(l)-3(h).

**Line 8e.** Enter the plan's integration level (in the case of an offset plan, enter the compensation used in determining the offset (the offset level)), the formula for determining the integration (or offset) level, or identify the table used for determining the integration (or offset) level.

**Note:** *In the case of a defined benefit plan, if the integration level is a uniform dollar amount, demographic tests may have to be satisfied. If this is a plan required to satisfy the tests, submit a demonstration that shows that this plan satisfies the tests. See Regulations sections 1.401(l)-3(b)(4) and 1.401(l)-3(c)(4) and Notice 89-70.*

**Line 8f.** Defined benefit plans must reduce the  $\frac{3}{4}$  of 1% factor in the maximum excess allowance or the maximum offset allowance by  $\frac{1}{15}$  for each of the first 5 years,  $\frac{1}{30}$  for each of the next 5 years and actuarially thereafter for benefits commencing before social security retirement age, other than qualified disability benefits as defined in Regulations section 1.401(l)-3(e)(4).

**Line 9b.** If your plan requires a minimum number of years of service to participate, enter the number. If your plan does not require a minimum number of years of service to participate, check the box labeled N/A (not applicable).

**Line 9c.** If your plan requires that an employee reach a minimum age to participate in the plan, enter the age. If your plan does not require a minimum age to participate, check the box labeled N/A.

**Line 10.** Check one box to indicate the regular non-top heavy vesting schedule used by the plan. If "Other" is checked, attach a schedule showing your vesting schedule.

**Line 11a.** If your plan is a defined benefit plan, specify the accrual rule the plan satisfies, the benefit formula at normal retirement age, the benefit formula at early retirement age, and the normal form of retirement benefit.

**Line 11b.** If your plan is a profit sharing or stock bonus plan, check one of the boxes in (1). If it is a money purchase plan, enter the rate of contribution. If it is a target benefit plan, state the target benefit formula.

**Line 12a.** Section 411(d)(6) protected benefits include the accrued benefits of a participant as of the later of the amendment's adoption date or effective date, any early retirement type subsidy or optional form of benefit for benefits from service before such amendment. If the answer is "Yes," attach an explanation of how the amendment satisfies one of the exceptions to the prohibition or reduction or elimination of section 411(d)(6) protected benefits.

**Line 12b.** If other than "total compensation" as defined in section 414(s) is used to allocate contributions

and benefits, the plan definition of compensation may be discriminatory. If "No" is checked, attach an explanation of how contributions or benefits are allocated.

**Line 12c.** In a defined contribution plan, if forfeitures are not allocated on the basis of total compensation, check "No" and attach an explanation of how forfeitures are allocated under your plan.

**Line 12d.** In a defined contribution plan, if trust earnings and losses are allocated on the basis of account balances, check "Yes." Otherwise, check "No," and attach an explanation of how trust earnings and losses are allocated.

**Line 12e.** If the plan or trust is under examination or if there is an issue related to the plan or trust pending before IRS, 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 and the details of who is considering the matter. Otherwise, check "No."