



# Instructions for Form 5300

(Revised December 1992)

## Application for Determination for Employee Benefit 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 the 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** . . . . . 21 hr., 46 min.

**Learning about the law or the form** . . . . . 6 hr., 12 min.

**Preparing the form** . . . . . 8 hr., 41 min.

**Copying, assembling, and sending the form to the IRS** . . . . . 32 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 (1545-0197), Washington, DC 20503. **DO NOT** send the form to either of these offices.

Instead, see **Where To File** on page 3.

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

**Disclosure Requested by Taxpayer.**—The Tax Reform Act of 1976 permits a taxpayer to request the IRS to disclose and discuss the taxpayers 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 the 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 5300**, Application for Determination for Employee Benefit 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.

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 that 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 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 block 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 a governmental plan or church plan, certain lines do not have to 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). For multiple employer plans, the fee is based on the number of participating employers.
7. The IRS may, at its discretion, require additional information any time it is deemed necessary.

## Who May File

This form may be filed by any:

1. Employer, including a sole proprietor, a partnership, a plan sponsor or a plan administrator that has adopted an individually designed plan desiring a determination letter on an initial qualification, amendment, partial termination of a plan, affiliated service group status (section 414(m)), or leased employee status (section 414(n)).
2. Plan sponsor or plan administrator desiring 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 affiliated service group (section 414(m)).

3. Plan sponsor or plan administrator desiring a determination letter for a multiple-employer plan (a plan maintained by more than one employer considering all employers aggregated under section 414(b), (c), or (m) as one employer).

4. 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)).

**Note:** This form may not be filed by an adopter of:

a. A collectively bargained plan (instead, file **Form 5303, Application for Determination for Collectively Bargained Plan**, or, if applicable, **Form 5307, Application for Determination for Adopters of Master or Prototype, Regional Prototype or Volume Submitter Plans**); or

b. A master or prototype plan or a regional prototype plan where the applicant is not requesting a determination on affiliated group status, leased employee status, or a partial termination (instead, file **Form 5307**).

## What To File

### All Plans

1. **Form 8717**, User Fee for Employee Plan Determination Letter Request.

2. **Form 5302**, Employee Census. One copy of the form must accompany each plan of an employer.

3. Two copies of page 1 of Form 5300. 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, demonstrations and designations. See Rev. Proc. 91-66, 1991-2 C.B. 870, and Rev. Proc. 92-60, 1992-30 I.R.B. 15.

### Specific Plans—Additional Requirements

1. For **initial qualification** of a plan (Rev. Proc. 92-6, 1992-1 C.B. 611), 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):

Partial Termination Worksheet		19....	19....	Year of partial termination 19....	19....
<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 <b>a</b> and <b>b</b> . . . . .				
	<b>d</b> Number dropped during the plan year				
	<b>e</b> Number at end of plan year, subtract <b>d</b> from <b>c</b> . . . . .				
	<b>f</b> Total number of participants in this plan separated from service without full vesting . . . . .				
<b>2</b>	Present value (as of month <u>   </u> / <u>   </u> / <u>   </u> 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 that 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).				

a. One copy of the previous determination letter, including caveats; and  
b. One copy of the plan amendments;

c. A statement as to how the amendments affect or change the plan or any other plan maintained by the employer.

3. A **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 non-substantive 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:

(1) the copy of the plan submitted is complete in all respects; and  
(2) 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 above, 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 this is a

plan maintained by more than one employer (when all employers in each affiliated service group or controlled group are considered one employer), in addition to completing line 1e of the Partial Termination Worksheet above for the entire plan, on an attached sheet show this information for each such single employer in the same format as line 1 on the Partial Termination Worksheet.

5. For an **affiliated service group** (Rev. Proc. 85-43, 1985-2 C.B. 501 and Rev. Proc. 92-6), file:

a. The application, and  
b. A copy of the appropriate documents and statements listed in the instructions for line 6a on page 4.

6. For plans of **controlled groups of corporations**, or trades or businesses under common control, submit the specified statement in the instructions for line 6 on page 4.

7. For **multiple-employer plans** that do not involve collective bargaining, file the following:

a. One application for the plan,  
b. Form 5300 (lines 1 through 10 only) for each employer who adopts the plan (all employers in each affiliated service group or controlled group are considered one employer). Form 5300 must be signed by the respective employers, and  
c. Form 5302 for each employer who adopts the plan (all employers in each affiliated service group or controlled group are considered one employer). The applications for the individual employers must be signed by the respective employers.

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

a. That is subject to ERISA, complete all lines of Form 5300.

b. That is not subject to ERISA, file Form 5300 skipping lines 9 and 12. For the purposes of this item, a governmental plan is considered not subject to ERISA. A church plan is considered not subject to ERISA unless an election under section 410(d) has been made.

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

9. If you are **terminating** your 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 multiemployer plan covered by the PBGC insurance program. Do not file Form 5300 for a complete termination.

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 5300. Do not file Form 5310 if your trust will continue.

**Note:** *If a defined benefit plan is amended to become a defined contribution plan, or if the merger of a defined benefit plan with a defined contribution plan results solely in a defined contribution plan, the defined benefit plan is considered terminated.*

10. For ESOPs, attach **Form 5309**, Application for Determination of Employee Stock Ownership Plan.

## Where To File

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

**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.

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

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

**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.

If entity is in	Send fee and request for determination 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.** "Plan Sponsor" means in the case of a plan:

a. That covers the employee 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;

c. 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

d. That covers the employees and/or partner(s) of a partnership, the partnership.

The name of the plan sponsor should be the same name that was 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.

## Line 1b. Employer identification number (EIN).

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

**Line 2.** The contact person will receive copies of all correspondence as authorized in a power of attorney or other written designation. This line must be completed as described; a reference such as "see attached" is not acceptable. If there is no other person to contact, leave this line blank.

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 Taxpayer.**

**Line 3a.** In the box in the left margin, 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 this application is for an amendment to a plan for which the IRS has issued a determination letter.

**Enter 3**, if a determination letter is requested concerning the effect of section 414(m) on the plan being submitted or because of a change in the affiliated service group membership.

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

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

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

c. 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) and whether it is not unusual for the services to be performed by employees of organizations in the recipient organization's business field in the United States; and

**d.** 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 such 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 a determination letter is requested on the effect of a potential partial termination on the plan's qualification.

In addition, enter the date the plan or amendment was signed. If a determination is requested based on a proposed plan or amendment, enter 9/9/99. Enter the effective date where requested. "Date effective" means the date the plan, amendment, affiliated service group status, or partial termination becomes operative, takes effect, or changes.

**Line 3b.** Explain in a cover letter if you checked "Yes" and do not have a copy of the latest determination letter.

**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 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 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 4a.** Designate and enter a name for the plan.

**Line 4b.** Assign and enter a three digit number, beginning with "001" and continuing in numerical sequence 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 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: (a) 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, (b) retirees or other 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.** If the plan sponsor is a member of a controlled group of corporations, trades or businesses under common control, or an affiliated service group, all employees of the group will be treated as employed by a single employer for purposes of certain qualification requirements such as coverage. Attach a statement showing in detail all members of the group, their relationship to the plan sponsor, 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:

**a.** A description of the nature of the business of the employer, specifically whether it is a service organization or an organization whose principal business is the performance of management functions for another organization, including the reasons therefor,

**b.** The identification of other members (or possible members) of the affiliated service group,

**c.** A description of the business of each member (or possible member) of the affiliated service group describing the type of organization (corporation, partnership, etc.) and indicating whether the member is a service organization or an organization whose principal business is the performance of management functions for the other group member(s),

**d.** 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),

**e.** A description of services performed for the employers by the members (or possible members) of the affiliated service group, or vice versa (including 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 not unusual for the services to be performed by employees of organizations in that service field in the United States,

**f.** A description of how the employer and the members (or possible members)

of the affiliated service group associate in performing services for other parties,

**g.** 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 explaining if 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,

**h.** If management functions are performed by the employer for the members (or possible members) of the affiliated service group, a description of 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),

**i.** A brief description of any other plan(s) maintained by the members (or possible members) of the affiliated service group, if such other plan(s) is designated as a unit for qualification purposes with the plan for which a determination letter has been requested, and

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

**Enter 2,** if this is a church plan not subject to ERISA (i.e., the church plan has not made an election under section 410(d)).

**Enter 3,** 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 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.

**Line 8a.** If you answered "Yes," attach a list for each plan with the following information: name of plan, type of plan, form of plan (standardized or nonstandardized) and if the plan is paired, rate of employer contributions, allocation formula, benefit formula, monthly benefit, and number of participants (if paired, show the letter serial number of the paired plan).

**Line 8b.** See M-12 of Regulations section 1.416-1.

**Line 8c.** See Regulations sections 1.415-7 and 1.415-8.

### Line 9. Coverage

**Note:** For line 9, 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 section 414(n)(5). In the case of multiple employer plans as defined in section 413(c), each unrelated participating employer must be tested for coverage separately. Therefore, if this plan is a multiple employer plan, submit the coverage data requested for line 9 separately for each unrelated employer participating in the multiple employer plan.

The part of a plan that is an ESOP must be treated as an independent plan that must separately satisfy the coverage rules. If this plan contains an ESOP component, submit a demonstration that the ESOP component separately satisfies the coverage rules. For purposes of testing the rest of the plan, disregard the ESOP.

**Line 9a.** In general, if the employer operates qualified separate lines of business as defined in section 414(r) and the regulations thereunder for a year, the employer may apply the coverage requirements separately for employees in each separate line of business. Attach a demonstration citing applicable regulations, revenue rulings or revenue procedures showing the separate lines of business are qualified separate lines of business satisfying sections 414(r) and 410(b)(5).

Also, if this plan, or any plan combined with this plan for purposes of satisfying the coverage requirements covers employees in more than one separate line of business, submit the coverage data requested in line 9 separately for each separate line of business or operating unit.

**Line 9c.** A plan that satisfies one of the tests on at least one day in each quarter of the year being tested, will be considered as passing the coverage tests for the entire year if the quarterly testing dates reasonably represent the coverage of the plan over the entire plan year. If you are applying this quarterly testing option, enter the date for which the coverage data is submitted on line 9c. 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 on line 9c.

**Line 9d.** Divide the number of nonexcludable employees who benefit and are not highly compensated employees, as defined in section 414(q),

by the total number of nonexcludable nonhighly compensated employees; show the result as a percentage and enter it on line 9d.

Generally, a qualified plan may exclude from coverage all employees who have not attained age 21 and completed 1 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 9d, exclude employees who have not attained the lowest age and service requirements for any employee under this or any other plan combined with this plan for the purpose of satisfying the coverage requirements.

On the other hand, employees who are not yet age 21 and have completed 1 year of service may be tested for coverage separately. If electing this alternative, demonstrate in an attachment that the group of employees who are not yet age 21 and have 1 year of service, but have attained the lowest age and service requirements under this or any other plan combined with this plan to satisfy the coverage requirements, independently passes one of the coverage tests.

When testing a plan covering noncollectively bargained employees for coverage, employees who are included in a unit of employees covered by an agreement (as defined in section 7701(a)(46)) that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers are generally 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 9d, exclude employees that are covered by a collective bargaining agreement described above 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 professionals as defined in Regulations section 1.410(b)-9.

To compute the percentage on line 9d, 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 within the United States (as defined in section 861(a)(3)).

To compute the percentage on line 9d, exclude employees who do not accrue a benefit or receive an allocation only

because they do not satisfy a minimum hour of service or a last day of the plan year 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 of service merely because they are not employed on the last day of the plan year.

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 do not receive an allocation of contributions and/or forfeitures, or accrue a benefit only because they are 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 (or part of 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 such elective or after-tax employee contributions, whether or not the employee actually makes the contributions. However, for purposes of line 9d, do not treat these employees as benefiting only because they are eligible under a plan (or part of a plan) subject to section 401(k) or (m). Data for these employees will be entered on lines 9f and 9g.

**Line 9e.** To compute the ratio on line 9e, 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; put 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; put the result in the denominator.

See the instructions for line 9d to determine which employees are nonexcludable employees and which employees benefit under the plan. For purposes of line 9e, do not include employees who are treated as benefiting only because they are eligible under a plan (or part of a plan) subject to section 401(k) or (m). Data for these employees will be entered on lines 9f and 9g.

**Line 9f.** Enter the ratio (using the instructions for line 9e) for the portion of the plan subject to section 401(k). Note that the instructions to line 9d contain a special definition of who is benefiting under the portion of the plan subject to section 401(k).

**Line 9g.** If the plan (or part of the plan) consists of employee and/or matching contributions subject to section 401(m), enter the ratio for this portion on line 9g. Note that the instructions to line 9d contain a special definition of who is benefiting under the plan or portion of a plan that consists of employee and matching contributions.

**Line 9h.** 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 collectively bargained plan and a noncollectively bargained plan, and a plan or part of a plan that is subject to section 401(k) (or subject to section 401(m) and a plan or part of a plan that is not subject to section 401(k) (or not subject to section 401(m)).*

If any other plan is considered in combination with this plan, complete line 9 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 in accordance with applicable regulations, revenue rulings, or revenue procedures that shows that the combined plans provide comparable benefits and together satisfy section 401(a)(4).

**Line 9i.** If any one of lines 9e, 9f or 9g, if applicable, is less than 70%, the plan must satisfy the average benefit test 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 9i(1).** A plan satisfies the nondiscriminatory classification test if benefiting employees are defined by reasonable and objective business criteria set out in the plan and the classification is nondiscriminatory. A classification will be considered nondiscriminatory if the ratio on line 9e, 9f or 9g, whichever is applicable, 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 9i(1). See Regulations section 1.410(b)-4.

**Line 9i(2).** A plan satisfies the average benefit percentage test if the actual benefit percentage for nonhighly compensated employees is at least 70% of the actual benefit percentage for highly compensated employees.

All qualified plans (or parts of plans) of the employer, including plans subject to section 401(k) or 401(m) are combined in determining 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 9h.

Also, 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 9i(2). Also, attach a demonstration in accordance with applicable regulations, revenue rulings or revenue procedures that shows that the plan satisfies the average benefit percentage test.

#### **Line 10. Permitted Disparity**

**Line 10a.** If you answered "No," submit a demonstration in accordance with applicable regulations, revenue rulings or revenue procedures that shows the plan is nondiscriminatory under section 401(a)(4).

**Line 10b.** 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 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 with respect to 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 with respect to 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 greater 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 greater 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 10c or 10d, whichever applies, and line 10e.

**Line 10c.** 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 greater than the maximum excess allowance.

The excess benefit percentage is the percentage of compensation at which employer-provided benefits are accrued with respect to 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 with respect to 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 on 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 10f).*

Benefits from employee contributions are not considered in determining if 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 10c based only on 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 10d.** In general, a defined benefit offset plan satisfies the permitted disparity requirements of section 401(l) if the gross benefit percentage, expressed as a percentage of average annual compensation, and the offset, expressed as a percentage of final average compensation, are uniform for all participants and no participant's offset exceeds 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 within the plan year. The maximum offset allowance is, with respect to employer-provided benefits provided under the plan for any year of credited service, the smaller of: **(a)**  $\frac{3}{4}$  of 1% multiplied by the participant's final average compensation (up to covered compensation), or **(b)** one-half of the employer-provided benefit that would be provided, before 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-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 offset 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 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 offset level is other than covered compensation (see Regulations section 1.401(l)-3(d)). Further reductions are required in the maximum offset allowance for certain benefits commencing before social security retirement age (see line 10f).*

Benefits from employee contributions are not considered in determining if the offset is greater than the maximum offset allowance. If the plan provides benefits from employee contributions,

complete line 10d based only on 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 10e.** Enter the plan's integration level (in the case of an offset plan, enter the plan's 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 demographic tests, submit a demonstration that shows this plan satisfies the tests. See Regulations sections 1.401(l)-3(d)(8).*

**Line 10f.** Defined benefit plans must adjust the  $\frac{3}{4}$  of 1% factor in the maximum excess allowance or the maximum offset allowance for benefits (other than qualified disability benefits) beginning at an age other than social security retirement age. See Regulations section 1.401(l)-3(e).

**Line 11b.** If the plan requires a minimum number of years of service to participate, enter the number. If the plan does not require a minimum number of years of service to participate, check the box labeled N/A (not applicable).

**Line 11c.** If your plan requires that an employee attain 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 (not applicable).

**Line 12.** 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 13a.** If your plan is a defined benefit plan, specify the accrual rule that 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 13b.** 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 14a.** 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, any early retirement benefit, 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 14b.** If other than "total compensation" as defined in section 414(s) is used to determine 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 14c.** In a defined contribution plan, if forfeitures are not divided on the basis of total compensation within the meaning of section 414(s), check "No" and attach an explanation of how forfeitures are divided under the plan.

**Line 14d.** In a defined contribution plan, if trust earnings and losses are divided on the basis of account balances, check "Yes." Otherwise, check "No," and attach an explanation of how trust earnings and losses are allocated.

**Line 14e.** If the plan or trust is under examination or if there is an issue related to the plan or trust pending before the IRS, the Department of Labor, 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."

**Line 14f.** The \$200,000 annual compensation limit of section 401(a)(17) is adjusted annually for cost of living increases. The 1992 amount was \$228,860. The cost of living increases are published each January in the Internal Revenue Bulletin.