

# Instructions for Form 5300

Revised July 1998

## Application for Determination for Employee Benefit Plan

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



Department of the Treasury  
Internal Revenue Service

**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.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

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

	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
Form 5300	11 hrs.	5 hrs., 1 min.	7 hrs., 16 min.	32 min.
Sch. Q (Form 5300)	25 hrs., 7 min.	19 hr., 53 min.	21 hr., 8 min.	

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001.

**DO NOT** send any of these forms or schedules to this address. Instead, see **"Where To File"** on page 3.

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

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

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

### How To Get Forms and Publications

**By personal computer.** Visit the IRS's Internet Web Site at **www.irs.ustreas.gov** to get:

- Forms and instructions
- Publications
- IRS press releases and fact sheets

You can also reach us using:

- Telnet at **iris.irs.ustreas.gov**
- File Transfer Protocol at **ftp.irs.ustreas.gov**
- Direct Dial (by modem) — Dial direct to the Internal Revenue Services (IRIS) by

calling **703-321-8020** using your modem. IRIS is an on-line information service on FedWorld.

**CD-ROM.** A CD-ROM containing over 2,000 tax products (including many prior year forms) can be purchased from the Government Printing Office (GPO). To order the CD-ROM, call the Superintendent of Documents at **202-512-1800**, or go through GPO's Internet Web Site (**www.access.gpo.gov/su\_docs**).

**By phone and in person.** To order forms and publications, call **1-800-TAX-FORM (1-800-829-3676)** between 7:30 a.m. and 5:30 p.m. on weekdays. You can also get most forms and publications at your local IRS office.

**Note:** You must file the pink copy of page one, Form 5300, which can not be downloaded.

### General Instructions

#### A Change To Note

Governmental plans are not required to attach Schedule Q (Form 5300), Nondiscrimination Requirements.

#### Purpose of Form

Use Form 5300 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.

### Type of Plan

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

• A **Defined Benefit Plan (DBP)** is any plan that is not a DCP.

**Note:** A qualified plan must satisfy section 401(a) including, but not limited to, participation, vesting, nondiscriminatory contributions or benefits, distributions, and contribution and benefit limitations.

### Completing the Application

Applications are screened for completeness. Incomplete applications may be returned to the applicant. For this reason, it is important that an appropriate response be entered for each line item (unless instructed otherwise). In completing the application, pay careful attention to the following:

- N/A (not applicable) is accepted as a response **only** if an N/A block is provided.
- If a number is requested, a number must be entered.
- If an item provides a choice of boxes to check, check only one box unless instructed otherwise.
- If an item provides a box to check, written responses are not acceptable.
- If a governmental plan or nonelecting church plan, certain lines do not have to be completed. See **What To File and Specific Plans.—Additional Requirements**.
- The IRS may, at its discretion, require a plan restatement or additional information any time it is deemed necessary.

• All applications must include the appropriate user fee and **Form 8717**, User Fee for Employee Plan Determination Letter Request. For multiple employer plans, the fee is based on the number of participating employers. Please submit a separate check for each application. See **How To Get Forms and Publications** above to get Form 8717.

### Who May File

This form may be filed by any:

- **Employer**, including a sole proprietor, partnership, plan sponsor or a plan administrator that has adopted an individually designed plan desiring a determination letter on:

1. initial qualification of a plan;
2. qualification of an entire plan as amended,
3. partial termination of a plan;
4. affiliated service group (ASG) status (section 414(m)), or
5. leased employee status (section 414(n)).

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

• **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 ASG (section 414(m)).

• **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 combined under section 414(b), (c), or (m) as one employer).

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

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

1. 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

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

### What To File

#### All Plans must attach the following:

- Form 8717
- Attach a duplicate copy of Form 5300, page 1, to the pink copy of Form 5300. The duplicate copy may be a reproduction or carbon; however, the signature must be original.
- Schedule Q (Form 5300) and any additional schedules or demonstrations required by these instructions or by the instructions for Schedule Q.

**Note:** *Schedule Q should not be filed by a governmental plan.*

### Type of Determination Letter Requested

#### Initial Qualification

For **initial qualification** of a plan or when requesting a determination letter after

Partial Termination Worksheet		Year -----	Year -----	Year of partial termination -----	Year -----
<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 ____ / ____ / ____ 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).				

initial qualification for a plan that has not been amended (for example, because of changes in employee demographics), file one copy of all instruments that make up the plan.

#### Entire Plan as Amended

When requesting a determination letter on the entire plan as amended after initial qualification file:

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

#### Restated Plan

A **restated plan** is required if four or more amendments have been made since the last restated plan was submitted. For restatement purposes, do not count an amendment making only minor plan changes as a plan amendment. For a restated plan, file Form 5300 as described under **Entire Plan as Amended** above.

#### Other Amendments

**Complex amendments.** Use Form 5300, as described under **Entire Plan as Amended** above, for complex amendments, including amendments with significant changes to plan benefits or coverage.

**Minor amendments.** Use **Form 6406**, Short Form Application for Determination for Minor Amendment of Employee Benefit Plan, instead of Form 5300 to request a determination letter on the effect of minor amendment on the qualification of a plan.

Form 6406 should not be used for plan amendments made to comply with the Uruguay Round Agreements Act, the Small Business Job Protection Act of 1996, or the Taxpayer Relief Act of 1997.

#### Partial Termination

For a **partial termination** you must:

1. File the application form and the appropriate documents and statements.
2. Attach a statement indicating if a partial termination may have occurred or might occur as a result of proposed actions.

3. Using the format in the Partial Termination Worksheet 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.

#### Termination of Plan

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

File Form 5303 to request a determination letter involving the complete termination of a multiemployer plan covered by the PBGC insurance program.

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

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

## Specific Plans—Additional Requirements

### Affiliated Service Group

**Affiliated service groups** must file:

- Form 5300, and
- A copy of the appropriate documents and statements listed in the instructions for line 6 or 6a on page 4.

### Controlled Groups of Corporations

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.

### Multiple-Employer Plans

For **multiple-employer plans** that do not involve collective bargaining, file:

1. One application for the plan, (including Schedule Q (Form 5300) and any additional required schedules or demonstrations, and
2. Form 5300 (lines 1 through 8 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.

### Governmental or Nonelecting Church Plan

For a **governmental or nonelecting church plan**, file Form 5300 but skip lines 10 and 12a. A nonelecting church plan is a plan for which an election under section 414(d) has not been made.

Schedule Q should not be filed by a governmental plan.

Electing church plans must complete all of the form including lines 10 and 12a.

### ESOP

Attach **Form 5309**, Application for Determination of Employee Stock Ownership Plan for an ESOP.

### Where To File

Internal Revenue Service,  
P.O. Box 192,  
Covington, KY 41012-0192.

Requests shipped by Express Mail or a delivery service should be sent to: Internal Revenue Service, 201 West Rivercenter Blvd., Attn: Extracting Stop 312, Covington, KY 41011.

**Private Delivery Services.** Applicants can use certain private delivery services designated by the IRS, the IRS publishes a list of the designated private delivery services in September of each year. The list published in September 1997, includes only the following:

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

- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M.

The private delivery service can tell you how to get written proof of the mailing date.

## Specific Instructions

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

1. Covering the employees of one employer, is the employer;
2. Maintained by two or more employers (other than a plan sponsored by a group of entities required to be combined under section 414(b), (c) or (m)), is the association, committee, joint board of trustees or other similar group of representatives of those who established or maintain the plan;
3. Sponsored by two or more entities required to be combined under sections 414(b), (c) or (m), is one of the members participating in the plan; or
4. Covering the employees and/or partner(s) of a partnership, is the partnership.

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

For a multiple employer plan, the EIN should be the same EIN that was or will be used by the participating employer when Form 5500 is filed by the employer.

**Do not** use a social security number or the EIN of the trust.

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

The plan of a group of entities required to be combined under section 414(b), (c), or (m) whose sponsor is more than one of the entities required to be combined should only enter the EIN of one of the sponsoring members. This EIN must be used in all subsequent filings of determination letter requests and 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.

**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 the IRS has previously issued a determination letter for this plan.

If this application is for initial qualification or an entire plan as amended, enter the date the plan or amendment was signed. If an amendment or plan is proposed, enter 9/9/9999. Enter the effective date where requested.

**Enter 3** if requesting a letter concerning the effect of section 414(m) on the plan being submitted or because of a change in the ASG membership.

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

1. A description of the nature of the business of the recipient organization;
2. A copy of the relevant leasing agreement(s);
3. A description of the function of all leased employees in the trade or business of the recipient organization (including data as to whether all leased employees are performing services on a substantially full-time basis);
4. A description of facts and circumstances relevant to a determination of whether such leased employees' services are performed under primary direction or control by the recipient organization (including whether the leased employees are required to comply with instructions of the recipient about when, where, and how to perform the services, whether the services must be performed by particular persons, whether the leased employees are subject to the supervision of the recipient, and whether the leased employees must perform services in the order or sequence set by the recipient), and

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

**Enter 5** if this is a request for the effect a potential partial termination will have on the plan's qualification.

**Date effective** means the date the plan, amendment, ASG status, or partial termination becomes operative, takes effect, or changes.

**Line 3b.** Explain in a cover letter if “Yes” is checked and you 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 “Yes” is checked, it means that each employee has been notified as required by the regulations under section 7476 or you have a one-person plan.

Rules defining “interested parties” and the form of notification are in Regulations section 1.7476-1. For an example of an acceptable format, see Rev. Proc. 98-6 1998-1 I.R.B. 183. If “No” is checked or this line is blank, your application will be returned.

**Note:** *Rev. Proc. 98-6 is updated annually and can be found in the Internal Revenue Bulletin.*

**Line 4a.** Enter a name for the plan.

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

**Line 4c.** Plan year means the calendar, policy, or fiscal year on which the records of the plan are kept. Enter four digits in month-day order.

**Example:** March 31 would be 0331.

**Line 4e.** Enter:

1. The total number of employees participating in the plan including

employees under a section 401(k) qualified cash or deferred arrangement who are eligible but do not make elective deferrals,

2. Retirees and other former employees who have a nonforfeitable right to benefits under the plan, and

3. Any beneficiary of a deceased employee who is receiving or will in the future receive benefits under the plan. This means one beneficiary for each deceased employee regardless of the number of individuals receiving benefits.

**Example:** A payment of a deceased employee's benefit to three children is considered a payment to one beneficiary.

**Line 5a.** If the plan is not described in 1, 2, or 3, enter 4 for “other” plan.

**Example:** If this is a cash balance plan, enter 4 and write “Cash Balance” where noted. A cash balance plan is a DBP plan that defines an employee's benefit by reference to hypothetical allocations and interest adjustments

**Line 6.** If the plan employer is a member of a controlled group of corporations, trades or businesses under common control, or an ASG, 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 employer, the type of plans each member has, and the plans common to all members.

**Line 6a.** If you are not sure if you are a member of an ASG, attach the information described in section 14.09(1) through (10) of Rev. Proc. 98-6.

**Line 7. Type of Plan.** Enter 3 if this is a multiple employer plan.

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

**Line 8a.** If “Yes” is checked, attach a list for each plan with the following information:

1. Name of plan,
2. Type of plan,
3. Plan number,

4. Whether the plan has received a determination letter, or an application for a letter is pending with IRS.

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

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## Miscellaneous Provisions

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

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

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