Instructions for Form 6406

(Revised July 1998)

Short Form Application for Determination for Minor Amendment of Employee Benefit Plan

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

Department of the Treasury
Internal Revenue Service

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.

Disclosure Request by Taxpayer. The Tax Reform Act of 1976 allows a taxpayer to request the IRS to disclose and discuss their 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 6406, which can not be downloaded.*

General Instructions

Purpose of Form

Use **Form 6406** to apply for a determination for a minor amendment for an employee benefit plan if that plan has already received a favorable determination letter that takes into account the requirements of the Tax Reform Act of 1986 (TRA of 1986). Form 6406 should not be used to comply with the Uruguay Round Agreements Act, the Small Business Job Protection Act of 1996, or the Taxpayer Relief Act of 1997.

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, and 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 or nonelecting church plan, line 8a does not have to be completed.
- All applications must include the appropriate user fee and **Form 8717,** User Fee for Employee Plan Determination Letter Request. Please submit a separate check for each application. See **How To Get Forms and Publications** above to get Form 8717.
- The IRS may, at its discretion, require a plan restatement, additional information, or the submission of a Form 5300 series application anytime it is deemed necessary.

Who May File

This form may be filed by any:

- Employer, including a sole proprietor, partnership, plan sponsor or plan administrator that wants a determination letter on the qualification of a minor amendment to their plan.

However, use Form 6406 only if the plan has an outstanding favorable determination letter under the TRA of 1986.

This form may be filed to obtain a determination letter:

1. On the qualification of minor amendments of individually designed plans (including volume submitter plans) or

2. Permitted changes to adoption agreement elections in master or prototype or regional prototype plans, provided these changes constitute minor amendments.

For this purpose, a minor amendment does not include an amendment that involves a significant change to plan benefits or coverage or that may affect other portions of the plan so as to cause disqualification.

Example: An amendment to add a cash or deferred arrangement to a plan is not a minor amendment.

• Plan sponsor or plan administrator desiring a determination letter as to the qualification of an amendment of a plan that involves:

1. A controlled group of corporations (section 414(b)), or

2. Trades or businesses under common control (section 414(c)), or

3. An affiliated service group (section 414(m)).

All of the above apply, provided the plan has a favorable determination letter under TRA of 1986.

Note: *This form may **not** be filed by anyone asking for approval of an amendment, if:*

• The amendment results in a:

1. Plan termination,

2. Partial termination,

3. Merger,

4. Consolidation, or

5. A transfer of plan assets or liabilities to another plan.

• The plan is restated. A plan is required to be restated if four or more amendments have been made to the plan. For restatement purposes, an amendment making only nonsubstantive plan changes is not counted as a plan amendment.

• If you are not sure if you have leased employees, file Form 5300 instead of Form 6406.

• Amendments are made to comply with the TRA of 1986.

Use the appropriate Form 5300 series form, if Form 6406 may not be used. Form 6406 should not be used to comply with the Uruguay Round Agreements Act, the Small Business Job Protection Act of 1996, or the Taxpayer Relief Act of 1997.

What To File

All plans must attach the following:

• **Form 8717,** User Fee for Employee Plan Determination Letter Requests.

• Attach a duplicate copy of Form 6406, page 1, to the original pink copy of Form 6406. The duplicate copy may be a reproduction or carbon; however, the signature must be original.

• All applications must be accompanied by:

1. A copy of the new amendments or adoption agreement;

2. A copy of the latest determination letter including caveats; and

3. A statement as to how the amendments or changes in adoption agreement elections affect or change the plan or any other plan maintained by the employer.

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

Specific Plans — Additional Requirements

Controlled Groups of Corporations

For plans of **controlled groups of corporations, trades or businesses under common control, and affiliated service groups,** attach a list of the member employers. Explain in detail their relationships, the types of plans each member has and the plans common to all member employers.

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 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, Secound 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. A plan sponsor for:

1. A plan that covers the employees of one employer, is the employer;

2. A plan maintained by two or more employers (other than a plan sponsored by a group of entities required to be combined under section 414(b), (c), or (m)), is the association, committee, joint board of trustees or other similar group of representatives of those who established or maintain the plan;

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

4. A plan that covers the employees and/or partner(s) of a partnership, is the partnership.

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. 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 the Form 5500 series returns/reports are filed for the plan. (Do not use a social security number or the EIN for 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 enter only the EIN of one of the sponsoring members. This EIN must be used in all later filings of determination letter requests, and for filing annual returns/reports unless there is a change of sponsor.

Line 1c. Enter the two digits representing the month the employer's tax 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. If a determination is requested based on a proposed amendment, enter 9/9/9999. The term “Date amendment effective” means the date the amendment becomes operative, takes effect, or changes.

Line 3b. If “Yes,” is checked and you do not have a copy of the latest determination letter, explain in the cover letter.

Form 6406 may not be used if the plan has not received a favorable determination letter that takes into account the TRA of 1986.

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. 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 I.R.B. 183. If “No” is checked or this line is left blank, the 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 your plan.

Line 4b. Assign and enter a three digit number, beginning with “001” and continuing in numerical order 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 year the plan **originally** became effective.

Line 4e. Enter the total of:

1. The total number of employee 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. Beneficiaries of deceased employees who are or will be receiving 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. 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.

Miscellaneous

Line 8a. 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 the amendment.

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

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 this information. We need it to determine whether you meet the legal requirements for plan approval.

You are not required to provide the information requsted 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	6 hr., 56 min.
Learning about the law or the form	1 hr., 44 min.
Preparing the form	3 hr., 47 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 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 the form to this office. Instead, see **“Where To File”** on page 2.