

Instructions for Schedule Q (Form 5300) (Rev. July 1998)



Department of the Treasury
Internal Revenue Service

Nondiscrimination Requirements

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

General Instructions

Purpose of Schedule

The information requested on Schedule Q (Form 5300) relates to the manner in which your plan satisfies certain qualification requirements relating to minimum participation, coverage, and nondiscrimination. Depending on the design of your plan and other factors, it also allows you to indicate whether you wish certain of these requirements to be considered by the IRS in its review of your plan.

Who Must File

Filers of Form 5300, Form 5303, Form 5307, or Form 5310 must complete and file Schedule Q (Form 5300) with their application.

Specific Instructions

Changes To Note

- The Small Business Job Protection Act (SBJPA) amended the definition of a "highly compensated employee". See Code section 414(q) and Notice 97-45, 1997-33 I.R.B. 7.
- The SBJPA eliminated the "family aggregation rules" for years beginning after 1996. See Code section 414(q).
- Governmental plans should not complete Schedule Q.
- Only Defined Benefit Plans must complete Question 2.

Part I — Type of Plan

Enter in Part I the letter below that best describes the plan:

Enter A if the plan:

1. Benefits only collectively bargained employees as defined in Regulations section 1.410(b)-6(d)(2) (or employees treated as collectively bargained employees) and
2. No noncollectively bargained employees.

For this purpose, an employee covered under a collective bargaining agreement (CBA) is **NOT** considered a collectively bargained employee if more than 2% of the employees who are covered under the agreement are professional employees as defined in Regulations section 1.410(b)-9.

Enter B RESERVED

Enter C if the plan is a nonelecting church plan described in section 410(c)(1)(B) and you are applying for a determination letter that does not take into account the nondiscrimination regulations that are effective for the plan in plan years beginning after 1998.

Enter D if the plan does not benefit any highly compensated noncollectively bargained employees.

Enter E if the plan is maintained by an employer that does not employ any nonhighly compensated noncollectively bargained employees.

Enter F if the plan is a nonstandardized safe harbor M&P or regional prototype plan approved under Rev. Proc. 93-10, 1993-1 C.B. 476, that:

1. satisfies the coverage requirements without relying on the average benefit test;
2. is neither permissively aggregated with another plan to pass coverage, nor maintained by an employer that is treated as operating qualified separate lines of business; and
3. does not use a definition of compensation that must be tested for nondiscrimination under Regulations section 1.414(s)-1(d).

Enter G if the plan is a nonstandardized safe harbor M&P or regional prototype plan approved under Rev. Proc. 93-10 that would be described in the preceding paragraph except that it uses a definition of compensation that must be tested for nondiscrimination under Regulations section 1.414(s)-1(d).

Enter H if the plan is not described above and **I** does not apply.

Enter I if the plan is a standardized M&P or regional prototype plan. Also, explain in a cover letter the reason for filing the determination letter application.

What to Complete

If the plan is described in:

- A or I, complete only Part I
- C, D, or E, complete Part I and only lines 1 and 2 of Part II
- F, complete Part I and only lines 1, 2, and 5 of Part II.
- G, complete Part I and only lines 1, 2 and 5 of Part II and line 12 of Part III.
- H, complete all lines unless directed otherwise.

Note: Applicants may be required to submit demonstrations showing how their plans satisfy the minimum participation, coverage, and nondiscrimination requirements, as explained in these instructions. However, information or computations that are used for more than one purpose or provided elsewhere in the application may be cross-referenced rather than repeated.

Part II — Participation, Coverage, and Nondiscrimination Requirements

Line 1. If "Yes" is checked, attach a schedule labeled Demo 1 with the following information, as applicable:

1. The Code section(s) for which the employer is testing on a separate line of business basis (i.e., section 410(b) or section 401(a)(26)),
2. The separate lines of business that have employees benefiting under the plan,
3. A demonstration of how the plan meets the nondiscriminatory classification requirement of section 410(b)(5)(B) and Regulations section 1.414(r)-8(b)(2) on an employer-wide basis, and
4. If the requirements of section 410(b) or section 401(a)(26) are to be applied to this plan on an employer-wide basis under the special rules for employer-wide plans, a demonstration of how the plan meets the requirements of the applicable special rule in Regulations sections 1.414(r)-1(c)(2)(ii) or 1.414(r)-1(c)(3)(ii).

If a request for an administrative scrutiny determination on any separate line of business of the employer is pending with IRS, submit a copy of the confirmation receipt issued by IRS with the application.

Line 2. Additional Minimum Participation Requirements

Line 2a. A defined benefit plan must benefit at least the lesser of:

1. 50 employees of the employer, or
2. the greater of:
 - a. 40% of the employees of the employer, or
 - b. two employees, or if there is only one employee, that employee.

However, if the plan satisfies the minimum participation requirements of section 401(a)(26) because:

- it meets one of the exceptions in Regulations section 1.401(a)(26)-1(b), or
- it is a frozen plan as described in Regulations section 1.401(a)(26)-2(b), answer "Yes" on lines 2a and 2i. Attach a demonstration labeled Demo 2 to identify the plan as a frozen plan or specify the particular exception that is met and to describe how the plan meets the requirements of that exception.

Line 2b. If you are required, or elect, to disaggregate the plan under any of the rules in Regulations section 1.401(a)(26)-2(d), answer "Yes", and complete lines 2c through 2i with respect to **one** disaggregated portion of the plan.

Attach additional schedules as necessary to identify the other disaggregated portions of the plan and to demonstrate how these portions of the plan separately satisfy section 401(a)(26).

Example: If this is a multiple employer plan, it is treated as separate plans, each of which is maintained by a separate employer and must separately satisfy section 401(a)(26) by reference only to that employer's employees.

Line 2c. Generally, a plan must satisfy section 401(a)(26) on each day of the year. A plan will be treated as satisfying this requirement if it satisfies the requirements of section 401(a)(26) on any single day during the plan year that is reasonably representative of the employer's workforce and the plan's coverage. Enter the eight-digit date for which data is given on line 2c (MMDDYYYY).

Example: March 31, 1998, would be 033198.

Line 2d. Include all employees of all entities combined under section 414(b), (c), (m), or (o). Also include all self-employed individuals, common law employees, and leased employees (as defined in section 414(n)) of any of the entities above, other than those excluded by section 414(n)(5). See the definition of an employee in Regulations section 1.410(b)-9.

Line 2e. Employees who are excludable are generally the same as those who are excludable for the purpose of performing the minimum coverage tests. See the instructions for lines 5e(1) through 5e(5).

Employees covered under a CBA may, at the employer's option, be treated as excludable employees for the purpose of testing the portion of the plan that benefits noncollective bargaining unit employees. (This rule may be applied separately to each CBA.)

Similarly, noncollective bargaining unit employees may, at the employer's election, be treated as excludable employees for purposes of testing the portion of the plan that benefits only collective bargaining unit employees. If more than 2 percent of the employees covered under a CBA are professional employees, all employees covered under the CBA are treated as noncollectively

bargained employees. See Regulations section 1.401(a)(26)-6(b).

Line 2g. In general, an employee is considered benefiting under the plan for purposes of section 401(a)(26) if the employee is treated as benefiting for purposes of the minimum coverage requirements of section 410(b). See the instructions for line 5i for the meaning of "benefiting" for purposes of section 410(b). For rules regarding the effect of benefit offset arrangements, see Regulations section 1.401(a)(26)-5(a)(2).

Line 2h. Enter the lesser of:

1. 50, or
2. the greater of:
 - a. 40% of line 2f, or
 - b. two (or 1 if there is only one employee).

Line 3. Determination letters generally provide reliance that those benefits, rights, and features under a plan that are currently available to all employees in the plan's coverage group satisfy the nondiscriminatory current availability requirement of Regulations section 1.401(a)(4)-4(b) provided the applicant has demonstrated that the plan satisfies the coverage requirements of section 410(b).

Answer "Yes" only if requesting a determination that any other specified benefit, right, or feature meets the nondiscriminatory current availability requirement of Regulations section 1.401(a)(4)-4(b).

If "Yes" is checked you must generally provide a separate demonstration for each other benefit, right, and feature you wish considered. Label this attachment Demo 3.

Also, see **Guidelines for Certain Demonstrations** on page 5.

Line 4. Check "Yes" and attach Demo 4 if, for purposes of satisfying the minimum coverage requirements of section 410(b) and the nondiscrimination requirements of section 401(a)(4), any of the following apply:

1. The plan includes an ESOP and a portion that is not an ESOP,
2. The employer applies section 410(b) separately to the portion of the plan that benefits only employees who satisfy age and service conditions under the plan that are lower than the greatest minimum age and service conditions permissible under section 410(a),
3. The plan benefits employees of more than one qualified separate line of business (unless the plan is tested under the special rule for employer-wide plans in Regulations section 1.414(r)-1(c)(2)(ii), or
4. The plan benefits the noncollectively bargained employees of more than one employer. See the mandatory disaggregation rules in Regulations sections 1.410(b)-7(c)(2), (3), and (4)(ii)(A) or (C).

Also check "Yes" if the plan is permissively aggregated with another plan under Regulations section 1.410(b)-7(d) or restructured into component plans under Regulations section 1.401(a)(4)-9.

If "Yes" is checked, attach a schedule labeled Demo 4 explaining the basis of the disaggregation, permissive aggregation, or restructuring, identifying the aggregated or separate disaggregated plans or component plans, and demonstrating how any restructured component plans satisfy section 410(b) as if they were separate plans.

Any other plan that has been permissively aggregated with this plan should be identified by:

- name,
- plan number, and
- file folder number, if available.

Describe the benefit or allocation formula of the other plan and indicate if that plan has received or been submitted for a determination letter.

If this plan is permissively aggregated with another plan, the information on Schedule Q should be answered with respect to the aggregate or combined plan.

Check "No" if the plan is disaggregated **solely** because of one or both of the following:

1. The plan benefits both collectively bargained and noncollectively bargained employees.

2. The plan consists of a section 401(k) plan and a portion that is not a section 401(k) plan, or the plan consists of a section 401(m) plan and a portion that is not a section 401(m) plan.

Also, see the instructions for lines 7 and 12 for additional information that may be required in Demo 4.

Line 5. Coverage

Note: Do not complete lines 5a through 5n if the plan is a nonelecting church plan that satisfies section 401(a)(3) as in effect on September 1, 1974. See Regulations section 1.410(b)-2(e). **However, line 5o must be completed.**

Line 5a. If "Yes" is checked on line 4 because the plan is disaggregated into two or more separate plans, complete lines 5b through 5o with respect to one disaggregated portion of the plan. Attach additional schedules as necessary to identify the other disaggregated portions of the plan and to provide the requested coverage information, in the same format as line 5, separately with respect to the other portions of the plan, or to otherwise show that the other portions of the plan separately satisfy section 410(b).

Example: If this plan benefits the employees of more than one qualified separate line of business (QSLOB), the portion of the plan benefiting the employees of each QSLOB is treated as a separate plan maintained by that QSLOB and must separately satisfy section 410(b) unless the employer-wide

plan testing rule in Regulations section 1.414(r)-1(c)(2)(ii) applies.

Line 5c. If, for purposes of satisfying the minimum coverage requirements of section 410(b), you are applying the daily testing option in Regulations section 1.410(b)-8(a)(2) or the quarterly testing option in Regulations section 1.410(b)-8(a)(3), or, if you are using single-day “snapshot” testing as permitted under section 3 of Rev. Proc. 93-42, 1993-2 C.B. 540, enter the eight-digit date (MMDDYYYY) for which the coverage data is submitted.

If you are applying the annual testing option in Regulations section 1.410(b)-8(a)(4), enter the year for which the coverage data is submitted.

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

Note: *(This note applies only to plans that include a qualified cash or deferred arrangement under section 401(k) or employee or matching contributions under section 401(m).)*

If there are any contributions under the plan that are not subject to the special rule for section 401(k) plans and section 401(m) plans in Regulations section 1.401(a)(4)-1(b)(2)(ii)(B) (such as nonelective contributions), complete lines 5e through 5k with respect to the portion of the plan that includes these contributions and enter the ratio percentage for this portion of the plan on line 5l.

Otherwise, complete lines 5e through 5k with respect to the section 401(k) part of the plan (or the section 401(m) plan if there is no section 401(k) arrangement) and leave line 5l blank. In all cases, enter the ratio percentages for the section 401(k) and the section 401(m) parts of the plan, as applicable, on line 5m.

Line 5e(1). Enter the number of employees who are excluded because they have not attained the lowest minimum age and service requirements for any employee under this plan. If the employer is separately testing the portion of a plan that benefits otherwise excludable employees, see the instructions for lines 4 and 5a.

Line 5e(2). Enter the number of employees who are excluded because they are collectively bargained employees as defined in Regulations section 1.410(b)-6(d)(2), regardless of whether those employees benefit under the plan. For this purpose, an employee covered

under a CBA is not considered a collectively bargained employee if more than 2% of the employees who are covered under the agreement are professional employees as defined in Regulations section 1.410(b)-9.

Line 5e(3). Enter the number of employees who do not receive an allocation or accrue a benefit under the plan only because they do not satisfy a minimum hours of service requirement or a last day of the plan year requirement, provided they do not have more than 500 hours of service, and they are not employed on the last day of the plan year. Do not enter on this line any employees who have more than 500 hours of service, even if they are not employed on the last day of the plan year.

Line 5e(4). If this plan benefits the employees of one QSLOB, enter on this line the number of employees of the employer's other QSLOBs. This is not applicable if the plan is tested under the special rule for employer-wide plans in Regulations section 1.414(r)-1(c)(2)(ii). Also see the instructions for lines 4 and 5a.

Line 5e(5). Enter the number of employees who are nonresident aliens who receive no earned income (as defined in section 911(d)(2)) from the employer that constitutes income from sources within the United States (as defined in section 861(a)(3)).

Line 5h. Enter the number of employees on line 5g who are highly compensated employees (HCEs) as defined in section 414(q).

Line 5i. In general, an employee is treated as benefiting under the plan for coverage tests purposes only if the employee receives an allocation of contributions or forfeitures or accrues a benefit under the plan for the plan year. Certain other employees are treated as benefiting if they fail to receive an allocation of contributions and/or forfeitures, or to accrue a benefit, solely because they are subject to plan provisions that uniformly limit plan benefits, such as a provision for maximum years of service, maximum retirement benefits, application of offsets or fresh start wear-away formulas, or limits designed to satisfy section 415.

An employee is treated as benefiting under a plan to which elective contributions under section 401(k) or after-tax employee contributions and matching contributions under section 401(m) may be made if the employee is currently eligible to make such elective or after-tax employee contributions, or to receive a matching contribution, whether or not the employee actually makes or receives such contributions. However, do not apply this rule to determine if an employee is to be counted as benefiting for lines 5i and 5k if, in accordance with the note following the instruction for line 5d, the information provided in lines 5e through 5k relates to the portion of the

plan that is not subject to the rule in Regulations section 1.401(a)(4)-1(b)(2)(ii)(B).

Line 5k. See the instructions for line 5i for the meaning of “benefiting under the plan.”

Line 5l. To obtain the ratio percentage:

Step 1. Divide the number on line 5k (nonexcludable NHCEs benefiting under the plan) by the number on line 5j (nonexcludable HCEs)

Step 2. Divide the number on line 5i (nonexcludable HCEs benefiting under the plan) by the number on line 5h (nonexcludable HCEs)

Step 3. Divide the result from Step 1 by the result from Step 2.

Line 5m. See the **Note** following the instructions for line 5d. To determine the ratio percentages for the section 401(k) and section 401(m) portions of the plan, follow the steps described in the instructions for lines 5d through 5l, but treat an employee as benefiting under the special rules for section 401(k) plans and section 401(m) plans described in the instruction for line 5i.

Note: *If the ratio percentage entered on line 5l and/or line 5m is less than 70%, the plan does not satisfy the ratio percentage test. In this case, the plan must satisfy the average benefit test.*

Line 5n. If you have aggregated plans for purposes of section 410(b), also see the instructions for line 4.

Line 5o. Enter the letter (A, B, or C) that corresponds to the coverage test being met by the plan:

A. Ratio percentage test (Regulations section 1.410(b)-2(b)(2)).

B. Average benefit test (Regulations section 1.410(b)-2(b)(3)).

C. Section 401(a)(3) as in effect on September 1, 1974 (Regulations section 1.410(b)-2(e)) for certain nonelecting church plans).

Also enter “B” if the average benefit test is being used by any separate disaggregated plan.

Line 6. If “Yes” is checked, see **Demo 5 — Average Benefit Test**, under **Guidelines for Certain Demonstrations**, on page 5. Label this attachment Demo 5.

If “No” is checked, the determination letter issued with respect to this plan will indicate that, at your request, the letter does not consider and may not be relied on with respect to whether the plan satisfies the minimum coverage requirements of section 410(b).

If this is a terminating plan that is meeting coverage on the basis of the average benefit test, you must answer “Yes” on this line unless a favorable determination letter that considered the average benefit test was issued for the plan during the preceding three years and there has been no change in the material facts on which that determination was based.

Note: If this plan benefits both collectively bargained employees as defined in Regulation section 1.410(b)-6(d)(2) (or employees treated as collectively bargained employees) and noncollectively bargained employees, answer the remaining questions on Schedule Q only with respect to the portion of the plan that benefits noncollectively bargained employees.

Line 7. See line 8c for a list of the design-based nondiscrimination safe-harbor regulations. Leave this line blank **ONLY** if the plan is a section 401(k) plan and/or a section 401(m) plan as defined in Regulations section 1.410(b)-9. Otherwise, answer "Yes" or "No."

For purposes of this line, a plan is not a section 401(k) and/or a section 401(m) plan if the plan also provides for any contributions (such as nonelective contributions) that are not subject to the special rule in Regulation section 1.401(a)(4)-1(b)(2)(ii)(B).

If "Yes" is checked on line 4 because this plan has been disaggregated into separate plans or restructured into component plans, show on Demo 4 how each separate disaggregated plan or restructured component plan satisfies the nondiscrimination in amount requirement of Regulations section 1.401(a)(4)-1(b)(2). Check "No," or this line 7 if any separate disaggregated plan or restructured component plan relies on a nondesign-based safe harbor or a general test.

Line 8. Design-Based Nondiscrimination Safe Harbors

Line 8a. Check "Yes" if the plan is intended to satisfy the permitted disparity requirements of section 401(l).

Line 8b. To satisfy section 401(l), a plan must provide that the overall permitted disparity limits are not exceeded and specify how employer-provided contributions or benefits under the plan are adjusted, if necessary, to satisfy the overall permitted disparity limits. See Regulations section 1.401(l)-5.

Line 8c. Enter the letter shown on the form that corresponds to the design-based safe harbor that is intended to be satisfied by the plan. See Regulations sections 1.401(a)(4)-2(b), 1.401(a)(4)-3(b), 1.401(a)(4)-8(b), and 1.401(a)(4)-8(c).

Line 9. If "Yes" is checked, see **Demo 6 under Guidelines For Certain Demonstrations** on pages 5, 6 and 7. Label this attachment Demo 6.

The demonstration must show that the plan satisfies either of the nondesign-based safe harbors described in Regulations section 1.401(a)(4)-2(b)(3) (safe harbor for uniform point plans) or Regulations section 1.401(a)(4)-3(b)(4)(i)(C)(3) (alternative safe harbor for flat benefit plans), or the contributions or benefits general test in Regulations sections 1.401(a)(4)-2(c), 1.401(a)(4)-3(c), 1.401(a)(4)-8(b)(2), 1.401(a)(4)-8(c)(2),

1.401(a)(4)-8(c)(3)(iii)(C) or 1.401(a)(4)-9(b).

Also enter the letter in the space provided in line 9 that indicates if the determination requested relates to:

A. A DBP being tested under the general test in Regulations section 1.401(a)(4)-3(c) that involves a facts and circumstances determination under the "safety valve" rule in Regulations section 1.401(a)(4)-3(c)(3);

B. A plan being tested under a general test that does not involve a determination under the safety valve rule; or

C. A plan intended to satisfy a nondesign-based safe harbor.

If "No" is checked, the determination letter issued for this plan will indicate that, at your request, the letter does not consider and may not be relied on as to whether the plan is nondiscriminatory in the amount of contributions or benefits provided in the plan under section 401(a)(4).

If this is a terminating plan that is meeting the nondiscrimination in amounts requirement on the basis of a general test or a nondesign-based safe harbor, you must check "Yes," unless a favorable determination letter that considered such test or safe harbor was issued for the plan during the preceding three years and there has been no change in the material facts on which that determination was based.

Line 10. Check "Yes" if any plan provision provides for pre-participation or imputed service as defined in Regulations section 1.401(a)(4)-11(d)(3)(ii).

Also check "Yes" if a plan amendment or, in the case of an initial determination, a plan provision provides for a period of past service that exceeds the period set forth in the safe harbor in Regulations section 1.401(a)(4)-5(a)(3).

If "Yes" is checked, attach a schedule labeled Demo 7 that includes the following:

1. A description of the nature of the grant of past service or pre-participation or imputed service,
2. The location of the various plan provisions that provide for the granting of the service, and
3. In the case of pre-participation or imputed service, state if the service is being taken into account in determining if the plan satisfies Regulations section 1.401(a)(4)-1(b)(2).

Do not check "Yes" if past service, pre-participation service, or imputed service is credited under the plan solely to the extent required by one or more of the following:

1. The service crediting rules under section 410(a) (eligibility), 411(a) (vesting), 413 (collectively bargained plans), or 414(a) (service for predecessor employer),
2. The hour of service or elapsed time service-crediting methods under 29 CFR 2530.200b-2 and Regulations section 1.410(a)-7, and

3. The prohibition on double proration of service and compensation in 29 CFR section 2530.204-2(d).

Line 11. If "Yes" is checked, attach a schedule labeled Demo 8 giving the name, file folder number (if available), and plan type (e.g., defined benefit or profit sharing) of the other plan that is part of the arrangement.

Also indicate if the other plan has received a favorable determination letter or is requesting a determination letter simultaneously with this application. Also check "Yes" if any separate disaggregated or restructured component plan is part of a floor offset arrangement.

Part III — Nondiscriminatory Compensation and Employee Contributions

Line 12. Check "Yes" if:

a. The plan bases contributions or benefits on a definition of compensation that does not satisfy the requirements of Regulations section 1.414(s)-1(c)(2) or (3); or

b. The plan includes a section 401(k) and/or section 401(m) plan that incorporates an actual deferral percentage or actual contribution percentage test using a definition of compensation that does not satisfy the requirements of Regulations sections 1.414(s)-1(c)(2) or (3).

If line 4 is checked "Yes" because this plan has been disaggregated into separate plans or restructured into component plans, check this line "Yes" if any of the separate disaggregated plans or restructured component plans are described in **a.** or **b.** above. Also indicate on Demo 4 each disaggregated plan or component plan to which **a** or **b** applies.

Note: Section 401(k) and 401(m) plans may not be restructured.

Attach Demo 9 if you checked "Yes," and see **Demo 9 — Nondiscriminatory Compensation** on page 7 for guidelines in preparing the required demonstration that the definition of compensation in **a** or **b** satisfies Regulations section 1.414(s)-1(d).

Line 13. Also check "Yes" if any separate disaggregated plan or restructured component plan provides for employee contributions not allocated to separate accounts.

Line 14. Enter the letter shown on the form that corresponds to the method that is being used to determine the employer-provided benefit for purposes of Regulations section 1.401(a)(4)-6(b).

Note: The composition-of-workforce and minimum benefit methods may only be used with plans that satisfy the unit credit safe harbor in Regulations section 1.401(a)(4)-3(b)(3).

If you enter the letter "A," attach a demonstration showing that the eligibility requirements of Regulations section 1.401(a)(4)-6(b)(2)(ii) are satisfied. Label this attachment Demo 10. If applicable, also indicate the plan factor.

Line 15. Enter the letter that corresponds to the method used to show that the employee-provided benefit is nondiscriminatory in amount. See Regulations section 1.401(a)(4)-6(c).

If you enter the letter “C,” attach a demonstration, if applicable, that the benefits provided on account of employee contributions at lower levels of compensation are comparable to those provided on account of employee contributions at higher levels of compensation, as required by Regulations section 1.401(a)(4)-6(c)(4)(ii)(D). Label this attachment Demo 11.

Guidelines For Certain Demonstrations

The following instructions describe additional information that should be included in Demo 3, Demo 5, Demo 6, and Demo 9 regarding:

1. The nondiscriminatory current availability of benefits, rights and features (Demo 3) for line 3;
2. The average benefit test (Demo 5) for line 6;
3. The general tests for nondiscrimination in amount of contributions or benefits (Demo 6) for line 9;
4. The safe harbor for uniform point plans (Demo 6) for line 9;
5. The alternative safe harbor for flat benefit plans (Demo 6) for line 9; and
6. The nondiscrimination test for compensation under Regulations section 1.414(s)-1(d) (Demo 9) for line 12.

Note: *Applicants are strongly encouraged to follow the guidelines in these instructions, to indicate in their demonstrations where the elements in the guidelines are addressed, and to briefly explain why any elements have not been addressed.*

Information or computations that are used for more than one purpose or provided elsewhere in the application may be cross-referenced rather than repeated.

Demo 3 — Nondiscriminatory Current Availability Of Benefits, Rights And Features

1. An applicant requesting a determination that a plan satisfies the nondiscriminatory current availability requirement of Regulations section 1.401(a)(4)-4(b) for any benefit, right, or feature (“BRF”) specified by the applicant should ordinarily demonstrate the following for each BRF that the applicant wants considered:

- a. Identify the specific BRF, including terms pertaining to the BRF, such as eligibility conditions, timing, election rights, etc.
- b. Cite the plan provisions that describe the BRF and all terms relating to the BRF.

c. Describe any conditions on the availability of the BRF that were disregarded in determining current availability.

d. If the BRF is contingent on an unpredictable event, describe the contingency and determine current availability as if the event had occurred.

e. If applicable, describe how the special rule in Regulations section 1.401(a)(4)-4(d)(3), relating to early retirement window benefits, has been applied.

2. If the BRF is an optional form of benefit, ancillary benefit, or other right or feature that has been aggregated, for testing purposes, with another optional form of benefit, ancillary benefit, or other right or feature, respectively, show how the requirements of Regulations section 1.401(a)(4)-4(d)(4)(i)(A) and (B) are satisfied.

3. Describe the group of employees to whom the BRF is available and indicate if this group includes any nonexcludable employees with accrued benefits who are not currently benefiting (“frozen plan participants”).

4. Demonstrate one of the following with respect to the specified BRF:

- a. The group of employees to whom the benefit is currently available satisfies section 410(b).
- b. The BRF has been prospectively eliminated and satisfies section 410(b) as of the elimination date.
- c. The BRF is available only to an acquired group of employees and the requirements of Regulations sections 1.401(a)(4)-4(d)(1)(i)(A) and (B) are satisfied.

d. The plan is a permissively aggregated plan and the BRF is a spousal benefit described in Regulations section 1.401(a)(4)-4(d)(5).

e. The plan is an ESOP and the BRF is an investment diversification right or feature or distribution option available only to all qualified participants (as defined in section 401(a)(28)(B)(iii)) or the failure of the BRF to satisfy current availability results solely from the restrictions of section 409(n).

f. The plan is a permissively aggregated defined benefit/defined contributions (DB/DC) plan; the BRF is not a single sum benefit, loan, ancillary benefit, or benefit commencement date (including the availability of in-service withdrawals); the BRF is provided under only one type of plan; and the BRF is currently available to all NHCEs in all plans of the same type as the plan under which it is provided.

5. If the BRF is available to frozen plan participants, show how one of the requirements in Regulations sections 1.401(a)(4)-4(d)(2)(i) through (iv) is satisfied.

Demo 5 — Average Benefit Test

1. An applicant requesting a determination that a plan satisfies the average benefit test must demonstrate compliance with the nondiscriminatory classification test of Regulations section 1.410(b)-4, including, if applicable, the facts and circumstances determination under Regulations section 1.410(b)-4(c)(3).

2. The demonstration for the average benefit test should provide the actual benefit percentages for HCEs and NHCEs.

3. A plan that is deemed to satisfy the average benefit percentage test under the special rule in Regulations section 1.410(b)-5(f) should demonstrate that the plan would satisfy the ratio percentage test if the excludable employee and mandatory disaggregation rules for collectively bargained and noncollectively bargained employees did not apply.

4. In addition to the above information, the average benefit percentage demonstration should identify and describe the method used for determining employee benefit percentages (see Regulations sections 1.410(b)-5(d) and (e)), and include the information listed below, as applicable. However, the IRS may request that additional information be submitted if necessary.

Note: *Applicants are encouraged to submit examples clarifying the analysis of the average benefit percentage test in a particular plan for representative sample employees. Issues where this might be particularly appropriate are marked by an asterisk(*).*

All Plans

All plans using the average benefit test must also include the following information on Demo 5:

1. The testing period (see Regulations section 1.410(b)-5(e)(5) for an optional averaging rule).

2. The definition of testing service (including imputed and pre-participation service).

3. A description of the testing group (see Regulations section 1.410(b)-7(e)).

4. Whether the employee benefit percentages are determined on a contributions or benefits basis.

5. Whether permitted disparity under Regulations section 1.401(a)(4)-7 is imputed in determining employee benefit percentages.*

6. A demonstration of how allocation or accrual rates are grouped.

7. A description of how contributions or benefits are normalized, including actuarial assumptions used.*

8. The definition of section 414(s) compensation used in determining plan year compensation or average annual compensation and a demonstration showing the definition as nondiscriminatory. The demonstration for nondiscriminatory compensation is not

needed if plan year compensation or average annual compensation is determined using a definition of compensation that satisfies Regulations section 1.414(s)-1(c)(2) or (3). For guidance pertaining to this demonstration, see the guidelines under Demo 9 on page 7 pertaining to nondiscriminatory compensation.

9. A description of the method of determining compensation used in determining employee benefit percentages.

10. The testing age of employees (not applicable to defined contribution plans testing on a contribution basis).

Plans with Defined Benefits Plans in the Testing Group

Plans with DBP's in the testing group must also provide the following information if applicable.

11. Show if accruals after normal retirement age are taken into account and, if such accruals are disregarded as provided in Regulations section 1.401(a)(4)-3(f)(3), the basis on which they are disregarded.

12. Show if most valuable rates must be used under Regulations section 1.410(b)-5(d)(7), and, if so, show how those rates are determined.

13. Show if a defined benefit plan disregards offsets described in Regulations section 1.401(a)(4)-3(f)(9), give a description of such offsets, and show how they satisfy Regulations section 1.401(a)(4)-3(f)(9).

14. Show if any disability benefits are taken into account in determining employees' accrued benefits under Regulations section 1.401(a)(9)-3(f)(2), and, if so, cite the plan provisions that permit these disability benefits to be taken into account.

15. Show if any other special rules in testing a plan for nondiscrimination in amounts are applied, e.g., the rules applicable to the determination of benefits on other than a plan-year basis described in Regulations section 1.401(a)(4)-3(f)(6), the adjustments for certain plan distributions provided in Regulations section 1.401(a)(4)-3(f)(7), and the adjustment for certain qualified preretirement survivor annuity charges as provided in Regulations section 1.401(a)(4)-3(f)(8).

16. Plans with employee contributions not allocated to separate accounts: give a description of the method for determining the employer-provided accrued benefit under Regulations section 1.401(a)(4)-6(b) and the location of relevant plan provisions. If the method for determining the employer-provided accrued benefit is the composition-of-workforce method, the demonstration must show that the eligibility requirements of Regulations section 1.401(a)(4)-6(b)(2)(ii) are satisfied; if the grandfather rule of Regulations section 1.401(a)(4)-6(b)(4) is used, the

demonstration must show, if applicable, that the benefits provided on account of employee contributions at lower levels of compensation are comparable to those provided on account of employee contributions at higher levels of compensation.

Employee Benefit Percentages Determined Using Cross-Testing

17. Provide a description of the method used to determine equivalent allocations and benefits.*

Demo 6 — General Test

A request for a determination that a plan satisfies any of the general tests in Regulations sections 1.401(a)(4)-2(c), 1.401(a)(4)-3(c), 1.401(a)(4)-8(b)(2), 1.401(a)(4)-8(c)(2), 1.401(a)(4)-8(c)(3)(iii)(C) and 1.401(a)(4)-9(b) must include a demonstration showing that the plan passes the relevant general test, and should provide the information listed under **All Plans (unless otherwise noted)**, and if applicable, under **DBP's Only or Cross-Tested Plans Only**. However, the IRS may request that additional information be submitted if necessary.

Note: *Applicants are encouraged to submit examples clarifying the analysis of the general test in a particular plan with respect to representative sample employees. Issues where this might be particularly appropriate are marked by an asterisk(*).*

All Plans (unless otherwise noted)

All plans must submit the information requested in items 1 through 10.

1. Identify each rate group under the plan and include a demonstration of how each rate group satisfies section 410(b). If the plan is a DBP that is being tested on the basis of the amount of benefits, rate groups must be determined on the basis of both normal and most valuable accrual rates which are expressed as a dollar amount or a percentage of compensation. If the most valuable accrual rate is determined in accordance with the special rule in Regulations section 1.401(a)(4)-3(d)(3)(iv) (floor on most valuable accrual rate), this must be indicated.

2. State whether the plan is being tested on a contributions or benefits basis.

3. Provide the plan year being tested.

4. Provide a description of the method of determining allocation or accrual rates, and if the plan is tested on a benefits basis, the measurement period and definition of testing service (including imputed and pre-participation service).*

5. State whether the plan is imputing permitted disparity under Regulations section 1.401(a)(4)-7.*

6. Provide a demonstration of how allocation or accrual rates are grouped.

7. Provide a demonstration of how benefits are normalized, including

actuarial assumptions used (not applicable to defined contribution plans testing on a contributions basis).*

8. State the definition of section 414(s) compensation used in determining plan year compensation or average annual compensation and a demonstration showing the definition as nondiscriminatory. The demonstration for nondiscriminatory compensation is not needed if plan year compensation or average annual compensation is determined using a definition of compensation that satisfies Regulations sections 1.414(s)-1(c)(2) or (3).

See the guidelines under Demo 9 on page 7 pertaining to nondiscriminatory compensation for guidance pertaining to this demonstration.

9. Provide the method of determining average annual compensation used in testing the plan for nondiscrimination as defined in Regulations section 1.401(a)(4)-3(e)(2) or give a description of the period used in determining plan year compensation.

10. Provide the testing age of employees (not applicable to DCPs testing on a contributions basis).

Defined Benefit Plans Only

All DBP's must also provide the following information if applicable.

11. State whether accruals after normal retirement age are taken into account, and if such accruals are disregarded as provided in Regulations section 1.401(a)(4)-3(f)(3), provide the basis on which they are disregarded.

12. State whether early retirement window benefits are taken into account in determining accrual rates and whether such benefits are being disregarded under Regulations section 1.401(a)(4)-3(f)(4)(ii). Also provide the basis on which they are disregarded.

13. State whether any unpredictable contingent event benefits were taken into account in determining accrual rates under Regulations section 1.401(a)(4)-3(f)(5) and provide the basis on which they are taken into account.

14. State whether the plan disregards offsets described in Regulations section 1.401(a)(4)-3(f)(9), provide a description of such offsets, and show how they satisfy Regulations section 1.401(a)(4)-3(f)(9).

15. State whether any disability benefits are taken into account in determining employees' accrued benefits under Regulations section 1.401(a)(4)-3(f)(2), and if so, cite the plan provisions that permit these disability benefits to be taken into account.

16. State whether any other special rules in Regulations section 1.401(a)(4)-3(f) are applied in testing a plan for nondiscrimination in amount, for example:

- The rules applicable to the determination of benefits on other than a plan-year basis described in Regulations section 1.401(a)(4)-3(f)(6),

- The adjustment for certain plan distributions provided in Regulations section 1.401(a)(4)-3(f)(7), and
- The adjustment for certain qualified preretirement survivor annuity charges as provided in Regulations section 1.401(a)(4)-3(f)(8).

17. Plans with employee contributions not allocated to separate accounts should include:

- A description of the method for determining whether employee-provided accrued benefits are nondiscriminatory under Regulations section 1.401(a)(4)-6(c),
- The method for determining the employer-provided accrued benefit under Regulations section 1.401(a)(4)-6(b), and
- The location of relevant plan provisions.

If the method for determining the employer-provided accrued benefit is the composition-of-workforce method, the demonstration must show that the eligibility requirements of Regulations section 1.401(a)(4)-6(b)(2)(ii) are satisfied.

If the grandfather rule of Regulations section 1.401(a)(4)-6(b)(4) is used, the demonstration must show, if applicable, that the benefits provided on account of employee contributions at lower levels of compensation are comparable to those provided on account of employee contributions at higher levels of compensation.

18. If the plan would otherwise fail to satisfy the general test in Regulations section 1.401(a)(4)-3(c)(1), and a determination is being sought that the failure may be disregarded as permitted by the special rule in Regulations section 1.401(a)(4)-3(c)(3), describe the relevant facts and circumstances that support the use of this rule.

Cross-Tested Plans Only

19. Provide a description of the method used to determine equivalent allocations and benefits.*

Demo 6 — Safe Harbor for Uniform Points Plans

Each demonstration of the safe harbor for uniform points plans in Regulations section 1.401(a)(4)-2(b)(3) should include the following information:

1. Provide a description of the plan's allocation formula and the location of relevant plan provisions.

2. State the definition of section 414(s) compensation used in determining plan year compensation and give a demonstration showing the definition as nondiscriminatory. The demonstration for nondiscriminatory compensation is not needed if the plan determines plan year compensation using a definition of compensation that satisfies Regulations section 1.414(s)-1(c)(2) or (3). See the guidelines in Demo 9 below pertaining to nondiscriminatory compensation for guidance pertaining to this demonstration.

3. Show the average of the allocation rates (determined without imputing permitted disparity) for the highly compensated and for the nonhighly compensated employees benefiting under the plan.

Demo 6 — Alternative Safe Harbor for Flat Benefit Plans

Each demonstration of the alternative safe harbor for flat benefit plans in Regulations section 1.401(a)(4)-3(b)(4)(i)(C)(3) must set forth the average of the normal accrual rates for all nonhighly compensated nonexcludable employees and the average of the normal accrual rates for all highly compensated nonexcludable employees. In addition, the demonstration should provide the additional information described under "Demo 6-General Test," relating to the determination of normal accrual rates, except for the information described in paragraphs numbered 1, 2, 6, 18, and 19.

Demo 9 — Nondiscriminatory Compensation

A demonstration that a definition of compensation is nondiscriminatory under the test in Regulations section 1.414(s)-1(d) should include the following information:

1. It should state if the demonstration relates to a definition used to determine contributions or benefits, or a definition used in a section 401(k) and/or section 401(m) plan's ADP and/or ACP test.

2. It should state the definition of compensation being tested (and cite the plan provision where applicable), and

indicate whether the definition uses rate of compensation or includes prior-employer compensation or imputed compensation.

3. It should identify the period for which compensation data is given.

4. It should state whether the test is based on the compensation of all employees benefiting under the plan or all employees benefiting under all plans of the employer for which the same alternative definition of compensation is used to determine that the plan satisfies section 401(a)(4). It should also state whether all employees with zero total compensation have been excluded from the test. The demonstration should state the numbers of HCEs and NHCEs whose compensation is taken into account in the demonstration.

5. For both the highly compensated and nonhighly compensated groups of employees, it should state whether the test uses an aggregate, individual, or other reasonable method to calculate inclusion percentages. If an "other" method is used, this should be described.

6. With regard to the determination of total compensation and compensation included under the definition being tested, the demonstration should:

a. Specify the section 415(c)(3) definition of compensation used in determining total compensation;

b. Indicate if total compensation includes elective contributions and deferred compensation and, if applicable, if and how the adjustment required by Regulations section 1.414(s)-1(d)(3)(ii)(B) has been made; and

c. State if, for purposes of the test, compensation included under the definition being tested is limited to total compensation and if both total compensation and compensation included under the definition being tested are limited to amounts not in excess of the limit in section 401(a)(17).

7. The demonstration should show, for both groups of employees, the respective inclusion percentages, and also describe the manner in which such inclusion percentages are determined.

8. Finally, if the HCEs inclusion percentage is greater than the NHCEs inclusion percentage, the demonstration should set forth any facts relevant to whether the difference is de minimis.