

Caution: *DRAFT—NOT FOR FILING*

This is an early release draft of an IRS tax form, instructions, or publication, which the IRS is providing for your information as a courtesy. **Do not file draft forms.** Also, do not rely on draft instructions and publications for filing. We generally do not release drafts of forms until we believe we have incorporated all changes. However, in some cases unexpected issues arise, or legislation is passed, necessitating a change to a draft form we have posted on IRS.gov. Also, forms generally are subject to OMB approval before they are officially released. Drafts of instructions and publications are usually subject to at least some changes before being officially released.

All early releases of draft forms, instructions, and publications are available at www.irs.gov/draftforms. All information about forms, instructions, and publications is accessible from www.irs.gov/formspubs.

If you have any comments on this draft, you can submit them to us on our IRS.gov page titled [Comment on Forms and Publications](#), where you may make comments anonymously if you wish. You can also email us at taxforms@irs.gov. Please include the form or publication number in the subject. We cannot respond to all comments due to the high volume we receive, but we will carefully consider each suggestion. Please note that we may not be able to consider many suggestions until the subsequent revision of the product.



Instructions for Form 5307

(Rev. February 2013)

Application for Determination for Adopters of Modified Volume Submitter (VS) Plans

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

What's New

The form and the instructions have undergone revisions in the format and information required. Review these documents before completing the application. Some of the revisions were made in accordance with Announcement 2011-82, 2011-52 I.R.B. 1052, available at www.irs.gov/irb/2011-52_IRB/ar20.html, which eliminated demonstrations regarding coverage and nondiscrimination requirements and limited Form 5307 applications.

Note. Rev. Proc. 2012-6, 2012-1 I.R.B. 197, available at www.irs.gov/irb/2012-01_IRB/ar11.html, contains the guidance under which the DL program is administered. It is updated annually and can be found in the Internal Revenue Bulletin (I.R.B.). The application should be filed in accordance with Rev. Proc. 2007-44, 2007-28 I.R.B. 54, available at www.irs.gov/pub/irs-irbs/irb07-28.pdf (as revised by Ann. 2011-82), and Rev. Proc. 2012-6 available at www.irs.gov/irb/2012-01_IRB/ar11.html. Review these documents before completing the application.

Future Developments

For the latest information related to Form 5307 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/form5307.

Disclosure Request by Taxpayer

A taxpayer can authorize 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, if the representative is qualified to sign, or Form 8821, Tax Information Authorization, for this purpose. See Pub. 947, Practice Before the IRS and Power of Attorney, for more information.

Public Inspection

Form 5307 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.

General Instructions

Purpose of Form

An adopter of a VS plan files Form 5307 to request a determination letter (DL) from the IRS for the qualification of a modified defined benefit (DB) or a defined contribution (DC) plan and the exempt status of any related trust.

Who May File

File Form 5307, Application for Determination for Adopters of Modified Volume Submitter (VS) Plans, if this is a VS plan that has made limited modifications to an approved specimen plan (that does not create an individually designed plan).

Note. Adopters of Master and Prototype (M&P) plans may not use Form 5307 and must file Form 5300 if a DL is requested. Adopters of VS plans that do not meet the above conditions must also file on Form 5300.

In certain circumstances (requests regarding 414(m), 414(n), partial termination, multiple employer plans, a procedure requested by the IRS, or a pension plan with a normal retirement age earlier than age 62) an application for a DL for a VS plan must be filed on Form 5300. See Form 5300 and instructions.

Type of Plan

A DC plan is a plan that provides an individual account for each participant and for benefits based only on:

1. The amount contributed to the participant's account, and
2. Any income, expenses, gains and losses, and any forfeitures of accounts of other participants that may be allocated to the participant's account.

A DB plan is any plan that is not a DC plan.

Termination of Plan

If the plan is terminated, file Form 5310, Application for Determination Upon Termination.

If benefit accruals or contributions have ceased, the plan and trust will not be considered terminated until an official action to terminate has occurred ("frozen plan").

Note. A DB plan cannot be amended to become a DC plan. If a sponsor of a DB plan attempts to amend the plan to become a DC plan, or if the merger of a DB plan with a DC plan results solely in a DC plan the DB plan is considered terminated.

Where To File

File Form 5307 at the address indicated below:

Internal Revenue Service
P.O. Box 12192
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. In addition to the United States mail, you can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. These private delivery services include only the following:

- DHL Express (DHL): DHL Same Day Service, DHL Next Day 10:30 am, DHL Next Day 12:00 pm, DHL Next Day 3:00 pm, and DHL 2nd Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

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

How To Complete the Application

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

Note. *Stamped signatures are not acceptable.*

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:

- 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 mark, mark only one box unless instructed otherwise.
- If an item provides a box to mark, written responses are not acceptable.
- The IRS may, at its discretion, require a plan restatement or additional information any time it is deemed necessary.
- The application has formatted fields that will limit the number of characters entered per field.
- All data input will need to be entered in Courier 10 point font to expedite processing.
- Alpha characters should be entered in all capital letters.
- Enter spaces between any words. Spaces do count as characters.
- All date fields are entered as an eight-digit field (MMDDYYYY).

What To File

All applications must contain an original signature and be accompanied by the following:

1. A completed Form 5307, which consists of pages 1–6.
2. Form 8717, User Fee for Employee Plan Determination Letter Request and, if applicable, the check for the appropriate user fee. Submit a separate check for each application. Make checks payable to the “United States Treasury.”

Note. Payments for sanction fees, compliance fees, etc. should be submitted on separate checks.

3. Form 8905, Certification of Intent to Adopt a Pre-approved Plan, if

applicable as determined under Part III of Rev. Proc. 2007-44.

4. A copy of the plan’s latest favorable DL letter, if applicable.
5. A copy of the most recent advisory letter issued to the VS specimen plan.
6. A complete copy of the plan and trust instrument and a copy of the completed adoption agreement, if applicable.
7. A written representation (signature optional) made by the VS sponsor under penalty of perjury, that explains that the plan and trust instrument are not word-for-word identical to the approved specimen plan and describes the location, nature and effect of each deviation from the language of the approved specimen plan.
8. Form 2848 or other written authorization allowing the VS practitioner to act as a representative of the employer with respect to the request for a determination letter.
9. Any interim amendments that were adopted for qualification changes on the applicable cumulative list (CL) used in reviewing and approving the underlying VS specimen plan, where the VS plan does not authorize the practitioner to amend on behalf of the adopting employer, and any other discretionary amendments adopted during the current six-year remedial amendment cycle. The changes to the pre-approved VS plan may be either incorporated into the pre-approved document or separately attached as amendments to the plan. If the changes are incorporated into the document, include a list describing the changes. Do not submit any interim or other amendments to the plan that were adopted by the VS practitioner on behalf of the employer and considered by the IRS in issuing the advisory letter for the plan.

Note. The IRS may, in any event, request evidence of adoption of interim amendments during the course of its review of a particular plan.

Note. Deviations from the language of the approved specimen plan will be evaluated based on the extent and complexities of the changes. If the changes are determined not to be compatible with the VS program, the IRS may require the applicant to file Form 5300 and pay the higher user fee.

10. A copy of any compliance statement(s) or closing agreement(s)

regarding this plan completed during the current remedial amendment cycle (RAC).

Note. Do not use staples (except to attach the check to the Form 8717), paper clips, binders, or sticky notes. Do not punch holes in the documents.

See Rev. Proc. 2007-44 for a description of the RACs.

Specific Instructions

Lines 1a through 1j. Enter the name, address, and telephone number of the plan sponsor/employer. A “plan sponsor” means:

1. In the case of a plan that covers the employees of one employer, the employer;
2. In the case of a plan 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
3. In the case of a plan that covers the employees and/or partner(s) of a partnership, the partnership.

Note. The name of the plan sponsor/ employer should be the same name that is used when the Form 5500 series, Annual Return/Report is filed for this plan. Line 1a is limited to 70 characters.

Line 1f, g & h. If applicable, complete these lines and follow the country’s practice for entering the name of the province, county, or state and the postal code.

Line 1i. Enter the nine-digit employer identification number (EIN) assigned to the plan sponsor/employer. This should be the same EIN that is used when the Form 5500 series Annual Return/Report is filed for this plan.



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

The plan sponsor/employer must have an EIN. A plan sponsor/employer without an EIN can apply for one.

- Online—Generally, a plan sponsor/ employer can receive an EIN by internet and use it immediately to file a return. Go to the IRS website at www.irs.gov/businesses/small and click on Employer ID Numbers (EINs).
- By telephone - Call 1-800-829-4933.
- By mail or fax – Send in a completed Form SS-4, Application for Employer Identification Number, to apply for an EIN.

Note. Form SS-4 can be obtained at Social Security Administration (SSA) offices.

The plan of a group of entities required to be combined under section 414(b), (c), (m), or (o) 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 DL requests, and annual returns/report unless there is a change of sponsor.

Line 11. Enter the two digits representing the month the employer's tax year ends.

Line 2. The contact person will receive copies of all correspondence as authorized on a Form 2848 or Form 8821. Either complete the contact's information on this line, or check the box and attach a completed Form 2848 or Form 8821.

Line 3a. Enter the number that corresponds to the request being made:

Enter 1 for Initial Qualification – New Plan. For this purpose, a new individually designed plan is a new plan with an initial RAC within the meaning of Regulations sections 1.401(b)–1(b)(1).

Enter 2 Initial Qualification – Existing Plan. If the IRS has not issued a DL for the plan or the plan sponsor previously did not rely on an opinion/advisory letter.

Enter 3 – Request after Initial Qualification. If the IRS has previously issued a DL for this plan or the plan sponsor previously relied on an opinion/advisory letter.

Line 3b. If the initial plan is a proposed plan document, enter "09/09/9999".

Line 3c. A VS plan may, but is not required to, contain a provision that authorizes the VS practitioner to amend the plan on behalf of employers who have previously adopted the plan. For purposes of reliance on the advisory letter, the practitioner will no longer have the authority to amend the plan on behalf of the employer as of the date of the adoption of an employer amendment to the plan to incorporate a type of plan not allowable in the VS program or as of the date the IRS notifies the practitioner that the plan is an individually designed plan. See section 15.03 of Rev. Proc. 2011-49. See also special instructions #9 under **What to File**, earlier.

Line 3e. An identical adopter of a pre-approved M&P or VS plan is an employer that has made no changes to the pre-approved plan document other than to select among options provided under the plan or certain changes described in section 19.03 of Rev. Proc. 2011-49, 2011-44 I.R.B. 608 available at www.irs.gov/irb/2011-44_IRB/ar08.html.

Line 3f. Use the table in line 3f to list all the amendments to the plan that have been adopted during the remedial amendment cycle of the plan in which the application is submitted (the "current cycle"), other than amendments described in the following paragraph.

Do not list:

1. Any amendment that was adopted during the current cycle as a condition of a DL for the preceding cycle (but include a copy of the amendment with the application);

2. Any amendment to a pre-approved plan that was adopted by the practitioner on behalf of the employer and considered by the IRS in issuing an advisory letter for the plan;

3. Any amendment to a pre-approved plan that is effective after the year of the CL that was considered by the IRS in issuing an advisory letter for the plan, regardless of whether the amendment was adopted by the practitioner of the pre-approved document or the employer;

4. Any interim amendment not included on the CL for which this determination is being requested.

Note: *If the plan does not have a DL for the preceding RAC and you are not entitled to rely on an advisory letter for that cycle, you must include with the application copies of interim amendments adopted for the preceding cycle. See **What to File**, above. However, do not list these amendments in the table in line 3f.*

Column (i). Note each amendment using an identifying number or name (i.e. Amendment 1, or PPA Amendment). An amendment may consist of modifications made to several plan provisions that are adopted on the same date. Two or more amendments with the same adoption date may be grouped and listed on a single line of the table. In this case, enter in column (ii) the effective date of the amendment with the earliest effective date of any of the grouped amendments.

Column (ii). Enter the date the amendment is actually effective under the plan. For example, if an amendment is effective on the first day of the first plan year beginning on or after January 1, 2013, and the plan year of the plan ends on June 30, the date to be entered in column (ii) is 07012013.

Column (iii). If the amendment is in proposed form enter "09/09/9999".

Column (iv) and (v). Note with an "X" whether each amendment is an interim amendment only or a discretionary amendment only. If the amendment contains both discretionary and interim amendments, leave both boxes in column (iv) and (v) blank.

Column (vi). Note the due date of the employer's tax return, including extensions, if applicable, for the year in which the amendments were adopted. If the relevant amendment is discretionary only, this field should be blank.

Line 4a. This field is limited to 70 characters, including spaces. Fill in the plan name as it should appear on the determination letter to the extent permitted. Keep in mind that "Employees" and "Trust" are not necessary in the plan name and will be left off if space does not permit.

Line 4b. Enter the three-digit number, beginning with "001" and continuing in numerical order for each plan the employer adopts (001-499). This numbering will differentiate the plans. The number assigned to a plan must not be changed or used for any other plan. This should be the same number that is used when the Form 5500 series Annual Return/Report is filed.

Line 4c. Plan month means the month in which the plan year ends. Enter the two-digit month (MM).

Line 4e. Enter the total number of participants. A "participant" is:

1. Any employee participating in the plan, including employees under 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. The beneficiaries of a deceased employee who is receiving or will in the future receive benefits under the plan. Include one beneficiary for each deceased employee regardless of the number of individuals receiving benefits. For example, payment of a deceased employee's benefit to three children is

considered a payment to one beneficiary.

Lines 4f and 4g. Notice 2002-1, 2002-2 I.R.B. 283, provides guidance regarding the user fees for certain determination letter requests, within a plan's first five years. Under that Notice, certain determination letter requests made by an eligible employer are exempt (generally an employer that has at least one employee who is not a highly compensated employee as defined in section 414(q) and is participating in the plan, and the employer had no more than 100 employees who received at least \$5,000 in compensation from the employer for the preceding year). Q&A -7 of Notice 2002-1 provides that employees taken into account for purposes of determining the number of employees include all employees employed at any time during the preceding calendar year, including self-employed individuals under section 401(c)(1) who received earned income from the employer during the preceding year, regardless of whether they were eligible to participate in the plan. For example, employees who are excludable under section 410(b)(3) or who have not met the plan's minimum eligibility requirements must be taken into account. See Notice 2002-1, 2002-1 C.B. 283, (as amplified by Notice 2003-49, 2003-32 I.R.B. 294 and Notice 2011-86, 2011-45 I.R.B. 698), for further details, including how to determine compensation.

Line 5b(2). If the plan's normal retirement age is below 62, the employer (or trustees in the case of multi-employer plan) must submit a signed statement that this is a good faith determination of the typical retirement age for the industry in which the covered workforce is employed. See also Regulations section 1.401(a)-(1). Leave this item blank if for a governmental plan.

Line 6a(1). If the employer is a member 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 that provides the following in detail:

1. All members of the controlled group,
2. The relationship of each member to the plan sponsor,

3. The type(s) of plan(s) maintained by each employer, and

4. Plans common to all members.

Line 6a(2). Mark "Yes" if the plan sponsor or member is a foreign entity; a nonresident alien individual; foreign corporation; foreign partnership; foreign trust; foreign estate; or any other person that is not a United States person. See sections 1473(5) and 7701(a)(30).

Line 6b. If yes, complete only applicable sections of this form. Governmental plans under section 414(d) are exempt from certain qualification requirements and are deemed to satisfy certain other qualification requirements under certain conditions. For example, the nondiscrimination, minimum participation rules, top heavy rules, and minimum funding standards do not apply to governmental plans. In addition such plans meet the vesting rules if they meet the pre-ERISA vesting requirements.

Line 6c(2). Church plans described in section 414(e) that have not made the election provided by section 410(d) may not have a VS plan.

Line 6e. Fully-insured section 412(e) (3) plans, other than plans that by their terms satisfy the safe harbor in Regulations section 1.401(a)(4)-3(b)(5), are not eligible to have a VS plan.

Line 7. Section 3001 of the Employee Retirement Income Security Act of 1974 requires the applicants subject to section 410 to provide evidence that each employee who qualifies as an interested party has been notified of the filing of the application. If "Yes" is marked, it means that each employee has been notified as required by Regulations section 1.7476-1. If this is a one-person plan or if this plan is not subject to section 410, a copy of the notice is not required to be attached to this application. If "No" is marked or this line is blank, the application will be returned.

Rules defining "interested parties" and the form of notification are in Regulations section 1.7476-1.

Line 8b. See Rev. Proc. 2007-44 for explanation of on-cycle filing for pre-approved plans.

Line 12. If "Yes", attach a separate statement providing the name, EIN and plan type of the other plan and a copy of pertinent plan provisions from the related plan regarding the offset.

Line 13. Attach a statement that provides the following:

1. Name of plans involved,
2. Type of plan,
3. Date of merger, consolidation, spinoff, or a transfer of plan assets or liabilities, and
4. Verification that each plan involved was qualified at the time of the merger, consolidation, spinoff, or a transfer of plan assets or liabilities.

Note. Verification includes a copy of prior DL, if any, the appropriate opinion or advisory letter and adoption agreement/plan document. Otherwise, provide a signed and dated copy of the most recent restatement and any subsequent amendments.

The plan and amendments submitted to verify the plan was qualified prior to the merger, consolidation, spinoff, or a transfer of plan assets or liabilities, are for information purposes only and will not be ruled on.

If applicable, file Form 5310-A, Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business, 30 days prior to the merger, consolidation, or transfer of assets or liabilities.

Line 15a. Attach a statement for each plan, which includes the following information:

1. Name of plan,
2. Type of plan,
3. Form of plan (standardized, non-standardized, VS, or individually designed),
4. Plan number,
5. Vesting schedule,
6. Whether the plan has received a DL or an application for a letter is pending with IRS.

Lines 15b and 15c. See M-8, M-12, and M-14 of Regulations section 1.416-1.

Line 16. 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," explain on an attachment how the amendments satisfy one of the exceptions to the

prohibition on reductions or elimination of section 411(d)(6) protected benefits.

How To Get Forms and Publications

Internet

You can access the IRS website 24 hours a day, 7 days a week at www.irs.gov to:

- Download forms, instructions, and publications;
- Order IRS products on-line;
- Research your tax questions on-line;
- Search publications on-line by topic or keyword;
- View Internal Revenue Bulletins (IRBs) published in the last few years; and
- Sign up to receive local and national tax news by email.

CD/DVD

You can order Publication 1796, IRS Tax Products CD/DVD, and obtain:

- Current-year forms, instructions, and publications.
- Prior-year forms, instructions, and publications.
- Bonus: Historical Tax Products DVD - Ships with the final release.
- Tax Map: an electronic research tool and finding aid.
- Tax law frequently asked questions.
- Tax topics from the IRS telephone response system.
- Fill-in, print, and save features for Internal Revenue Bulletins.
- Toll-free and email technical support.
- The CD which is released twice during the year.

The first release will ship the beginning of January.

The final release will ship the beginning of March.

Purchase the CD/DVD from National Technical Information Service (NTIS) at

www.irs.gov/cdorders for \$35 (no handling fee) or call **1-877-CDFORMS** (1-877-233-6767) toll-free to buy the CD/DVD for \$35 (plus a \$5 handling fee). Price is subject to change.

By Phone and in Person

You can order forms and publications by calling 1-800-TAX-FORM (1-800-829-3676). You can also get most forms and publications at your local IRS office.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. Our legal right to ask for the information on this form is Internal Revenue Code sections 401(a), 501(a), and 6109, and their regulations. You are not required to obtain approval of the plan; however, if you apply for approval you are required to provide the information requested on this form. We need it to determine whether you meet the legal requirements for plan approval. Failure to provide the requested information may delay or prevent processing of your request. Providing false or fraudulent information may subject you to penalties.

We may disclose this information to the Department of Justice for civil or criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws. We may disclose this information to the Department of Labor or the Pension Benefit Guarantee Agency for administration of ERISA. This information may be open to public inspection if the plan has over 25 plan participants. We may also disclose this information to other countries under a tax treaty, to Federal and state agencies to enforce Federal nontax criminal laws,

or to Federal law enforcement and intelligence agencies to combat terrorism. 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:

	Form 5307	Sch. Q (Form 5300)
Recordkeeping	28 hr., 27 min.	6 hr., 13 min.
Learning about the law or the form	7 hr., 28 min.	9 hr., 14 min.
Preparing the form	13 hr., 51 min.	9 hr., 45 min.
Copying, assembling, and sending the form to the IRS	1 hr., 36 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 Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224.

Do not send any of these forms or schedules to this address. Instead, see Where To File on page 1.