

# Employee Benefit Plans

# Explanation No. 10 Affiliated Service Group

**Note:**

Plans submitted during the Cycle E submission period  
Plans submitted during the Cycle A submission period  
must satisfy the applicable changes in plan qualification  
requirements listed in Section IV of Notice 2015-84, 2015-  
52 I.R.B. 1 (the 2015 Cumulative List).

This publication contains copies of:  
Form 8388, Worksheet 10  
Form 8400, Deficiency Checksheet 10

These forms are included as examples only  
and should not be completed and returned  
to the Internal Revenue Service.

Worksheet Number 10 (Form 8388) and this explanation are  
designed to aid the specialist in identifying and resolving is-  
sues pertaining to affiliated service groups as defined under  
section 414(m) of the Code.

The general rule of section 414(m) is that employees of em-  
ployers that are members of an affiliated service group are  
considered to be employed by a single employer for purposes  
of certain provisions of section 401(a), and sections 408(k),  
408(p), 410, 411, 415 and 416.



---

The technical principles in this publication may be changed  
by future regulations or guidelines.

---

---

**I. Required Information**

If the information described in section 5.01 of Rev. Proc. 85-43, 1985-2 C.B. 501, has not been submitted with the application and there are indications that the plan may be subject to section 414(m), the information should be requested. If it is not submitted within a reasonable period of time, this worksheet should not be completed. If the plan is otherwise qualified, a favorable determination letter should be issued without a caveat addressing section 414(m). See IRM 7.11.1.26. In such instances, the employer may not rely on the letter for qualification of the plan under section 414(m).

---

**II. Management Organizations**

**Line a.** Under section 414(m)(5) of the Code, two or more organizations comprise an affiliated service group if the principal business of one of the organizations is performing management functions on a regular and continuing basis for the other organization(s) (or organizations related to the other organization (s)). Note that there is no requirement of common ownership of the managing and managed entities, unlike organizations affiliated under other provisions of section 414(m).

Whether an organization's principal business is performing management functions on a regular and continuing basis for another organization is essentially a facts and circumstances question. Factors to be considered in making this determination could include the percentage of the organization's gross receipts that are derived from performing management functions for the other organization and the amount of time individuals actually spend performing these functions. A sufficient period of time (e.g., more than one year) must be considered to ensure that the "regular and continuing basis" condition is met. Of course, the particular activities and services that the organization provides for the other organization must also be considered in order to determine that these activities and services are in the nature of management functions.

---

**Line b.** A affiliated service group under section 414(m)(5) will not exist unless the management functions performed by the one organization for the other organization are functions that have historically been performed by employees, including partners or sole proprietors. Management functions will be considered to be of a type historically performed by employees if, in other organizations in the same business field, it is not unusual for such functions to have been performed by employees. Conference Committee Report on the Tax Equity and Fiscal Responsibility Act of 1982.

---

**III. A Organizations**

**Lines a., b., c., and d.** Under section 414(m)(2) of the Code, an organization must be a service organization in order to be considered a "First Service Organization" (FSO) or an A Organization (A-Org.) within the meaning of section 414(m)(2)(A). The term "service organization" is defined in section 1.414(m)-2(f) of the proposed regulations. It includes organizations in which capital is not a material income producing factor and organizations engaged in one of the specific service fields listed in section 1.414(m)-2(f)(2) regardless of whether capital is a material income-producing factor.

For purposes of the A-Org. test only, an FSO must be either a partnership or a professional service corporation. See section 1.414(m)-1(c) of the proposed regulations. If the A-Org is a shareholder or partner in the FSO, and either regularly performs services for the FSO or is regularly associated with the FSO in providing services to third parties, then the organizations are an affiliated service group under section 414(m)(2) of the Code. See section 1.414(m)-2(b) of the proposed regulations.

---

**IV. B Organizations**

**Line a.** In order to be a B Organization, a significant portion of the organization's business must be the performance of services for an FSO, for one or more A-Orgs. determined with respect to the FSO, or for both. The services must be of a type historically performed by employees in the service field of the FSO or the A-Orgs. Note that an organization may be a B-Org. even though it does not qualify as a service organization within the meaning of section 414(m)(3) of the Code. See section 1.414(m)-2(c) of the proposed regulations.

---

**Line b.** In addition to satisfying Part IV.a. of the worksheet, 10 percent or more of the interests in the potential B-Org. must be held by persons who are highly compensated employees (within the meaning of section 414(q)) of a potential FSO or A-Org.

---

**Line c.** The test for services that are of the type "historically performed" by employees in that service field is found in section 1.414(m)-2(c)(3) of the proposed regulations. It is, essentially, a facts and circumstances question stating that a service is deemed historically performed if, as of December 13, 1980, it was not unusual for employees to perform such functions.

---

**Line d.** The services performed by the B-Org. must be "significant." A service receipts safe harbor test in the proposed regulations provides that if less than five percent of all receipts derived from an organization's performance of services originates with the potential FSO or A-Orgs. of the potential FSO, then such amounts are not considered a "significant portion" of the business of the potential B-Org. within the meaning of section 414(m)(2)(B)(i) of the Code. See section 1.414(m)-2(c)(2)(ii) of the proposed regulations.

---

**Line e.** If 10 percent or more of a potential B-Org.'s total receipts from all sources are derived from the potential FSO, or A-Orgs. of the potential FSO, that percentage of gross receipts is deemed significant under section 414(m)(2)(B)(i) of the Code. See section 1.414(m)-2(c)(2)(iii) of the proposed regulations.

---

**Line f.** If more than five percent of service receipts but less than 10 percent of gross receipts of a potential B-Org. are derived from a potential FSO and its A-Orgs., then the determination of whether the amount is a significant portion of the potential B-Org.'s business is based on the relevant facts and circumstances. See section 1.414(m)-2(c)(2)(i) of the proposed regulations.

---

#### **V. Qualification Requirements**

If the answer was “yes” in Part II.b., Part III.d., or Part IV.e. or f., the organizations to which the “yes” answers apply comprise one or more affiliated service groups. The questions in Part V of the worksheet pertain to the qualified status of the plans of organizations that are affiliated service group members.

**Employee Benefit Plan**  
**Affiliated Service Groups**  
**(Worksheet Number 10 – Determination of Qualification)**

**Instructions** – All items must be completed. Completed unless otherwise indicated. In the absence of further instructions, a “Yes” answer generally indicates a favorable conclusion is warranted while a “No” answer indicates a problem exists. Please use the space on the worksheet to explain any “no” answer. (Numbers in brackets refer to EDS paragraph numbers.) See Publication 7005, Explanation 10, for guidance in completing this form.

The technical principles in this worksheet may be changed by future regulations or guidelines

Name of plan

I. Required Information	Plan Reference	Yes	No	N/A
a. Has the employer submitted all the information indicated in section 5.01 of Rev. Proc. 85-43 that is needed for a determination as to the effect of section 401(m) upon the plan's qualified status? (If the answer is “No,” do not complete the remainder of this worksheet.) [1002]				
II. Management Organizations	Plan Reference	Yes	No	N/A
a. Is the principal business of one of the organizations involved in this request the performance of management functions on a regular and continuing basis for another organization? (“Another organization” includes one or more organizations related within the meaning of section 144(a)(3) of the Code.) (If the answer is “No,” proceed to Part III.) [1011]				
b. Is the management function being performed in this case the type historically performed by employees of organizations in the same line of business as the managed entity? (If the answer is “Yes,” the organization and any organizations receiving the services are members of an affiliated service group, and Part V of this worksheet must be completed. If the answer is “No,” there is no affiliated service group formed by reason of section 414(m)(5) of the Code; proceed to Part III.) [1012]				
III. A Organizations	Plan Reference	Yes	No	N/A
a. Are at least two members of the potential affiliated service group service organizations? (If the answer is “No,” proceed to Part IV.) [1021]				
b. Is at least one member of the potential affiliated service group a partnership or professional service corporation that is a service organization (potential First Service Organization, or FSO)? (If the answer is “No,” proceed to Part IV.) [1022]				
c. Is at least one of the service organizations that are members of the potential affiliated service group a shareholder or partner in the potential FSO? (If the answer is “No,” proceed to Part IV.) [1023]				
d. Does the service organization referred to in III.c that is a shareholder or partner in the potential FSO either:				
(i) Regularly perform services for the potential FSO, or				
(ii) Regularly associate with the potential FSO in providing services to third parties? [1024]				
(If the answer to either (i) or (ii) is “Yes,” an affiliated service group is formed and Part V of this worksheet must be completed. The partnership or professional service corporation referred to in III.b is an FSO and the service organization referred to in III.d is an A Org.)				
IV. B Organizations	Plan Reference	Yes	No	N/A
a. Is one or more of the service organizations (potential FSOs and/or A-Orgs.) receiving services from another organization that is also a potential member of the affiliated service group and not an FSO or A-Org? (If the answer is “No,” proceed to Part V.) [1031]				
b. Do highly compensated employees of the potential FSO or A-Org. own, actually or constructively, in the aggregate, 10 percent or more of one or more organizations from which the potential FSO or A-Org. receives services? (If the answer is “No,” do not complete the remainder of Part IV.) [1044]				

IV. B Organizations - Continued	Plan Reference	Yes	No	N/A
c. Are the services performed for the potential FSO, or any A-Org. of that organization, the type of services historically performed by employees in the service field of the FSO and/or A-Org.? (If the answer is "No" for any potential B-Org., do not complete the remainder of Part IV for that organization.) [1033]				
d. Is the potential B-Org's Service Receipts Percentage at least 5 percent? (Do not complete the remainder of Part IV for any potential B-Org for which the answer is "No.") [1034]				
e. Is the potential B-Org's Total Receipts Percentage 10 percent or more? (If the answer is "Yes," the organization is a B-Org and Part V of this worksheet must be completed. If the answer is "No" for any organization being considered, complete question f.) [1035]				
f. If the receipts from services provided to the potential FSO or its A-Orgs are equal to or greater than 5 percent of the potential B-Org's total receipts from services, but less than 10 percent of total receipts, then, based on facts and circumstances, is that portion of the services rendered to the potential FSO a significant portion of total services rendered by the potential B-Org? [1036]				

V. Qualification Requirements	Plan Reference	Yes	No	N/A
(If the answer is "Yes" in Part II.b., Part II.d., or Part IV.e. or f., the organizations to which the "Yes" answers apply comprise one or more affiliated service groups and the questions in this part must also be answered.)				
a. Does the plan's definition of "employer" include all employers that are members of the affiliated service group or groups of which the employer is a member? [1041]				
b. Considering all employees of all organizations that are members of an affiliated service group with the applicant (pursuant to Parts II, III, or IV.e. and f. above) as employed by the employer, does the plan of each applicant organization meet the requirements of sections: [1043]				
(i) 401(a)(3)				
(ii) 401(a)(5)				
(iii) 401(a)(7)				
(iv) 401(a)(16)				
(v) 401(a)(17)				
(vi) 401(a)(26)				
(vii) 410				
(viii) 411				
(ix) 415				
(x) 416				
(xi) 408(k)				

This form is provided as an example only and should not be completed or returned to the Internal Revenue Service.

**Employee Plan Deficiency Checksheet**  
**Attachment Number 10**  
**Affiliated Service Groups**

For IRS Use	Please furnish the amendment(s) requested in the section(s) checked below.
1002	Your application contains information indicating that your organization may be a member of an affiliated service group within the meaning of section 414(m) of the Internal Revenue Code. To obtain a full determination on this issue, send all information indicated in section 5.01 of Rev. Proc. 85-43, 1985-2 C.B. 501. Specifically, the information requested in section _____ is needed.
I.a.	
1011	Send information showing, on the basis of all relevant facts and circumstances, whether or not the principal business of any of the organizations is the performance of management services, on a regular and continuing basis, for another organization (or organization related to the other organization). IRC section 414(m)(5)(A).
II.a.	
1012	Show whether or not the management functions performed by the management organization for the managed entity are the type that, in the business field of the managed entity, have historically been performed by employees, including partners and sole proprietors. See Conference Committee Report on the Tax Equity and Fiscal Responsibility Act of 1982.
II.b.	
1021	Show whether or not one or more of the organizations in the potential affiliated service group is a service organization. (Also discussed in section 1.414(m)-2(f) of the proposed regulations.)
III.a.	
1022	Show whether or not one or more members of the potential affiliated service group is a partnership or professional service corporation that is a service organization. IRC section 414(m)(2)(A).
III.b.	
1023	Show whether or not a partnership or professional service corporation that is a service organization and a member of the potential affiliated service group is owned, in whole or in part, by one or more other members of the potential affiliated service group that is also a service organization. IRC section 414(m)(2)(A).
III.c.	
1024	Show whether any of the shareholders or partners that are service organizations either: (i) regularly perform services for another organization in which they own an interest, or (ii) regularly associate with that organization in providing services to third parties. IRC section 414(m)(2)(A).
III.d.	
1031	Please show whether one or more of the service organizations (a potential First Service Organization or a potential A Organization) in the potential affiliated service group receives service from another organization that is also a potential member of the affiliated service group and not an A Organization. IRC section 414(m)(2)(B). (Also discussed in section 1.414(m)-2(b) and (c) of the proposed regulations.)
IV.a.	
1044	Show whether or not highly compensated employees of a potential First Service Organization own, actually or constructively, in the aggregate, 10 percent or more of one or more organizations from which the potential First Service Organization receives services. IRC sections 414(m)(2)(B) and 318(a). (Also discussed in section 1.414(m)-2(c) of the proposed regulations.)
IV.b.	
1033	Show whether or not, as of December 13, 1980, it was or was not unusual for employees of organizations in the service field of the potential First Service Organization, and any A Organization associated with that potential First Service Organization, to perform the services now received by the organization from another entity. (Discussed in section 1.414(m)-2(c)(3) of the proposed regulations.)
IV.c.	
1034	Show whether at least 5 percent of all receipts of the potential B Organization derived from performing service for others are earned performing service for the potential First Service Organization (FSO) and any A Organization of the potential FSO. (Discussed in section 1.414(m)-2(c)(2)(ii) of the proposed regulations.)
IV.d.	
1035	Show whether or not 10 percent or more of the potential B Organization's gross receipts are derived from performing service for the potential First Service Organization or its A Organizations. (Discussed in section 1.414(m)-2(c)(2)(iii) of the proposed regulations.)
IV.e.	
1036	Based on all relevant facts and circumstances, demonstrate whether or not the portion of the services rendered to the potential First Service Organization and/or its A Organization is a significant portion of the total services rendered by the potential B Organization. Proposed Regs. section 1.414(m)-2(c)(2)(i).
IV.f.	
1041	Section _____ of the plan, defining employer, should be amended to include all employers that are members of the affiliated service group or groups of which the employer is a member. IRC section 414(m)(1).
V.a.	
1043	Show that the plan of each applicant organization meets the requirements of Internal Revenue Code sections 401(a)(3), (4), (7), (16), (17) and (26) and sections 408(k), 408(p), 410, 411, 415 and 416, considering all employees of all organizations that are members of an affiliated service group with the applicant as employed by the same employer. IRC section 414(m)(4).
V.b.	