

# Application for Determination of Employee Stock Ownership Plan

(Under section 409 or 4975(e)(7) of the Internal Revenue Code)

▶ Attach to Form 5300.

**For IRS Use Only**

1 Name of employer or plan sponsor	2 Employer identification number	3 Three-digit plan number
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4 This application is for (complete one):

- a  A tax credit employee stock ownership plan under section 409
- b  An employee stock ownership plan under section 4975(e)(7)

5 Type of plan:

- a  Profit-sharing
- b  Stock bonus
- c  Money purchase and stock bonus

**All Plans** (Complete lines 6a through 6h.)

- 6a Is the plan designed to invest primarily in employer securities? . . . . .
- 6b Is each participant entitled to direct the plan to vote the allocated securities as required by section 409(e)? . . . . .
- 6c Does the plan provide that each participant who is entitled to a distribution from the plan has a right to demand that the benefit be distributed in the form of employer securities, and, if the securities are not readily tradable on an established market, can the participant require the employer to repurchase the securities under a fair valuation formula? (See section 409(h)(1).) . . . . .
- 6d If the charter or bylaws of the corporation restrict stock ownership to employees or the ESOP, does the plan provide that participants are entitled to receive distributions in cash? (See section 409(h)(2).) . . . . .
- 6e If the plan is maintained by an S Corporation, does the plan provide that participants are entitled to receive distributions in cash? (See section 409(h).) . . . . .
- 6f Does the plan provide that a participant may elect to diversify a portion or his or her account investment in employer securities, as required by section 401(a)(28)(B)? . . . . .
- 6g With respect to activities that are carried on by the plan, are all valuations of employer securities acquired after December 31, 1986, which are not readily tradable on an established securities market made by an independent appraiser? (See section 401(a)(28)(C).) . . . . .
- 6h Does the plan provide that a participant may begin receiving a distribution of his or her account that is attributable to employer securities acquired after December 31, 1986 (within the guidelines of section 409(o)) after reaching normal retirement age, or after death, disability, or other separation from service? . . . . .

	Yes	No
6a		
6b		
6c		
6d		
6e		
6f		
6g		
6h		

**Plans Applying Under Section 409** (Complete lines 7a through 7e.)

- 7a Does the plan provide that all employer securities transferred to or purchased by the plan for the employee plan credit or ESOP credit be allocated for the plan year to the accounts of all participants who are entitled to share in the allocations? . . . . .
- 7b Does the plan provide that the allocation of the employer securities described in 7a above be in substantially the same proportion as each participant's compensation is to the total compensation of all participants? (For this purpose, compensation of any participant in excess of the first \$100,000 per year is disregarded.) . . . . .
- 7c Does the plan provide that allocated securities described in section 409(d) may not be distributed to participants before the end of the 84th month after the month the securities are allocated, unless the reason for the distribution is separation from service, death, disability, termination of the plan, or as otherwise stated in section 409(d)? . . . . .
- 7d Do the participants have a nonforfeitable right to the securities allocated to them? . . . . .
- 7e Does the plan provide that, even if the employee plan or ESOP credit is recaptured or redetermined, amounts transferred to the plan for such credit shall remain in the plan and, if allocated, shall remain allocated? . . . . .

7a		
7b		
7c		
7d		
7e		

**Plans Applying Under Section 4975(e)(7)** (Complete lines 8a through 9.)

- 8a Is the plan designed as an ESOP within the meaning of section 4975(e)(7)? . . . . .
- 8b Does the plan provide for the establishment and maintenance of a suspense account as required under Regulations section 54.4975-11(c)? . . . . .
- 8c Are the participants' rights to plan assets acquired by use of the exempt loan protected as specified in Regulations section 54.4975-11(a)(3)(i) and (ii)? . . . . .
- 9 If the plan is applying under section 409(n) with respect to transactions under section 1042, does the plan provide that the assets of the plan attributable to employer securities acquired by the plan (in a sale to which section 1042 applies) cannot accrue for the benefit of the persons specified in section 409(n) during the nonallocation period? . . . . .
- 10 Does the plan provide that no portion of the assets attributable to employer securities in an S Corporation may, during a nonallocation year, accrue to the benefit of a disqualified person? (See section 409(p).) . . . . .

8a		
8b		
8c		
9		
10		

**Sign Here**

Under penalties of perjury, I declare that I have examined this application, including accompanying statements, and to the best of my knowledge and belief it is true, correct, and complete.

Signature	Date	Title
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## A Change To Note

An S corporation-sponsored ESOP must provide that no prohibited allocation of employer stock may be made to a disqualified person for a nonallocation year. This applies to plan years ending after March 14, 2001, if:

1. The ESOP was established after March 14, 2001 or
2. The ESOP was established on or before March 14, 2001, if the employer maintaining the ESOP had not made an S corporation election in effect on such date.

## General Information

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

Use this form to apply for a determination letter for either a tax credit employee stock ownership plan that meets the requirements of section 409, or an employee stock ownership plan (ESOP) that meets the requirements of section 4975(e)(7). Attach Form 5309 to Form 5300.

The plan you establish must be designed to invest primarily in employer securities. For a definition of employer securities and how it applies to your plan, see section 409(l) or section 4975(e)(8). Also see Regulations section 54.4975-11 for the formal plan requirements of an ESOP, and Regulations section 1.46-8(d) for the formal requirements of a tax credit employee stock ownership plan.

## General Instructions

### Who May File

1. Any corporate employer who:
  - Elects to have an employee plan credit apply that was earned under section 48(n) as in effect prior to the enactment of the Tax Reform Act of 1984 and that has been properly carried from such prior year and
  - Establishes a plan intended to meet the requirements under section 409.
2. Any corporate employer who has established an ESOP intended to meet the requirements under section 4975(e)(7).
3. Any corporate employer who amends an ESOP under section 409 or 4975.

### What To File

To receive a determination on whether a plan, initially or as a result of a plan amendment, meets the requirements of section 409 or 4975(e)(7), submit Form 5309, Form 5300, and a copy of all documents and statements required by those forms. Attach the completed Form 5309 to Form 5300.

### Signature

Form 5309 must be signed by the principal officer authorized to sign.

### Paperwork Reduction Act Notice.

We ask for the information on this form to determine whether you meet the legal requirements for the plan approval you request. Your filing of this information is only required if you wish the IRS to determine if your plan qualifies under section 409 or 4975(e)(7).

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

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

**Recordkeeping** . . . 5 hr., 59 min.

**Learning about the law or the form** . . . 2 hr., 11 min.

**Preparing and sending the form to the IRS** . . . . 2 hr., 23 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee at the address in the Instructions for Form 5300.

