

# Instructions for Form 5307

(Revised February 1990)

## Application for Determination for Adopters of Master or Prototype, Regional Prototype, or Volume Submitter Plans (Other than Collectively Bargained Plans)

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

### General Information

**Paperwork Reduction Act Notice.**—We ask for this information to carry out the Internal Revenue laws of the United States. We need it to determine whether you meet the legal requirements for plan approval. If you want to have your plan approved by IRS, you are required to give us this information.

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

<b>Recordkeeping</b>	13 hrs. 52 min.
<b>Learning about the law or the form</b>	5 hrs. 53 min.
<b>Preparing the form</b>	9 hrs., 9 min.
<b>Copying, assembling, and sending the form to the IRS</b>	48 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making the form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, Washington, DC 20224, Attention: IRS Reports Clearance Officer T:FP; and the **Office of Management and Budget**, Paperwork Reduction Project (1545-0200), Washington, DC 20503.

**Public Inspection.**—The application is open to public inspection if there are more than 25 participants. Therefore, it is important that the total number of participants be shown on line 4(e). See the Specific Instructions for definition of "participant."

**Disclosure Requested by Taxpayers.**—The Tax Reform Act of 1976 permits a taxpayer to request IRS to disclose and discuss his or her return and/or return information with any person(s) the taxpayer designates in a written request. **Form 2848**, Power of Attorney and Declaration of Representative, or **Form 2848-D**, Tax Information Authorization and Declaration of Representative, are designed to be used for this purpose. As an alternative, you may submit privately designed authorization forms, but they must contain the basic requirements regarding the scope of authority granted and specify the tax matter to which the authority relates. The privately designed form must contain the following:

1. Your name, address, employer identification number and plan numbers.
2. A paragraph that clearly identifies the person or persons you have authorized to

receive the return and/or return information. This must include the name, address, telephone number(s), and social security number(s) of the authorized person(s).

3. A paragraph that clearly and explicitly describes the return and/or return information that you authorize IRS to disclose.

4. Your signature as the taxpayer making the authorization.

**Signature.**—The application must be signed by the employer plan administrator or an authorized representative. An application made by a representative on behalf of an employer or plan administrator must comply with the Power of Attorney requirements above.

### General Instructions

**Purpose of Form.**—Form 5307 is used to request a determination letter from the IRS for the qualification of a defined benefit or a defined contribution plan and the exempt status of any related trust.

Practitioners and employers may rely on regulations for the Tax Reform Act of 1986 to the extent specified in those regulations.

A **Defined Contribution Plan** is a plan that provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to the participant's account.

A **Defined Benefit Plan** is any plan that is not a defined contribution plan.

**NOTE:** A qualified plan must contain provisions which satisfy section 401(a) and which include but are not limited to participation, vesting, nondiscriminatory contributions and benefits, distributions, and contribution and benefit limitations.

Determination applications are screened for completeness by computer. Incomplete applications will be returned to the applicant. For this reason, it is important that an appropriate response be entered for each line item (except as indicated in 5 below). In completing the application, pay careful attention to the following:

1. N/A (not applicable) is accepted as a response only if an N/A block is provided.
2. If an item requests a numeric response, a numeric response must be entered.

3. If an item provides a choice of boxes to be checked, only one box should be checked unless instructed otherwise.

4. If an item provides a box or boxes to be checked, written responses are not acceptable.

5. If the governmental or church plan box is checked for line 8, certain line items need not be completed. See General Instruction B "What To File."

6. All applications must include the appropriate user fee and **Form 8717**, User Fee for Employee Plan Determination Letter Request.

7. The IRS may, at its discretion, require additional information any time it is deemed necessary.

### A. Who May File

This form may be filed by an adopter of:

1. a master or prototype plan that was approved by the National Office of the IRS; or
2. a regional prototype plan approved in a key district office; or
3. a District approved volume submitter plan.

**Standardized Plans:** A plan sponsor who adopts a master or prototype or regional prototype standardized plan and has had another qualified plan, or who adopts another plan in addition to the standardized plan, other than a paired plan, must file an application for a determination letter. If this standardized plan is the only plan you have or ever have had, do not file for a determination letter unless this plan is a standardized defined benefit plan and you are requesting a determination letter as to whether the plan satisfies section 401(a)(26) with respect to its prior benefit structure.

**NOTE:** This form may **not** be filed to request a determination for:

- a. a collectively bargained plan (use **Form 5303**, Application for Determination for Collectively Bargained Plan);
- b. a multiple employer plan (use **Form 5300**, Application for Determination for Employee Benefit Plan);
- c. an employee stock ownership plan (ESOP);
- d. an individually designed plan (other than a District approved volume submitter plan);
- e. affiliated service group status (see instructions for line 6a); or
- f. multiple employer plans (file Form 5300).

## B. What To File

### I. All plans

#### 1. User Fees

As of February 1, 1988, all applications for determination letters must be accompanied by the appropriate fee. In addition, Form 8717 should be filed. Form 8717 may be obtained from your local IRS District office or by calling 1-800-424-FORM.

#### 2. Form 5302, Employee Census

All applications for determination letters must include a Form 5302 unless the plan is a standardized defined benefit plan for which a determination letter is being requested only as to whether the plan satisfies section 401(a)(26) with respect to its prior benefit structure.

**3. Two copies of page 1 of Form 5307** One copy must be an original (printed in special red ink). The other copy may be a reproduction or carbon, except the signature.

**4. The first page of this application must be typed.** Use 10 pitch type except that you may use 12 pitch or Elite, Courier 12 or Titan 12 type. **Contact your key district office if you wish to computer generate this application form.**

#### 5. Adoption Agreement

All applications submitted by master or prototype plan or regional prototype plan adopters must be accompanied by a copy of the adoption agreement. **DO NOT** submit a copy of the plan or trust instruments unless the plan is a regional prototype plan which uses separate trust or custodial account documents, in which case, such trust or custodial account documents must be submitted along with the application.

#### 6. Plan Document and Volume Submitter Representation

All applications submitted by adopters of District approved volume submitter plans must be accompanied by a copy of the plan and trust instrument and by a written representation, made by the volume submitter under penalty of perjury, which explains how the plan and trust instrument are not word-for-word identical to the District approved specimen plan and which describes the location, nature and effect of each difference from the language of the approved specimen plan. If the plan will benefit any owner-employee or if it is a defined benefit or target benefit plan whose disparity in benefits (or targeted benefits) is intended to meet the requirements of section 401(l) of the Code, the volume submitter's representation must also include the following, to the extent applicable:

**a.** A statement indicating whether the District approved specimen plan meets the requirements of section 401(d) of the Code and, if not, a description of the location of provisions in the applicant's plan which do meet these requirements.

**b.** A statement indicating whether the defined benefit (or target benefit) plan has an integration level or a compensation base for determining the offset that will meet the requirements of the Proposed Regulations under section 401(l) only if the requirements of sections 1.401(l)-3(b)(4)(iii)(B) and (C) or 1.401-3(c)(4)(iii)(B) and (C) of the Proposed

Regulations, as applicable, are satisfied. If this is the case, the application must also include a demonstration, based on employee census data, of how these tests are satisfied and must specify the date as of which the demonstration is being made.

**c.** A statement indicating whether, for purposes of permitted disparity, the determination of the portion of each participant's benefit attributable to employee contributions is made with reference to a uniform factor determined under section 1.401(l)-3(g)(2)(vi) of the Proposed Regulations. If this is the case, the application must also include a demonstration, based on the employee census data, of how at least one of the tests described in sections 1.401(l)-3(g)(2)(ii) and (iii) is satisfied and must specify the date as of which the demonstration is being made.

All applications submitted by adopters of district approved volume submitter plans must also be accompanied by any other information or material required by the District office.

#### 7. Opinion, Notification, or Advisory Letter

All applications for adopters of master or prototype, regional prototype, or volume submitter plans must be accompanied by a copy of the opinion, notification, or advisory letter issued to the plan.

#### 8. Prior Determination Letter

All applications for plans that have at any time in the past received a favorable determination letter must submit a copy of the plan's latest determination letter

#### 9. Standardized Plans

If this application is filed for a standardized plan because the adopting employer maintains or has ever maintained another plan that is not paired with this plan, or if this application is filed solely to request that a standardized defined benefit master and prototype or regional prototype plan satisfies section 401(a)(26) with respect to its prior benefit structure, complete only items 1, 2, 3, 4, 5, 7, 8, 9, and 11(b) and (c).

## II. Controlled Groups and Affiliated Service Groups

For plans of controlled groups of corporations, trades or businesses under common control, and affiliated service groups, submit the documents and statements listed above, if applicable. In addition, attach a list of the member employers. Explain in detail their relationship, the types of plans each member has and the plans common to all member employers.

## III. Governmental and Church Plans

For a governmental or church plan, a plan administrator may request a determination letter by filing the following:

(1) for a plan that is subject to ERISA, complete all items of Form 5307; or

(2) for a plan that is not subject to ERISA, file Form 5307 omitting item 10

## IV. Merger, Consolidation or Transfer of Plan Assets or Liabilities

File **Form 5310**, Application for Determination Upon Termination; Notice of Merger Consolidation or Transfer of Plan Assets or Liabilities; Notice of Intent to Terminate.

## C. Where To File

File this form as follows:

**1. Single Employer plan.**—Send the form to the District Director for the key district in which the plan sponsor's principal place of business is located.

**2. Domestic Employers Using Foreign Situs Trust.**—Send the form to the District Director for the key district in which the principal place of business of the employer is located.

**3. Foreign Employers.**—Send the form to the District Director of the Baltimore Key District.

If entity is in this IRS District	Send fee and request for determination letter or notification letter to this address
Albany, Augusta, Boston, Brooklyn, Buffalo, Burlington, Hartford, Manhattan, Portsmouth, Providence	Internal Revenue Service EP/EO Division P.O. Box 1680, GPO Brooklyn, NY 11202
Baltimore, District of Columbia, Newark, Philadelphia, Pittsburgh, Richmond, Wilmington, any U.S. possession or foreign country	Internal Revenue Service EP/EO Division P.O. Box 17010 Baltimore, MD 21203
Cincinnati, Cleveland, Detroit, Indianapolis, Louisville, Parkersburg	Internal Revenue Service EP/EO Division P.O. Box 3159 Cincinnati, OH 45201
Albuquerque, Austin, Cheyenne, Dallas, Denver, Houston, Oklahoma City, Phoenix, Salt Lake City, Wichita	Internal Revenue Service EP/EO Division Mail Code 4950 DAL 1100 Commerce Street Dallas, TX 75242
Atlanta, Birmingham, Columbia, Ft. Lauderdale, Greensboro, Jackson, Jacksonville, Little Rock, Nashville, New Orleans	Internal Revenue Service EP/EO Division P.O. Box 941, Atlanta, GA 30370
Honolulu, Laguna Niguel, Las Vegas, Los Angeles, San Jose	Internal Revenue Service EP Application Receiving Room 5127 P.O. Box 536 Los Angeles, CA 90053-0536
Aberdeen, Chicago, Des Moines, Fargo, Helena, Milwaukee, Omaha, St. Louis, St. Paul, Springfield	Internal Revenue Service EP/EO Division 230 S. Dearborn DPN 20-6 Chicago, IL 60604
Sacramento, San Francisco	Internal Revenue Service EP Application Receiving Stop SF 4446 P.O. Box 36001 San Francisco, CA 94102
Anchorage, Boise, Portland, Seattle	Internal Revenue Service EP Application Receiving P.O. Box 21224 Seattle, WA 98111

## Specific Instructions

The following instructions are keyed to the line items on the form.

**1a.** Enter the name, address, and telephone number of the plan sponsor "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 aggregated under section 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.

The plan sponsor should be the same name as was used or will be used when Form 5500 series return/reports are filed for the plan.

**1b.** Enter the 9-digit employer identification number (EIN) assigned to the plan sponsor. This should be the same EIN that was used or will be used when Form 5500 series returns/reports are filed for the plan. (Please do not use a social security number.) An EIN may be secured by using **Form SS-4**, Application for Employer Identification Number, which may be obtained by calling 1-800-424-FORM.

The plan of a group of entities required to be aggregated under section 414(b), (c), or (m) whose sponsor is more than one of the entities required to be aggregated should enter only the EIN of one of the sponsoring members. This EIN must be used in all subsequent filings of determination letter requests. This is also the EIN used for filing annual returns/reports unless there is a change of sponsor

**1c.** Enter two digits representing the month the employer's tax year ends. This is the employer whose EIN was used on line 1b.

**2.** Enter the name, address, and telephone number of the person to contact for additional information if other than the applicant. However, you may leave blank any items that are the same as line 1a. This person will receive copies of all correspondence as authorized in a power of attorney or other written designation (explanation follows). This item must be completed as described; a reference such as "see attached" is not acceptable. If there is no other person to contact, please leave this item blank. A taxpayer may request IRS to disclose and discuss his or her return and/or return information with any person(s) the taxpayer designates in a written request.

If you want to designate a person or persons to represent you before the IRS in connection with an application for a determination, see "Disclosure Requested by Taxpayers" in the General Information section on page 1.

**3a.** In the box at left margin, you must enter the number(s) that corresponds to the request(s) being made.

**Enter 1**, if IRS has not issued a determination letter for this plan.

**Enter 2**, if this application is for an amendment to a plan for which the IRS has issued a determination letter

In addition, enter the date the plan or amendment was signed. If a determination is requested based on a proposed plan or amendment, enter 9/9/99. Enter the effective date where requested. The term "Date amendment effective" means the date the amendment becomes operative or takes effect.

**Enter 3**, if this is the initial adoption or amendment by an employer of a standardized (paired) defined benefit plan and a determination is requested as to whether the plan satisfies section 401(a)(26) with respect to its prior benefit structure. Also enter 3 if the adopting employer maintains or has ever maintained another plan that is not paired with this plan.

If you enter 3, you **must** also enter a "1 or '2" and the appropriate dates in the space provided.

**3b.** If a determination letter dated after January 1, 1984 has been received, that considered the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), the Deficit Reduction Act of 1984 (DEFRA), and the Retirement Equity Act of 1984 (REA), check "Yes" Attach a copy of the plan's latest letter even if it was dated before January 1, 1984. If you do not have a copy of the latest determination letter, explain this in the cover letter

Determination letters issued before January 1, 1984, did not consider TEFRA, DEFRA, or REA. Determination letters issued during 1984 may include a caveat indicating that only TEFRA was considered. If you have this type of letter, or if you have no determination letter for the plan, in addition to the changes required by the Tax Reform Act of 1986, all required amendments must be made retroactively effective to the effective date of each law change with respect to the plan. In general, the changes required by TEFRA were effective as of the first day of the first plan year after December 31, 1983. For additional details, see Notice 83-4, 1983-1 C.B. 532. In general, the changes required by DEFRA and REA are effective as of the first day of the first plan year beginning after December 31, 1984. All required restorations must also be made as if the plan had been operating and the required amendments were made timely. In such cases, the determination letter will only provide reliance beginning with the plan year in which the determination letter application is submitted.

**3c.** Section 3001 of the Employee Retirement Income Security Act of 1974 states that the applicant must provide evidence that each employee who qualifies as an interested party has been notified of the filing of the application. If you check "Yes," it means that you have notified each employee as required by regulations under section 7476 or you have a one-person plan. Rules defining "interested parties" and providing for the form of notification are contained in the regulations. An example of an acceptable format is found in Rev. Proc. 80-30, 1980-1 C.B. 685. If you check "No" or leave this item blank, your application will be returned.

**3d.** If your plan contains provisions for a cash or deferred arrangement (CODA) under section 401(k), or for employee or matching contributions described in section 401(m), check "Yes" Otherwise, "No" must be checked.

**4a.** Enter the name you designated for your plan.

**4b.** You should assign and enter a three-digit number beginning with "001" and continuing in numerical sequence for each plan you adopt. This numbering will differentiate your plans. The number that is assigned to a plan must not be changed or used for any other plan.

**4c.** Plan year means the calendar, policy, or fiscal year on which the records of the plan are kept. Enter four digits in month-day order. For example, March 31 would be 0331.

**4d.** Enter the date the plan **originally** became effective. Enter six digits in month-day-year order

**4e.** Enter the total number of participants. The term "participant" includes retirees and other former employees and the beneficiaries of both who are receiving benefits under the plan or will at some future time receive benefits under the plan. Enter on this line the total of: (1) the number of employees who are participating in the plan including employees under a Code section 401(k) qualified cash or deferred arrangement who are eligible, but do not make elective deferrals, (2) former employees who are receiving benefits under the plan or will at some future date receive benefits under the plan, and (3) beneficiaries of former employees who are receiving benefits under the plan. (This means one beneficiary for each former employee regardless of the number of individuals receiving benefits. For example, payment of a former employee's benefit to three children is considered as a payment to one beneficiary.)

**5a.** Complete either line 5a or line 5b. If this is a defined benefit plan, enter the number for the type of benefit in the box at the left margin.

**5b.** If this is a defined contribution plan, enter the number for the type of plan in the box at the left margin.

**6.** If the plan sponsor is a member of a controlled group of corporations, trades or businesses under common control, or an affiliated service group, all employees of the group will be treated as employed by a single employer for purposes of certain qualification requirements such as coverage. If the plan sponsor is a member of such a group, attach a statement showing in detail all members of the group, their relationship to the plan sponsor, the type of plans each member has, and the plans common to all members.

**6a.** If the employer is a member of an affiliated service group, enter 1. If not, enter 2. If you wish to apply for a determination letter to determine if you are a member of an affiliated service group, do not file this form. You must file Form 5300 for a determination letter regarding status as an affiliated service group.

**6b.** If the employer is a member of a controlled group, enter 1. If not, enter 2.

**7 Enter 1**, if you are adopting a master or prototype plan having an opinion letter issued by the Service.

**Enter 2**, if you are adopting a regional prototype plan having a notification letter issued by the Service.

**Enter 3**, if you are adopting a volume submitter plan having a favorable letter identifying the plan as approved under the District volume submitter program.

**B. Enter 1** if this is a governmental plan or a church plan not subject to ERISA.

**Enter 2** if this plan is not described above. Most plans will enter "2."

**9a.** If you maintain any other qualified plan(s), **attach** a list for each plan which includes the following information: name of plan, type of plan, form of plan (standardized or nonstandardized) and

indicate if the plan is paired, rate of employer contributions, allocation formula, benefit formula, monthly benefit, and number of participants (if paired, indicate the letter serial number of the paired plan).

**9b.** See M-12 of Regulations section 1.416-1.

**9c.** See Regulations sections 1.415-7 and 1.415-8.

**10. COVERAGE. Note:** In completing items 10, 11, and 12, include all employees of all employers aggregated with the employer under section 414(b), (c) or (m). In addition, include all self-employed individuals, common law employees and leased employees within the meaning of section 414(n) of any of the entities above, other than those excluded by reason of section 414(n)(5).

**10a.** In general, if the employer operates separate lines of business or operating units within the meaning of section 414(r) for a year the employer may apply the coverage requirements separately for employees in each separate line of business. Attach a demonstration using applicable regulations, revenue rulings or revenue procedures that shows the separate lines of business are qualified separate lines of business satisfying the rules of sections 414(r) and 410(b)(5).

In addition, if this plan, or any plan aggregated with this plan for purposes of satisfying the coverage requirements, covers employees in more than one separate line of business or operating unit, submit the coverage data requested in item 10 separately for each separate line of business or operating unit.

**10c.** In general, if the plan satisfies one of the tests on at least one day in each quarter of the year being tested, the plan will be deemed to pass the coverage tests for the entire year provided that the quarterly testing dates reasonably represent the coverage of the plan over the entire plan year. Enter the date for which the coverage data is submitted on line 10c.

**10d.** Divide the number of nonexcludable employees who benefit and who are not highly compensated employees, within the meaning of section 414(q), by the total number of nonexcludable nonhighly compensated employees; express the quotient as a percentage and enter it on line 10d.

Generally, a qualified plan may exclude from coverage all employees who have not attained age 21 and completed one year of service. However, if a plan covers any such excludable employee, it must test coverage based on the lowest minimum age and service requirements for any employee under this or any other plan aggregated with this plan for the purpose of satisfying the coverage rules. To compute the percentage on line 10d, exclude employees who have not attained the lowest age and service requirements for any employee under this or any other plan aggregated with this plan for the purpose of satisfying the coverage requirements.

On the other hand, employees who have not attained age 21 and completed one year of service may be tested for coverage separately. If you elect this alternative, demonstrate in an attachment that the group

of employees who have not attained age 21 and one year of service but have attained the lowest age and service requirements under this or any other plan aggregated with this plan for purposes of satisfying the coverage requirements, independently passes one of the coverage tests.

When testing a plan covering noncollectively bargained employees for coverage, employees who are included in a unit of employees covered by an agreement (within the meaning of section 7701(a)(46)) that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers are generally excluded if there is evidence that the retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

To compute the percentage on line 10d, exclude employees that are covered by a collective bargaining agreement described above, including such employees covered under this plan. However, do not exclude any employee covered under a collective bargaining agreement if more than 2 percent of the employees who are covered under the collective bargaining agreement are professionals within the meaning of section 1.410(b)-9(g) of the Proposed Regulations.

In computing the percentage on line 10d, exclude the total number of nonresident aliens who receive no earned income (within the meaning of section 911(d)(2)) from the employer that constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

To compute the percentage on line 10d, exclude employees who fail to accrue a benefit or to receive an allocation solely because they do not satisfy a minimum hour of service or a last day of the plan year requirement under the plan, 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 exclude any employees who have more than 500 hours of service merely because they are not employed on the last day of the plan year.

In general, an employee is treated as benefiting for purposes of the coverage tests, 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 even if they fail to receive an allocation of contributions and/or forfeitures, or to accrue a benefit solely because the employee is subject to plan provisions that limit plan benefits, such as a provision for maximum years of service, maximum retirement benefits, or limits designed to satisfy section 415. (For the first plan year beginning in 1989, all participants who fail to accrue a benefit or receive an allocation solely because they do not satisfy a minimum hour of service requirement of 1,000 hours or less, or a last day of the plan year requirement, may be treated as benefiting under the plan).

An employee is treated as benefiting under a plan (or part of a plan) to which elective contributions or after tax employee

contributions and matching contributions subject to section 401(k) or 401(m) may be made if the employee is currently eligible to make such elective or after tax employee contributions, whether or not the employee actually makes the contributions. However, for purposes of line 10d, do not treat these employees as benefiting solely because they are eligible under a plan (or part of a plan) subject to section 401(k) or (m). Data for these employees will be entered on lines f and g.

**10e.** In computing the ratio on line 10e, divide the number of nonexcludable employees who benefit under the plan and are not highly compensated, within the meaning of section 414(q), by the total number of nonexcludable nonhighly compensated employees; put the quotient in the numerator. Divide the number of nonexcludable employees who benefit under the plan and who are highly compensated by the total number of nonexcludable highly compensated employees; put the quotient in the denominator.

See the instructions to line 10d to determine which employees are nonexcludable employees and which employees benefit under the plan. For purposes of line 10e, do not include employees who are treated as benefiting solely because they are eligible under a plan (or part of a plan) subject to section 401(k) or (m). Data for these employees will be entered on lines f and g.

**10f.** If the plan (or part of the plan) contains a CODA component, enter the ratio (described above in line 10e) for the CODA component in line 10f. Note that the instructions to the last paragraph for line d contain a special definition of who is benefiting under a CODA.

**10g.** If the plan (or part of the plan) consists of employee and/or matching contributions subject to section 401(m), enter the ratio for this portion on line 10g. Note that the instructions to the last paragraph for line d contain a special definition of who is benefiting under the plan or portion of a plan that consists of employee and matching contributions.

**10h.** If this plan does not, by itself, satisfy the coverage requirements, certain other qualified plans may be aggregated with this plan for purposes of satisfying the coverage requirements. Note that the following plans may not be aggregated: an ESOP with a non-ESOP, a collectively bargained plan with a noncollectively bargained plan, and a plan that contains a CODA (section 401(k)), employee or matching contributions (section 401(m)) with a plan that does not include such a feature.

If any other plan is considered in combination with this plan, complete item 10 as though the combined plans were a single plan. Also attach a description, including the allocation or benefit formula, of the other plan(s) along with a demonstration in accordance with applicable regulations, revenue rulings or revenue procedures that shows the aggregated plans provide comparable benefits and together satisfy section 401(a)(4).

**10i.** If any one of lines e, f or g, if applicable, are less than 7, the plan must satisfy the average benefit test in order to pass coverage. A plan satisfies the average benefit test if it satisfies both the nondiscriminatory classification test and the average benefit percentage test.

**10i. (i) Nondiscriminatory classification test**

A plan satisfies the classification test if benefiting employees are defined by objective business criteria set out in the plan and such classification is nondiscriminatory. A classification will be deemed nondiscriminatory if the ratio on lines e, f, or g whichever applies, is equal to or greater than the safe harbor percentage.

The safe harbor percentage is 50 percent, reduced by  $\frac{3}{4}$  of a percentage point for each percentage point by which the nonhighly compensated employee concentration percentage exceeds 60 percent. The nonhighly compensated employee concentration percentage is the percentage of all the employees of the employer who are not highly compensated employees. Enter the safe harbor percentage on line 10i. (i). See Proposed Regulations section 1.410(b)-4.

**10i. (ii) Average benefit percentage test**

A plan satisfies the average benefit percentage test if the average benefit percentage for nonhighly compensated employees is at least 70 percent of the average benefit percentage for highly compensated employees.

All qualified plans (or parts of plans) of the employer including CODAs and plans containing employee or matching contributions (section 401(k) or (m)) are aggregated in determining the average benefit percentage. Do not aggregate plans that may not be aggregated for purposes of satisfying the ratio percentage test, other than plans subject to section 401(k) or (m). (See instructions for line 10h.)

In addition, all nonexcludable employees, including those with no benefit under any qualified plan of the employer, are included in determining the average benefit percentage. Enter the average benefit percentage on line 10i(ii). In addition, attach a demonstration in accordance with applicable regulations, revenue rulings or revenue procedures that shows the plan satisfies the average benefit percentage test.

**11. PARTICIPATION. Caution:** At the time Form 5307 and its instructions went to print, changes in the proposed regulations under section 401(a)(26) were under consideration. If the regulations are revised,

IRS will publish guidance, as needed, regarding Form 5307 and its instructions. Section 401(a)(26) requires a qualified plan to meet certain minimum participation requirements. For purposes of this requirement, each separate current benefit structure under a plan is treated as a separate plan. In addition, a defined benefit plan must satisfy certain requirements with respect to its prior benefit structure. Certain plans are deemed to satisfy the participation rules of section 401(a)(26) if they meet one of the exceptions specified in the Proposed Regulations under section 401(a)(26).

**11a and b.** In general, each current benefit structure included in the plan must benefit at least the lesser of 50 employees or 40 percent of the nonexcludable employees of the employer. A plan contains separate current benefit structures to the extent there are differences in the bases and conditions applicable to the determination of an employee's contribution allocation under a defined contribution plan and the bases and conditions applicable to an employee's normal retirement benefit, early retirement benefit (to the extent such benefit is reduced by less than 3% for each year of early commencement), or joint and survivor annuity benefit, and any accrual, availability, and eligibility conditions related to these normal retirement, early retirement, or joint and survivor annuity benefits. See the Proposed Regulations under section 401(a)(26).

In performing the participation tests, the employees who are excludable are generally the same as those who are excludable for the purposes of performing the coverage tests. See item 10 and the Proposed Regulations under section 401(a)(26). In addition, for most plans the definition of who is benefiting under the plan for purposes of the participation test is the same as the definition of benefiting employees for the purposes of the coverage tests. See item 10 and the Proposed Regulations under section 401(a)(26).

Answer "Yes" to this question only if you wish to receive a determination as to whether the plan satisfies the participation test under section 401(a)(26) with respect to each of the plan's current benefit structures. If you answer "Yes," attach a demonstration in accordance with applicable regulations, revenue rulings or revenue procedures that shows each current benefit structure satisfies the requirements of section 401(a)(26) or that the plan is deemed to satisfy section 401(a)(26).

**11b.** The minimum current accrual rate is:

**(i)** In the case of a unit benefit plan, 75 percent of compensation if compensation under the plan is averaged over 5 years or less, or 1.1 percent of compensation if compensation under the plan is averaged over more than 5 years.

**(ii)** In the case of a fixed or flat benefit plan, the level accrual required to provide a benefit at normal retirement age of 30 percent of compensation if compensation under the plan is averaged over 5 years or less, or 45 percent of compensation if compensation under the plan is averaged over more than 5 years.

**11c.** If the answer to b is "No," attach a demonstration in accordance with applicable regulations, revenue rulings or revenue procedures that shows the plan satisfies one of the other prior benefit structure tests in the Proposed Regulations under section 401(a)(26) or that the plan is deemed to satisfy section 401(a)(26) under the Proposed Regulations.

**12.** If you wish to receive a determination as to whether the plan satisfies the coverage or participation tests with respect to former employees, attach a demonstration showing how the plan satisfies such tests with respect to its former employees. See section 1.410(b)-2(c) of the Proposed Regulations and the Proposed Regulations under section 401(a)(26).

**13a.** 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 with respect to benefits attributable to service before such amendment. If the answer is "Yes" attach an explanation of how the amendment satisfies one of the exceptions to the prohibition or reduction or elimination of section 411(d)(6) protected benefits.

**13b.** If other than "total compensation" within the meaning of section 414(s) is used to allocate contributions and benefits, the plan definition of compensation may be discriminatory. If "No" is checked, attach an explanation of how contributions or benefits are allocated.

**13c.** If the plan or trust is under examination or if there is an issue related to the plan or trust pending before IRS, the Department of Labor, the Pension Benefit Guaranty Corporation or any court, check "Yes," and attach an explanation detailing the specific nature of the matter and the details of who is considering the matter. Otherwise, check "No."