



# Instructions for Form 5307

## (Revised May 1993)

### Application for Determination for Adopters of Master or Prototype, Regional Prototype, or Volume Submitter Plans

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

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

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

- Recordkeeping** . . . . . 10 hr., 46 min.
- Learning about the law or the form** . . . . . 5 hr., 58 min.
- Preparing the form** . . . . . 9 hr., 12 min.
- Copying, assembling, and sending the form to the IRS** . . . . . 48 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, Attention: Reports Clearance Officer, T:FP, Washington, DC 20224; and the **Office of Management and Budget**, Paperwork Reduction Project (1545-0200), Washington, DC 20503. **DO NOT** send the tax form to either of these offices. Instead, see **Where To File** on page 2.

**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 4e.

“Participant” includes retirees, other former employees, and a beneficiary of a deceased employee who is receiving benefits or will in the future receive benefits under the plan.

**Disclosure Requested by Taxpayer.**—The Tax Reform Act of 1976 permits a taxpayer to request 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. You may use **Form 2848**, Power of Attorney and Declaration of Representative, or submit a privately designed authorization form. A privately

designed authorization form **must** provide the following:

1. Your name, address, employer identification number, and plan number(s).
2. A paragraph that clearly identifies the person or persons 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 the 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.

## General Instructions

### Purpose of Form

Form 5307 is used by adopters of master or prototype, regional prototype, or volume submitter plans, 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.

### Type of Plan

1. 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, any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to the participant’s account.

2. 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) including but not limited to participation, vesting, nondiscriminatory contributions and benefits, distributions, and contribution and benefit limitations.

## Completing the Application

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 a numeric response is requested, a number 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 a governmental plan or church plan, certain lines do not have to be completed. See **What To File**.
6. All applications must include the appropriate user fee and **Form 8717**, User Fee for Employee Plan Determination Letter Request. Form 8717 may be obtained by contacting your local IRS District office or by calling 1-800-TAX-FORM (1-800-829-3676).
7. The IRS may, at its discretion, require additional information any time it is deemed necessary.

## Who May File

This form may be filed by an adopter of:

1. A master or prototype plan that was approved by the IRS National Office;
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 letter for:*

1. A multiple employer plan (use **Form 5300**, Application for Determination for Employee Benefit Plan);

2. An employee stock ownership plan (ESOP) (Attach **Form 5309**, Application for Determination of Employee Stock Ownership Plan, to Form 5300 or **Form 5303**, Application for Determination for Collectively Bargained Plans.);

3. An individually designed plan (other than a District approved volume submitter plan) (Use Form 5300 or Form 5303, whichever applies.); or

4. To determine if you are a member of an affiliated service group (use Form 5300).

## What To File

### All plans

1. **Form 8717**, User Fee for Employee Plan Determination Letter Request.

2. **Form 5302**, Employee Census, 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. Collectively bargained plans see item 5, under **Specific Plans—Additional Requirements**.

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; however, the signature must be original.

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. The appropriate certifications, designations, and demonstrations. See Rev. Proc. 91-66, 1991-2 C.B. 870, Rev. Proc. 92-60, 1992-2 C.B. 413, and Rev. Proc. 93-10, 1993-5 I.R.B. 13.

6. An Adoption Agreement must accompany all applications submitted by master or prototype plan, or regional prototype plans. **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, or a volume submitter plan, in which case such trust or custodial account documents must be submitted along with the application.

7. 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 if the plan and trust instrument are or are not word-for-word identical to the District approved specimen plan and, if not identical 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), 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) and, if not, a description of the location of provisions in the applicant's plan which meet these requirements.

b. A statement indicating whether the defined benefit (or target benefit) plan has an integration level or an offset level that will meet the requirements of the Regulations under section 401(l) only if the requirements of Regulations sections 1.401(l)-3(d)(8), 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 Regulations section 1.401(a)(4)-6(b). 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 Regulations section 1.401(a)(4)-6(b)(ii)(B) 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.

8. An Opinion, Notification, or Advisory Letter issued to the plan must accompany all applications for adopters of master or prototype, regional prototype, or volume submitter plans.

9. 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. In addition, if the plan is a regional prototype plan, a certification must be attached to the application that indicates the plans notification letter has not been withdrawn and is still in effect, and that the plan has not changed. (See section 12.02 of Rev. Proc. 89-13, 1989-1 C.B. 801.)

10. 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) for its prior benefit structure, complete only lines 1 through 5, and 7 through 9, and 11(b) and (c).

### Specific Plans—Additional Requirements

1. For plans of controlled groups of corporations, trades or businesses under common control, and affiliated service groups, submit the statement specified in the instructions for line 6 on page 4.

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

a. that is subject to ERISA, complete all items of Form 5307; or

b. that is not subject to ERISA, file Form 5307 omitting item 10.

**Note:** *For purposes of this item, a governmental plan is considered not subject to ERISA. A church plan is considered not subject to ERISA unless an election under section 410(d) has been made.*

3. File **Form 5310**, Application for Determination Upon Termination, if a termination occurs.

4. File **Form 5310-A**, Notice of Merger, Consolidation, or Transfer of Plan Assets or Liabilities, 30 days prior to a merger, consolidation, or transfer of plan assets or liabilities.

5. Collectively bargained plans are not required to file **Form 5302**, Employee Census, with this application. Also, do not complete the coverage data on line 10 of this form.

**Note:** *If a plan benefits employees other than collectively bargained employees, file **Form 5303**, Application for Determination for Collectively Bargained Plan. **DO NOT** file Form 5307.*

### Where To File

1. **Single Employer Plan.**—File the form where the plan sponsor's principal place of business is located.

**2. Domestic Employers Using Foreign Situs Trust.**—File the form where the principal place of business of the employer is located.

**3. Foreign Employers.**—File the form with the Internal Revenue Service, EP/EO Division, P.O. Box 17288, Baltimore MD 21203.

If entity is in	Send user fee and request for determination letter or notification letter to this address
Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont	Internal Revenue Service EP/EO Division P.O. Box 1680, GPO Brooklyn, NY 11202
Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, any U.S. possession or foreign country	Internal Revenue Service EP/EO Division P.O. Box 17288 Baltimore, MD 21203
Indiana, Kentucky, Michigan, Ohio, West Virginia	Internal Revenue Service EP/EO Division P.O. Box 3159 Cincinnati, OH 45201
Arizona, Colorado, Kansas, Oklahoma, New Mexico, Texas, Utah, Wyoming	Internal Revenue Service EP/EO Division Mail Code 4950 DAL 1100 Commerce Street Dallas, TX 75242
Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee	Internal Revenue Service EP/EO Division P.O. Box 941 Atlanta, GA 30370
Alaska, California, Hawaii, Idaho, Nevada, Oregon, Washington	Internal Revenue Service EP/EO Division McCaslin Industrial Park 2 Cupania Circle Monterey Park, CA 91754-7406
Illinois, Iowa, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wisconsin	Internal Revenue Service EP/EO Division 230 S. Dearborn, DPN 20-6 Chicago, IL 60604

## Specific Instructions

**Line 1a.** "Plan Sponsor" means in the case of a plan:

1. That covers the employees of one employer, the employer;
2. Sponsored by two or more entities required to be combined under section 414(b), (c) or (m), one of the members participating in the plan; or
3. That covers the employees and/or partner(s) of a partnership, the partnership.

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

**Address.**—Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the plan has a P.O. box, show the box number instead of the street address.

**Note:** If a change in address occurs after the application is filed, the plan should

use **Form 8822, Change of Address**, to notify the IRS of the new address.

**Line 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 the Form 5500 series returns/reports are filed for the plan. (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-TAX-FORM (1-800-829-3676).

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

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

**Line 2.** The contact person will receive copies of all correspondence as authorized in a power of attorney or other written designation. This item must be completed as described; a reference such as "see attached" is not acceptable. If there is no other person to contact, leave this item blank.

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 Taxpayer** on page 1.

**Line 3a.** In the box in the left margin, 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 defined benefit plan (whether or not paired) and a determination is requested as to whether the plan satisfies section 401(a)(26) for 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.

**Line 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 for 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.

**Line 3c.** Section 3001 of ERISA requires the applicant to 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. For an example of an acceptable format see Rev. Proc. 93-6, 1993-1 I.R.B. 135. If you check "No," or leave this line blank, your application will be returned.

**Line 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, check "No".

**Line 4a.** Designate and enter a name for the plan.

**Line 4b.** Assign and enter a three-digit number, beginning with "001" and continuing in numerical sequence for each plan adopted. This numbering will differentiate your plans. The number that

is assigned to a plan must not be changed or used for any other plan.

**Line 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.

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

**Line 4e.** Enter **(a)** the total number of employees participating in the plan, including employees under a section 401(k) qualified cash or deferred arrangement who are eligible, but do not make elective deferrals, **(b)** retirees or other former employees, and **(c)** a beneficiary of a deceased employee who is receiving or will in the future receive 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.)

#### **Line 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. 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.

**Note:** If you want to apply for a determination letter to determine if you are a member of an affiliated service group, do not file this form.

#### **Line 7. Type of Adopter**

**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.

#### **Line 8. Type of Plan**

**Enter 1**, if this is a governmental plan.

**Enter 2**, if this is a church plan not subject to ERISA (i.e., the church plan has not made an election under section 410(d)).

**Enter 3**, if this is a collectively bargained plan.

**Enter 4**, if this plan is a section 412(i) plan.

**Enter 5**, if this plan is not described above. Most plans will enter "5."

**Line 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).

**Line 9b.** See M-12 and M-14 of Regulations section 1.416-1.

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#### **Coverage**

**Note:** In completing the coverage section, include all employees of all employers combined with the employer under section 414(b), (c) or (m). Also, 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 section 414(n)(5).

**Line 10a.** In general, if the employer operates qualified separate lines of business (as defined in section 414(r) and the related regulations) for a year, the employer may apply the coverage requirements separately for employees in each separate line of business. Attach a demonstration citing 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).

Also, if this plan, or any plan combined with this plan for purposes of satisfying the coverage requirements, covers employees in more than one separate line of business, submit the coverage data requested in line 10 separately for each separate line of business.

**Line 10c.** A plan that satisfies one of the tests on at least one day in each quarter of the year being tested, will be considered as passing the coverage tests for the entire year if the quarterly testing dates reasonably represent the coverage of the plan over the entire plan year. If you are applying this quarterly testing option, enter the date for which the coverage data is submitted on line 10c. If you are applying the annual testing option in Regulations section 1.401(b)-8(a)(4), enter the year for which the coverage data is submitted on line 10c.

**Line 10d.** Divide the number of nonexcludable employees who benefit and who are not highly compensated employees, as defined in section 414(q), by the total number of nonexcludable nonhighly compensated employees; show the result 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 1 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 combined with this plan for purposes 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 combined with this plan for purposes of satisfying the coverage requirements.

On the other hand, employees who are not yet age 21 and have completed 1 year of service may be tested for coverage separately. If electing this alternative, demonstrate in an attachment that the group of employees who are not yet age 21 and 1 year of service, but have attained the lowest age and service requirements under this or any other plan combined with this plan to satisfy 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 (as defined in 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 employee representatives and 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% of the employees who are covered under the collective bargaining agreement are professionals as defined in Regulations section 1.410(b)-9(g).

To compute 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 (as defined in section 861(a)(3)).

To compute the percentage on line 10d, exclude employees who do not accrue a benefit or receive an allocation only 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 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.

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 10f and 10g.

**Line 10e.** To compute the ratio on line 10e, divide the number of nonexcludable employees who benefit under the plan and are not highly compensated, as defined in section 414(q), by the total number of nonexcludable nonhighly compensated employees; put the result 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 result in the denominator. If the denominator of the ratio is zero, enter "1" on line 10e.

See the instructions for 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) (CODA) or 401(m). Data for these employees will be entered on lines 10f and 10g.

**Line 10f.** Enter the ratio (using the instructions for line 10e) for the portion of the plan subject to section 401(k). Note that the instructions to the last paragraph for line 10d contain a special definition of who is benefiting under the

portion of the plan subject to section 401(k). If the denominator of the ratio is zero, enter "1" on line 10f.

**Line 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 10d contain a special definition of who is benefiting under the plan or part of a plan that consists of employee and matching contributions. If the denominator of the ratio is zero, enter "1" on line 10g.

**Line 10h.** If this plan does not, by itself, satisfy the coverage requirements, certain other qualified plans may be combined with this plan to satisfy the coverage requirements.

**NOTE:** *The following plans may not be combined: an ESOP with a non-ESOP, a collectively bargained plan with a noncollectively bargained plan, and a plan or part of a plan that is subject to section 401(k) (or subject to section 401(m)) and a plan or part of a plan that is not subject to section 401(k) (or not subject to section 401(m)).*

If any other plan is considered in combination with this plan, complete line 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 combined plans provide comparable benefits and together satisfy section 401(a)(4).

**Line 10i.** If any one of lines 10e, 10f or 10g, if applicable, is less than 70%, 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.

**Line 10i(1)** A plan satisfies the nondiscriminatory classification test if benefiting employees are defined by reasonable and objective business criteria set out in the plan and such classification is nondiscriminatory. A classification will be deemed nondiscriminatory if the ratio on lines 10e, 10f, or 10g, whichever applies, is equal to or greater than the safe harbor percentage.

The safe harbor percentage is 50%, reduced by  $\frac{3}{4}$  of a percentage point for each percentage point by which the nonhighly compensated employee concentration percentage exceeds 60%. 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(1). See Regulations section 1.410(b)-4.

**Line 10i(2)** A plan satisfies the average benefit percentage test if the actual benefit percentage for nonhighly compensated employees is at least 70% percent of the actual benefit percentage for highly compensated employees.

All qualified plans (or parts of plans) of the employer, including plans subject to section 401(k) or 401(m) are combined in determining the average benefit percentage. Do not combine plans that may not be combined to satisfy 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(2). 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.

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## Miscellaneous Provisions

**Line 11a.** 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", 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.

**Line 11b.** If other than "total compensation" within the meaning of section 414(s) is used to determine 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.

**Line 11c.** In a defined contribution plan, if forfeitures are not divided on the basis of total compensation within the meaning of section 414(s), check "No," and attach an explanation of how forfeitures are divided under the plan.

**Line 11d.** In a defined contribution plan, if trust earnings and losses are divided on the basis of account balances, check "Yes." Otherwise, check "No," and attach an explanation of how trust earnings and losses are allocated.