Chapter 6

Terminations

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INTERNAL REVENUE SERVICE
TAX EXEMPT AND GOVERNMENT ENTITIES

Overview

Purpose

This chapter will provide the information needed to process a 5310 application and assist the agent in verifying the form of the plan so that the plan can receive a determination letter plan termination.

In This Chapter

This chapter contains the following topics:

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Overview, Continued

Complete Termination

Introduction

- A qualified plan upon its termination or partial termination, or
- A profit sharing or stock bonus plan upon a complete discontinuance of contributions,

must provide that the rights of each affected employee to benefits accrued to date (to the extent funded) or amounts credited to an individual's account, are nonforfeitable.

PBGC Covered plan- introduction

There are two type of complete terminations:

- Voluntary, and
- Involuntary.

Voluntary plan termination

Under a voluntary termination, the PBGC is given advance notice of the proposed date of the termination. There are two types of voluntary terminations:

- Standard: Plan assets sufficient to provide all nonforfeitable benefits accrued at the time of termination. Proper notices and documents are provided.
- Distress: The employer meets certain financial hardship criteria and proper notices and documents are provided.

Involuntary plan termination

An involuntary termination occurs when the PBGC takes over the plan due to

- Failure to meet minimum funding requirements, and
- Inability to pay benefits when due

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Complete Termination, Continued

Non PBGC Plan

The plans that are not subject to PBGC insurance requirements and therefore are not subject to PBGC termination are:

- Governmental,
- Church,
- Defined Contribution - not subject to Title IV of ERISA, therefore, the date of termination is the date the plan is voluntarily terminated by the employer(s), and
- Plans maintained by professional service employers with never more than 25 participants.

Permanency-introduction

If a plan is terminated within a few years after its adoption without a valid business reason, there is a presumption that it was not intended as a permanent program from its inception. In that case, the qualification of the plan may be lost retroactively.

Permanency-reasons for valid business reasons

Reason for termination that are valid business reasons are:

- Bankruptcy or insolvency of the employer,
- Discontinuance of the employer's business,
- Substantial change in stock ownership of the employer,
- Merger,
- Substitution of another type plan,
- Employee dissatisfaction with the plan and preference for a current pay raise,
- Financial inability to continue the plan, and
- Changes in law which regulates retirement plans

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Complete Termination, Continued

Processing steps when reviewing for permanency

IRM 7.12.1.2.5.1 enumerates processing steps to use when reviewing 5310 submissions for permanency. Consider the following:

- Determine if the plan terminated within a few years after its adoption and if so, was it a business necessity.
- If "adverse business conditions" is the reason given and information provided with the application is not sufficient, additional information should be requested.
- If "other" is the reason for termination additional information may be required if the explanation provided is not sufficient.
- Defined benefit plans are subject to early termination rules (IT Reg. 1.401(a)(4)-5(b).
- Repetitive failure to make discretionary contributions in profitable years may indicate lack of intent for a permanent plan.

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Complete Termination, Continued

Notice to Interested Parties

IT Reg. 1.7476-2 requires anyone applying for a determination letter to give notice to any persons who qualify as an interested party. See IT Reg. 1.7476-1 for the definition of an interested party.

The notice should be delivered to interested parties per the methods described in 1.7476-2(c). When the notice is given in person or by posting, it must be given not less than 7 nor more than 21 days prior to the date that application for a determination is made. When notice is given by mailing, it should be given not less than 10 nor more than 24 days prior to the date the application for determination is made. See IT Reg. 601-201(o)(3)(xv).

Termination date- introduction

IRM 7.12.1.2.3 provides guidance for determining the date of Termination under ERISA 4048 and IT Reg. 1.411(d)-2(c).

Generally, the date of plan termination is the date established in the corporate resolutions adopted by the employer. However, the date is determined based on the facts and circumstances of each case.

PBGC Plan factors in determining the termination date

If a plan is covered by PBGC, the following are PBGC Plan factors:

- In a standard termination, the date is proposed by the plan administrator in the notice of intent submitted to the PBGC.
- In a distress termination, the date is established by the plan administrator and agreed to by the PBGC.
- In an involuntary termination due to failure to meet minimum funding or inability to pay benefits when due, the date is established by the PBGC and agreed to by the plan administrator. In the event that the PBGC and the administrator cannot come to an agreement regarding the date of termination, the date will be established by a court.

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Complete Termination, Continued

Non-PBGC Plan factors in determining the termination date	Non PBGC Plan factors: • Corporate resolution, and • Facts and Circumstances
DB Plan amended to a DC plan	IT Reg. 1.411(d)-2(c)(2) provide that a defined benefit that is amended to a defined contribution plan is terminated.

Plan Timely & Properly Amended

Definition

Some plans may terminated **after** the effective date of a change in law, but **prior** to the remedial amendment period date (i.e. the date that amendments are required).Under Revenue Procedure 2004-6, Section 12.06, such a plan must be amended to comply with the applicable provisions of law from the date on which they become effective with respect to the plan.

Current Law

A terminating plan must be amended to update for all current law at the time of termination.

Defined Contribution Plans:

- GUST,
- EGTRRA – Notice 2001-57, and
- 401(a)(9) – Rev. Proc. 2002-29.

Defined Benefit Plans:

- GUST,
- EGTRRA – Notice 2001-57, and
- GAR ’94 – Rev. Rul. 2001-62.

Revenue Procedure 2003-72 applies to M & P and Volume Submitter plans.

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Plan Timely & Properly Amended, Continued

General GUST Remedial Amendment Period

The general GUST remedial amendment period ended February 28, 2002 or the last day of the 2001 plan year.

For M & P and Volume Submitter plans, the GUST remedial amendment period was extended until September 30, 2003, if the plan met the requirements of Rev. Proc. 2000-20 section 19.

Rev. Proc. 2003-72 extended the deadline for filing for a determination letter until January 31, 2004 (the Service agreed to accept applications received or postmarked by February 2, 2004 as timely).

In order to qualify for the extension under Rev. Proc 2003-72, the plan's GUST remedial amendment period must end on or after September 30, 2003, and before January 1, 2004, and pay a sanction of $250, if the employer had not adopted a GUST amendment. For an expanded coverage, see the enclosed chapter on closing agreements.

Rev. Proc. 2003-72 also extended the remedial amendment period for EGTRRA, GAR '94, Section 125, 401(a)(9) and CRA until the end of the GUST remedial amendment period.

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Plan Timely & Properly Amended, Continued

Prior Law

A terminating plan must meet all prior law. The following steps should be taken:

1. Review the last favorable determination letter, or ,
   - Rev. Proc. 93-39 letter covers all TRA ’86 including IRC section 401(a)(17) and 401(a)(31).
   - GUST I, II, III – a determination letter can cover GUST I, II or full GUST.
2. Verification in absence of a determination letter.
   - Obtain a copy of the prior plans, trust and all amendments to determine if the plan meets 401(a).
   - Quality Assurance Bulletin 2000-2 dated July 18, 2001, has guidelines to follow when a plan does not have a last favorable determination letter.
   - If the plan is not in compliance (i.e. a late amender), see the CPE chapter on Audit CAP (closing agreements) and IRM 7.11.1, Employee Plans Determination Letter Program, for applicable procedures.

Termination Application

Introduction

Upon the complete termination of a plan, a plan administer or sponsor uses a Form 5310, Application for Determination for Terminating Plan, to request a final determination letter as to the plan's qualified status. See Exhibit 1.

A terminating plan must be in compliance with all the qualification requirements of IRC § 401(a), in form and in operation, effective on the date of termination. (See IRM 7.12.1.2.1.1 (2)). This includes compliance with all of the following IRC §§:

- 410 – Minimum Participation,
- 411 – Minimum Vesting,
- 412 – Minimum Funding,
- 415 – Limitations of Benefits & Contributions,
- 416 – Minimum Top Heavy Contributions, and
- 417 – Requirements for QJSA/QPSA.

An accurately completed application package will usually provide enough information to establish whether the plan is qualified, in form, and provide clues as to whether certain operational requirements have been observed. (See Form 5310, instructions, pages 1 – 2, "What To File" – Exhibit 2).

Coverage for Certain Employers

Form 5310, lines 6(a) and 6(b) request information regarding the employer's status as part of an affiliated service group and/or controlled group. This information is necessary in order to establish whether or not there may be concerns/issues relative to coverage. If either question is answered "yes", then it will be necessary to determine if all employees have been considered for purposes of coverage. Per the instructions for Form 5310, the applicant should attach a statement providing the following:

- The name of each member of the group,
- Their relationship to the plan sponsor (i.e. parent corporation, brother/sister corporation, or a child/wholly owned subsidiary corporation, etc.),
- The type(s) of plan(s) each member has, and
- Plan(s) common to all members.

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Termination Application, Continued

Terminations in General

In general, a plan termination can only occur when:

- A date is established,
- Benefits and liabilities can be established as of that date, and
- All assets are distributed as soon as administratively feasible.

A plan is not terminated merely because benefit accruals cease (See the Frozen Plan section in this chapter). A plan may also be considered not terminated (for IRS purposes) if the assets are not distributed as soon as administratively feasible. The facts and circumstances in each case will determine whether a termination has actually occurred.

Checksheet

When reviewing the 5310 application, Form 6677 should be used (see IRM section 7.12.1.2.1.). See Exhibit 3 and 4 for the Form and instructions.

Case Closing

When the case is ready to close, complete the closing transmittal worksheet and prepare the 1132 letter on EDS.

See Exhibit 5 for a copy of the closing transmittal.

Closing Letter

The most common caveats used on the 1132 letter are 04, 10, 11, and 5998.

Minimum Funding Standards

Introduction

IRC § 412 provides minimum funding standards for employee benefit plans that are pensions. This includes:

- All defined benefit plans,
- Money purchase pension plans, and
- Target benefit plans.

Minimum funding standards apply to a plan through the end of the plan year in which the plan terminates. Therefore, the funding standard account must be maintained until the end of the plan year in which the plan terminates, even though the termination occurs before the last day of the plan year. IT Reg. 1.412(b)-4. Also see Rev. Rul. 79-237.

Form 5310, line 11, and line 17(f), which requests information about the last contribution to the plan, funding deficiencies and waivers, provide details about possible minimum funding issues that must be resolved in order for the plan to properly terminate. If Form 5310, line 20(f), net assets, is less than Form 6088, Distributable Benefits From Employee Pension Benefit Plans, line 28, there may also be a need to look at minimum funding more closely.

Rules for Defined Benefit Plans

For a defined benefit plan, the charges and credits to the funding standard account are adjusted ratably to reflect the portion of the plan year before the plan terminated. Rev. Rul. 79-237.

Example – Defined Benefit Plan

Employer A maintains a defined benefit plan, Plan P1, with a 12/31plan year end. Plan P1 is terminated effective 09/30/X4. The required minimum contribution for Plan P1, for the entire plan year X4, which has been actuarially determined, is $40,000. Employer A will be liable for a required minimum contribution, to Plan P1, of $30,000 for plan year X4 since the plan terminated 09/30. This would be true regardless of the valuation date being at the beginning or end of the plan year.

Rules for Defined Contribution Plans

For a defined contribution plan, the charges to the funding standard account will reflect the entire amount of any contributions due (according to the stated formula in the plan) on or before the date of termination, but no contributions are due after that date. Rev. Rul. 79-237.

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Minimum Funding Standards, Continued

Example – Defined Contribution Plan

Employer B maintains a defined contribution plan, Plan P2, a money purchase pension plan, with a 12/31plan year end. Plan P2 is terminated 04/30/X4. Plan P2 provides for an allocation of 10% of eligible compensation to be made to each participants account on the valuation date, which is 12/31 each year. Eligible compensation, taking into consideration IRC § 415 limitations, is $215, 000. The required contribution for X4 would have been $21,500. However, since the contribution is not yet due because the valuation date is 12/31, Employer B has no funding requirement for X4.

Timeliness of Contributions

IRC § 412(c)(10) provides that contributions made to defined benefit plans within 8 ½ months after the close of the plan year are considered to have been made on the last day of the plan year.

Contributions to other plans made within 2 ½ months after the plan year are considered made on the last day of the plan year. The due date for contributions to other plans may be extended up to, but not more than, 6 months. This means that defined contribution plans must file for an extension, in order to extend the due date for contributions past 2 ½ months after the close of the plan year.

If contributions are not made timely within these guidelines, the plan will fail to meet the minimum funding standards of IRC § 412 and there will be an accumulated funding deficiency.

IRC § 4971(a) imposes a 10% excise tax on any accumulated funding deficiency as of the end of any plan year ending with or within the taxable year. This means that if there is an accumulated funding deficiency as of the last day of the plan year in which the plan terminated, the 10% excise tax penalty will apply. No additional tax under IRC § 4971 will be imposed on subsequent years.

The termination however, does not relieve the employer of the obligation to fund the accumulated funding deficiency as of the end of the year in which the plan is terminated. If the deficiency is not reduced to zero, the 100% excise tax penalty of IRC § 4971(b) will apply. Rev. Rul. 79-237.

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Minimum Funding Standards, Continued

Procedures

If the date on Form 5310, line 11 (i.e. last employer/sponsor contribution to the plan) is prior to the proposed date of termination:

- Verify that an amendment has been made to cease benefits or contributions,
- Verify that contributions will or have been made timely to satisfy IRC § 412, and
- Determine if a funding deficiency exists, and if so, make an appropriate referral to EP Classification Unit.

If Form 5310, line 17(f) indicates a funding deficiency exists, please see Quality Assurance Bulletin 2004-3, Processing Examination Referrals.

If Form 5310, line 17(f) was answered "yes", the items listed in that line item (Form 5330 and/or minimum funding waiver) should be attached to the application, and if not, they should be secured.

Coverage

Items 13 and 14

Note that Items 13 & 14 must be completed to indicate how the plan satisfies IRC §§ 410(b) and 401(a)(4) in the year of termination. Line 14 doesn't have to be completed if line 13p is satisfied.

Form 5310 Line 13-IRC §410(b) Compliance

Line 13 of form 5310 is completed to indicate how the plan satisfies IRC section 410(b) in the year of termination. Plans that use qualified separate lines of business must attach a Demo 1.

Line 13 a – n	Ratio Percentage Test
Line 13 b – o	Completed with respect to each disaggregated portion of the plan if the plan is disaggregated into two or more separate plans (other than profit sharing and/or IRC §§ 401(k) and/or 401(m) plans). Additional schedules using the format of line 13 should be attached to show how the disaggregated portions separately satisfy IRC § 410(b).
Line 13 l & m	IRC §§ 401(k) and (m) plans must complete to demonstrate how they are meeting the ratio percentage test.
Line 13 o	Average Benefit Test and Demo 5 (unless a favorable letter regarding the average benefit test was issued to the plan within the 3 years preceding the date of termination and the plan has not experienced a material change in the facts on which the determination was based.
Line 13 p	Special requirements of Regs. 1.410(b)-2-(b)(5), (6) or (7).

Form 5310 Line14 -IRC § 401(a)(4)

Line 14a – d	Complete if the plan satisfies a nondiscrimination safe harbor in the year of termination
Line 14e	Complete if the plan satisfied a general test for the year of termination. Demo 4 - submit if the plan has been disaggregated or restructured Demo 6 required if (e)(2) and (e)(3) is not satisfied

Schedule Q should be submitted if a Demo is submitted.

Affected Participants

Definition of affected participant

IRC 411(d)(3) defines an affected employee as a current employee or former employee who has not forfeited his or her nonvested interest as of the plan termination date. See the Affected Participants Flow Chart in Exhibit 6.

Procedure

Review line 15a (6) of the 5310. Were participants' dropped without full vesting?

Participants were not dropped without full vesting

See line 18b of the 5310 for forfeitures within the last 5 years.

- If there are no forfeitures, there are no issues regarding affected participants.
- If there are forfeitures, secure an explanation.

Participants were dropped without full vesting

Make sure all necessary information is provided and it is adequate (see the plan for the vesting schedule & cash-out provisions and verify when forfeitures occurred). The table below summarizes when participants should be fully vested if the plan provides for:

- A forfeiture after a 5 year break in service, or
- A forfeiture after a cash out distribution.

Note: Secure proof/assurance that all affected participants' forfeited account balances will be restored and caveat the determination letter accordingly (7060 caveat).

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Affected Participants, Continued

BREAKS IN SERVICE	CASHOUT DISTRIBUTION
If the plan provides that forfeiture occurs **AFTER** the end of the 5-year break in service described in IRC section 411(a)(6)(C):	**If the plan provides** forfeiture occurs **BEFORE** the end of the 5-year break n service described in IT Reg. section 1.411(a)-7(d)(4):
The nonvested portion will become vested if the plan termination occurs PRIOR to the 5th break in service. All affected participants without 5 consecutive breaks in service or who were not properly cashed out should be fully vested.	Nonvested portion will become forfeited if distribution has occurred prior to the plan termination. A former participant is not an "Affected Employee" if the plan terminates after the date of such forfeiture, even if the termination occurs before the end of the participant's 5th break in service.
	In a cashout, the nonvested interest will not be forfeited ONLY if the plan termination occurs before the forfeiture is incurred pursuant to the cashout distribution.

Vesting

Introduction

Special rules, outlined in IRC § 411(d)(3), apply to vesting of participants upon a plan's termination, partial termination, or upon the complete discontinuance of contributions to the plan.

Form 5310, lines 15(a), 15(b) and 17(a) are the primary sources of information, relating to vesting, for complete terminations.

Form 5300 should be completed for partial terminations.

Complete Terminations

In a complete termination of both defined benefit and defined contribution plans, the accrued benefit to the extent funded or amounts credited to the account, at the date of termination, must become nonforfeitable.

The plan must also provide for the allocation of any previously *unallocated* funds to the employees covered by the plan either through provisions established at the plans inception or through an amendment adopted prior to the event.

Example – Complete Termination

Employer C maintains Plan P3, a profit sharing plan, for the benefit of its employees. Employer C decides to terminate Plan P3 because the company is being sold and the buyer does not want to take over the plan. Employer C has 3 employees: J, K, and L. The vesting schedule prior to termination was 5 year graded, with 20% vesting each year for the first five years of employment. Employee J has 6 years of service, Employee K has 3 years of service, and Employee L has 2 years of service. Their account balances as of the date of termination are as follows:

Employee	YOS	Vested Acct Bal	Account Bal
J	6	$10,000	$10,000
K	3	$3,000	$5,000
L	2	$800	2,000

The account balances of $10,000, $5,000 and $2,000 respectively are non-forfeitable as of the date of termination and all participants should receive their entire account balance.

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Vesting, Continued

Terminated Participants without full vesting

Form 5310 requires information about participants that terminated in the year of plan termination and the 5 years prior to the year of termination. If any participant terminated without full vesting, as shown on line 15(a)(6), line 15(b) requires an attachment be made to Form 5310 showing the following information:

- Name of participant,
- Date of hire,
- Date of termination,
- Years of participation,
- Vesting percentage,
- Account balance or accrued benefit at separation from service,
- Amount of distribution,
- Date of distribution, and
- Reason for termination.

This information will help you determine if vesting was correctly computed thereby establishing if distributions were proper. This information may also help establish whether a partial termination occurred.

Partial Terminations

Whether a partial termination has occurred is a matter of fact and circumstances. However, if it is determined that a partial termination has occurred, IRC § 411(d)(3) provisions apply only to the part of the plan that is terminated.

Example – Partial Termination

Employer D has two divisions, Division E & Division F. The employees of both Division E and Division F are all covered by one plan, Plan P5. Division E is closed due to economic hardship. The employees of Division E will be terminated due to the closing and their account balances distributed to them. Employer D must segregate the account balances of the Employees of Division E, which will become nonforfeitable on the effective date of the termination. Division F employees' account balances will continue to vest according to the plan's vesting schedule.

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Vesting, Continued

Complete Discontinuance

A complete discontinuance applies to plans that are *not* subject to IRC § 412. The determination as to whether a complete discontinuance has occurred, as opposed to a temporary cessation of contributions, is also a matter of facts and circumstances.

Because an employer has made contributions to the plan does not preclude the fact that a complete discontinuance has occurred if it can be established that the amount of contributions made were not substantially enough to reflect the intent of the employer to continue to maintain the plan.

Factors to consider when determining whether a suspension constitutes a discontinuance are:

- Whether the suspension is merely being called such in order to avoid full vesting,
- Whether contributions are substantial and recurring, and
- Whether there is any reasonable probability that the lack of contributions will continue indefinitely.

The time of the discontinuance will generally be effective not later than the last day of the taxable year of the employer following the last taxable year of the employer for which a substantial contribution is made to the plan.

Account balances as of this effective date will be non-forfeitable.

Forfeitures

Defined benefit plans are precluded from using forfeitures to increase benefits prior to termination. See IRC § 401(a)(8) and IT Reg. § 1.401-7.

Stock bonus, profit sharing, and after 12/31/1985, money purchase pension plans must allocate forfeitures to the remaining participants (See Rev. Rul. 2002-42). However, the allocation must not result in prohibited discrimination.

Prohibition against decreases in Accrued Benefit

IRC § 411(d)(6) provides that a plan amendment cannot decrease, eliminate, or make subject to employer discretion, any benefit, early retirement benefit, retirement-type subsidies and/or optional forms of benefit, to the extent that they have accrued, except to the extent permitted by regulation. This includes termination of the plan.

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Vesting, Continued

Procedures

When making a determination regarding vesting on a terminating plan, review all relevant information of the plan document and the application to:

- Verify the plans vesting schedule prior to termination was valid,
- Verify the plan provides for nonforfeitable accrued benefit or account balances at termination or that an amendment containing this provision is timely adopted.
- Verify that all participants that terminated employment without full vesting within the year of termination and the five years prior to the year of termination were properly vested.

Partial Terminations

Introduction

IT Reg. section 1.411(d)-2(b) provides for a facts and circumstances test in determining whether a partial termination occurs, and provides rules relating to partial terminations.

Defined Benefit Plan

IT Reg. section 1.411(d)-2(b)(2) provides rules for defined benefit plans which cease or reduce future accruals. In such case, a partial termination will be deemed to occur if the cessation or decrease results in creating or increasing the potential for reversion. If no potential is created or increased, a partial termination will not be deemed to occur solely by reason of the cessation or decrease.

Facts and Circumstances

The facts and circumstances considered when determining if a partial termination occurred include:

- The exclusion of a group of employees by plan amendment or by severance by the employer who were previously covered by the plan,
- Whether benefit accruals or employer contributions are reduced, or
- Eligibility or vesting requirements under the plan are made more restrictive.

  Such cutbacks could result in a violation of IRC section 411(d)(6) regardless of whether a partial termination occurs.
- The potential for a reversion may also be a factor in determining if there is a partial termination in a defined contribution plan.

Participant terminations are considered employer initiated unless the employer can provide proof that the employee terminations were voluntary, or on account of death, disability or attainment of normal retirement age.

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Partial Terminations, Continued

Facts and Circumstances (continued)

In certain situations, the employer may be able to prove that other terminations were also not employer initiated. Other factors which cause participant terminations beyond employer control are generally considered to be employer initiated, such as a termination due to depressed economic conditions.

If there is a significant increase in the turnover rate for a period, or for other reasons a partial termination has occurred, full vesting of affected participants is required.

- The ratio of the number of employer initiated terminations to the total number of plan participants during the applicable period is the turnover rate for the plan.
- In some court cases only the terminations of participants with less than full vesting have been considered in calculating the turnover rate, however, the Service position is that fully vested terminated participants are included.
- There is no fixed turnover rate which determines whether a partial termination has occurred, but the rate must be substantial. Facts and circumstances to be considered in each case include the extent to which employees are replaced and the normal turnover rate.

Additional factors bearing directly on whether or not a partial termination has occurred are:

- Whether the potential for a reversion has been created or increased as a result of participant turnover and
- Whether the possibility for prohibited discrimination has increased.

The issue of the possibility of reversion, prohibited discrimination or a significant turnover rate may not, in and of itself, indicate a partial termination, but may indicate such a termination when considered in combination with other factors.

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Partial Terminations, Continued

Defined Benefit Plan amended to Defined Contribution Plan	IT Reg. section 1.411(d)-2(c)(2) indicates that a defined benefit plan subject to PBGC insurance (Title IV of ERISA) will be deemed terminated if it is amended to become an individual account plan (defined contribution plan).

Miscellaneous

In Kind Distributions

Review Form 5310, line 17e

Line 17e asks questions to determine if an in kind distribution has occurred.

- If yes, verify the requirements of lines 1-3 (of 17e) are satisfied.
- If no, there are no in-kind distributions, and no action is necessary.

Reversions

Review Form 5310, line 17h

Line 17h asks if any funds will be or have been returned to the employer. If there has been a reversion, make sure the requirements of lines 17h(1) – 17h(10) have been satisfied.

Plan under examination

Review Form 5310, line 17i

If line 17i shows that the plan is currently under examination, the agent should make sure the required statement is attached, per the 5310, and coordinate with the proper contact person to determine if the 5310 application should be forwarded to exam.

Top Heavy Considerations

If the plan has been top heavy, Form 5310, line 17l asks the employer whether minimum benefit accruals or minimum contributions have been made for non-key employees. It is especially important to determine if a terminating plan has been operating as to provide the top heavy minimum, where required, so as to insure all participants receive an appropriate distribution upon close out of the plan.

Complete Discontinuance

Introduction

IRM 7.12.1.4.10.1- Complete Discontinuance applies only to profit sharing plans and does not apply to plans subject to IRC 412.

Review lines 11 and 18a of the 5310 to determine if there has been a possible complete discontinuance.

Definition

IT Reg. section 1.411(d)-2(d)(i) provides guidance regarding factors relevant in determining whether discontinuance has occurred. These include:

- Whether the employer is using the term "suspension" to avoid full vesting,
- Whether contributions are recurring and substantial, and
- Whether there is a reasonable probability the discontinuance will continue indefinitely.
- The failure to make substantial contributions in 3 of the last 5 years.

Facts and circumstances are used to determine if complete discontinuance has happened. If plan participants are fully vested at all times, then complete discontinuance is not an issue.

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Complete Discontinuance, Continued

Discontinuance

The employer is not required to make contributions every year to a profit sharing plan, but:

- Contributions must be recurring and substantial.
- If the amount is not significant enough to reflect intent to continue the plan, the service will treat contributions as discontinued.

IRC section 401(a)(27) states that a plan may receive contributions without regard to current or accumulated profits of the employer.

IT Reg. section 1.411(d)-2(a)(1)(ii) provides that "In the event of complete discontinuance of contributions under the plan, the account balance of each affected participant will be non-forfeitable."

Timing

There are two rules when determining the timing of a complete discontinuance:

1. In the case of a single employer plan, the discontinuance becomes effective not later than the last day of the employer's taxable year following the taxable year in which the last substantial contribution was made.
2. If the plan is maintained by more than one employer, the discontinuance becomes effective with reference to the last day of the *plan* year following the *plan* year within which the last substantial contribution was made by the employer.

Distributions

Forms of Distributions

IRM section 7.12.1.2.12 discusses Modes of Distribution upon termination.

- The form of distribution must be either single sum or annuity contracts. Annuity contracts must comply with IRC sections 411(d)(6), 401(a)(9), 401(a)(11) and 417.

- In general, if the participant (and spouse to the extent required) does not consent to single sum distribution, the benefit must be paid by an annuity contract.

- In general, for plans that the minimum survivor annuity requirements apply to, in order to satisfy IRC sections 401(a)(11) and 417, distributions must be in the form of a qualified joint and survivor annuity to any participant under the plan and in the form of a qualified pre-retirement survivor annuity to the participant's surviving spouse if the participant dies before his annuity starting date, unless waived by the participant and consented to by the spouse.

- To satisfy IRC section 401(a)(9), the entire interest of each employee must be distributed by the required beginning date, or must be distributed beginning by the required beginning date over the life (or life expectancy) of the employee or lives (or life expectancies) of the employee and a designated beneficiary.

- The distribution method must also satisfy the incidental death benefit rules.

- Stock bonus plans must generally permit the election of distribution of benefits in employer securities.

- There are exceptions to the distribution limitations under IRC 401(k) on account of an event described in IRC section 401(k)(10), including termination of the plan without reestablishment.

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Distributions, Continued

Forms of Distributions (continued)

Form 5310, line 19b indicates the modes of distribution; whether they are in accordance with plan provisions, and if proper elections and consents have been or will be secured.

In reviewing modes of distributions the agent should verify that 19b is not answered "no". A "no" answer indicates that there is a problem since distributions have not been made in accordance with plan provisions etc.

Plan Distributions With In Past 5 Years

Review Form 5310, line 17j and secure additional information if this item appears questionable.

Balance Sheet

Introduction

5310, line 20 is the statement of net assets that are available to pay benefits as of the proposed date of plan termination or the latest valuation date. Assets must be:

- valued annually, and
- sufficient enough to pay benefits to all participants.

Verify that assets are valued properly and that there are no prohibited transactions or unrelated business income.

Procedures

Review line 20 of the 5310

The application form was designed to direct the Employer when to attach additional information. Obtain additional information on items that look questionable:

Line	Description	Suggested Review Procedures
20a	Total noninterest-bearing cash	Secure explanation.
20b(1)	Employer Receivables	• Ask if and when the receivable has been paid. • If there is an IRC § 412 funding deficiency, is IRC §4971 excise tax due. • Employer contributions should be deposited within 8 ½ months after the end of the plan year for pension plans.
20b(4)	Other	Ask for explanation, look for UBTI.
20c(6)	Partnership/Joint Venture interests	Need most recent K-1s and other information pertaining to the nature of the partnership/joint venture, looking for UBTI and prohibited transactions.
20c(7)(A)	Real Estate – Income-producing	If there is acquisition indebtedness on line 20i, request additional information about this property.
20c(7)(B)	Real Estate – Nonincome-producing	Ask what the property is used for (and by whom) and if there is acquisition indebtedness.

Continued on next page

Balance Sheet, Continued

Procedures (continued)

Line	Description	Suggested Review Procedures
20c(9)	Loans to participants	Secure the following participant information: • Name, • Account balance prior to the date of the loan, • Date of loan(s), • Dollar amount of each loan(s), • Balance of the loan at the date of termination, and • Loan amortization and/or repayment schedule • Identify all disqualified persons as described by IRC § section 4975(f).
20c (10)	Other Loans	Secure information requested for loans in instructions to form 5310. Look for prohibited transactions and UBTI.
20c (13)	Other	Secure detailed explanation.
20g-20j	Liabilities	Ask for account detail of all these items and look for prohibited transactions and UBTI.

Prohibited Transactions

Definition of prohibited transaction

IRC section 4975(c) - Prohibited Transaction is any direct or indirect dealing between the plan and a disqualified person:

- Sale or exchange, of leasing of any property;
- Lending of money or other extension of credit;
- Furnishing of goods, services or facilities;
- Transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan;
- Act by a disqualified person who is fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account; or
- Receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

Continued on next page

Prohibited Transactions, Continued

Definition of disqualified person

IRC 4975(e)(2) – Disqualified Person is a:

A. Fiduciary;

B. Person providing services to the plan;

C. Employer of any of whose employees are covered by the plan;

D. Employee organization any of whose members are covered by the plan;

E. Owner, direct or indirect, of 50% or more of:

   i. The combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,
   ii. The capital interest or the profits interest of a partnership, or
   iii. The beneficial interest of a trust or unincorporated enterprise,

   which is an employer or employee organization described in C or D above.

F. Member of the family of any individual described in A, B, C or E above;

G. Corporation, partnership, or trust or estate of which (or in which) 50% or more of:
   i. The combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,
   ii. The capital interest or the profits interest of such partnership, or
   iii. The beneficial interest of such trust or estate,

   is owned directly or indirectly, or held by persons described in A – E above;

H. Officer, director, a 10% or more shareholder, or a highly compensated employee (earning 10% or more of the yearly wages of an employer) of a person described in C, D, E, or G above.

I. A 10% or more partner or joint venture of a person described in C, D, E, or G above.

See IRC 4975(d) for the exemptions.

Unrelated Business Taxable Income (UBTI)

Definition

IRC section 513(a) defines an unrelated trade or business as any trade or business the conduct of which is not substantially related to the exercise of the purpose for the trust's exemption under IRC section 501(a).

IRC section 513(b)(2) states the term "unrelated trade or business" means in the case of a trust described in IRC section 401(a) or 501(c)(17) which is exempt from tax under IRC section 501(a), any trade or business regularly carried on by such trust or by a partnership of which it is a member.

- Specific business activities of an exempt trust will ordinarily be deemed to be regularly carried on if they manifest a frequency and continuity, and are pursued in a manner generally similar or comparable to commercial activities of nonexempt organizations.

UBTI occurs when any trade or business is conducted by a trust (IRC section 512(a)(1)).

Income Included in UBTI

- Ordinary net income (loss) from trade or business activities;
- Rents from personal property as part of a regularly carried on trade or business;
- Partnership trade or business net income (IRC section 512(c)). Income derived by a trust retains its character from the partnership whether or not distributed;
- Income (loss) from debt financed property. IRC section 514(b)(1) defines this as any property held to produce income on which there is acquisition indebtedness at any time during the year. This includes passive income such as income form common stock or bonds;

  Exceptions:

  - Debt-financed income (loss) already taxed as from a regularly carried on unrelated trade or business (to avoid double taxation), and
  - Any debt financed income (loss) all of which is used to exercise the function giving rise to the trust's exemption.

Continued on next page

Unrelated Business Taxable Income (UBTI), Continued

Income Excluded from UBTI

- Dividends, interest, annuities, IT Reg. section 1.152(b)-1(a);
- Royalties except when used in a regularly carried on trade or business. The relationship between the parties is a partnership or joint venture. Rev. Rul. 69-179, 1961-1 C.B. 158;
- Gains and losses from the sale, exchange or other disposition as part of a regularly carried on trade or business, of property other than inventory;
- Rents – income from rental or only real property as part of a regularly carried on trade or business. IRC section 512(b)(3)(A).

Referrals

As of now, if you determine there is a prohibited transaction or UBTI, issue a determination letter and submit an exam referral for the operational issue on a form 5666. See Quality Assurance Bulletin 2004-3, Processing Examination Referrals.

Frozen Plans

Definition

A plan is considered a frozen plan when future accruals or contributions have ceased and the trust continues to exist. A frozen plan is considered an ongoing plan for purposes of the qualification requirements of IRC section 401(a).

Requirements

A frozen plan must still meet the following requirements:

- Nondiscrimination (IRC section 401(a)(4)),
- Coverage (IRC section 410(b)),
- Participation (IRC section 401(a)(26)),
- Funding (IRC section 412),
- Minimum benefit for top heavy plans (IRC section 416(c)(1)), and
- Updated for all current law changes.

The trust will retain its exempt status only if the plan continues to meet the requirements of IRC section 401(a). IRC sections 410(b) and 401(a)(26) would not apply if no benefits (including forfeitures) are allocated or accrued during the plan year.

Procedure

The employer must continue to file the Form 5500, Annual Report of Employee Benefit Plans, until such time all the assets of the trust have been distributed.

Defined Benefit Plans

Introduction

There are some termination issues that are of particular interest for defined benefit plans. Benefits in a defined benefit plan must be adjusted for optional forms at the plan's termination. There are also special forms to be filed with the termination application and special caveats to be used on determination letters for plans where funds will revert to the employer.

Applicable Interest Rate & Applicable Mortality Table

IRC § 415(b)(2)(B) requires that a benefit payable in a form *other* than a straight life annuity (optional forms) must be adjusted to the equivalent of a straight life annuity in order to establish whether the limitations of IRC §415(b)(1) have been satisfied.

IRC § 415(b)(2)(C) and (D) requires that if a benefit is payable at an age greater than or less than the participant's social security retirement age, the IRC § 415(b) dollar limit at that age be the actuarial equivalent of the IRC § 415(b) limitation at the participant's social security retirement age.

IRC § 417(e)(3) presents rules for establishing the present value of benefits for purposes of placing restrictions on cash-outs.

98-1

Rev. Rul. 1998-1, outlined rules for the use of actuarial assumptions in making the above adjustments. The rules allowed for a separation of benefits, for purposes of use of actuarial assumptions, into 2 basic categories; old law benefits (Pre-RPA '94) and new law benefits (RPA '94). Plans which were adopted and effective prior to December 8, 1994 had the option of using the RPA '94 actuarial assumption for <u>all</u> benefits *or* using Pre-RPA '94 actuarial assumptions until the earlier of: the later of the date an amendment for the changes is adopted or effective, or the first day of the first limitation year beginning after 12/31/1999.

The plan must be amended to include the proper age and form adjustments, and the protection of an old law benefit, if applicable. The plan must be amended to satisfy Revenue Ruling 98-1 including the correct effective date, applicable interest rate and applicable mortality table.

For additional information see the 2004 CPE chapter on IRC § 415(b).

Continued on next page

Defined Benefit Plans, Continued

Form 6088

Form 6088, Distributable Benefits From Employee Pension Benefit Plans, must be filed for all defined benefit plans that are terminating.

The total of Form 6088, line 28(h) should be equal to the total on Form 5310, line 20(l); if line 28(h) is less than line 20(l), there may be a reversion issue.

Reversions- technical overview

Generally, no part of the corpus of the trust of a qualified plan may revert to the employer. But there are certain exceptions.

- Terminated defined benefit plans that have excess assets after all liabilities have been satisfied, may revert to the employer, if they are due to erroneous actuarial calculation.

- Excess amounts may arise in a defined benefit plan where the value of the assets exceed the present value of plan liabilities at termination and the excess value is not the result of a change in plan provision other than the termination.

A defined benefit plan that converts the plans accrued benefit, in annuity form, to lump-sum benefits, at present value, is a situation that may be attributable to erroneous actuarial calculation. IRC § 401(a)(2) & IT Reg. section 1.401-2(a).

The right of the employer to recover excess assets must be provided for in the plan. Any amendment providing for or increasing the amount that may revert to the employer is not effective until the earlier of the end of the 5th calendar year following the adoption date or the plan's effective date.

Section 4980 reversion tax

IRC § 4980 imposes a 50% excise tax on the employer for reversion occurring after 09/30/1990. If the participants in a terminating plan are provided with additional benefits, with a replacement plan, or the employer is in bankruptcy liquidation, the excise tax is reduced to 20%. The excise tax is reported on Form 5330 and is due on the last day of the month following the month in which the reversion occurs.

Continued on next page

Defined Benefit Plans, Continued

Reversions-procedural

When preparing Letter 1132, caveats 6, 9 and 8503 should be used for all defined benefit plans that involve reversions. This will alert the sponsor of certain filing requirements and generate a Benefit Assurance Form.

Any reversion over $5,000,000 is required to be sent to Quality Assurance Staff for mandatory review per IRM 7.11.1.12.1.

Prepare a 3198-A and attach it to the front of the case file.

Form 5666, TE/GE Information Report should also be completed and routed. See procedures below.

If the employer is receiving a reversion from a defined benefit plan, make sure that it has been provided for under the terms of the plan for the 5 calendar years preceding the plan termination date and that it is due to an "erroneous actuarial computation" within the meaning of the regulations.

If a reversion has occurred prepare an information report and forward to the Classification Unit, in El Monte, CA. IRM 7.12.1.2.8.1. Agents should instruct the secretary to mail the referral package once the manager has approved the case for closing unless the case has to be sent to Quality Assurance for TEQMS or mandatory review.

Implementation Guidelines

Guidelines have been issued for terminating defined benefit plans to provide that any attempt to recover surplus assets in a termination/reestablishment, or a spin-off/termination will treated as a diversion of assets for a purpose other than the exclusive benefit of employees and their beneficiaries unless certain conditions are met. See IRM 7.12.1.2.10.

EXHIBIT 1-Form 5310

Form **5310**
Rev. November 2002
Department of the Treasury
Internal Revenue Service

Application for Determination for Terminating Plan
(Under section 401(a) of the Internal Revenue Code)
(See separate instructions.)

OMB No. 1545-0202

For IRS Use Only

See the **Procedural Requirements Checklist** on page 7 before submitting this application.

1a Name of plan sponsor (employer if single-employer plan) — 1b Employer identification number

Number, street, and room or suite no. (If a P.O. box, see page 2 of the instructions.) — 1c Employer's tax year ends—Enter (MM)

City — State — ZIP code — 1d Telephone number ( )

2a Person to contact if more information is needed. (See page 2 of the instructions.) (If Power of Attorney is attached, check box and do not complete this line.) ▶ ☐ — 1e Fax number ( )

Name

Number, street, and room or suite no. (If a P.O. box, see page 2 of the instructions.) — 2b Telephone number ( )

City — State — ZIP code — 2c Fax number ( )

If more space is needed for any item, attach additional sheets the same size as this form. Identify each sheet with the plan sponsor's name and EIN and identify each item.

3a Have interested parties (as defined in Treasury Regulations section 1.7476-1) been given the required notification of this application? . . . . . Yes ☐ No ☐

b If line 3a is "Yes," enter date of notification (MMDDYYYY) Date ▶ ____/____/____

c Has the plan received a determination letter? Date of letter ▶ ____/____/____ Yes ☐ No ☐

(1) If "Yes," submit a copy of the latest letter and subsequent amendments. Number of amendments ▶ ____

(2) If "No," submit all prior plan(s) and/or adoption agreement(s). (See page 3 of the instructions.)

d Does the plan have a cash or deferred arrangement (section 401(k)) ? . . . . . Yes ☐ No ☐

e Does the plan have matching contributions (section 401(m))? . . . . . Yes ☐ No ☐

f Does the plan have after-tax employee voluntary contributions (section 401(m))? . . . . . Yes ☐ No ☐

4a Name of Plan (Plan name may not exceed 66 characters, including spaces.):

b ____ Enter 3-digit plan number

c ____/____ Enter date plan year ends (MMDD)

d ____ Enter plan's **original** effective date (MMDDYYYY)

e ____ Enter number of participants (See page 3 of the instructions.)

5 Indicate type of plan by entering the number from the list below.

☐

(1)—profit sharing and/or section 401(k) (4)—defined benefit but not cash balance (7)—non-leveraged ESOP
(2)—money purchase (5)—cash balance (8)—stock bonus
(3)—target benefit (6)—leveraged ESOP (9)—safe harbor section 401(k)

6a Is the employer a member of an affiliated service group? . . . . . Yes ☐ No ☐

b Is the employer a member of a controlled group of corporations or a group of trades or businesses under common control? . . . . . Yes ☐ No ☐

If line(s) 6a and/or 6b is "Yes," see page 3 of the instructions for the required statement.

7 Attach copies of records of all actions taken to terminate the plan (see page 3 of the instructions).

a Proposed date of plan termination (MMDDYYYY) ____/____/____

b Will funds be distributed as soon as administratively feasible? . . . . . Yes ☐ No ☐

c Will any funds be, or have any funds been, returned to the employer? (See page 3 of the instructions.) Yes ☐ No ☐

(1) If "Yes," enter the estimated amount ▶ $ _____

(2) If "Yes," has the employer established or intend to establish a Qualified Replacement Plan? . . . Yes ☐ No ☐

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 ▶ Title ▶ Date ▶

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 11840Y Form **5310** (Rev. 11-2002)

Continued on next page

EXHIBIT 1-Form 5310, Continued

Form 5310 (Rev. 11-2002) Page 2

		Yes	No
8a	Is this a governmental plan?		
	If "Yes," is the plan a state level plan?		
b	Is this a nonelecting church plan?		
c	Is this a collectively bargained plan? (See Regulations section 1.410(b)-9.)		
d	Is this a section 412(i) plan?		
e	Is this a multiple employer?		
	If "Yes," enter number of participating employers ▶		

		Yes	No
9a	Have any of the amendments altered the plan's vesting provisions?		
b	Have any of the amendments (including the termination) decreased plan benefits for any participant?		

10 Reason for termination. Check only one box to indicate primary reason for termination.

- **a** ☐ Change in ownership by merger
- **b** ☐ Liquidation or dissolution of employer
- **c** ☐ Change in ownership by sale or transfer
- **d** ☐ Adverse business conditions (see page 3 of the instructions and attach explanation)
- **e** ☐ Adoption of new plan. Enter type of new plan ▶ .....
- **f** ☐ Other (specify) ▶

11 Last employer/sponsor contribution to the plan:
(a) Date (MMDDYYYY) **(b)** Amount $ **(c)** For plan year ending (MMDDYYYY) ▶

12a Name(s) of trustee(s) or custodian(s) **12b** Telephone number ( )

Address (number and street)

City or town, state, and ZIP code

13 Coverage

- Complete only lines 13a through 13n if the plan satisfied the ratio percentage test for the year of termination.
- Complete only line 13o if the plan satisfied the average benefit test for the year of termination.
- Complete only line 13p if the plan satisfied coverage using one of the special requirements of Regulations section 1.410(b)-2(b)(5), (6), or (7). Plans that use the qualified separate line of business rules of section 414(r) must attach **Demo 1.** See **Guidelines for Demonstrations** on page 6 of the instructions.

		Yes	No	
a	Is this plan disaggregated into two or more separate plans that are not section 401(k), 401(m), or profit sharing plans? If "Yes," see page 3 of the instructions and attach separate schedules for each disaggregated portion.			
b	Does the employer receive services from any leased employees as defined in section 414(n)?			
c	Coverage date (MMDDYYYY). See page 3 of the instructions			/ /
d	Total number of employees (employer-wide) (include self-employed individuals)			
e	Statutory and regulatory exclusions under this plan (do not count an employee more than once):			
	(1) Number of employees excluded because of the minimum age or years of service required			
	(2) Number of employees excluded because of their inclusion in a collective bargaining unit			
	(3) Number of employees excluded because they terminated employment with less than 501 hours of service and were not employed on the last day of the plan year			
	(4) Number of employees excluded because they were employed by other qualified separate lines of business (QSLOBs).			
	(5) Number of employees excluded because they were nonresident aliens with no earned income from sources within the United States			
f	Total statutory and regulatory exclusions. Add lines 13e(1) through 13e(5).			
g	Nonexcludable employees. Subtract line 13f from line 13d			
h	Number of nonexcludable employees on line 13g who are highly compensated employees (HCEs)			
i	Number of nonexcludable HCEs on line 13h benefiting under the plan			
j	Number of nonexcludable employees who are nonhighly compensated employees (NHCEs). Subtract line 13h from line 13g.			
k	Number of nonexcludable NHCEs on line 13j benefiting under the plan			
l	Ratio percentage (See page 4 of the instructions.)			
m	Enter the ratio percentage for the following, if applicable:			
	(1) Section 401(k) part of the plan			
	(2) Section 401(m) part of the plan			

Form **5310** (Rev. 11-2002)

EXHIBIT 1 - CONTINTUED

Form 5310 (Rev. 11-2002) Page **3**

	Yes	No
n Are the results on line 13l or 13m based on the aggregate coverage of more than one plan?		
If "Yes," see **Guidelines for Demonstrations** on page 6 of the instructions and submit a **Demo 4.**		
o **(1)** Did the plan use the average benefit test to satisfy section 410(b) for the year of termination?		
(2) If "Yes," did the plan receive a favorable determination letter in the three plan years immediately preceding the date of termination that contained a determination regarding the average benefit test?		
(3) If line 13o(2) is "Yes," are the facts (including benefits provided and employee demographics) upon which the determination was based materially unchanged?		
If line 13o(2) or 13o(3) is "No," see **Guidelines for Demonstrations** on page 6 of the instructions and submit **Demo 5.**		

p If the plan satisfied coverage using one of the special requirements of Regulations section 1.410(b)-2(b)(5), (6) or (7), enter the number from the list below for the Regulations section that identifies the special rule: ☐

(1)—1.410(b)-2(b)(5)—No NHCEs employed **(3)**—1.410(b)-2(b)(7)—Collectively bargained only
(2)—1.410(b)-2(b)(6)—No HCEs benefit

Note: *If you completed line 13p, skip line 14.*

14 Nondiscrimination—Section(s) 401(k) and/or 401(m) plans that do not contain a provision for discretionary contributions, skip line 14. Complete lines 14a through 14d if the plan satisfied a nondiscrimination safe harbor for the year of termination. Complete line 14e if the plan satisfied a general test for the year of termination. If this plan has been disaggregated or restructured, see **Guidelines for Demonstrations** on page 6 of the instructions and submit **Demo 4.**

	Yes	No
a Does the plan provide for disparity in contributions or benefits that is intended to meet the permitted disparity requirements of section 401(l)?		
If "Yes," answer line 14b. Otherwise, skip to line 14c.		
b Do the provisions of the plan ensure that the overall permitted disparity limits will not be exceeded?		
c Enter the number from the list below for the Regulations section that identifies the safe harbor intended to be satisfied. ► ☐		
d List the plan section(s) that satisfy the safe harbor (including, if applicable, the permitted disparity requirements) here ►		
e **(1)** Did the plan use a non-design based safe harbor or a general test to satisfy section 401(a)(4) for the year of termination?		
(2) If "Yes," did the plan receive a favorable determination letter in the three plan years immediately preceding the date of termination that contained a determination regarding the non-design based safe harbor or general test?		
(3) If "Yes," are the facts (including benefits provided and employee demographics) upon which the determination was based materially unchanged?		
If line 14e(2) or 14e(3) is "No," see **Guidelines for Demonstrations** on page 6 of the instructions and submit **Demo 6.**		

(1)—1.401(a)(4)-2(b)(2) defined contribution plan with uniform allocation formula
(2)—1.401(a)(4)-3(b)(3) unit credit defined benefit plan
(3)—1.401(a)(4)-3(b)(4)(i)(C)(1) unit credit DB fractional rule plan
(4)—1.401(a)(4)-3(b)(4)(i)(C)(2) flat benefit DB plan
(5)—1.401(a)(4)-3(b)(5) insurance account
(6)—1.401(a)(4)-8(b)(3) target benefit plan
(7)—1.401(a)(4)-8(c)(3)(iii)(B) cash balance plan

15a Enter the total number of participants employed at any time during the current plan year and each of the 5 prior plan years on the schedule below. If all such participants were fully vested at all times during such period, do not complete lines 15a(1) through 15a(5). Instead, enter -0- in each column next to line 15a(6).

(Enter plan year end in MMDDYYYY format).	Plan Year End ----------	Plan Year End ----------	Plan Year End ----------	Plan Year End ----------	Plan Year End ----------	Current Plan Year ----------
(1) Number at end of prior plan year						
(2) Number added during the plan year						
(3) Total. Add lines **(1)** and **(2)**						
(4) Number dropped during the plan year						
(5) Number at end of plan year. Subtract line **(4)** from line **(3)**						
(6) Total number of participants in this plan separated from vesting service during the plan year without full vesting						

15b If line 15a(6) shows that a participant(s) separated without full vesting in the current year or any of the past 5 years, attach the following information.

(1) Name of participant
(2) Date of hire
(3) Date of termination
(4) Years of participation
(5) Vesting percentage
(6) Account balance or accrued benefit at the time of separation from service
(7) Amount of distribution
(8) Date of distribution
(9) Reason for termination

Form **5310** (Rev. 11-2002)

EXHIBIT 1 – CONTINUED

Form 5310 (Rev. 11-2002) Page 4

		Total number
16	Summary of participants or claimants by category:	
a	Retirees and beneficiaries (including disability retirees) receiving benefits	
b	Active participants	
c	Participants separated from service with deferred vested benefits	
d	Total (Add lines 16a through 16c)	

		Yes	No	N/A
17	Miscellaneous:			
a	As a result of the termination, are accrued benefits or account balances nonforfeitable as required under section 411(d)(3)?			
b	If annuity contracts are distributed on plan termination, are the applicable consent, present value, waiver and other rights and benefits protected by sections 401(a)(11) and 417 included in the annuity contracts?			
c	Do the accrued benefits for each participant upon termination include the subsidized benefits that the participant may become entitled to receive subsequent to the termination? (See page 5 of the instructions.)			
d	Were any funds contributed in the form of, or invested in, obligations or property of the employer or any controlled group of corporations or group of trades or businesses under common control?			
e	Will distributions include property other than cash and/or readily tradable marketable securities?			
	If "Yes,"			
	(1) were all participants given the option of taking this type of distribution?			
	(2) what is the section number of the plan which allows for this type of distribution? ▶			
	(3) attach a statement explaining how assets were valued and how assets will be allocated.			
f	If a defined benefit or money purchase plan, do you estimate there will be an accumulated funding deficiency as of the end of the plan year during which the proposed termination date occurs if no additional plan contributions are made and no additional funding waiver is granted? (See page 5 of the instructions.)			
	If "Yes," complete the following:			
	(1) Estimated accumulated funding deficiency ▶ $			
	(2) Was a Form 5330 filed?			
	(3) Was a funding waiver granted?			
	(4) Have you attached a copy of Form 5330 or a waiver ruling?			
g	(1) If there are unallocated funds which can be reallocated to participants without exceeding the limitations of section 415, have these funds been reallocated to participants?			
	(2) If line 17g(1) is "Yes," did the plan originally contain a provision allowing this reallocation?			
	(3) If line 17g(2) is "No," was the plan amended to provide for this reallocation?			
h	If any funds will be or have been returned to the employer, complete lines 17h(1) through 17h(10) below			
	(1) Has the terminating plan been involved in a spinoff or other transfer of assets or liabilities, subject to section 414(l), within 60 months preceding the proposed date of termination? If "Yes," attach a list and an explanation of the transaction(s) involved.			
	(2) Was proper notice filed with the IRS on Form 5310-A?			
	(3) Was the only transaction in line 17h(1) above, a transfer of assets before any employer reversions?			
	(4) If line 17h(1) is "Yes," answer **(A)** and **(B)**:			
	(A) Are the accrued benefits of all participants, in the other plan(s) included in line 17h(1), fully vested and nonforfeitable as of the date of this plan termination? (See page 5 of the instructions.)			
	(B) Have cash distributions or guaranteed annuity contracts been provided for all accrued benefits, as of the date of this plan termination, of all participants in the other plan(s) included in line 17h(1)? (See instructions.)			
	Note: *Distributions generally may not be made to employed participants in nonterminating plans.*			
	(5) Have cash distributions or guaranteed annuity contracts been provided for all accrued benefits of all participants in this plan?			
	(6) Attach a statement providing the dates and amounts of these cash distributions or purchases of annuity contracts.			
	(7) If this is a defined benefit plan, is it intended, or is it a fact, that any or all of the participants in the terminating plan will be covered by a new or existing defined benefit plan of the employer?			
	(8) If "Yes," does the new plan give full prior service credit for vesting and entitlement purposes?			
	(9) If line 17h(1) or 17h(7) is "Yes," then —			
	(A) Has a Form 5300 been submitted for a determination letter for the other plan(s) involved? If "Yes," attach plan numbers.			
	(B) Has the IRS granted approval for a change in funding method in connection with this termination for the other plan(s) involved? If "Yes," attach a copy of the approval letter(s)			
	(10) Did the employer previously receive a reversion of assets upon termination of a defined benefit plan in the past 15 years? If "Yes," attach explanation			

Form **5310** (Rev. 11-2002)

EXHIBIT 1 – CONTINTUED

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17 (continued)	Yes	No	N/A
i Is this plan or trust currently under examination or is any issue related to this plan or trust currently pending before:			
• the Internal Revenue Service			
• the Department of Labor			
• the Pension Benefit Guaranty Corporation; or			
• any court?			
If "Yes," attach a statement explaining the issues involved, the contact person's name (IRS Agent, DOL Investigator, etc.) and their telephone number.			
Note: *Do not answer "Yes" if the plan has been considered under the Employee Plans Compliance Resolution System (EPCRS).*			
j Did any plan participant during the current plan year or in the 5 prior plan years, receive a single-sum distribution (see page 5 of the instructions) or have an annuity contract purchased by the plan from an insurance company on his or her behalf?			
If "Yes," state the largest amount so distributed or applied to purchase an annuity contract ▶ $ _____			
k (1) Does the value of plan assets at termination exceed the present value of a plan's liabilities within the meaning of section 401(a)(2)?			
(2) If the answer to line 17k(1) is "Yes," is the excess value the result of a change in the plan provisions other than the mere termination of the plan?			
l If the plan has been top-heavy, have top-heavy minimum benefits accrued or minimum contributions been made for non-key employees?			
m Do you maintain any other qualified plan under section 401(a)?			
If "Yes," provide a description as to the type of plan. (See page 5 of the instructions.)			

18 For defined contribution plans enter the information for the current plan year and the 5 prior plan years on the following schedule:

(Enter Plan Year end in MMDDYYYY format.)	Plan Year End	Plan Year End	Plan Year End	Plan Year End	Plan Year End	Current Plan Year .....
a Employer contributions						
b Forfeitures						
c Qualified Transfer/Rollover amount(s) received						

19a Indicate how distributions will be made on termination (check applicable box(es)):

(1) ☐ Single-sum distribution, including direct rollovers (2) ☐ Participating annuity contract(s)

(3) ☐ Non-participating annuity contract(s) (4) ☐ Transfer of assets and liabilities to another plan

(5) ☐ Other (specify) ▶ .....

b Will all distributions be made according to plan provisions and have proper consents been obtained, when applicable?	Yes	No

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Continued on next page

EXHIBIT 1-Form 5310, Continued

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20 Statement of net assets available to pay benefits as of the proposed date of plan termination or latest valuation date.

	Assets	Date ▶		
a	Total noninterest-bearing cash. (Attach explanation.)	20a		
b	Receivables:			
	(1) Employer contributions	20b(1)		
	(2) Participant contributions	20b(2)		
	(3) Income	20b(3)		
	(4) Other (Attach explanation.)	20b(4)		
	(5) Allowance for doubtful accounts	20b(5)	(	)
	(6) **Total.** Combine lines 20b(1) through 20b(5) ▶	20b(6)		
c	General Investments:			
	(1) Interest-bearing cash (including money market funds)	20c(1)		
	(2) Certificates of deposit	20c(2)		
	(3) U.S. Government securities	20c(3)		
	(4) Corporate debt instruments	20c(4)		
	(5) Corporate stocks	20c(5)		
	(6) Partnership/joint venture interests	20c(6)		
	(7) Real estate:			
	(A) Income-producing	20c(7)(A)		
	(B) Nonincome-producing	20c(7)(B)		
	(8) Loans (other than to participants) secured by mortgages	20c(8)		
	(9) Loans to participants. (See page 5 of the instructions.)	20c(9)		
	(10) Other loans (See page 5 of the instructions.)	20c(10)		
	(11) Value of interest in registered investment companies	20c(11)		
	(12) Value of funds held in insurance company general account	20c(12)		
	(13) Other (Attach explanation.)	20c(13)		
	(14) **Total.** Add lines 20c(1) through 20c(13) ▶	20c(14)		
d	Employer-related investments:			
	(1) Employer securities	20d(1)		
	(2) Employer real property	20d(2)		
e	Buildings and other property used in plan operation	20e		
f	**Total assets.** Add lines 20a, 20b(6), 20c(14), 20d(1), 20d(2), and 20e ▶	20f		
	Liabilities			
g	Benefit claims payable	20g		
h	Operating payables	20h		
i	Acquisition indebtedness	20i		
j	Other liabilities (Attach explanation.)	20j		
k	**Total liabilities.** Add lines 20g through 20j ▶	20k		
	Net Assets			
l	**Net assets.** Subtract line 20k from line 20f ▶	20l		

Form 5310 (Rev. 11-2002)

Exhibit 2, Instructions, Form 5310

Instructions for Form 5310

(Rev. November 2002)

Department of the Treasury
Internal Revenue Service

Application for Determination for Terminating Plan

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

A Change To Note

Schedule Q (Form 5300), Elective Determination Requests, is no longer required to be filed. Questions regarding the requirement under section 401(a)(4) that a plan be nondiscriminatory in the amount of contributions or benefits, including the general test, and questions regarding the minimum coverage requirements of section 410(b), including the average benefit test, are now included on Form 5310. File Schedule Q (Form 5300) only to broaden the scope of the determination letter to include other nondiscrimination requirements addressed by the questions on Schedule Q (Form 5300).

Public Inspection

Form 5310 is open to public inspection if there are more than 25 plan participants. The total number of participants must be shown on line 4e. See the instructions for line 4e for a definition of participant.

Disclosure Request by Taxpayers

The Tax Reform Act of 1976 allows a taxpayer to request the IRS to disclose and discuss the return and/or return information with any person(s) the taxpayer designates in a written request. Use **Form 2848**, Power of Attorney and Declaration of Representative, for this purpose.

How To Get Forms and Publications

Personal computer. You can access the IRS Web Site 24 hours a day, 7 days a week at **www.irs.gov** to:

- Order IRS products on-line.
- Download forms, instructions, and publications.
- See answers to frequently asked tax questions.
- Search publications on-line by topic or keyword.
- Send us comments or request help by e-mail.
- Sign up to receive local and national tax news by e-mail.

You can also reach us using file transfer protocol at **ftp.irs.ustreas.gov**.

CD-ROM. Order **Pub. 1796**, Federal Tax Products on CD-ROM, and get:

- Current year forms, instructions, and publications.
- Prior year forms, instructions, and publications.
- Popular tax forms that may be filled in electronically, printed out for submission, and saved for recordkeeping.
- The Internal Revenue Bulletin.

Buy the CD-ROM on the Internet at **www.irs.gov/cdorders** from the National Technical Information Service (NTIS) for $22 (no handling fee), or call 1-877-CDFORMS (1-877-233-6767) toll free to buy the CD-ROM for $22 (plus a $5 handling fee).

By phone and in person. You can order forms and publications 24 hours a day, 7 days a week, by calling **1-800-TAX- FORM** (1-800-829-3676). You can also get most forms and publications at your local IRS office.

For questions regarding this form, call the Employee Plans Customer Service, toll-free, at 1-877-829-5500 between 8:00 a.m. and 6:30 p.m. Eastern Time.

General Instructions

Purpose of Form

Use Form 5310 to request an IRS determination as to the qualified status (under section 401(a) or section 403(a)) of a pension, profit-sharing, or other deferred compensation plan upon plan termination.

This form can no longer be used to determine whether an employer is a member of an Affiliated Service Group status (ASG).

Type of Letter

- Determination Letter - issued to a specific employer.
- Sponsor Letter:

1. Advisory - issued to a sponsor of a volume submitter plan.

2. Opinion - issued to a sponsor of a prototype plan approved by the Washington, D.C. office.

Type of Plan

- A Defined Contribution Plan (DCP) is a plan that provides an individual account for each participant and for benefits based only on:

1. The amount contributed to the participant's account and

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

- A Defined Benefit Plan (DBP) is any plan that is not a DCP.

Note. *A qualified plan must satisfy section 401(a) including, but not limited to, participation, vesting, nondiscriminatory contributions or benefits, distributions, and contribution and benefit limitations.*

Who May File

Any plan sponsor or administrator of any pension, profit-sharing, or other deferred compensation plan (other than a multi-employer plan covered under PBGC insurance) may file this form to ask the IRS to make a determination on the plan's qualification status at the time of the plan's termination.

Use **Form 5300**, Application for Determination for Employee Benefit Plan, instead of Form 5310 if the plan sponsor or administrator is filing for a determination but will continue to maintain the trust after termination.

Who May Not File

This form may not be filed for:

- A multi-employer plan covered by PBGC insurance.
- A request on a determination on the plan's qualification status for a partial termination.
- A plan sponsor who is not certain if they are a member of an ASG.

In these cases, use Form 5300 instead of Form 5310.

What To File

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

- The appropriate user fee and **Form 8717**, User Fee for Employee Plan Determination Letter Request. Please submit a separate check for each application. For multiple employer plans, the fee is based on the number of participating employers.
- A copy of the plan document.
- A copy of all amendments made since the last determination letter.
- A statement explaining how the amendments affect or change this plan

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Exhibit 2, Instructions, Form 5310,

or any other plan maintained by the employer.
- All applications for plans that have, at any time in the past, received a favorable determination letter must include a copy of the plan's latest determination letter. See Specific Instructions for line 3c.
- A copy of the latest opinion letter for a standardized master or prototype plan, if any.
- A copy of the latest opinion or advisory letter for a master or prototype plan or volume submitter plan on which the employer is entitled to rely, if applicable.
- Copies of all records of all actions taken to terminate the plan.
- Schedule Q (Form 5300) if an elective determination is being requested, and any additional schedules or demonstrations required by these instructions or the instructions for Schedule Q.

Note. *See* **Guidelines for Demonstrations** *on page 6 regarding the content of the demonstrations that may be required by these instructions. The numbers assigned to the demonstrations that may be required by these instructions are the numbers of the corresponding demonstrations under Schedule Q (Form 5300) and, therefore, are not consecutive.*
- A copy of all required attachments and statements.
- **Form 6088**, Distributable Benefits from Employee Pension Benefit Plans, for all defined benefit or underfunded defined contribution plans.

Note. *A multiple-employer plan must submit a Form 6088 for* ***each*** *employer who has adopted the plan.*

Where To File

File Form 5310 at the address indicated below:

Internal Revenue Service
P.O. Box 192
Covington, KY 41012-0192

Requests shipped by Express Mail or a delivery service should be sent to:

Internal Revenue Service
201 West Rivercenter Blvd.
Attn: Extracting Stop 312
Covington, KY 41011

Private Delivery Services. You can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. The most recent list of designated private delivery services was published by the IRS in September 2002 and includes only the following:
- Airborne Express (Airborne): Overnight Air Express Service, Next Afternoon Service, Second Day Service.
- DHL Worldwide Express (DHL): DHL "Same Day" Service, DHL USA Overnight.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

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

How To Complete the Application

Applications are screened for completeness. **The application must be signed by the employer, plan administrator or authorized representative.** Incomplete applications may be returned to the applicant. For this reason, it is important that an appropriate response be entered for each line item (unless instructed otherwise). In completing the application, pay careful attention to the following:
- N/A (not applicable) is accepted as a response **only** if an N/A block is provided.
- If a number is requested, a number must be entered.
- If an item provides a choice of boxes to check, check only one box unless instructed otherwise.
- If an item provides a box to check, written responses are not acceptable.
- The IRS may, at its discretion, require additional information any time it is deemed necessary.

Note. *Rev. Proc. 2002-6, 2002-1 I.R.B. 203 publishes the guidance under which the determination letter program is administered. It is updated annually and can be found in the Internal Revenue Bulletin (I.R.B.).*

Specific Instructions

Line 1a. Enter the name, address, and telephone number of the plan sponsor/employer.

A plan sponsor means:
- In the case of a plan that covers the employees of one employer, the employer;
- In the case of a plan maintained by two or more employers (other than a plan sponsored by a group of entities required to be combined under section 414(b), (c), or (m)), the association, committee, joint board of trustees or other similar group of representatives of those who established or maintain the plan;
- In the case of a plan 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
- In the case of a plan that covers the employees and/or partner(s) of a partnership, the partnership.

The name of the plan sponsor/employer should be the same name that was or will be used when the Form 5500 series annual returns/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. This address should be the address of the sponsor/employer.

Line 1b. Enter the 9-digit employer identification number (EIN) assigned to the plan sponsor/employer. This should be the same EIN that was or will be used when the Form 5500 series annual returns/reports are filed for the plan. **Do not use a social security number or the EIN of the trust.** For a multiple employer plan, the EIN should be the same EIN that was or will be used by the participating employer when Form 5500 is filed by the employer.

Use **Form SS-4**, Application for Employer Identification Number, to apply for an EIN. Form SS-4 can be obtained at Social Security Administration (SSA) offices or by calling 1-800-TAX-FORM.

The plan of a group of entities required to be combined under section 414(b), (c), or (m), whose sponsor is more than one of the entities required to be combined, should only enter the EIN of one of the sponsoring members. This EIN **must** be used in all subsequent filings of 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, Form 2848, or other written designation. Either complete the contact's information on this line, or check the box and attach a Power of Attorney.

Line 3a. 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 this application. If "Yes" is checked, it means that each employee has been notified as required by regulations under Section 7476 or this is a one person plan. A copy of the notice is not required to be attached to this application. If "No" is checked or this

EXHIBIT 2 – CONTINUED

line is blank, the application may be returned.

Rules defining "interested parties" and the form of notification are in Regulations section 1.7476-1. For an example of an acceptable format, see Rev. Proc. 2002-6.

Line 3c. If you do not have a copy of the latest determination letter, or if no determination letter has ever been received by the employer, submit copies of the initial plan, or the latest plan for which you do have a determination letter, and any subsequent amendments and/or restatements, including all adoption agreements.

If you check "Yes," also **attach** a statement explaining how the amendments affect or change this or any other plan of the employer.

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

Line 4c. Plan year means the calendar, policy, or fiscal year on which the records of the plan are kept.

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

1. 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,

2. Retirees and other former employees who have a nonforfeitable right to benefits under the plan, and

3. The beneficiary of a deceased employee who is receiving or will in the future receive benefits under the plan. Include one beneficiary for each deceased employee regardless of the number of individuals receiving benefits.

Example. The payment of a deceased employee's benefit to three children is considered a payment to one beneficiary.

Line 5. Cash balance or similar plan. For this purpose, a "cash balance" formula is a benefit formula in a defined benefit plan by whatever name (e.g., personal account plan, pension equity plan, life cycle plan, cash account plan, etc.) that rather than, or in addition to, expressing the accrued benefit as a life annuity commencing at normal retirement age, defines benefits for each employee in terms more common to a defined contribution plan such as a single sum distribution amount (e.g., 10 percent of final average pay times years of service, or the amount of the employee's hypothetical account balance).

Line 6. If the plan employer/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. Attach a statement showing in detail:

1. All members of the group,

2. Their relationship to the plan sponsor,

3. The type(s) of plan(s) each member has, and

4. 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. File Form 5300.*

Line 7. Attach copies of records of all actions taken to terminate the plan, such as board of directors' resolutions.

Line 7b. Assets must be distributed as soon as administratively feasible after the date of termination. See Rev. Rul. 89-87, 1989-2 C.B. 81.

Line 7c. Check "No" only if you are certain that there will be no reversion of plan assets to the employer.

Line 10d. If you checked adverse business conditions as the reason for filing for termination, attach an explanation detailing the conditions that require termination of the plan.

Line 13. Complete this line to indicate how the plan satisfied section 410(b). Complete lines 13a through 13n if the plan satisfied the ratio percentage test for the year of termination. Complete line 13o if the plan satisfied the average benefit test for the year of termination. Complete line 13p if the plan satisfied coverage using one of the special requirements of Regulations section 1.410(b)-2(b)(5), (6), or (7). Plans that use the qualified separate lines of business rules of section 414(r) must attach Demo 1. See Guidelines for Demonstrations.

Line 13a. If the plan is disaggregated into two or more separate plans that are other than profit sharing and/or section(s) 401(k) and/or 401(m) plan(s), complete lines 13b through 13o with respect to each disaggregated portion of the plan. Attach additional schedules as necessary to identify the other disaggregated portions of the plan and to provide the requested coverage information, in the same format as line 13, separately with respect to the other portions of the plan, or to otherwise show that the other portions of the plan separately satisfy section 410(b).

Example. If this plan benefits the employees of more than one qualified separate line of business (QSLOB), the portion of the plan benefiting the employees of each QSLOB is treated as a separate plan maintained by that QSLOB and must separately satisfy section 410(b) unless the employer-wide plan testing rule in Regulations section 1.414(r)-1(c)(2)(ii) applies.

Section(s) 401(k) and/or 401(m) plan(s) must complete line 13(l) for the portion of the plan that is not a section 401(k) or a 401(m) plan. Also complete line 13(m)(1) to report the ratio percentage for the section 401(k) portion of the plan and line 13(m)(2) to report the ratio percentage for the section 401(m) portion of the plan.

Line 13c. If, for purposes of satisfying the minimum coverage requirements of section 410(b), you are applying the daily testing option in Regulations section 1.410(b)-8(a)(2) or the quarterly testing option in Regulations section 1.410(b)-8(a)(3), or, if you are using single-day "snapshot" testing as permitted under section 3 of Rev. Proc. 93-42, 1993-2 C.B. 540, enter the most recent eight-digit date (MMDDYYYY) for which the coverage data is submitted. If you are applying the annual testing option in Regulations section 1.410(b)-8(a)(4), enter the year for which the coverage data is submitted.

Line 13d. Include all employees of all entities combined under section 414(b), (c), (m), or (o). Also include all self-employed individuals, common law employees, and leased employees as defined in section 414(n) of any of the entities above, other than those excluded by section 414(n)(5). Certain other individuals may also be required to be counted as employees. See the definition of employee in Regulations section 1.410(b)-9. Also see Regulations section 1.410(b)-6(i), which may permit the employer to exclude certain former nonhighly compensated employees.

Note. *This note applies **only** to plans that include a qualified cash or deferred arrangement under section 401(k) or employee or matching contributions under section 401(m).*

If there are any contributions under the plan that are not subject to the special rule for section 401(k) plans and section 401(m) plans in Regulations section 1.401(a)(4)-1(b)(2)(ii)(B) (such as nonelective contributions), complete lines 13e through 13k with respect to the portion of the plan that includes these contributions and enter the ratio percentage for this portion of the plan on line 13l.

Otherwise, complete lines 13e through 13k with respect to the section 401(k) part of the plan (or the section 401(m) plan if there is no section 401(k) arrangement) and leave line 13l blank.

EXHIBIT 2 – CONTINUED

In all cases, enter the ratio percentages for the section 401(k) and the section 401(m) parts of the plan, as applicable, on line 13m. These percentages should be based on the actual nonexcludables in the sections 401(k) and 401(m) portions, respectively. It is suggested that these calculations be submitted with the application, but this is optional.

Do not base the calculations on lines 13(m)(1) and (2) on the nonexcludable employees reported on line 13(g) unless all of the disaggregated plans (profit sharing, section 401(k), and section 401(m)) have the same nonexcludable employees with the same age and service requirements.

Line 13e(1). Enter the number of employees who are excluded because they have not attained the lowest minimum age and service requirements for any employee under this plan. If the employer is separately testing the portion of a plan that benefits otherwise excludable employees, attach a separate schedule describing which employees are treated as excludable employees on account of the minimum age and service requirements under each separate portion of the plan.

Line 13e(2). Enter the number of employees who are excluded because they are collectively bargained employees as defined in Regulations section 1.410(b)-6(d)(2), regardless of whether those employees benefit under the plan. For this purpose, an employee covered under a Collective Bargaining Agreement (CBA) is not considered a collectively bargained employee if more than 2% of the employees who are covered under the agreement are professional employees as defined in Regulations section 1.410(b)-9.

Line 13e(3). Enter the number of employees who do not receive an allocation or accrue a benefit under the plan only because they do not satisfy a minimum hours of service requirement or a last-day-of-the-plan year requirement, 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 enter on this line any employees who have more than 500 hours of service, even if they are not employed on the last day of the plan year.

Line 13e(4). If this plan benefits the employees of one QSLOB, enter on this line the number of employees of the employer's other QSLOBs. This is not applicable if the plan is tested under the special rule for employer-wide plans in Regulations section 1.414(r)-1(c)(2)(ii).

Line 13e(5). Enter the number of employees who are nonresident aliens who receive no earned income (as defined in section 911(d)(2)) from the employer that constitutes income from sources within the United States (as defined in section 861(a)(3)).

Line 13g. Subtract the total of lines 13(e)(1) through 13(e)(5) as reported on line 13(f) from the total employees reported on line 13(d). The result is the number of "nonexcludable employees". These are the employees who cannot be excluded from the plan for statutory or regulatory reasons and must be considered in the calculation of the ratio percentage even though they might not "benefit" under the plan. If they meet the age and service requirements of section 410 and are not otherwise excludable employees, they must be included in this number.

Line 13h. Enter the number of employees on line 13g who are highly compensated employees (HCEs) as defined in section 414(q).

Line 13i. In general, an employee is treated as benefiting under the plan for coverage tests purposes 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 if they fail to receive an allocation of contributions and/or forfeitures, or to accrue a benefit, solely because they are subject to plan provisions that uniformly limit plan benefits, such as a provision for maximum years of service, maximum retirement benefits, application of offsets or fresh start wear-away formulas, or limits designed to satisfy section 415.

An employee is treated as benefiting under a plan to which elective contributions under section 401(k) or employee contributions and matching contributions under section 401(m) may be made if the employee is currently eligible to make such elective or employee contributions, or to receive a matching contribution, whether or not the employee actually makes or receives such contributions, (Regulations sections 1.401(k)-1(g)(4) and 1.401(m)-1(f)(4)). However, do not apply this rule to determine if an employee is to be counted as benefiting for lines 13i and 13k if, in accordance with the note following the instruction for line 13d, the information provided in lines 13e through 13k relates to the portion of the plan that is not subject to the rule in Regulations section 1.401(a)(4)-1(b)(2)(ii)(B).

Line 13k. See the instructions for line 13i for the meaning of "benefiting under the plan."

Line 13l. To obtain the ratio percentage:

Step 1. Divide the number on line 13k (nonexcludable NHCEs benefiting under the plan) by the number on line 13j (nonexcludable NHCEs).

Step 2. Divide the number on line 13i (nonexcludable HCEs benefiting under the plan) by the number on line 13h (nonexcludable HCEs).

Step 3. Divide the result from Step 1 by the result from Step 2.

Note. *If the ratio percentage entered on line 13l and/or line 13m is less than 70%, the plan does not satisfy the ratio percentage test. In this case, the plan must satisfy the average benefit test. A determination regarding the average benefit test can be requested on line 13o by submitting a Demo 5.*

Line 13m. See the Note following the instructions for line 13d. To determine the ratio percentages for the section 401(k) and all section 401(m) (matching and employee contribution) portions of the plan, follow the steps described in the instructions for lines 13d through 13l, but treat an employee as benefiting under the rules for section 401(k) plans and section 401(m) plans described in the instruction for line 13i.

Line 13o. Plans that use the average benefit test to satisfy section 410(b) for the year of termination must attach a Demo 5 (see Guidelines for Demonstrations) unless the plan has received a favorable determination regarding the average benefit test in the 3 years preceding the date of termination and the plan has not experienced a material change in the facts (including benefits provided and employee demographics) on which the determination was based.

Line 14. Do not complete line 14 if line 13p is completed. Complete line 14 to indicate how the plan satisfied the requirements of section 401(a)(4). Complete this line as of the date entered in line 13c. If this plan has been disaggregated into separate plans or restructured into component plans, attach a Demo 4 indicating how each separate disaggregated plan or restructured component plan satisfies the nondiscrimination in amount requirement of Regulations section 1.401(a)(4)-1(b)(2).

If any restructured component plan or disaggregated plan relies on a non-design based safe harbor or a general test, leave line 14c blank.

Line 14a. Check "Yes" if the plan is intended to satisfy the permitted disparity requirements of section 401(l).

Line 14b. To satisfy section 401(l), a plan must provide that the overall permitted disparity limits are not exceeded and specify how employer-provided contributions or benefits under the plan are adjusted, if necessary, to satisfy the overall permitted disparity limits. See Regulations section 1.401(l)-5.

Line 14e. Plans that use a non-design based safe harbor or a general test to satisfy section 401(a)(4) for the year of

EXHIBIT 2 - CONTINUED

termination must attach a Demo 6 (see Guidelines for Demonstrations) unless: (1) the plan has received a favorable determination regarding the non-design based safe harbor or general test in the 3 years preceding the date of termination, and (2) the plan has not experienced a material change in the facts (including benefits provided and employee demographics) on which the determination was based.

Line 15a(4). A dropped participant means any participant who has terminated employment even if their benefits have not been distributed.

Line 15a(6). Enter the number of participants separated from vesting service with less than 100% vesting in their accrued benefit or account balance.

Line 15b. Attach a schedule with the following information for each participant who has separated from vesting service with less than 100% vesting:

1. Name of participant,
2. Date of hire,
3. Date of termination,
4. Years of participation,
5. Vesting percentage,
6. Account balance/account benefit at the time of separation from service,
7. Amount of distribution,
8. Date of distribution, and
9. Reason for termination.

If there is a 20% reduction in participants, explain why this would not constitute a partial termination.

Line 17b. Regulations section 1.401(a)-20, Q&A-2 provides, in part, that the requirements of sections 401(a)(11) and 417 apply to the payments under annuity contracts, not to the distributions of annuity contracts.

Line 17c. The accrued benefits of a plan participant may not be reduced on plan termination. A plan amendment (including an amendment terminating a plan) that effectively eliminates or reduces an early retirement benefit or a retirement type subsidy for benefits attributable to pre-amendment service is treated as reducing the accrued benefit of a participant if subsequent to termination the participant could satisfy the conditions necessary to receive such benefits. See section 411(d)(6) and Regulations section 1.411(d)-3 and Rev. Rul. 85-6, 1985-1 C.B. 133.

Line 17d. Answer "Yes" if any funds were contributed in the form of, or invested in, obligations or property of the employer (including any entity related to the employer under section 414(b) or 414(c)).

Line 17f. If there is a contribution receivable that the employer intends to make by the required due date for section 412, and no funding deficiency will exist after the contribution is made, this line should be answered "No."

Line 17h(1). Provide a description of the transaction(s) and attach a statement which must include the:

1. Name(s) of the sponsor(s) involved;
2. Employer identification number(s) of the sponsor(s);
3. Plan administrator's name(s) and EIN; and
4. Plan name(s) and plan numbers.

Line 17h(4)(A). All plan liabilities must be satisfied before assets can revert to the employer upon termination of the plan. All liabilities will not be satisfied if the value of retirement-type subsidies are not provided participants who, after the date of the proposed termination, satisfy certain pre-termination conditions necessary to receive such benefits. See section 401(a)(2), Regulations section 1.401-2(a)(1) and Rev. Rul. 85-6.

Line 17h(4)(B). The annuity contracts purchased must be guaranteed for each participant. However, in order to maintain qualification of a continuing pension plan, the contracts covering participants' accrued benefits in the plan must not be distributed except in accordance with Regulations section 1.401-1(b)(1)(i).

Line 17h(7). Answer "Yes" if your plan is a defined benefit plan and you intend that any or all of your participants will be covered by a new or existing defined benefit plan of the employer.

Line 17h(10). If the answer to this item is "Yes," attach a list that includes the:

1. Name(s) of the plan sponsor(s),
2. Employer or sponsor's EINs,
3. Administrator's identification number(s),
4. Plan number(s), and
5. An explanation of the termination(s) including:
a. The amount(s) of the reversion(s),
b. The date(s) of termination, and
c. The reason(s) for termination.

Line 17j. For this question only, "single-sum distribution" will mean a single payment of the value of a participant's benefits or a series of payments that do not provide substantially equal payments (either alone or in conjunction with other benefit payments) over the life of the participant.

Line 17l. Section 416 provides that plan participants in a top-heavy plan who are non-key employees must accrue a minimum benefit or receive a minimum contribution.

Line 17m. If "Yes" is checked, attach a list for each plan with the following information:

1. Name of plan,
2. Type of plan,
3. Plan number, and
4. Indicate if another application is simultaneously being submitted with this application.

Line 18. Complete this only for defined contribution plans. Enter the date of the current plan year and the prior 5 plan-years in the columns indicated.

Line 18b. Enter the amount of forfeitures for each of the plan years entered. If these forfeitures resulted from a cashout for a year not listed on line 15a, attach a statement indicating the year of the cashout.

Line 18c. Enter the amount of transfers and rollovers received from qualified plans (under section 401(a) and/or conduit IRAs) for each of the plan years entered.

Line 19. Check the box or boxes that indicate the form(s) of distribution of benefits for your plan upon termination. Submit a statement that all distributions have been or will be made in accordance with plan provisions and proper spousal consents will be secured, when applicable.

Line 20. Complete the statement showing the estimated fair market value of the plan assets and liabilities as of the proposed date of termination or the latest valuation date.

Include and clearly identify all liabilities (other than liabilities for benefit payments due after the date of plan termination) that are unpaid as of the proposed termination date or that are paid or payable from plan assets after the proposed date of plan termination under the provisions of the plan. Liabilities include expenses, fees, other administrative costs, and benefit payments due and not paid before the proposed termination date or latest valuation date.

Line 20c(4). Include investment securities issued by a corporate entity at a stated interest rate repayable on a particular future date such as most bonds, debentures, convertible debentures, commercial paper and zero coupon bonds. Do not include debt securities of governmental units or municipalities.

Line 20c(7)(A). Include the current value of real property owned by the plan which produces income from rentals, etc. Do not include this property in line 20e (buildings and other property used in plan operations).

Line 20c(7)(B). Include the current value of real property owned by the plan which is not producing income or used in plan operations.

Line 20c(9) and (10). Attach a list regarding loans from the plan. Include the following information:

1. Name,
2. Dollar amount of each loan(s),
3. Date of loan,

EXHIBIT 2 - CONTINUED

4. Balance of the loan at the date of termination,
5. Account balance prior to the date of the loan,
6. Identify all disqualified persons as described by section 4975(f), and
7. Amortization and/or repayment schedule.

Line 20c(12). Include allocated and unallocated contracts including plan-owned life insurance.

Line 20i. "Acquisition indebtedness," for debt-financed property other than real property, means the outstanding amount of the principal debt incurred:

1. By the organization in acquiring or improving the property;
2. Before the acquisition or improvement of the property if the debt was incurred only to acquire or improve the property; or
3. After the acquisition or improvement of the property if the debt was incurred only to acquire or improve the property and was reasonably foreseeable at the time of such acquisition or improvement. For more details, see section 514(c).

Guidelines for Demonstrations

The following instructions describe additional information that must be included in the demonstrations.

Note. *Applicants must follow the guidelines in these instructions and indicate in their demonstrations where the elements in the guidelines are addressed. Applicants must explain why any elements have not been addressed.*

Information or computations that are used for more than one purpose or provided elsewhere in the application may not be cross-referenced.

Demo 1 - Qualified Separate Lines of Business

Provide a schedule with the following information, as applicable:

1. The section(s) for which the employer is testing on a separate line of business basis (i.e., section 410(b) or section 401(a)(26)),
2. The separate lines of business that have employees benefiting under the plan,
3. A demonstration of how the plan meets the nondiscriminatory classification requirement of section 410(b)(5)(B) and Regulations section 1.414(r)-8(b)(2) on an employer-wide basis, and
4. If the requirements of section 410(b) or section 401(a)(26) are to be applied to this plan on an employer-wide basis under the special rules for employer-wide plans, a demonstration of how the plan meets the requirements of the applicable special rule in Regulations sections 1.414(r)-1(c)(2)(ii) or 1.414(r)-1(c)(3)(ii).

Demo 4 - Test for Restructuring, Mandatory Disaggregation or Permissive Aggregation

Explain the basis of the disaggregation, permissive aggregation, or restructuring, identifying the aggregated or separate disaggregated plans or component plans, and demonstrate how any restructured component plans satisfy section 410(b) as if they were separate plans.

Any other plan that has been permissively aggregated with this plan should be identified by:
- Name,
- Plan number, and
- Employer Identification Number (EIN).

Describe the benefit or allocation formula of the other plan and indicate if that plan has received or been submitted for a determination letter.

Demo 5 - Average Benefit Test

1. A demonstration that a plan satisfies the average benefit test must describe compliance with the nondiscriminatory classification test of Regulations section 1.410(b) including, if applicable, the facts and circumstances determination under Regulations section 1.410(b)-4(c)(3).

Note. *The determination regarding the average benefit test is not available to a plan that satisfies the ratio percentage test.*

2. The demonstration for the average benefit test should provide, for each HCE and each NHCE, the compensation used in the test, the allocation or benefit being tested, and the actual benefit percentages. The average benefit percentages for HCEs and NHCEs must be provided.

3. A plan that is deemed to satisfy the average benefit percentage test under the special rule in Regulations section 1.410(b)-5(f) must demonstrate that the plan would satisfy the ratio percentage test if the excludable employee and mandatory disaggregation rules for collectively bargained and noncollectively bargained employees did not apply.

4. In addition to the above information, the average benefit percentage demonstration must identify and describe the method used for determining employee benefit percentages (see Regulations sections 1.410(b)-5(d) and (e)). Also, include the applicable information listed below, under the heading **All Plans**.

Note. *The demonstration must include the portion of the coverage test showing the data used in the calculations and the calculations for each participant. Participants need not be identified. However, the IRS may request that additional information be submitted if necessary.*

All Plans

All plans using the average benefit test must also include the following information on Demo 5:

1. The testing period (see Regulations section 1.410(b)-5(e)(5) for an optional averaging rule).

2. The definition of testing service (including imputed and pre-participation service).

3. A description of the testing group (see Regulations section 1.410(b)-7(e)).

4. Whether the employee benefit percentages are determined on a contributions or benefits basis.

5. Whether permitted disparity under Regulations section 1.401(a)(4)-7 is imputed in determining employee benefit percentages.

6. An explanation of how allocation or accrual rates are grouped on the test.

7. A description of how contributions or benefits are normalized on the test, including the actuarial assumptions used.

8. The definition of section 414(s) compensation used in determining plan year compensation or average annual compensation and a demonstration showing the definition as nondiscriminatory. If plan year compensation or average annual compensation is determined using a definition of compensation that satisfies Regulations section 1.414(s)-1(c)(2) or (3), the explanation should state whether the definition satisfies Regulations section 1.414(s)-1(c)(2) or (3). For guidance pertaining to this demonstration, see the guidelines for Demo 9, nondiscriminatory compensation, in the instructions for Schedule Q (Form 5300).

9. A description of the method of determining compensation used in determining employee benefit percentages.

10. The testing age of employees (not applicable to defined contribution plans testing on a contribution basis).

Plans with Defined Benefits Plans in the Testing Group

Plans with DBPs in the testing group must also provide the following information, if applicable.

11. Show if accruals after normal retirement age are taken into account and, if such accruals are disregarded as provided in Regulations section 1.401(a)(4)-3(f)(3), the basis on which they are disregarded.

EXHIBIT 2 – CONTINUED

12. Show if most valuable rates must be used under Regulations section 1.410(b)-5(d)(7), and, if so, show how those rates are determined.

13. Show if a defined benefit plan disregards offsets described in Regulations section 1.401(a)(4)-3(f)(9), give a description of such offsets, and show how they satisfy Regulations section 1.401(a)(4)-3(f)(9).

14. Show if any disability benefits are taken into account in determining employees' accrued benefits under Regulations section 1.401(a)(9)-3(f)(2), and, if so, cite the plan provisions that permit these disability benefits to be taken into account.

15. Show if any other special rules in testing a plan for nondiscrimination in amounts are applied, e.g., the rules applicable to the determination of benefits on other than a plan-year basis described in Regulations section 1.401(a)(4)-3(f)(6), the adjustments for certain plan distributions provided in Regulations section 1.401(a)(4)-3(f)(7), and the adjustment for certain qualified preretirement survivor annuity charges as provided in Regulations section 1.401(a)(4)-3(f)(8).

16. For plans with employee contributions not allocated to separate accounts, give a description of the method for determining the employer-provided accrued benefit under Regulations section 1.401(a)(4)-6(b) and the location of relevant plan provisions. If the method for determining the employer-provided accrued benefit is the composition-of-workforce method, the demonstration must show that the eligibility requirements of Regulations section 1.401(a)(4)-6(b)(2)(ii) are satisfied; if the grandfather rule of Regulations section 1.401(a)(4)-6(b)(4) is used, the demonstration must show, if applicable, that the benefits provided on account of employee contributions at lower levels of compensation are comparable to those provided on account of employee contributions at higher levels of compensation.

Employee Benefit Percentages Determined Using Cross-Testing

17. Provide a description of the method used to determine equivalent allocations and benefits on the test.

Demo 6 - General Test

A determination that a plan satisfies any of the general tests in Regulations sections 1.401(a)(4)-2(c), 1.401(a)(4)-3(c), 1.401(a)(4)-8(b)(2), 1.401(a)(4)-8(c)(2), 1.401(a)(4)-8(c)(3)(iii)(C), and 1.401(a)(4)-9(b) must include a nondiscrimination test showing that the plan passes the relevant general test, and provide the information listed under **All Plans (unless otherwise noted)** and, if applicable, under DBPs Only or Cross-Tested Plans Only. However, the IRS may request that additional information be submitted if necessary.

All Plans (unless otherwise noted)

All plans must submit the information requested in items 1 through 11.

1. Provide the portion of the nondiscrimination test that provides the data for each participant and demonstrates that the plan satisfies section 401(a)(4). Participants need not be identified by name. Tests that include two or more component plans (such as profit sharing, money purchase, sections 401(k) and 401(m)) should show the allocations or benefits under each component plan.

2. Identify each rate group under the plan and include a demonstration of how each rate group satisfies section 410(b). If the plan is a DBP that is being tested on the basis of the amount of benefits, rate groups must be determined on the basis of both normal and most valuable accrual rates which are expressed as a dollar amount or a percentage of compensation. If the most valuable accrual rate is determined in accordance with the special rule in Regulations section 1.401(a)(4)-3(d)(3)(iv) (floor on most valuable accrual rate), this must be indicated.

3. State whether the plan is being tested on a contributions or benefits basis.

4. Provide the plan year being tested.

5. Provide a description of the method of determining allocation or accrual rates, and if the plan is tested on a benefits basis, the measurement period and definition of testing service (including imputed and pre-participation service).

6. State whether the test is imputing permitted disparity under Regulations section 1.401(a)(4)-7.

7. Provide an explanation of how allocation or accrual rates are grouped.

8. Provide an explanation of how benefits are normalized on the test, including the actuarial assumptions used (not applicable to defined contribution plans testing on a contributions basis).

9. State the definition of section 414(s) compensation used in determining plan year compensation or average annual compensation and a demonstration showing the definition as nondiscriminatory. If plan year compensation or average annual compensation is determined using a definition of compensation that satisfies Regulations section 1.414(s)-1(c)(2) or (3), state whether the definition satisfies Regulations section 1.414(s)-1(c)(2) or (3). See the guidelines for Demo 9, nondiscriminatory compensation, in the Instructions for Schedule Q (Form 5300) for guidance pertaining to this demonstration.

10. Provide the method of determining average annual compensation used in testing the plan for nondiscrimination as defined in Regulations section 1.401(a)(4)-3(e)(2) or give a description of the period used in determining plan year compensation.

11. Provide the testing age of employees, include fractions of year if test is based on fractional age (not applicable to DCPs testing on a contributions basis).

Defined Benefit Plans Only

All DBPs must also provide the following information if applicable.

12. State whether accruals after normal retirement age are taken into account, and if such accruals are disregarded as provided in Regulations section 1.401(a)(4)-3(f)(3), provide the basis on which they are disregarded.

13. State whether early retirement window benefits are taken into account in determining accrual rates and whether such benefits are being disregarded under Regulations section 1.401(a)(4)-3(f)(4)(ii). Also provide the basis on which they are disregarded.

14. State whether any unpredictable contingent event benefits were taken into account in determining accrual rates under Regulations section 1.401(a)(4)-3(f)(5) and provide the basis on which they are taken into account.

15. State whether the plan disregards offsets described in Regulations section 1.401(a)(4)-3(f)(9), provide a description of such offsets, and show how they satisfy Regulations section 1.401(a)(4)-3(f)(9).

16. State whether any disability benefits are taken into account in determining employees' accrued benefits under Regulations section 1.401(a)(4)-3(f)(2), and if so, cite the plan provisions that permit these disability benefits to be taken into account.

17. State whether any other special rules in Regulations section 1.401(a)(4)-3(f) are applied in testing a plan for nondiscrimination in amount. For example:

- The rules applicable to the determination of benefits on other than a plan-year basis described in Regulations section 1.401(a)(4)-3(f)(6),
- The adjustment for certain plan distributions provided in Regulations section 1.401(a)(4)-3(f)(7), and
- The adjustment for certain qualified preretirement survivor annuity charges as provided in Regulations section 1.401(a)(4)-3(f)(8).

EXHIBIT 2 – CONTINUED

18. Plans with employee contributions not allocated to separate accounts should include:

- A description of the method for determining whether employee-provided accrued benefits are nondiscriminatory under Regulations section 1.401(a)(4)-6(c),
- The method for determining the employer-provided accrued benefit under Regulations section 1.401(a)(4)-6(b), and
- The location of relevant plan provisions.

If the method for determining the employer-provided accrued benefit is the composition-of-workforce method, the demonstration must show that the eligibility requirements of Regulations section 1.401(a)(4)-6(b)(2)(ii) are satisfied.

If the grandfather rule of Regulations section 1.401(a)(4)-6(b)(4) is used, the demonstration must show, if applicable, that the benefits provided on account of employee contributions at lower levels of compensation are comparable to those provided on account of employee contributions at higher levels of compensation.

19. If the plan would otherwise fail to satisfy the general test in Regulations section 1.401(a)(4)-3(c)(1), and a determination is being sought that the failure may be disregarded as permitted by the special rule in Regulations section 1.401(a)(4)-3(c)(3), describe the relevant facts and circumstances that support the use of this rule.

Cross-Tested Plans Only

20. Provide a description of the method used to determine equivalent allocations and benefits.

21. Defined Contribution Plans. The demonstration must list each participant's allocation rate for the plan being tested and list the equivalent benefit accrual rate (including component plans) for each participant. Also, the demonstration must show how the plan satisfies one of the conditions in Regulations section 1.401(a)(4)-8(b)(1)(i)(B) in order to be eligible to test on a benefits basis.

Demo 6 - Safe Harbor for Uniform Points Plans

Each demonstration of the safe harbor for uniform points plans in Regulations section 1.401(a)(4)-2(b)(3) should include the following information:

1. Provide a description of the plan's allocation formula and the location of relevant plan provisions.

2. State the definition of section 414(s) compensation used in determining plan year compensation and give a demonstration showing the definition as nondiscriminatory. If the plan determines plan year compensation using a definition of compensation that satisfies Regulations section 1.414(s)-1(c)(2) or (3), state whether the definition satisfies Regulations section 1.414(s)-1(c)(2) or (3).

See the guidelines for Demo 9, nondiscriminatory compensation, in the Instructions for Schedule Q (Form 5300) for guidance pertaining to this demonstration.

3. Provide the portion of the nondiscrimination test that provides the data for each participant and demonstrates that the plan satisfies section 401(a)(4). The data must include the units for each participant being tested and the underlying basis for the units such as age, years of service or compensation. Show the allocation rate for each eligible participant.

Show the average of the allocation rates (determined without imputing permitted disparity) for the highly compensated and for the nonhighly compensated employees benefiting under the plan.

Demo 6 - Alternative Safe Harbor for Flat Benefit Plans

Each demonstration of the alternative safe harbor for flat benefit plans in Regulations section 1.401(a)(4)-3(b)(4)(i)(C)(3) must set forth the average of the normal accrual rates for all nonhighly compensated nonexcludable employees and the average of the normal accrual rates for all highly compensated nonexcludable employees. In addition, the demonstration should provide the additional information described under "Demo 6 - General Test," relating to the determination of normal accrual rates, except for the information described in paragraphs numbered 1, 2, 6, 18, and 19.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to determine whether you meet the legal requirements for plan approval.

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 the forms listed below will vary depending on individual circumstances. The estimated average times are:

	Recordkeeping	Learning about the law or the form	Preparing, copying, assembling, and sending the form to the IRS
Form 5310	64 hr., 5 min.	21 hr., 35 min.	25 hr., 27 min.
Form 6088	6 hr., 24 min.	1 hr., 12 min.	1 hr., 21 min.

If you have any comments concerning the accuracy of these time estimates or suggestions for making these forms simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001.

Do not send these forms to this address. Instead, see **Where To File** on page 2.

EXHIBIT 3-Plan Termination Standards

Employee Benefit Plan

Plan Termination Standards

Worksheet for Determination of Qualification Upon Termination

Instructions – Complete Section I for all plans. Complete Section II if the plan provided for employer contributions and it is not a church or governmental plan. A "yes" answer to a question generally indicates there is no qualification problem with respect to that item and a "no" answer indicates a potential qualification problem. Specific guidance for each question is provided in the correspondingly enumerated item on the related Document 6678, Explanation for Form 6677.

Name of plan

Specialist's initials and date

Reviewer's initials and date

Application Processing Questions	Reference	Check one		
		Yes	No	N/A
Section I **1**. Has the plan met the permanency requirement of I.T. Regs. 1.401 -1 (b)(2)?				
2. If a partial or complete termination or, in the case of a profit sharing or stock bonus plan, a complete discontinuance of contributions occurred in a year prior to the stated date of termination, were the accrued benefits or account balances of the affected participants nonforfeitable at the time, as required by section 411(d)(3) of the Code?				
3. If any funds revert to, or become available to the employer, is the reversion in accordance with qualification requirements? *If "yes," and the amount is substantial, complete Form 5666, EP/EO Information Report, or Form 5346, Examination Information Report, for the year of the reversion and refer to the Examination Division.*				
4. In the case of a defined contribution plan, does it appear that allocations up to the time of termination have been nondiscriminatory?				
5. In the case of a defined benefit plan: a. Would the formula for computing benefits be nondiscriminatory as of the date of termination if the plan were going to be continued?				
b. If (a) above is answered "yes," will each participant receive a distribution equal to the present value of his or her accrued benefits as of the date of termination?				
c. When assets exceed the present value of accrued benefits as of the date of termination and the excess does not revert to the employer, has the excess been applied to increase benefits in a nondiscriminatory manner?				
d. If assets are less than the present value of accrued benefits as of the date of termination, have they been allocated in accordance with the rules set forth in part 5.d. of the Explanation related to this Worksheet?				
e. Does the plan provision allowing the employer to take a reversion or to increase the amount of any reversion go into effect before the end of the fifth calendar year following the date such provision was adopted?				
6. Does the plan appear to comply with Section 415 of the Code?				
a. If annuity contracts are distributed, do they include life insurance policies with "springing cash value"?				
7. Is the mode of distribution (e.g., lump sum, life annuity, etc.) in accordance with plan provisions?				
8. Do the balance sheet assets, reflected on the Form 5310, reconcile with distributable benefits as reflected on Form 5310, Form 6088 or other data on distributions submitted with the application, taking into account any reversions?				
9. Does the plan appear to be free of prohibited transactions and/or exclusive benefit violations?				
10. Is the trust a "wasting trust"? *[If "Yes"complete Form 5666, EP/EO Information Report, or Form 5346, Examination Information Report, for the year of the termination and all subsequent years and refer to the Examination Division.]*				

Form **6677** (Rev. 6-90) Page 1 — Department of the Treasury – Internal Revenue Service

EXHIBIT 3 – CONTINUED

Application Processing Questions	Reference	Check one		
		Yes	No	N/A
Section II **1**. Does the plan appear to comply with section 410 of the Code?				
2. Does the plan appear to comply with section 411 of the Code?				
3. If the plan has been involved in any transfer of assets or liabilities (e.g., merger of plans or spinoff of assets or liabilities) were the requirements of I.T. Regs. 1.414(l)-1 satisfied?				
4. Does the plan appear to comply with section 416(c) of the Code?				
5. If the plan is subject to section 412 of the Code, is there any evidence the plan was actually terminated on a date later than the stated date of termination? (Review should include the resolution to terminate)				
6. Does this plan have an outstanding favorable determination letter?				
7. If the plan has been amended since the last determination letter: a. Do all plan amendment(s) which alter the vesting schedule satisfy section 411(a)(10) of the Code?				
b. Do all plan amendment(s) which decrease benefits satisfy section 411 (d)(6) of the Code?				
c. Does the termination satisfy section 411(d)(6) of the Code?				
8. If the plan is sponsored by an employer who is a member of a controlled group of corporations, a group of trades or businesses under common control or an affiliated service group, does the plan comply with the applicable requirements of sections 414(b), (c), (m), or (n) of the Code?				

Comments

Form **6677** (Rev. 6-90) Page 2 | Submit | Reset | Department of the Treasury – Internal Revenue Service

EXHIBIT 4-Explanation-Plan Termination Standards

Department of the Treasury
Internal Revenue Service

Explanation for Worksheet, Form 6677

Plan Termination Standards

Document 6678 (4-1981) Cat. No. 45351C

The purpose of this worksheet and explanation is to assist in identifying problems concerning plan termination. The worksheet does not cover every potential problem, and the specialist should be alert for issues not mentioned on the worksheet which may affect the plan's qualification. For example, the ERISA Non-Compliance Enforcement Program (ENCEP) procedures may apply to a terminating plan that has not met qualification requirements. If needed, additional information and documents should be requested from the taxpayer. Cases involving questions and issues for which there are insufficient guidelines should be referred to the National Office for Technical Advice. It is not intended that every termination application be developed as an examination case, hence wording such as "does it appear" or "are there indications" is used in presenting many of the questions on the worksheet. Answers to questions on the worksheet should be based on information provided in the application and the plan file and, if necessary, by contacting the plan sponsor or his representative. Only if there is an indication of potential defect(s) or noncompliance should a determination case be converted to an examination case.

Note: Numbered and lettered explanations which follow correspond to the same numbered and lettered question items on Form 6677. They are set in boldface type for easy identification.

Section I

1. If a plan is discontinued within a few years after its adoption there is a presumption that it was not intended as a permanent program from its inception. Unless business necessity required the discontinuance, termination or partial termination, the qualification of the plan may be lost retroactively. The business necessity must have been unforseeable when the plan was adopted and not within the control of the employer. See section 1.401-1(b)(2) of the regulations and Rev. Rul. 69-25 1969-1 C.B. 113.

Bankruptcy or insolvency would ordinarily be considered as prima facie evidence of such business necessity. Discontinuance of the business of the employer may also constitute such business necessity. Some other acceptable reasons for termination of a plan may, depending on the circumstances, include:

(1) Substantial change in stock ownership.
(2) Merger.
(3) Substitution of another type plan.
(4) Employee dissatisfaction with the plan and preference for a current pay increase.
(5) Financial inability to continue the plan.
(6) Change in the law which regulates retirement plans.

Business necessity also includes other valid business reasons which significantly impair the attractiveness of a plan as a means of providing employee compensation.

Whatever the reason given for the termination of the plan, the facts and circumstances leading to its discontinuance must establish the taxpayer's original intention of the plan's permanence.

As time passes however, the element of business necessity becomes less important in determining if a plan, from its inception, was intended to be permanent. As an example, if a plan has been in existence for more than 10 years, termination without a valid business reason has been held not to affect its qualification. See Rev. Rul. 72-239, 1972-1 C.B. 107, also see section 1.401-1(b)(2) of the regulations.

In addition, repetitive failure to make contributions in a discretionary profit-sharing plan, during profitable years, may be indicative of a lack of intent that a plan be a permanent one.

2. Whether or not a plan is terminated, partially terminated, or contributions have been discontinued, depends in general on the facts and circumstances in the particular case. When the termination or partial termination is proposed rather than consummated, the facts and circumstances must support a conclusion that neither the termination nor the partial termination has occurred prior to the proposed date.

IRC 411(d)(3) requires that, in the event of termination or partial termination or in the case of a plan to which IRC 412 does not apply, upon complete discontinuance of contributions under the plan, the right of all affected employees to benefits accrued to the date of such termination, partial termination or discontinuance, to the extent funded as of such date, or the amounts credited to the employees' accounts, must be nonforfeitable.

Section 1.411(d)-2(b) of the regulations provides for a facts and circumstances test in determining whether or not a partial termination occurs. Such facts and circumstances include the exclusion of a group of employees who have previously been covered by the plan, either by reason of a plan amendment or severance by the employer.

The regulations under Code section 411 do not refer to the curtailment concept as determinative of whether there has been a partial termination. Therefore, where benefits or employer contributions are reduced or the eligibility or vesting requirements under the plan are made less liberal, facts and circumstances other than the mere fact that benefits, employer contributions, etc. have been cut back enter into the determination of whether there has been a partial termination.

Section 1.411(d)-2(b)(2) of the regulations sets forth a "special rule" for defined benefit plans which cease future accruals. A partial termination shall be deemed to occur if a potential for reversion is created or increases as a result of the cessation of future benefit accruals. If there is no potential for reversion however, then no partial termination results merely because of the cessation of future accruals. A partial termination could occur because of factors other than such cessation or decrease. The potential for reversion is a factor which may also be used in considering where there is a partial termination in defined contribution plans. However, in a defined contribution plan, potential reversion is part of the facts and circumstances test set out in section 1.411(d)-2(b)(1) of the regulations.

In Rev. Rul. 81-27, 1981-(4l).R.B.12, a partial termination was deemed to have occurred when an employer discharged 95 of the 165 participants under the plan in connection with the dissolution of one division of the employer's business.

In Rev. Rul. 73-284,1973-(2C).B. 139, a partial termination was deemed to have occurred when the employer's business was closed and 12 of the 15 participating employees were discharged upon refusing the opportunity to transfer to the employer's new business location.

In the Revenue Rulings cited above a significant percentage of employees, in each case over 50%, were effectively excluded from participating in the plan. These rulings represent clear-cut examples where the facts and circumstances show that a partial termination has occurred. There is no fixed percentage of employees, nor any fixed number of employees, that we may set as guidelines. The facts and circumstances must be considered for each case.

A reduction in future benefit accruals or employer contributions, or a situation in which the eligibility or vesting requirements under the plan are made less liberal, does not necessarily constitute a partial termination. This is because the regulations under Code Sec. 411 no longer refer to the curtailment concept. Instead, in order to bring about a partial termination in such a situation:

(1) A potential for reversion must have been created or increased (applies to either defined benefit or defined contribution plans), and/or,
(2) Prohibited discrimination has occurred or the potential for discrimination has been increased, and/or
(3) Situations similar to those noted above are found.

EXHIBIT 4 – CONTINUED

Example 1-A money purchase plan is amended by the employer to bring about a cessation of future accruals. Here, a potential for reversion is created. Since forfeitures in a money purchase plan are used to reduce future employer contributions, a cessation of accruals eliminating future contributions would result in an accumulation of forfeitures that would revert to the employer.

Example 2-A money purchase plan is amended by the employer to reduce future contributions from an annual contribution rate of 6 percent of compensation to a rate of 3 percent of compensation. In this case, one must gauge whether the expected future forfeitures will exceed future employer contributions. If so, a reversion to the employer is likely.

Example 3-The employer ceases future accruals in a defined benefit plan at a time when the fair market value of the assets is greater than the present value of the accrued benefit for all the participants. A potential for reversion exists since any forfeitures would be likely to cause assets to further exceed the present value of accrued benefits.

Example 4-A corporation which has a qualified profit sharing plan decides to relocate to another state. While it offers to pay for moving expenses, the only employees who decide to move are prohibited group members. The specialist might conclude a partial termination has not occurred based soley on the percentage of employees affected. However, the forfeitures from the rank and file who do not move would go to the remaining participants who are prohibited group members and therefore, a partial termination would be deemed to occur because of the discrimination.

Please note that the factors of reversion, prohibited discrimination, and reduction in the number of employees covered by the plan sometimes may not result in a partial termination when considered separately, but, when considered together in a particular case, may interrelate in such a way as to constitute a partial termination. For example, a reduction of 20% of the number of employees covered would not by itself cause a partial termination, unless there were additional factors such as prohibited discrimination or potential for reversion. In addition, where the 20% represented the elimination of a division, a plant closing, the discontinuance of a particular product, etc., such factors add additional weight to the 20% and should also be considered in reaching any conclusion.

Generally speaking, the amendment of one kind of plan into another will not be considered a partial termination unless the factors of prohibited discrimination, reversion and reduction in the number of employees covered by the plan are present.

However, even in the absence of these factors, a defined benefit plan will be deemed to be terminated if it is amended in such a way as to become an individual account plan. Income Tax Regulations Section 1.411(d)-2(c)(2) provides that the IRS will consider a plan terminated if the PBGC determines that the plan is terminated under sec. 4041 of Title IV of ERISA. Sections 4041(f) and 4021(b) of ERISA provide that a defined benefit plan shall be considered terminated if it is amended to become an individual account plan described in sec. 3(34) of Title I of ERISA. Section 3(34) equates an individual account plan with a defined contribution plan.

The pre-ERISA concept of "comparable plans" as expressed in I.T. Reg. Sec. 1.381(c)(11)-1(d)(4) is not applicable in determining whether a plan that is subject to section 411(d) of the Code has been terminated or partially terminated as a result of changing one type of plan into another type by amendment.

3. In general, no part of the corpus of the trust of a qualified plan may revert to the employer. However, in the event of a termination of a defined benefit plan, amounts in excess of that required to satisfy all liabilities with respect to employees and their beneficiaries may revert to the employer if such amounts are the result of an erroneous actuarial computation. See IRC 401(a)(2) and Section 1.401-2 of the regulations. In the case of a defined contribution plan, amounts that may not be allocated due to the limitations on contributions in IRC 415 may revert to the employer.

4. A trust forming part of a pension plan is precluded from using forfeitures to increase benefits prior to plan termination. See IRC 401(a)(8) and Section 1.401-7 of the regulations.

Funds in a stock bonus or profit-sharing plan arising from forfeitures on termination of service may, if the plan so provides, be allocated to the remaining participants. However, such allocations must not result in prohibited discrimination. See Section 1.401-4(a)(1)(iii) of the regulations.

If there is a high turnover rate and the plan does not provide for early vesting, officers, shareholders and highly compensated employees usually tend to remain in service the longest and, therefore, benefit from the forfeitures of rank and file employees. This could result in prohibited discrimination. In addition, if forfeitures are allocated on the basis of account balances, the likelihood of discrimination is increased. See Rev. Rul. 71-4, 1971-1 C.B. 120.

Variations in contributions or benefits may be provided so long as the plan, viewed as a whole for the benefit of the employees in general, with all its attendant circumstances, does not discriminated in favor of the prohibited group. See Section 1.401-4(a)(2)(iii) of the regulations. If the allocation formula, method of allocating contributions and, where applicable, forfeitures would not be discriminatory on an ongoing basis, a distribution of the account of each participant will not result in discrimination.

5. These guidelines are applicable to a defined benefit plan whether or not the early termination restrictions of Section 1.401-4(c) of the regulations apply. All present values and the value of plan assets must be computed using assumptions that are acceptable under Section 4044 of ERISA. See also Rev. Rul 80-229, 1980-34 I.R.B. 8.

a. If the plan formula for computing benefits would be discriminatory if the plan had not terminated, the allocation guidelines set forth in this item (item 5) are not applicable. If the plan was discriminatory at the time of termination, application of the guidelines will not restore its qualification.

b. If the plan assets, as of the date of termination, are not less than the present value of the accrued benefits as of such date, a distribution to each participant of assets equal to the present value of his or her accrued benefit will not be discriminatory within the meaning of IRC 401(a)(4) if the formula for computing benefits as of the date of termination would not be discriminatory had the plan not terminated.

A "no" answer to question 5b of Section I of the Worksheet does not indicate a loss of plan qualification if the answer to question 5c or 5d of Section I of the Worksheet (whichever is applicable) is "yes."

c. If the assets exceed the present value of the accrued benefits as of the date of termination, the plan will not be considered discriminatory if such excess reverts to the employer or is applied to increase benefits in a nondiscriminatory manner. One method of applying the assets to increase benefits in a nondiscriminatory manner is to amend the plan to provide a new benefit structure so that (1) the benefit structure would not be discriminatory if the plan were not terminated and (2) the present value of the revised accrued benefits equals the value of the assets as of the date of termination, and to distribute assets equal to the present value of the revised accrued benefits. The new benefit structure must satisfy other requirements of the law (e.g., IRC 411(d)(6) and IRC 415).

d. In the case of a terminating plan in which the assets are less than the present value of accrued benefits as of the date of termination, plan assets allocated in accordance with the priorities set forth in the following five paragraphs will not be discriminatory.

(1) Except as provided in item 5d(3) of this section, the assets of a plan are allocated in accordance with Section 4044(a)(1),(2),(3), and (4)(A) of ERISA. PBGC has authority to approve this allocation.
(2) Notwithstanding any other paragraphs, in the case of assets, restricted by Section 1.401-4(c) of the regulations, assets may be reallocated to the extent necessary to help satisfy item 5d(4) of this section.
(3) In the case of a plan establishing subclasses within the meaning of Section 4044(a) of ERISA, the assets defined in any paragraph of section 4044(a) of ERISA may be reallocated within such paragraph to the extent that such reallocation helps to satisfy item 5d(4) of this section.

EXHIBIT 4 – CONTINUED

(4) Subject to the requirements of item 5d(1) of this section above, the assets shall be allocated, to the extent possible, so that the rank and file receive from the plan at least the same proportion of the present value of their accrued benefits (whether or not forfeitable) as employees who are officers, shareholders, or highly compensated.
(5) Subject to items 5d(1), (2), (3) and (4) of this section, the assets shall be allocated in accordance with Section 4044(a)(4)(B), (5), and (6) of ERISA.

6. The annual additions allocated to a participant's account in a limitation year under a defined contribution plan maintained by the employer may not exceed the limitation on additions under IRC 415(c). In general, annual additions are the sum, for any limitation year, of employer contributions, forfeitures, and the lesser of one half of employee contributions, or the amount of employee contributions in excess of six percent of the employee's compensation. Excess annual additions, as a result of the allocation of forfeitures or a reasonable error in estimating a participant's annual compensation, will not be deemed annual additions if the excess amounts were properly reallocated to other participants or held unallocated in a suspense account for future reallocation or reduction of employer contributions, if the plan so provides.

A defined benefit plan is not qualified if it provides for the payment of benefits, with respect to a participant, which exceed the limitations of IRC 415(b). If a defined benefit plan provided a retirement benefit other than a straight life annuity or a qualified joint and survivor annuity, the dollar and the compensation limitations of the plan should have been adjusted to the actuarial equivalent of the limitations on a straight life annuity. If a defined benefit plan provided a benefit beginning before age 55, the dollar limitation of the plan should have been adjusted to the actuarial equivalent of the dollar limitation on a benefit beginning at age 55. A defined benefit plan may provide a total annual benefit not in excess of $10,000 without regard to the compensation limitation, the age at which benefits commence, or a form of benefit payment other than a straight life annuity, if the employee has not at any time participated in a defined contribution plan of the employer. All the above limitations are reduced proportionately for service of less than 10 years at retirement.

Plans must be aggregated for the above tests. See sections 1.415-1 to 1.415-10 of the regulations.

7. The selected mode of distribution must be in accordance with the terms of the plan and benefits provided for individuals, other than the employee-participant, and must be within the incidental limits set out in Rev. Rul 72-240,1972-1 C.B. 108, and Rev. Rul 72-241,1972-1 C.B. 108. For stock bonus plans, benefits must be distributable in the form of employer securities. See Section 1.401-1(b)(1)(iii) of the regulations.

A "no" answer to question 7 does not indicate a loss of plan qualification when distributions have not yet been made, provided appropriate adjustments can be made before actual distribution. However, when distributions have already occurred, a "no" answer may indicate a qualification problem.

8. The trust balance sheet should accurately reflect the assets and liabilities of the plan. A "no" answer to question 8 of Section I of the Worksheet does not indicate that the plan is not qualified. However, an inaccurate balance sheet does indicate that further consideration may be required to determine whether the exclusive benefit rule has been violated and whether participants are receiving a proper allocation. In the event assets reported on the balance sheet do not reconcile with distributable benefits, the specialist should attempt to reconcile the difference.

9. IRC 503(b) governs whether a transaction which was entered into prior to 1/1/75 constitutes a prohibited transaction. However, even after 1/1/75, IRC 503(b) continues to apply to government plans and church plans with the exception of church plans that have made the election under IRC 410(d) to be subject to ERISA. See IRC 503(a)(1)(B) and 4975(g).

If the transaction is subject to IRC 503(b), the trust forming a part of the plan will lose its exemption unless the disqualified person involved in the prohibited transaction elects to pay the excise taxes calculated under IRC 4975 for the period prior to 1/1/75. See Temporary Excise Tax Regulation, Section 54.4975-14. This election is not available to government or church plans, with the exception of church plans described above, that are covered by IRC 410(d). In addition, effective 1/1/75 the IRC 4975 taxes are imposed on the participating disqualified person for the period on or after 1/1/75. Such taxes are not imposed on government or church plans unless the church has made the IRC 410(d) election.

Generally, IRC 4975 governs whether a transaction entered into on or after 1/1/75 is a prohibited transaction. When the transaction is subject only to IRC 4975, the qualification of the plan is not affected by the transaction; rather the disqualified person participating in the transaction is subject to the IRC 4975 taxes. The term disqualified person includes parties related to the plan, such as the employer, certain owners of the employer, officers and directors of the employer, highly compensated employees, trustees and other parties providing services to the plan. See IRC 4975(e)(2).

In general, under IRC 4975, a disqualified person may not engage in a transaction which constitutes a direct or indirect (1) sale or exchange between the trust and a party in interest (2) leasing of property between the trust and a party in interest (3) lending of money or extension of credit between the trust and a party in interest (4) furnishing of goods, services, or facilities between the trust and a party in interest (5) transfer to or use by or for, the benefit of a party in interest of any of the trusts assets (6) acquisition by the plan of any employer security or employer real property in excess of applicable limits. See IRC 4975(c)(1). If there is any indication a prohibited transaction has occurred, the specialist should consider converting the case to an examination.

A plan may engage in a transaction that while not prescribed by IRC 4975 still violates IRC 401(a). An example of such a transaction is a diversion of trust funds to one who is not a disqualified person.

Section 1.401-1 of the regulations outlines the conditions under which a plan is considered to be for the exclusive benefit of employees or their beneficiaries. In general, the plan must be for the primary purpose of benefiting the employees and their beneficiaries. A plan will fail to remain qualified if in operation it directly benefits the employer. The employer need not divorce himself from the operation of a qualified plan. He may participate in its administration and operation. However, the employer may not use the plan as a device for siphoning off profits, nor may he, with some exceptions, recoup any corpus or income of contributed funds, unless a surplus exists after all liabilities are satisfied under the plan. See IRC 401(a)(2) and section 1.402-2 of the regulations. In brief, the plan must be established and maintained for the benefit of employees and their beneficiaries. Any method which diverts a plan to the advantage of the employer will violate the exclusive benefit rule and the plan will not be qualified.

Section II

1. The operation of the plan must be in accordance with the standards in the Alert Guidelines Explanation No. 1, Minimum Participation Standards, and Explanation No. 5, Coverage and Discrimination.

2. The operation of the plan must be in accordance with the standards in the Alert Guidelines Explanation No. 2, Minimum Vesting Standards -Defined Contribution Plans, Explanation No. 2A, Minimum Vesting Standards-Defined Benefit Plans, Explanation No. 5, Coverage and Discrimination.

3. The operation of the plan must be in accordance with the standards of the Alert Guidelines Explanation No. 4, Miscellaneous, Part I(b), dealing with plan merger, consolidation and transfers, and Section 1.414(l)-(1) of the regulations.

4. In general, IRC 412 applies to defined benefit pension plans and money purchase pension plans. IRC 412 has created minimum funding standards that must be met by the above-mentioned plans. If an employer fails to make a required contribution to a pension plan, the plan could fail to meet the minimum funding standard.

IRC 4971 provides for a penalty tax upon an employer who fails to maintain the funding of the plan at the required level. See

EXHIBIT 4 – CONTINUED

ing of IRC 414(m), all employees of each of these groups will be treated as employed by a single employer for purposes of certain qualification requirements. See section 414(b)(c) and (m) of the Code and Rev. Rul. 81-105, 1981-12 I.R.B. 27.
IRC 412(a), (b) and (c). Compliance with IRC 412 is not a qualification requirement.
If a plan to which IRC 412 is applicable was actually terminated on a date later than the stated date, the taxpayer may have incurred funding deficiencies and penalties for the period prior to the time of the actual termination.

5. If the plan has no post-ERISA favorable determination letter, the specialist should review the plan using all the Alert Guidelines Worksheets and, in addition, ensure the plan complies with all final ERISA regulations that are applicable. If the plan has a favorable post-ERISA determination letter, the specialist will use his/her judgment as to whether further plan review is necessary.

6. Sections 411(a)(10) and 411(d)(6) of the Code generally prohibit any plan amendment which would decrease the accrued benefit of any participant or the nonforfeitable percentage applicable to any participant. (For exceptions, see VII of Documents 6389 and 6390-Explanations 2 and 2A to the Alert Guidelines.) In addition, if benefits are liberalized within 10 years prior to termination, the early termination restrictions may apply. See section 1.401-4 of the regulations and Rev. Rul. 80-229 I.R.B. 1980-34. Questions 6a, b and c of Section II of the Worksheet discussed below are examples of amendments that may be made in anticipation of termination. However, the specialist must check to see if the plan has been amended in any way since the last determination letter, because an amendment may affect qualification and must be reviewed.

a. Section 411(a)(10) of the Code concerns plan amendments changing the vesting schedules. A change in vesting schedule is any change, direct or indirect, that alters the manner in which the nonforfeitable percentage is determined. See 1- 411(a)-8(c) of the regulations. An example of an indirect change is a change in the service counting rules. In the case of such a change, (1) Section 411 (a)(10)(A) requires that the non-forfeitable percentage of the accrued benefit as of the later of the date the amendment is adopted, or becomes effective, may not be decreased and (2) Section 411(a)(10)(B) requires that each participant with 5 or more years service must be given the opportunity to elect the former schedule for all accrued benefits.

b. Except as provided in Section 411(d)(6), 418D and 418E of the Code, a plan amendment may not retroactively decrease an accrued benefit directly or indirectly. Section 1.411(d)-3(b) of the regulations states that indirect changes include changes in service counting rules, break in service rules, accrual rules, and actuarial factors for determining optional or early retirement benefits. For changes in actuarial factors see Rev. Rul. 81-12, 1981-2 I.R.B. 10.

c. A termination may cause a violation of section 411(d)(6) of the Code if the effective date of termination precedes the date of adoption of the amendment terminating the plan. In a money purchase pension plan (including a target benefit plan), if the termination date precedes the date of adoption, contributions that were required to be made as of allocation dates after the effective date of termination but prior to the date of adoption may not be eliminated by such an amendment. If the plan document is unclear as to the allocation date within a plan year, assume the allocation date is as of the last day of a plan year. Thus, for example, if the plan year were on the calendar year and allocation dates in the plan were unclear, a termination adopted January 1, 1982, terminating the plan as of some date in 1981, or earlier, which had the effect of eliminating the required 1981 contribution would violate 411(d)(6). NOTE! A retroactive decrease of accrued benefits described in 412(c)(8) and a waiver of the minimum funding standard described in 412(d) may eliminate the requirement for such decrease. Those sections may only be applied if the taxpayer (not the field) requests rulings pursuant to Rev. Proc. 79-18 1979-1 C.B. 525 and Rev. Proc. 78-14 1978-2 C.B. 486. The foregoing does not apply to profit-sharing plans.

7. If the adopting employer is a member of a controlled group of corporations within the meaning of IRC 414(b), a group of trades or businesses under common control within the meaning of IRC 414(c), or an affiliated service group within the mean-

EXHIBIT 5-EP Determination letter and closing transmittal worksheet

EP DETERMINATION LETTER AND CLOSING TRANSMITTAL WORKSHEET
Name of Case_____ DLN:17007_____

Specialist Name & EDS Number:_____ Case Number:_____

Circle applicable paragraphs & enter date

Letter 1132 Standard EDS Paragraphs:

4 – Effective Date of Termination per resolution_____
5 – 2nd Proposed Amendments:_____
10 – Proposed Amendments:_____
11---All executed amendments that have not been ruled on _____
7027 – Addl executed amendments dated:_____
52 – All terminations of DB plans
5998 – POA and Letter to POA #1_____ POA #2 ____
7002 – Proposed Restated Plan dated: _____

8503 – Benefit Assurance Form

9000 series paragraph*
This determination also applies to the amendments adopted_____

Special Situation Caveats

6/9 – Reversion Paragraph (select both & must also select 8503)
7-----Spin-off termination/change in funding

44 – ESOP plans

7060 -Restoration of vesting to affected participants:
"This letter is contingent upon the restoration of vested benefits for the affected participants as agreed to in your letter dated _____"
Correction to determination letter is solicited
7054—Date of prior determination letter :_____

*9000 series should begin with 9001
Since all terminations have to be updated for current law there is no caveat number for the law considered for Letter 1132, the law indicator would be K.

CLOSING INFORMATION:

Continued on next page

EXHIBIT 5-EP Determination letter and closing transmittal worksheet, Continued

Letter 1132
Closing Date:_____ Closing Code:_____ Law Indicator:_____ Hours:_____
Grade:_____

Closing Codes: 06- Screened out no contact; 09- Screened Out with contact /00-Limited review issue only; 01—Complete Analysis To update the master record to status 09, on the inventory control system menu screen, choose 19 instead of 01. Changes to Entity Information: (If changes are necessary, indicate changes below, copy this form and forward to EP Unpostable Clerk, Room 4024). To approve a case after it has been put in status 09, on the inventory control system choose 29 instead of 08 for managerial approval.

EXHIBIT 6-Diagram, affected participants