Rev. Proc. 2005–6

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SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

Purpose of revenue procedure

.01 This revenue procedure sets forth the procedures of the various offices of the Internal Revenue Service for issuing determination letters on the qualified status of pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans (ESOPs) under §§ 401, 403(a), 409 and 4975(e)(7) of the Internal Revenue Code of 1986, and the status for exemption of any related trusts or custodial accounts under § 501(a).

Organization of revenue procedure

.02 Part I of this revenue procedure contains instructions for requesting determination letters for various types of plans and transactions. Part II contains procedures for providing notice to interested parties and for interested parties to comment on determination letter requests. Part III contains procedures concerning the processing of determination letter requests and describes the effect of a determination letter.

SECTION 2. WHAT CHANGES HAVE BEEN MADE TO THIS PROCEDURE?

In general

.01 This revenue procedure is a general update of Rev. Proc. 2004–6, 2004–1 I.R.B 197, which contains the Service's general procedures for employee plans determination letter requests. Many of the changes to Rev. Proc. 2004–6 involve minor revisions, such as updating citations to other revenue procedures.

Other changes

.02 In addition, the following changes have been made:

(1) Section 6.05 is revised to clarify that a complete copy of the plan and trust is required to be submitted with a volume submitter determination letter application, except that a copy of the completed adoption agreement is required in the case of determination letters for adoption of a volume submitter plan as described in section 9.09(2)(d) where the employer has made no changes to the specimen plan and trust other than completing options permitted under the adoption agreement.

(2) Section 6.09 regarding general procedures for requesting determination letters is revised to add that the application must include a copy of the prior plan or adoption agreement and the opinion or advisory letter, if applicable, when a copy of the latest favorable determination letter is not available.

(3) Section 6.10 (referring to an extension of the GUST remedial amendment period for certain employers who adopted pre-approved plans) is deleted, since the GUST remedial amendment period has now expired. The subsequent subsections of section 6 are adjusted accordingly.

(4) Renumbered section 6.10 is revised to provide that stamped signatures are not acceptable on Form 8717.

(5) Section 7.02(2) is revised to delete the parenthetical regarding a collectively bargained ESOP.

(6) Section 7.04 is revised to add clarifying language on submission of a working copy and amendments.

(7) Section 9.13 is revised to provide that an application submitted by an employer with respect to an M&P plan will be treated as an application for an individually designed plan if it is executed prior to the time the M&P plan is approved.

(8) Section 10.02 is revised to clarify that a determination letter applicant for a multiple employer plan may request a letter for the plan in the name of the controlling member.

(9) Section 13 is revised to incorporate Rev. Rul. 2004–67, which clarifies and modifies Rev. Rul. 81–100 on group trusts.

(10) Section 15 is revised to incorporate new procedures with respect to waivers of the minimum funding standards.

Future guidance

.03 Future guidance affecting this revenue procedure

Currently, the rules for the "pre-approval" of plans qualified under § 401 — the master and prototype (M&P) program and the volume submitter (VS) program — are in different revenue procedures. The VS rules are primarily set forth in section 9 of this revenue procedure and the M&P rules are primarily set forth in Rev. Proc. 2000–20. Announcement 2004–33, 2004–18 I.R.B. 862, contains a draft revenue procedure with the procedures for the pre-approval of such plans for both programs that is intended to be issued in the near future. The final revenue procedure will supersede and/or substantially modify portions of this Rev. Proc. 2005–6, including, in particular, sections 8 and 9.

PART I. PROCEDURES FOR DETERMINATION LETTER REQUESTS

SECTION 3. ON WHAT ISSUES MAY TAXPAYERS REQUEST WRITTEN GUIDANCE UNDER THIS PROCEDURE?

Types of requests

.01 Determination letters may be requested on completed and proposed transactions as set forth in the table below:

TYPE OF REQUEST	FORMS	REV. PROC. SECTION
1. Initial Qualification, etc.		
a. Individually-Designed Plans (including collectively bargained plans)	5300, Schedule Q (optional)	7

	TYPE OF REQUEST	FORMS	REV. PROC. SECTION
b.	ESOPs	5300, 5309 Schedule Q (optional)	7
c.	Adoptions of Master & Prototype Plans	5307, Schedule Q (optional)	9
d.	Adoptions of Volume Submitter Plans	5300, Schedule Q (optional)	9
e.	Multiple Employer Plans	5300, Schedule Q (optional)	10
f.	Group Trusts	Cover letter	13
2.	**Minor Amendments**	6406	11
3.	**Termination**		
a.	In general	5310, 6088 Schedule Q (optional)	12
b.	Multiemployer plan covered by PBGC insurance	5300, 6088, Schedule Q (optional)	12
4.	**Special Procedures**		
a.	Affiliated Service Group Status (§ 414(m)), Leased Employees (§ 414(n))	5300, Schedule Q (optional)	14
b.	Minimum Funding Waiver	5300, Schedule Q (optional)	15
c.	Section 401(h) Determination Letters	5300, Schedule Q (optional)	16
d.	Section 420 Determination Letters Including Other Matters Under § 401(a)	5300, Schedule Q (optional), Cover letter, Checklist	16
e.	Section 420 Determination Letters Excluding Other Matters Under § 401(a)	Cover letter, Checklist	16

Note: Form 5310–A, *Notice of Plan Merger, Consolidation, Spinoff or Transfer of Plan Assets or Liabilities — Notice of Qualified Separate Lines of Business*, generally must be filed not less than 30 days before the merger, consolidation or transfer of assets and liabilities. The filing of Form 5310–A will not result in the issuance of a determination letter.

Areas in which determination letters will not be issued

.02 Determination letters issued in accordance with this revenue procedure do not include determinations on the following issues within the jurisdiction of the Commissioner, TE/GE:

(1) Issues involving §§ 72, 79, 105, 125, 127, 129, 402, 403 (other than 403(a)), 404, 409(l), 409(m), 412, 457, 511 through 515, and 4975 (other than 4975(e)(7)), unless these determination letters are authorized under section 7 of Rev. Proc. 2005–4, page 128, this Bulletin.

(2) Plans or plan amendments for which automatic approval is granted pursuant to section 8.02 below.

(3) Plan amendments described below (these amendments will, to the extent provided, be deemed not to alter the qualified status of a plan under § 401(a)).

(a) An amendment solely to permit a trust forming part of a plan to participate in a pooled fund arrangement described in Rev. Rul. 81–100, 1981–1 C.B. 326, as clarified and modified by Rev. Rul. 2004–67, 2004–28 I.R.B. 28;

(b) An amendment that merely adjusts the maximum limitations under § 415 to reflect annual cost-of-living increases, other than an amendment that adds an automatic cost-of-living adjustment provision to the plan; and

(c) An amendment solely to include language pursuant to § 403(c)(2) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) concerning the reversion of employer contributions made as a result of mistake of fact.

(4) This section applies to determination letter requests with respect to plans that combine an ESOP (as defined in § 4975(e)(7) of the Code) with retiree medical benefit features described in § 401(h) (HSOPs).

(a) In general, determination letters will not be issued with respect to plans that combine an ESOP with an HSOP with respect to:

(i) whether the requirements of § 4975(e)(7) are satisfied;

(ii) whether the requirements of § 401(h) are satisfied; or

(iii) whether the combination of an ESOP with an HSOP in a plan adversely affects its qualification under § 401(a).

(b) A plan is considered to combine an ESOP with an HSOP if it contains ESOP provisions and § 401(h) provisions.

(c) However, an arrangement will not be considered covered by section 3.02(4) of this revenue procedure if, under the provisions of the plan, the following conditions are satisfied:

(i) No individual accounts are maintained in the § 401(h) account (except as required by § 401(h)(6));

(ii) No employer securities are held in the § 401(h) account;

(iii) The § 401(h) account does not contain the proceeds (directly or otherwise) of an exempt loan as defined in § 54.4975–7(b)(1)(iii) of the Pension Excise Tax Regulations; and

(iv) The amount of actual contributions to provide § 401(h) benefits (when added to actual contributions for life insurance protection under the plan) does not exceed 25 percent of the sum of: (1) the amount of cash contributions actually allocated to participants' accounts in the plan and (2) the amount of cash contributions used to repay principal with respect to the exempt loan, both determined on an aggregate basis since the inception of the § 401(h) arrangement.

EGTRRA

.03 As provided in Notice 2001–42, 2001–2 C.B. 70, until further notice, determination, opinion and advisory letters will not consider and may not be relied on with respect to whether a plan satisfies the qualification requirements of the Code as amended by EGTRRA. However, an employer's ability to rely on a favorable determination, opinion or advisory letter will not be adversely affected by the timely adoption of good faith EGTRRA plan amendments.

SECTION 4. ON WHAT ISSUES MUST WRITTEN GUIDANCE BE REQUESTED UNDER DIFFERENT PROCEDURES?

TE/GE

.01 Other procedures for obtaining rulings, determination letters, opinion letters, etc., on matters within the jurisdiction of the Commissioner, TE/GE are contained in the following revenue procedures:

(1) Employee Plans Technical (EP Technical) letter rulings, information letters, etc.: *See* Rev. Proc. 2005–4, page 128, this Bulletin.

(2) M&P plans: *See* Rev. Proc. 2000–20, 2000–1 C.B. 553, as modified by Rev. Proc. 2000–27, Notice 2001–42, Rev. Proc. 2001–55, 2001–2 C.B. 552, Rev. Proc. 2003–6, Rev. Proc. 2002–29, 2002–1 C.B. 1176 (as modified by Rev. Proc. 2003–10, 2003–1 C.B. 259), Rev. Proc. 2002–73, 2002–2 C.B. 932, and Rev. Proc. 2003–72, 2003–2 C.B. 578.

(3) Technical advice requests: *See* Rev. Proc. 2005–5, page 170, this Bulletin.

Chief Counsel's revenue procedure

.02 For the procedures for obtaining letter rulings, determination letters, etc., on matters within the jurisdiction of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), or within the jurisdiction of other offices of Chief Counsel, see Rev. Proc. 2005–1, page 1, this Bulletin.

SECTION 5. WHAT IS THE GENERAL SCOPE OF A DETERMINATION LETTER?

Scope of this section

.01 This section delineates, generally, the scope of an employee plan determination letter. It identifies certain qualification requirements, relating to nondiscrimination, that are considered by the Service in its review of a plan only at the election of the applicant. This section also identifies certain qualification requirements that are not considered by the Service in its review of a plan and with respect to which determination letters do not provide reliance. This section applies to all determination letters other than letters issued in response to an application filed on Form 6406, Short Form Application for Determination for Minor Amendment of Employee Benefit Plan; letters relating to the qualified status of group trusts; and letters relating solely to the requirements of § 420, regarding the transfer of assets in a defined benefit plan to a health benefit account described in § 401(h). For additional information pertaining to the scope of reliance on a determination letter, see sections 8, 9 and 21 of this revenue procedure.

Scope of determination letters

.02 In general, employee plans are reviewed by the Service for compliance with the form requirements (that is, those plan provisions that are required as a condition of qualification under § 401(a)). In addition, as described below, certain nondiscrimination requirements are considered if the applicant specifically requests that they be considered. Unless otherwise stated, a plan is reviewed on the basis of the requirements that apply to the plan as of the date the application is received, except for terminating plans. For terminating plans, the requirements are those that apply as of the date of termination.

Nondiscrimination in amount requirement

.03 Unless the applicant elects otherwise, a plan will not be reviewed for, and a determination letter may not be relied on with respect to, whether a plan satisfies one of the safe harbors or the general test for nondiscrimination in amount of contributions or benefits requirements under § 1.401(a)(4)–1(b)(2) of the Income Tax Regulations.

Minimum coverage and § 401(a)(26) participation requirements

.04 Unless the applicant elects otherwise, a plan will not be reviewed for, and a determination letter may not be relied on with respect to, the minimum coverage requirements of § 410(b). If the applicant demonstrates that the plan satisfies the coverage requirements of § 410(b), the determination letter may also be relied on with respect to the participation requirements of § 401(a)(26).

Nondiscriminatory current availability requirement

.05 If the applicant demonstrates that the plan satisfies the coverage requirements of § 410(b), the determination letter may also be relied on as to whether the plan satisfies the nondiscriminatory current availability requirements of § 1.401(a)(4)–4(b) with respect to those benefits, rights, and features that are currently available (within the meaning of § 1.401(a)(4)–4(b)(2)) to all employees in the plan's coverage group. The plan's coverage group consists of those employees who are treated as currently benefiting under the plan (within the meaning of § 1.410(b)–3(a)) for purposes of demonstrating that the plan satisfies the minimum coverage requirements of § 410(b). Applications will not be reviewed for, and determination letters may not be relied on with respect to, whether the plan satisfies the requirements of § 1.401(a)(4)–4(b) with respect to any benefit, right, or feature other than the ones described above, except those that are specified by the applicant and for which the applicant has provided information relevant to the determination.

Other nondiscrimination requirements

.06 An applicant may also ask that the review of its plan consider certain other nondiscrimination requirements which are described in Schedule Q (Form 5300), such as whether a definition of compensation satisfies § 414(s).

Reliance conditioned on retention of information

.07 A favorable determination letter may be relied on with respect to whether a plan satisfies a coverage or nondiscrimination requirement only if the application, demonstrations and other information submitted to the Service in support of a favorable determination is retained by the applicant.

Effective availability requirement

.08 In no event will any plan be reviewed to determine, and a determination letter may not be relied on with respect to, whether any benefit, right, or feature under the plan satisfies the effective availability requirement of § 1.401(a)(4)–4(c).

Other limits on scope of determination letter

.09 Determination letters may generally be relied on with respect to whether the timing of a plan amendment (or series of amendments) satisfies the nondiscrimination requirements of § 1.401(a)(4)–5(a) of the regulations, unless the plan amendment is part of a pattern of amendments that significantly discriminates in favor of highly compensated employees. A favorable determination letter does not provide reliance for purposes of § 404 and § 412 with respect to whether an interest rate (or any other actuarial assumption) is reasonable. Furthermore, a favorable determination letter will not constitute a determination with respect to the use of the substantiation guidelines contained in Rev. Proc. 93–42, 1993–2 C.B. 540, *e.g.*, a determination letter will not consider whether data submitted with an application is substantiation quality. Lastly, a favorable determination letter will not constitute a determination with respect to whether any requirements of § 414(r), relating to whether an employer is operating qualified separate lines of business, are satisfied. However, if an employer is relying on § 414(r) to satisfy the minimum coverage or § 401(a)(26) participation requirements, and the applicant so requests, a determination letter will take into account whether the plan satisfies the nondiscriminatory classification test of § 410(b)(5)(B). In this case, if the requirements of § 410(b) or § 401(a)(26) are to be applied on an employer-wide basis under the special rules for employer-wide plans, a determination letter will take into account whether the requirements of the applicable special rule set forth in § 1.414(r)–1(c)(2)(ii) or § 1.414(r)–1(c)(3)(ii) are met.

Publication 794

.10 Publication 794, *Favorable Determination Letter*, contains other information regarding the scope of a determination letter, including the requirement that all information submitted with the application be retained as a condition of reliance. In addition, the specific terms of each letter may further define its scope and the extent to which it may be relied upon.

SECTION 6. WHAT IS THE GENERAL PROCEDURE FOR REQUESTING DETERMINATION LETTERS?

Scope

.01 This section contains procedures that are generally applicable to all determination letter requests. Additional procedures for specific requests are contained in sections 7 through 16.

Qualified trusteed plans

.02 A trust created or organized in the United States and forming part of a pension, profit-sharing, stock bonus or annuity plan of an employer for the exclusive benefit of its employees or their beneficiaries that meets the requirements of § 401 is a qualified trust and is exempt from federal income tax under § 501(a) unless the exemption is denied under § 502, relating to feeder organizations, or § 503, relating to prohibited transactions, if, in the latter case, the plan is one described in § 503(a)(1)(B).

Qualified nontrusteed annuity plans

.03 A nontrusteed annuity plan that meets the applicable requirements of § 401 and other additional requirements as provided under § 403(a) and § 404(a)(2), (relating to deductions of employer contributions for the purchase of retirement annuities), qualifies for the special tax treatment under § 404(a)(2), and the other sections of the Code, if the additional provisions of such other sections are also met.

Complete information required

.04 An applicant requesting a determination letter must file the material required by this revenue procedure with the Employee Plans Determinations manager (EP Determinations) at

the address in section 6.17. The filing of the application, when accompanied by all information and documents required by this revenue procedure, will generally serve to provide the Service with the information required to make the requested determination. However, in making the determination, the Service may require the submission of additional information. Information submitted to the Service in connection with an application for determination may be subject to public inspection to the extent provided by § 6104.

Complete copy of plan and trust instrument required

.05 Except in the case of applications involving master and prototype plans filed on Form 5307, minor amendments described in section 11, or determination letters for volume submitter plans under section 9.09(2)(d), a complete copy of the plan and trust instrument is required to be included with the determination letter application. See sections 7.03 and 7.04 for what must be included with applications involving plan amendments that are not minor amendments.

Section 9 of Rev. Proc. 2005–4 applies

.06 Section 9 of Rev. Proc. 2005–4 is generally applicable to requests for determination letters under this revenue procedure.

Separate application required for each single § 414(l) plan

.07 A separate application is required for each single plan within the meaning of § 414(l). This requirement does not pertain to applications regarding the qualified status of group trusts.

Coverage and nondiscrimination requirements

.08 An applicant may request that the plan be reviewed to determine that the ratio percentage test of § 410(b)(1) is satisfied or that the plan satisfies one of the design-based safe harbors under § 401(a)(4) by completing the appropriate elective lines on Form 5300 or Form 5307. Schedule Q (Form 5300) may be filed with the application, other than an application filed on Form 6406, to request consideration of the general test under § 401(a)(4), the average benefit test of § 410(b)(2), or any of the other requirements described on Schedule Q. The applicant must include with the application form the material and demonstrations called for in the instructions to Form 5300 or Form 5307, and, if applicable, Schedule Q.

Prior letters

.09 If the plan has received a favorable determination letter in the past, the application must include a copy of the latest determination letter, if available. If the letter is not available, an explanation must be included with the application, and the employer must include a copy of the prior plan or adoption agreement, including the opinion or advisory letter, if applicable.

User fees

.10 The appropriate user fee, if applicable, must be paid according to the procedures of Rev. Proc. 2005–8, page 243, this Bulletin. Form 8717, *User Fee for Employee Plan Determination Letter Request*, must accompany each determination letter request. If the criteria for the user fee exemption are met in accordance with Notice 2003–49, 2003–2 C.B. 294, the certification on Form 8717 must be signed. Stamped signatures are not acceptable.

Interested party notification and comment

.11 Before filing an application, the applicant requesting a determination letter must satisfy the requirements of section 3001(a) of ERISA, and § 7476(b)(2) of the Code and the regulations thereunder, which provide that an applicant requesting a determination letter on the qualified status of certain retirement plans must notify interested parties of such application. The general rules of the Service with respect to notifying interested parties of requests for determination letters relating to the qualification of plans involving §§ 401 and 403(a) are set out below in sections 17 and 18 of this revenue procedure.

Contrary authority must be distinguished

.12 If the application for determination involves an issue where contrary authorities exist, failure to disclose or distinguish such significant contrary authorities may result in requests for additional information, which will delay action on the application.

Employer/employee relationship

.13 The Service ordinarily does not make determinations regarding the existence of an employer-employee relationship as part of its determination on the qualification of a plan, but relies on the applicant's representations or assumptions, stated or implicit, regarding the existence of such a relationship. The Service will, however, make a determination regarding the existence of an employer-employee relationship when so requested by the applicant. In such cases, the application with respect to the qualification of the plan should be filed in accordance with the provisions of this revenue procedure, contain the information and documents in the instructions to the application, and be accompanied by a completed Form SS–8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, and

any information and copies of documents the organization deems appropriate to establish its status. The Service may, in addition, require further information that it considers necessary to determine the employment status of the individuals involved or the qualification of the plan. After the employer-employee relationships have been determined, EP Determinations may issue a determination letter as to the qualification of the plan.

Incomplete applications returned

.14 If an applicant requesting a determination letter does not comply with all the required provisions of this revenue procedure, EP Determinations, in its discretion, may return the application and point out to the applicant those provisions which have not been met. The failure to provide information required by an application, including any supplemental information required by the instructions for the application, may result in the application being returned to the applicant as incomplete. The request will also be returned pursuant to Rev. Proc. 2005–8 if the correct user fee is not attached. If such a request is returned to the applicant, the 270-day period described in § 7476(b)(3) will not begin to run until such time as the provisions of this section have been satisfied.

Effect of failure to disclose material fact

.15 The Service may determine, based on the application form, the extent of review of the plan document. A failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance that would otherwise be obtained through issuance by the Service of a favorable determination letter. Similarly, failure to accurately provide any of the information called for on any form required by this revenue procedure may result in no reliance.

Data requirements

.16 The applicant is responsible for the accuracy of any factual representations and conclusions contained in the application. In some circumstances, applicants may not be able to use precise data in preparing demonstrations or schedules that may be required to be submitted with the application. Therefore, the use of estimated data in these demonstrations and schedules is not prohibited. In addition, the data used may be for a prior plan year, provided the following conditions are satisfied: (1) the data is the most recent data available, (2) there is no misstatement or omission of material fact with respect to such prior year's data, (3) there has been no material change in the facts (including a change in the benefits provided under the plan and employee demographics) since such prior plan year, (4) the same data is used throughout the application, (5) the data is relevant to the operational effect of the plan provisions that are under review, and (6) the applicant clearly discloses that prior year's data is being submitted with the application. The use of estimated or prior year's data is not a misrepresentation of material fact. A determination letter that is based on estimated or prior year's data, however, may not be relied upon to the extent that such data does not satisfy the substantiation guidelines in Rev. Proc. 93–42. Regardless of whether the data is actual or estimated, or whether it is for the current or a prior year, data that is presented in a determination letter application must reflect any changes in the law that are considered by the Service in its determination of the plan's qualified status.

Where to file requests

.17 Requests for determination letters are to be addressed to EP Determinations at the following address:

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

Determination letter applications will not be accepted via fax.

Submission of related plans

.18 If applications for two or more plans of the same employer are submitted together, each application should include a cover letter that identifies the name of the employer and the plan numbers and employer identification numbers of all the related plans submitted together.

Submission of 30 or more applications by authorized representative

.19 An authorized representative who will be submitting determination letter applications for 30 or more plans at one time should pre-notify the Service of the submissions so that the Service can endeavor to ensure that the applications will be reviewed in one area. The pre-notification should be e-mailed to *Jennifer.L.Frederick@irs.gov* and should include the following information: the firm name, the names of the authorized representative(s) submitting the plans, the name and phone number of the contact person, the approximate number of submissions, and the expected date(s) of the submissions. Upon receipt of the e-mail, the representative will be contacted and assigned a number that must be entered in green ink at the upper left hand corner of the applications. For further discussion, see the Spring/Summer 2002 edition of the Employee Plans Newsletter.

Withdrawal of requests

.20 The applicant's request for a determination letter may be withdrawn by a written request at any time prior to the issuance of a final adverse determination letter. If an appeal to a proposed adverse determination letter is filed, a request for a determination letter may be withdrawn at any time prior to the forwarding of the proposed adverse action to the Chief, appeals office. In the case of a withdrawal, the Service will not issue a determination of any type. A failure to issue a determination letter as a result of a withdrawal will not be considered a failure of the Secretary or his delegate to make a determination within the meaning of § 7476. However, the Service may consider the information submitted in connection with the withdrawn request in a subsequent examination. Generally, the user fee will not be refunded if the application is withdrawn.

Right to status conference

.21 An applicant for a determination letter has the right to have a conference with the EP Determinations Manager concerning the status of the application if the application has been pending at least 270 days. The status conference may be by phone or in person, as mutually agreed upon. During the conference, any issues relevant to the processing of the application may be addressed, but the conference will not involve substantive discussion of technical issues. No tape, stenographic, or other verbatim recording of a status conference may be made by any party. Subsequent status conferences may also be requested if at least 90 days have passed since the last preceding status conference.

How to request status conference

.22 A request for a status conference with the EP Determinations Manager is to be made in writing and is to be sent to the specialist assigned to review the application or, if the applicant does not know who is reviewing the application, to the EP Determinations Manager at the address in section 6.17. If, pursuant to section 15, the application for a determination letter has been submitted to Employee Plans Technical (EP Technical) together with a request for a waiver of minimum funding, the request for a status conference should be sent to the address in section 15.03. In this case, the right to a status conference will be with the EP Technical Manager or designee.

SECTION 7. INITIAL QUALIFICATION, ETC.

Scope

.01 This section contains the procedures for requesting determination letters for individually-designed defined contribution and defined benefit plans including employee stock ownership plans in the following circumstances:

(1) Initial qualification.

(2) Amendment (other than minor amendments described in section 11 below for which Form 6406 is appropriate).

(3) Restatement of plan.

(4) Qualification of a plan in the event of a partial termination.

(5) Change in scope of determination letter. This means that the applicant has previously received a favorable determination letter for the plan and now wishes to modify the scope of the letter, for example, by requesting the Service to review the plan for certain nondiscrimination requirements that were not within the scope of the earlier letter.

(6) Other circumstances (excluding plan termination) such as a change in the demographics of the employer or a change in the method of testing the plan that was used in a demonstration submitted in support of an earlier application.

Forms

.02 A determination letter request for the items listed in section 7.01 is made by filing the appropriate form according to the instructions to the form and any prevailing revenue procedures, notices, and announcements.

(1) Form 5300, *Application for Determination for Employee Benefit Plan*, must be filed to request a determination letter for individually designed plans, including collectively bargained plans.

(2) Form 5309, *Application for Determination of Employee Stock Ownership Plan*, must be filed as an attachment with a Form 5300 in order to request a determination whether the plan is an ESOP under § 409 or § 4975(e)(7).

(3) Schedule Q, (Form 5300), *Elective Determination Requests*, may be filed as an attachment with Form 5300.

Application for amendments must include copy of plan

.03 Because a plan amendment, other than a minor amendment described in section 11, may affect other portions of a plan so as to cause plan disqualification, a determination letter issued on such an amendment to a plan will express an opinion on the entire plan, as amended. Therefore, the determination letter application must include a copy of the plan and trust instrument plus all plan amendments made to the date of the application. The application must also include a statement explaining how any amendments made since the last determination letter affect the plan or any other plan maintained by the employer.

Restatements may be required

.04 A restated plan is required to be submitted if four or more amendments (excluding amendments making only non-substantive changes) have been made since the last restated plan was submitted. In addition, the Service may require restatement of a plan or submission of a working copy of the plan in a restated format when considered necessary. Where a working copy is submitted with executed amendments integrated into the working copy, all such amendments must also be separately submitted. For example, restatement may be required when there have been major changes in law. A restated plan or a working copy of the plan in a restated format generally must be submitted for a plan that has not previously received a determination letter that takes into account all requirements of GUST. However, see section 3.04 of Rev. Proc. 2000–27 for exceptions to this requirement.

Controlled groups, etc.

.05 For a controlled group of corporations as defined in § 414(b), trades or businesses under common control as defined in § 414(c), an affiliated service group within the meaning of § 414(m), and entities utilizing the services of leased employees within the meaning of § 414(n), the coverage items on the application forms referred to in this revenue procedure must be completed as though the controlled group, commonly controlled trades or businesses, affiliated service group, etc., constitutes a single entity. Leased employees within the meaning of § 414(n) must be included as employees of the recipient entity (except in the case of a safe-harbor plan described in § 414(n)(5)).

SECTION 8. EMPLOYER RELIANCE ON M&P AND VOLUME SUBMITTER PLANS

Scope

.01 This section describes the conditions under which, and the extent to which, adopting employers of M&P and volume submitter plans may rely on favorable opinion or advisory letters without having to request individual determination letters. Rev. Proc. 2000–20 describes the requirements that apply to M&P plans and the procedures for requesting opinion letters on

M&P plans. Section 9 of this revenue procedure describes the requirements that apply to volume submitter plans and the procedures for requesting advisory letters on volume submitter plans. Section 9 also describes the procedures for requesting determination letters on M&P and volume submitter plans for adopting employers who need to obtain a determination letter in order to have reliance or who otherwise wish to obtain a determination letter, for example to expand the scope of reliance.

Standardized M&P plans

.02 An employer adopting a standardized or paired M&P plan may rely on that plan's opinion letter, except as provided in section 8.02(1) through (3) and section 8.04 below, if the sponsor of such plan or plans has a currently valid favorable opinion letter, the employer has followed the terms of the plan(s), and the coverage and contributions or benefits under the plan(s) are not more favorable to highly compensated employees (as defined in § 414(q)) than for other employees.

(1) Except in the case of a combination of paired plans, an employer may not rely on an opinion letter for a standardized plan with respect to the requirements of §§ 415 and 416, without obtaining a determination letter, if the employer maintains at any time, or has maintained at any time, another plan, including a standardized plan, that was qualified or determined to be qualified covering some of the same participants. For this purpose, a plan that has been properly replaced by the adoption of a standardized plan is not considered another plan. The plan that has been replaced and the standardized plan must be of the same type (*e.g.*, both money purchase pension plans) in order for the employer to be able to rely on the standardized plan with respect to the requirements of §§ 415 and 416 without obtaining a determination letter. In addition, an employer that adopts a standardized defined contribution plan will not be considered to have maintained another plan merely because the employer has maintained another defined contribution plan(s), provided such other plan(s) has been terminated prior to the effective date of the standardized plan and no annual additions have been credited to the account of any participant under such other plan(s) as of any date within a limitation year of the standardized plan. Likewise, an employer that adopts a standardized defined contribution plan that is first effective on or after the effective date of the repeal of § 415(e) will not be considered to have maintained another plan merely because the employer has maintained a defined benefit plan(s), provided the defined benefit plan(s) has been terminated prior to the effective date of the standardized defined contribution plan.

(2) An employer that has adopted a standardized defined benefit plan may rely on an opinion letter with respect to the requirements of § 401(a)(26) only if the plan satisfies the requirements of § 401(a)(26) with respect to its prior benefit structure or is deemed to satisfy § 401(a)(26) under the regulations. However, an employer may request a determination letter if the employer wishes to have reliance as to whether the plan satisfies § 401(a)(26) with respect to its prior benefit structure.

(3) An employer that adopts a standardized plan may not rely on an opinion letter with respect to: (a) whether the timing of any amendment to the plan (or series of amendments) satisfies the nondiscrimination requirements of § 1.401(a)(4)–5(a), except with respect to plan amendments granting past service that meet the safe harbor described in § 1.401(a)(4)–5(a)(3) and are not part of a pattern of amendments that significantly discriminates in favor of highly compensated employees; or (b) whether the plan satisfies the effective availability requirement of § 1.401(a)(4)–4(c) with respect to any benefit, right, or feature. An employer that adopts a standardized plan as an amendment to a plan other than a standardized plan may not rely on an opinion letter with respect to whether a benefit, right, or feature that is prospectively eliminated satisfies the current availability requirements of § 1.401(a)(4)–4 of the regulations. Such an employer may request a determination letter if the employer wishes to have reliance as to whether the prospectively eliminated benefit, right, or feature satisfies the current availability requirements.

Nonstandardized M&P plans and volume submitter plans

.03 An employer adopting a nonstandardized M&P or volume submitter plan may rely on that plan's opinion or advisory letter as described below if the employer's plan is identical to an approved M&P or specimen plan with a currently valid favorable opinion or advisory letter, the employer has chosen only options permitted under the terms of the approved plan, and the

employer has followed the terms of the plan. These employers can forego filing Form 5307 and rely on the plan's favorable opinion or advisory letter with respect to the qualification requirements, except as provided in section 8.03(1) through (4) and section 8.04 below.

(1) Except as provided in section 8.03(2) and (3), adopting employers of nonstandardized M&P plans and volume submitter plans may not rely on a favorable opinion or advisory letter with respect to the requirements of:

(a) §§ 401(a)(4), 401(a)(26), 401(l), 410(b) or 414(s); or

(b) if the employer maintains or has ever maintained another plan covering some of the same participants, §§ 415 or 416.

For this purpose, whether an employer maintains or has ever maintained another plan will be determined using principles consistent with section 8.02(1) above.

(2) Adopting employers of nonstandardized M&P plans and volume submitter plans may rely on the opinion or advisory letter with respect to the requirements of §§ 410(b) and 401(a)(26) (other than the § 401(a)(26) requirements that apply to a prior benefit structure) if 100 percent of all nonexcludable employees benefit under the plan.

(3) Nonstandardized M&P plans must give adopting employers the option to elect a safe harbor allocation or benefit formula and a safe harbor compensation definition. Adopting employers of nonstandardized M&P plans that elect a safe harbor allocation or benefit formula and a safe harbor compensation definition may rely on an opinion letter with respect to the nondiscriminatory amounts requirement under § 401(a)(4). Adopting employers of nonstandardized M&P plans that are § 401(k) and/or § 401(m) plans may rely on an opinion letter with respect to whether the form of the plan satisfies the actual deferral percentage test of § 401(k)(3) or the actual contribution percentage test of § 401(m)(2) if the employer elects to use a safe harbor definition of compensation in the test. Adopting employers of nonstandardized M&P plans described in § 401(k)(11) and/or § 401(m)(12) may rely on an opinion letter with respect to whether the form of the plan satisfies these requirements unless the plan provides for the safe harbor contribution to be made under another plan.

(4) Adopting employers of nonstandardized safe harbor M&P plans (which require adopting employers to elect a safe harbor allocation or benefit formula) are entitled to the same reliance as adopting employers of nonstandardized plans except that they have automatic reliance with respect to the nondiscriminatory amounts requirement if they elect a safe harbor definition of compensation.

Other limitations and conditions on reliance

.04 The following conditions and limitations apply with respect to standardized and nonstandardized M&P plans as well as volume submitter plans.

(1) An adopting employer of an M&P or volume submitter plan can rely on a favorable opinion or advisory letter only if the letter has taken into account the requirements of GUST and the plan has been amended to the extent necessary to comply with the requirements of section 314(e) of CRA, relating to changes to the definition of compensation under §§ 414(s) and 415(c)(3). In addition, if the opinion or advisory letter is a "GUST I" letter (as defined in Rev. Proc. 2000–27), the plan must have been amended to the extent necessary to comply with the requirements of GUST that are effective after 1998.

(2) An adopting employer can rely on a favorable opinion or advisory letter for a plan that amends or restates a plan of the employer only if the plan that is being amended or restated satisfies the qualification requirements as in effect prior to GUST and the operational compliance requirements of GUST, and the GUST amendments are retroactively effective to the extent required.

(3) An adopting employer cannot rely on an opinion or advisory letter for a plan if the repealed family aggregation rules continued to apply under the plan after 1996 or if the repealed § 415(e) limits continued to apply under the plan after 1999. The continued application of these

rules and limits in years following their repeal could cause a plan to fail to satisfy one or more requirements of § 401(a).

(4) An adopting employer cannot rely on an advisory letter issued after the date the employer adopts the GUST-amended plan.

(5) An adopting employer can rely on an opinion or advisory letter only if the employer has not added any terms to the approved M&P or volume submitter plan document and has not modified or deleted any terms of the document other than choosing options permitted under the document or, in the case of an M&P plan, amending the document as permitted under sections 5.07 and 5.11 of Rev. Proc. 2000–20. Thus, for example, in the case of a volume submitter plan, the employer's plan must be identical to the approved specimen plan except as the result of the employer's selection among options that are permitted under the terms of the approved specimen plan.

(6) An adopting employer cannot rely on an opinion or advisory letter if the adopting employer has modified the terms of the plan's approved trust in a manner that would cause the plan to fail to be qualified.

Reliance equivalent to determination letter

.05 If an employer can rely on a favorable opinion or advisory letter pursuant to this section, the opinion or advisory letter shall be equivalent to a favorable determination letter. For example, the favorable opinion or advisory letter shall be treated as a favorable determination letter for purposes of section 21 of this revenue procedure, regarding the effect of a determination letter, and section 5.01(4) of Rev. Proc. 2003–44, 2003–1 C.B. 1051 regarding the definition of "favorable letter" for purposes of the Employee Plans Compliance Resolution System.

SECTION 9. ADVISORY LETTER AND DETERMINATION LETTER FILING PROCEDURES FOR M&P AND VOLUME SUBMITTER PLANS

Scope

.01 This section contains procedures for requesting advisory letters and determination letters for volume submitter plans and determination letters for M&P plans.

Description of volume submitter program

.02 Under the volume submitter program, a practitioner who qualifies may request the Service to issue an advisory letter regarding a volume submitter specimen plan. A specimen plan is a sample plan of a practitioner (rather than the actual plan of an employer) that contains provisions that are identical or substantially similar to the provisions in plans that such practitioner's clients have adopted or are expected to adopt. A specimen plan may include an adoption agreement. A specimen plan may include blanks or fill-in provisions for the employer to complete only if the plan also includes parameters on these provisions that preclude an employer from completing them in a manner that could violate the qualification requirements. Once the Service has approved the specimen plan, employers who adopt the same plan and meet the conditions described in section 8 of this revenue procedure will be able to rely on the advisory letter to the extent provided in section 8. In addition, the practitioner will be able to file determination letter requests on behalf of employers adopting substantially similar plans who need a determination letter to have reliance or who otherwise desire a determination letter.

Definition of volume submitter plan

.03 A volume submitter plan is a profit-sharing plan (without a § 401(k) arrangement), a profit-sharing plan (with a § 401(k) arrangement), a money purchase pension plan, or a defined benefit plan that is submitted under the procedures described in this section 9 for filing requests for volume submitter advisory letters (with respect to the specimen plan) and requests for determination letters (with respect to an employer's adoption of a plan that is substantially similar to an approved specimen plan). The Service will not accept volume submitter requests with respect to ESOPs or other stock bonus plans, cash balance or similar defined benefit plans, or plans that include so-called fail-safe provisions for § 401(a)(4) or the average benefit test under § 410(b). The Service may decline to accept volume submitter requests for other types of plans not described in this section 9.03.

Incorporation by reference

.04 Incorporation by reference in a volume submitter plan is subject to the limits described in sections 5.18 and 8.03 of Rev. Proc. 2000–20.

User fees

.05 Rev. Proc. 2005–8 provides reduced user fees for requests under the volume submitter program if certain requirements are satisfied. For adopting employers to be entitled to file a request for a determination letter with the lower fees, the volume submitter practitioner must certify at the time of filing a request for an advisory letter for the specimen plan that at least 30 employers are expected to adopt plans that are substantially similar in form to the specimen plan. Also, the volume submitter practitioner must be a representative of the employer when the employer's determination letter application is filed. Although the volume submitter is not required to submit a list of adopting employers, the Service reserves the right to request such a list. Reduced user fees also apply to advisory letter applications for volume submitter specimen plans that are identical to volume submitter lead specimen plans. See section 17.02 of Rev. Proc. 2000–20.

Advisory letter for specimen plan

.06 With respect to advisory letters for volume submitter specimen plans:

(1) A request for approval of a volume submitter specimen plan must be sent to the volume submitter coordinator for EP Determinations at the following address:

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201
Attn: VSC Coordinator
Room 5106

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

Internal Revenue Service
550 Main Street
Cincinnati, OH 45202
Attn: VSC Coordinator
Room 5106

(2) The request for approval must include the following:

(a) A copy of the specimen plan, including adoption agreement, if applicable, and any related specimen trust instrument;

(b) A cover letter requesting approval that includes the certification described in section 9.05 above and indicates the type of plan for which approval is being requested;

(c) The required user fee submitted with Form 8717, *User Fee for Employee Plan Determination Letter Request;* and

(d) An index/table of contents listing the location of all variable sections.

(3) For procedures regarding volume submitter lead specimen plans, see section 17.02 of Rev. Proc. 2000–20.

Requests for information

.07 The Service may, at its discretion, require any additional information it considers necessary to the issuance of a favorable advisory letter, including a demonstration of how the variables (options or alternatives) in the specimen plan interrelate to satisfy the qualification requirements of the Code. If a letter requesting changes to the specimen plan is sent to the volume submitter practitioner or authorized representative, a response addressing each requested change must be received no later than 30 days from the date of the letter, and the response must include either a copy of the plan with the changes highlighted or, if the changes are not extensive, replacement pages. If the changes are not received within 30 days, the advisory letter application may be considered withdrawn. An extension of the 30-day time limit will

only be granted for reasonable cause. The Service may return to the applicant any request for an advisory letter if it determines the application is so deficient that it cannot be reviewed in a reasonable amount of time.

Inadequate submissions

.08 The Service will return, without further action, applications for advisory letters for plans that are not in substantial compliance with the qualification requirements or plans that are so deficient that they cannot be reviewed in a reasonable amount of time. A plan may be considered not to be in substantial compliance if, for example, it omits or merely incorporates qualification requirements by reference to the applicable Code section. The Service will not consider these plans until after they are revised, and they will be treated as new requests as of the date they are resubmitted. No additional user fee will be charged if an inadequate submission is amended to be in substantial compliance and is resubmitted to the Service within 30 days following the date the volume submitter practitioner is notified of such inadequacy.

Determination letter for adoption of volume submitter plan

.09 With respect to determination letters for volume submitter plans:

(1) A request for a determination letter for an employer's adoption of an approved volume submitter plan must be sent to the address provided in section 6.17.

(2) The request for a determination letter must include the following:

(a) Form 5307, *Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans* (Schedule Q is optional);

(b) Form 2848, *Power of Attorney and Declaration of Representative*, or other written authorization allowing the volume submitter practitioner to act as a representative of the employer with respect to the request for a determination letter;

(c) A copy of the advisory letter for the practitioner's volume submitter specimen plan;

(d) A copy of the plan and trust instrument or, if the employer has made no changes to the specimen plan and trust other than completing options permitted under the adoption agreement, a copy of the completed adoption agreement;

(e) A written representation made by the volume submitter practitioner which:

(i) states whether the plan and trust instrument are word-for-word identical to the approved specimen plan;

(ii) if the plan and trust are not word-for-word identical to the approved specimen plan, explains how the plan and trust instrument differ from the approved specimen plan, describing the location, nature and effect of each deviation from the language of the approved specimen plan; and

(iii) if the latest advisory letter for the approved specimen plan does not consider all the changes made by GUST, states that the plan satisfies all requirements of GUST, including those first effective in plan years beginning after December 31, 1998, and identifies those deviations from the language of the approved specimen plan that are intended to satisfy specific GUST requirements;

(f) A copy of the plan's latest favorable determination letter, if applicable; and

(g) Any other information or material that may be required by the Service.

(3) Deviations from the language of the approved specimen plan will be evaluated based on the extent and complexities of the changes. If the changes are determined not to be compatible with the volume submitter program, the Service may require the applicant to file Form 5300 and pay the higher user fee.

(4) An employer will not be treated as having adopted a volume submitter plan if the employer has signed or otherwise adopted the plan prior to the date on the volume submitter

specimen plan's advisory letter. In this case, the determination letter application for the employer's plan may not be filed on Form 5307 and will not be eligible for a reduced user fee. A determination letter application for a volume submitter plan must be based on the approved volume submitter specimen plan with any applicable modifications.

Determination letter for adoption of M&P plan

.10 Form 5307 must be filed to request a determination letter for the adoption of an M&P plan. Schedule Q may be filed as an attachment to Form 5307.

Required information

.11 The determination letter request must include the following:

(1) An adoption agreement showing which elections the employer is making with respect to the elective provisions contained in the plan;

(2) A copy of the plan's most recent opinion letter; and

(3) In the case of a determination letter request for an M&P plan that uses a separate trust or custodial account, a copy of the employer's trust or custodial account document.

Amended plan is treated as an individually-designed plan

.12 An employer that amends any provision of an M&P plan or its adoption agreement (other than to choose among the options offered by the sponsor if the plan permits or contemplates such options), or an employer that chooses to discontinue participation in such a plan as amended by its sponsor and does not substitute another approved plan referred to in this section is considered to have adopted an individually-designed plan. The requirements stated in this revenue procedure relating to the issuance of determination letters for individually-designed plans will then apply to such plan.

Requests made prior to the issuance of opinion letter

.13 An application submitted by an employer with respect to an M&P plan will be treated as an application for an individually-designed plan if it is executed prior to the time the M&P plan is approved. Also see sections 5.14 and 18.06 of Rev. Proc. 2000–20 regarding the requirement that employers sign new adoption agreements when M&P plans are restated.

SECTION 10. MULTIPLE EMPLOYER PLANS

Scope

.01 This section contains procedures for applications filed with respect to plans described in § 413(c). A plan is not described in § 413(c) if all the employers maintaining the plan are members of the same controlled group or affiliated service group under § 414(b), (c) or (m).

Option to file for the plan only or for both the plan and employers maintaining the plan

.02 A determination letter applicant for a multiple employer plan can request either (1) a letter for the plan in the name of the controlling member or (2) a letter for the plan and a letter for each employer maintaining the plan with respect to whom a separate Form 5300 is filed.

(1) An applicant requesting a letter for the plan submits one Form 5300 application for the plan in the name of the controlling member, omitting the optional minimum coverage questions and Schedule Q and either including or omitting the design-based safe harbor questions. The user fee for a single employer plan will apply. An employer maintaining a multiple employer plan can rely on a favorable determination letter issued for the plan without having to request its own determination letter except with respect to the requirements of §§ 401(a)(4), 401(a)(26), 401(l), 410(b) and 414(s), and, if the employer maintains or has ever maintained another plan, §§ 415 and 416.

(2) An applicant requesting a letter for the plan and an employer must submit the filing required in (1) above as well as a separate Form 5300 application, completed through line 8, and, if applicable, a completed adoption agreement, for each employer requesting a separate letter. Each employer may elect to respond to the Form 5300 questions regarding minimum coverage and design-based safe harbors and to file Schedule Q to request a determination on the average benefit test, the general test or any other nondiscrimination requirement addressed by the Schedule Q. The user fee for the application will be determined under the user fee schedules for multiple employer plans in section 6.06 of Rev. Proc. 2005–8, treating the entire application as a general test or average benefit test application if any employer requests a determination on either of these tests.

(3) Rules similar to the rules in section 8 of this revenue procedure above also apply in the case of an employer maintaining a multiple employer plan.

Where to file

.03 The complete application, including all Forms 5300 (and, if applicable, adoption agreements) for employers maintaining the plan who request separate letters must be filed as one package submission with EP Determinations. The application is to be sent to the address in section 6.17.

Determination letter sent to each employer who files Form 5300

.04 The Service will mail a determination letter to each employer maintaining the plan for whom a separate Form 5300 has been filed.

Addition of employers

.05 An employer may continue to rely on a favorable determination letter after another employer commences participation in the plan, regardless of whether the first employer's reliance is based on its own letter or the letter issued for the plan and regardless of whether an application for a determination letter for the new employer is filed. An application for a determination letter that takes into account the addition of such other employer should include a completed Form 5300 for the plan in the name of the controlling member on the Form 5300 filed pursuant to section 10.02 above, and a supplemental Form 5300 and optional Schedule Q (and, if applicable, adoption agreement) for each new employer who desires a separate determination letter. The Service will send the determination letter only to the applicant and the new employers.

SECTION 11. MINOR AMENDMENT OF PREVIOUSLY APPROVED PLAN

Scope

.01 This section contains procedures for requesting determination letters on the effect of a minor plan amendment.

Form 6406

.02 Form 6406, *Short Form Application for Determination for Minor Amendment of Employee Benefit Plan*, may be filed to request a determination letter on a minor plan amendment. This form may be used for minor amendments of individually-designed plans (including volume submitter plans, multiemployer plans and multiple employer plans) or permitted changes to adoption agreement elections in master or prototype plans, provided the changes constitute minor amendments. The Service may also designate other specific amendments that may be submitted using Form 6406.

Additional information

.03 All applications must be accompanied by a copy of the new amendments, a statement as to how the amendments affect or change the plan or any other plan maintained by the employer, and a copy of the latest determination letter. In the case of a master or prototype or volume submitter plan, a copy of the opinion or advisory letter should also be included. A copy of the plan or trust instrument should not be filed with the Form 6406.

Minor amendment procedures may not be used for complex amendments or GUST letter

.04 Since determination letters issued on minor amendments express an opinion only as to whether the amendments, in and of themselves, affect the qualification of employee plans under § 401 or 403(a), the minor amendment procedures cannot be used for complex amendments that may affect other portions of the plan so as to cause plan disqualification. Thus, the minor amendment procedures may not be used for an amendment to add a § 401(k) or an ESOP provision to a plan, or to restate a plan. The minor amendment procedures also may not be used to obtain a determination letter on plan amendments involving plan mergers or consolidations, transfers of assets or liabilities, or plan terminations (including partial terminations). In addition, the minor amendment procedures may not be used for an amendment that involves a significant change to plan benefits or coverage. Except as provided in section 3.05 of Rev. Proc. 2000–27, the minor amendment procedures may not be used to obtain a GUST determination letter.

EP Determinations has discretion to determine whether use of minor amendment procedures is appropriate

.05 EP Determinations has discretion to determine whether a plan amendment may be submitted as a minor plan amendment and may request additional information, including the filing of a Form 5300 series application if it determines that the application and the attachments filed under the minor amendment procedures do not contain sufficient information, or that the Form 6406 is inappropriate.

SECTION 12. TERMINATION OR DISCONTINUANCE OF CONTRIBUTIONS; NOTICE OF MERGERS, CONSOLIDATIONS, ETC.

Scope

.01 This section contains procedures for requesting determination letters involving plan termination or discontinuance of contributions. This section also contains procedures regarding required notice of merger, consolidation, or transfer of assets or liabilities.

Forms

.02 Required Forms

(1) Form 5310, *Application for Determination for Terminating Plan,* is filed by plans other than multiemployer plans covered by the insurance program of the Pension Benefit Guaranty Corporation (PBGC).

(2) Form 5300, *Application for Determination of Employee Benefit Plan,* is filed in the case of a multiemployer plan covered by PBGC insurance.

(3) Schedule Q, *Elective Determination Requests,* may be filed as an attachment to Form 5310 or Form 5300.

(4) Form 6088, *Distributable Benefits from Employee Pension Benefit Plans*, is also required of a sponsor or plan administrator of a defined benefit plan or an underfunded defined contribution plan who files only an application for a determination letter regarding plan termination. For collectively bargained plans, a Form 6088 is required only if the plan benefits employees who are not collectively bargained employees within the meaning of § 1.410(b)–6(d). A separate Form 6088 is required for each employer employing such employees.

(5) Form 5310–A, *Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities — Notice of Qualified Separate Lines of Business*, if required, generally must be filed not later than 30 days before merger, consolidation or transfer of assets and liabilities. The filing of Form 5310–A will not result in the issuance of a determination letter.

Supplemental information

.03 The application for a determination letter involving plan termination must also include any supplemental information or schedules required by the forms or form instructions. For example, the application must include copies of all records of actions taken to terminate the plan (such as a resolution of the board of directors) and a schedule providing certain information regarding employees who separated from vesting service with less than 100% vesting.

Required demonstration of nondiscrimination requirements

.04 An applicant requesting a determination letter upon termination may not decline to elect that the plan be reviewed for the minimum coverage requirements or the nondiscrimination in amount requirement, as otherwise permitted, unless the following conditions are satisfied:

(1) With respect to the coverage requirements, in the year of termination the plan must use the average benefit test and the plan must have received a prior favorable determination letter that considered whether the plan satisfied the requirements of the test;

(2) With respect to the nondiscrimination in amount requirement, in the year of termination the plan must use either a nondesign-based safe harbor or the general test for nondiscrimination in amount and the plan must have received a prior favorable determination letter that considered whether the plan satisfied the requirements of either a nondesign-based safe harbor or the general test;

(3) The favorable determination letter was issued during the immediately preceding three plan years; and

(4) There has been no material change in the facts (including benefits provided under the plan and employee demographics) or law upon which the determination was based.

If these conditions are satisfied, but the prior determination letter does not state that the average benefit test, general test or nondesign-based safe harbor (as applicable) was considered, the applicant must include a copy of the prior submission in order to decline to have the test or safe harbor considered in the review of the application for determination on plan termination.

Compliance with Title IV of ERISA

.05 In the case of plans subject to Title IV of ERISA, a favorable determination letter issued in connection with a plan's termination is conditioned on approval that the termination is a valid termination under Title IV of ERISA. Notification by PBGC that a plan may not be terminated will be treated as a material change of fact.

Termination prior to time for amending for change in law

.06 A plan that terminates after the effective date of a change in law, but prior to the date that amendments are otherwise required, must be amended to comply with the applicable provisions of law from the date on which such provisions become effective with respect to the plan. Because such a terminated plan would no longer be in existence by the required amendment date and therefore could not be amended on that date, such plan must be amended in connection with the plan termination to comply with those provisions of law that become effective with respect to the plan on or before the date of plan termination. (Such amendments include any amendments made after the date of plan termination that were required in order to obtain a favorable determination letter.) In addition, annuity contracts distributed from such terminated plans also must meet all the applicable provisions of any change in law.

SECTION 13. GROUP TRUSTS

Scope

.01 This section provides special procedures for requesting a determination letter on the qualified status of a group trust under Rev. Rul. 81–100, as clarified and modified by Rev. Rul 2004–67.

Required information

.02 A request for a determination letter on the status of a group trust as described in Rev. Rul. 81–100 is made by submitting a written request demonstrating how the group trust satisfies the five criteria listed in Rev. Rul. 81–100, together with the trust instrument and related documents. Rev. Rul. 2004–67 extends the ability to participate in group trusts to eligible governmental plans under § 457(b) and clarifies the ability of certain individual retirement accounts under § 408 to participate. The revenue ruling provides model language, one for group trusts that have received favorable determination letters and the other for trusts that have received letter rulings.

SECTION 14. AFFILIATED SERVICE GROUPS; LEASED EMPLOYEES

Scope

.01 This section provides procedures for determination letter requests on affiliated service group status under § 414(m), and the effect of leased employees on a plan's qualified status.

Types of requests under § 414(m) and § 414(n)

.02 In accordance with section 7.01, an employer that is subject to § 414(m) or (n) may request a determination letter under the following circumstances: (1) with respect to the initial qualification of its plan, (2) on a plan amendment, and (3) in certain circumstances, even though the plan has not been amended (for example, where there has been a change in membership in the affiliated service group or where the employer did not previously have reliance).

Employer must request the determination under § 414(m) or § 414(n)

.03 Generally, a determination letter will cover § 414(m) or § 414(n) only if the employer requests such determination, and submits with the determination letter application the information specified in section 14.09 or section 14.10 below.

Forms

.04 Form 5300 (with Schedule Q optional) is submitted for a request on affiliated service group status or leased employee status. Form 5307 cannot be used for this purpose.

Employer is responsible for determining status under § 414(m) and § 414(n)

.05 An employer is responsible for determining at any particular time whether it is a member of an affiliated service group and, if so, whether its plan(s) continues to meet the requirements of § 401(a) after the effective date of § 414(m), including § 414(m)(5). An employer or plan administrator is also responsible for taking action relative to the employer's qualified plan if that employer becomes, or ceases to be, a member of an affiliated service group. An employer that is the recipient of services of leased employees within the meaning of § 414(n) is also responsible for determining at any particular time whether a leased employee is deemed to be an employee of the recipient for qualified plan purposes.

Omission of material fact

.06 Failure to properly indicate that there is or may be an affiliated service group and to provide the information specified in section 14.09 of this revenue procedure, or failure to properly indicate that an employer is utilizing the services of leased employees and to provide the information specified in section 14.10, is an omission of a material fact. The failure of the employer to follow the procedures in this section will result in the employer being unable to rely on any favorable determination letter concerning the effect of § 414(m) or § 414(n) on the qualified status of the plan.

Service will indicate whether § 414(m) or § 414(n) was considered

.07 If the Service considers whether the plan of an employer satisfies the requirements of § 414(m) or § 414(n), the determination letter issued to the employer will state that questions arising under § 414(m) or § 414(n) have been considered, and that the plan satisfies qualification requirements relating to that section. Absent such a statement pertaining to § 414(m) or § 414(n), a determination letter does not apply to any qualification issue arising by reason of such provisions.

M&P plans

.08 An employer that has adopted an M&P plan (including a standardized plan) and wants a determination as to the effect of § 414(m) or § 414(n) on the qualified status of its plan must attach the information required by section 14.09 or section 14.10 of this revenue procedure to Form 5300 and submit the information, Form 5300, and any other materials necessary to make a determination.

Required information for § 414(m) determination

.09 A determination letter issued with respect to a plan's qualification under § 401(a), 403(a), or 4975(e)(7) will be a determination as to the effect of § 414(m) upon the plan's qualified status only if the application includes:

(1) A description of the nature of the business of the employer, specifically whether it is a service organization or an organization whose principal business is the performance of management functions for another organization, including the reasons therefor;

(2) The identification of other members (or possible members) of the affiliated service group;

(3) A description of the business of each member (or possible member) of the affiliated service group, describing the type of organization (corporation, partnership, etc.) and indicating whether the member is a service organization or an organization whose principal business is the performance of management functions for the other group member(s);

(4) The ownership interests between the employer and the members (or possible members) of the affiliated service group (including ownership interests as described in § 414(m)(2)(B)(ii) or § 414(m)(6)(B));

(5) A description of services performed for the employer by the members (or possible members) of the affiliated service group, or vice versa (including the percentage of each member's (or possible member's) gross receipts and service receipts provided by such services, if available, and data as to whether such services are a significant portion of the member's business) and whether, as of December 13, 1980, it was not unusual for the services to be performed by employees of organizations in that service field in the United States;

(6) A description of how the employer and the members (or possible members) of the affiliated service group associate in performing services for other parties;

(7) In the case of a management organization under § 414(m)(5):

(a) A description of the management functions, if any, performed by the employer for the member(s) (or possible member(s)) of the affiliated service group, or received by the employer from any other members (or possible members) of the group (including data explaining whether the management functions are performed on a regular and continuous basis) and whether or not it is unusual for such management functions to be performed by employees of organizations in the employer's business field in the United States;

(b) If management functions are performed by the employer for the member (or possible members) of the affiliated service group, a description of what part of the employer's business constitutes the performance of management functions for the member (or possible member) of the group (including the percentage of gross receipts derived from management activities as compared to the gross receipts from other activities);

(8) A brief description of any other plan(s) maintained by the members (or possible members) of the affiliated service group, if such other plan(s) is designated as a unit for qualification purposes with the plan for which a determination letter has been requested;

(9) A description of how the plan(s) satisfies the coverage requirements of § 410(b) if the members (or possible members) of the affiliated service group are considered part of an affiliated service group with the employer;

(10) A copy of any ruling issued by the headquarters office on whether the employer is an affiliated service group; a copy of any prior determination letter that considered the effect of § 414(m) on the qualified status of the employer's plan; and, if known, a copy of any such ruling or determination letter issued to any other member (or possible member) of the same affiliated service group, accompanied by a statement as to whether the facts upon which the ruling or determination letter was based have changed.

Required information for § 414(n) determination

.10 Unless the plan provides that all leased employees within the meaning of § 414(n)(2) are treated as common law employees for all purposes under the plan, a determination letter issued with respect to the plan's qualification under § 401(a), 403(a), or 4975(e)(7) will be a determination as to the effect of § 414(n) upon the plan's qualified status only if the application includes:

(1) A description of the nature of the business of the recipient organization;

(2) A copy of the relevant leasing agreement(s);

(3) A description of the function of all leased employees within the trade or business of the recipient organization (including data as to whether all leased employees are performing services on a substantially full-time basis);

(4) A description of facts and circumstances relevant to a determination of whether such leased employees' services are performed under primary direction or control by the recipient organization (including whether the leased employees are required to comply with instructions of the recipient about when, where, and how to perform the services, whether the services must be performed by particular persons, whether the leased employees are subject to the supervision of the recipient, and whether the leased employees must perform services in the order or sequence set by the recipient); and

(5) If the recipient organization is relying on any qualified plan(s) maintained by the employee leasing organization for purposes of qualification of the recipient organization's plan, a description of such plan(s) (including a description of the contributions or benefits provided for all leased employees which are attributable to services performed for the recipient organization, plan eligibility, and vesting).

SECTION 15. WAIVER OF MINIMUM FUNDING

Scope

.01 This section provides procedures with respect to defined contribution plans for requesting a waiver of the minimum funding standard account and requesting a determination letter on any plan amendment required for the waiver.

Applicability of Rev. Proc. 2004–15

.02 The procedures in Rev. Proc. 2004–15, 2004–7 I.R.B. 490 apply to the request for a waiver of the minimum funding requirement. Section 2 of that revenue procedure contains the procedures for obtaining waivers of the minimum funding standards in the instance of defined benefit plans. In order to provide maximum flexibility in requesting a waiver for a defined contribution pension plan, section 3 of the revenue procedure contains three alternative methods as described more fully in Rev. Proc. 2004–15.

Waiver request submitted to EP Technical

.03 The first two alternatives involve (1) a waiver ruling only, without submission of a plan amendment, and (2) a waiver ruling only, with submission of a plan amendment. Under these first two procedures, requests for waivers must be submitted to:

Employee Plans
Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA
P. O. Box 27063
McPherson Station
Washington, D.C. 20038

In both cases, the applicant must satisfy the requirements of section 2 of Rev. Proc. 2004–15, other than the parts applicable only to defined benefit plans.

If a plan amendment is not submitted or is not already part of a plan, the Service will supply an amendment which will, if adopted, satisfy section 3 of Rev. Rul. 78–223, 1978–1 C.B. 125. The waiver will be conditioned upon the plan being amended by adoption of that amendment, within a reasonable period of time, and will contain a caveat stating that the ruling is not a ruling as to the effect the plan provision may have on the qualified status of the plan. The applicant may request reconsideration within 60 days of the date of the letter if the amendment is inappropriate, by submitting a letter to the above address.

If the request for the waiver is submitted along with a plan amendment, the plan provisions necessary to satisfy section 3 of Rev. Rul. 78–223 must be included. All waivers issued pursuant to this alternative will contain a caveat indicating that the ruling is not a ruling as to the effect any plan provision may have on the qualified status of the plan.

Waiver and determination letter request submitted to EP Technical

.04 The third alternative is a request for a waiver ruling and a determination letter request. Both requests must be submitted by the applicant to EP Technical where it will be treated as if it had been submitted as a request for technical advice from the Determinations Manager. The request must:

(1) satisfy all the procedural requirements of 3.03 of Rev. Proc. 2004–15;

(2) include a completed Form 5300 and all necessary documents, plan amendments and information required by the Form 5300 and Rev. Proc. 2004–15 for approval;

(3) indicate which Area Office has audit jurisdiction over the return; and

(4) submit the user fee for both requests to EP Technical.

In addition, the procedures for notice and comment by interested parties, contained in sections 17, 18 and 19 of this revenue procedure, and the notice and comment procedures provided in section 2.02 of Rev. Proc. 2004–15 must be satisfied. Comments will be forwarded to the

Determinations Office that is considering the determination letter request for the plan amendments.

Handling of the request

.05 The waiver request described in section 15.04 above will be handled by EP Technical as follows:

(1) The waiver request and supporting documents will be forwarded to EP Technical, SE:T:EP:RA:T, which will treat the request as a technical advice on the qualification issue with respect to the plan provisions necessary to satisfy section 3 of Rev. Rul. 78–223.

(2) The appropriate Determinations Office will be notified of the request. In order not to delay the processing of the request, all materials relating to the determination letter request will be forwarded by EP Technical to the Determinations Manager for consideration while the technical advice request is completed.

(3) EP Technical will consider both issues. If a waiver is to be granted and if EP Technical believes that qualification of the plan is not adversely affected by the plan amendment, the mandatory technical advice memorandum will be issued to the Determinations Manager. The Determinations Manager must decide within 10 working days from the date of the technical advice memorandum either to furnish the applicant with the technical advice memorandum and with a favorable advance determination letter, or to ask for reconsideration of the technical advice memorandum. This request must be in writing. An initial written notice of intent to make this request may be submitted within 10 working days of the date of the technical advice memorandum and followed by a written request within 30 working days from the date of such written notice. If the Determinations Manager does not ask for reconsideration of the technical advice memorandum within 10 working days, EP Technical will issue the waiver ruling. This ruling will not contain the caveat described in section 3.02 of Rev. Proc. 2004–15.

When waiver request should be submitted

.06 In the case of a plan other than a multiemployer plan, all waiver requests must be submitted to the Service no later than the 15th day of the third month following the close of the plan year for which the waiver is requested. The Service may not extend this statutory deadline. A request for a waiver with respect to a multiemployer plan generally must be submitted no later than the close of the plan year following the plan year for which the waiver is requested.

In seeking a waiver with respect to a plan year that has not yet ended, the applicant may have difficulty in furnishing sufficient current evidence in support of the request. For this reason it is generally advisable that such advance request be submitted no earlier than 180 days prior to the end of the plan year for which the waiver is requested.

SECTION 16. SECTION 401(h) AND § 420 DETERMINATION LETTERS

Scope

.01 This section provides procedures for requesting determination letters (i) with respect to whether the requirements of § 401(h) are satisfied in a plan with retiree medical benefit features and (ii) on plan language that permits, pursuant to § 420, the transfer of assets in a defined benefit plan to a health benefit account described in § 401(h).

Required information for § 401(h) determination

.02 EP Determinations will issue a determination letter that considers whether the requirements of § 401(h) are satisfied in a plan with retiree medical benefit features only if the plan sponsor's application includes, in addition to the application forms and any other material required by this revenue procedure, a cover letter that requests consideration of § 401(h). The cover letter must specifically state that consideration is being requested with regard to § 401(h) in addition to other matters under § 401(a) and must specifically state the location of plan provisions that satisfy the requirements of § 401(h). Part I of the checklist in the Appendix of this revenue procedure may be used to identify the location of relevant plan provisions. Form 6406 may not be used to request a determination letter that considers § 401(h).

Required information for § 420 determination

.03 EP Determinations will consider the qualified status of plan language designed to comply with § 420 only if the plan sponsor requests such consideration in a cover letter. The cover

letter must specifically state (i) whether consideration is being requested only with regard to § 420, or (ii) whether consideration is being requested with regard to § 420 in addition to other matters under § 401(a). (If consideration of other matters under § 401(a) is being requested, the application forms and other material required by this revenue procedure must also be submitted. Form 6406 may not be used for this purpose.) The cover letter must specifically state the location of plan provisions that satisfy each of the following requirements. Parts I and II of the checklist in the Appendix of this revenue procedure may be used to identify the location of relevant plan provisions.

(1) The plan must include a health benefits account as described in § 401(h).

(2) The plan must provide that transfers shall be limited to transfers of "excess assets" as defined in § 420(e)(2).

(3) The plan must provide that only one transfer may be made in a taxable year. However, for purposes of determining whether the rule in the preceding sentence is met, a plan may provide that a transfer will not be taken into account if it is a transfer that:

(a) Is made after the close of the taxable year preceding the employer's first taxable year beginning after December 31, 1990, and before the earlier of (i) the due date (including extensions) for the filing of the return of tax for such preceding year, or (ii) the date such return is filed; and

(b) Does not exceed the expenditures of the employer for qualified current retiree health liabilities for such preceding taxable year.

(4) The plan must provide that the amount transferred shall not exceed the amount which is reasonably estimated to be the amount the employer will pay out (whether directly or through reimbursement) of the health benefit account during the taxable year of the transfer for "qualified current retiree health liabilities," as defined in § 420(e)(1).

(5) The plan must provide that no transfer will be made after December 31, 2013.

(6) The plan must provide that any assets transferred, and any income allocable to such assets, shall be used only to pay qualified current retiree health liabilities for the taxable year of transfer.

(7) The plan must provide that any amounts transferred to a health benefits account (and income attributable to such amounts) which are not used to pay qualified current retiree health liabilities shall be transferred back to the defined benefit portion of the plan.

(8) The plan must provide that the amounts paid out of a health benefits account will be treated as paid first out of transferred assets and income attributable to those assets.

(9) The plan must provide that the accrued pension benefits for participants and beneficiaries must become nonforfeitable as if the plan had terminated immediately prior to the transfer (or in the case of a participant who separated during the 1-year period ending on the date of transfer immediately before such separation). In the case of a transfer described in § 420(b)(4) that relates to a prior year, the plan must provide that the accrued benefit of a participant who separated from service during the taxable year to which such transfer relates will be recomputed and treated as nonforfeitable immediately before such separation.

(10) The plan must provide that a transfer will be permitted only if each group health plan or arrangement under which health benefits are provided contains provisions satisfying § 420(c)(3). The plan must define "applicable employer cost", "cost maintenance period", and "benefit maintenance period", as applicable, consistent with § 420(c)(3), as amended. If applicable, the provisions of the plan must also reflect the transition rule in § 535(c)(2) of the Tax Relief Extension Act of 1999 (TREA '99). The plan may provide that § 420(c)(3) is satisfied separately with respect to individuals eligible for benefits under Title XVIII of the Social Security Act at any time during the taxable year and with respect to individuals not so eligible.

(11) The plan must provide that transferred assets cannot be used for key employees (as defined in § 416(i)(1)).

PART II. INTERESTED PARTY NOTICE AND COMMENT

SECTION 17. WHAT RIGHTS TO NOTICE AND COMMENT DO INTERESTED PARTIES HAVE?

Rights of interested parties

.01 Persons who qualify as interested parties under § 1.7476–1(b), have the following rights:

(1) To receive notice, in accordance with section 18 below, that an application for an advance determination will be filed regarding the qualification of plans described in §§ 401, 403(a), 409 and/or 4975(e)(7);

(2) To submit written comments with respect to the qualification of such plans to the Service;

(3) To request the Department of Labor to submit a comment to the Service on behalf of the interested parties; and

(4) To submit written comments to the Service on matters with respect to which the Department of Labor was requested to comment but declined.

Comments by interested parties

.02 Comments submitted by interested parties must be received by EP Determinations by the 45th day after the day on which the application for determination is received by EP Determinations. (However, see sections 17.03 and 17.04 for filing deadlines where the Department of Labor has been requested to comment.) Such comments must be in writing, signed by the interested parties or by an authorized representative of such parties (as provided in section 9.02(11) of Rev. Proc. 2005–4), addressed to EP Determinations at the address in section 6.17, and contain the following information:

(1) The names of the interested parties making the comments;

(2) The name and taxpayer identification number of the applicant for a determination;

(3) The name of the plan, the plan identification number, and the name of the plan administrator;

(4) Whether the parties submitting the comment are:

(a) Employees eligible to participate under the plan,

(b) Employees with accrued benefits under the plan, or former employees with vested benefits under the plan,

(c) Beneficiaries of deceased former employees who are eligible to receive or are currently receiving benefits under the plan,

(d) Employees not eligible to participate under the plan.

(5) The specific matters raised by the interested parties on the question of whether the plan meets the requirements for qualification involving §§ 401 and 403(a), and how such matters relate to the interests of the parties making the comment; and

(6) The address of the interested party submitting the comment (or if a comment is submitted jointly by more than one party, the name and address of a designated representative) to which all correspondence, including a notice of the Service's final determination with respect to qualification, should be sent. (The address designated for notice by the Service will also be used by the Department of Labor in communicating with the parties submitting a request for comment.) The designated representative may be one of the interested parties submitting the comment or an authorized representative. If two or more interested parties submit a single

comment and one person is not designated in the comment as the representative for receipt of correspondence, a notice of determination mailed to any interested party who submitted the comment shall be notice to all the interested parties who submitted the comment for purposes of § 7476(b)(5) of the Code.

Requests for DOL to submit comments

.03 A request to the Department of Labor to submit to EP Determinations a comment pursuant to section 3001(b)(2) of ERISA must be made in accordance with the following procedures.

(1) The request must be received by the Department of Labor by the 25th day after the day the application for determination is received by EP Determinations. However, if the parties requesting the Department to submit a comment wish to preserve the right to comment to EP Determinations in the event the Department declines to comment, the request must be received by the Department by the 15th day after the day the application for determination is received by EP Determinations.

(2) The request to the Department of Labor to submit a comment to EP Determinations must:

(a) Be in writing;

(b) Be signed as provided in section 17.02 above;

(c) Contain the names of the interested parties requesting the Department to comment and the address of the interested party or designated representative to whom all correspondence with respect to the request should be sent. See also section 17.02(6) above;

(d) Contain the information prescribed in section 17.02(2), (3), (4), (5) and (6) above;

(e) Indicate that the application was or will be submitted to EP Determinations at the address in section 6.17;

(f) Contain a statement of the specific matters upon which the Department's comment is sought, as well as how such matters relate to the interested parties making the request; and

(g) Be addressed as follows:

Deputy Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210
Attention: 3001 Comment Request

Right to comment if DOL declines to comment

.04 If a request described in 17.03 is made and the Department of Labor notifies the interested parties making the request that it declines to comment on a matter concerning qualification of the plan which was raised in the request, the parties submitting the request may still submit a comment to EP Determinations on such matter. The comment must be received by the later of the 45th day after the day the application for determination is received by EP Determinations or the 15th day after the day on which notification is given by the Department that it declines to submit a comment on such matter. (See section 17.07 for the date of notification.) In no event may the comment be received later than the 60th day after the day the application for determination was received. Such a comment must comply with the requirements of section 17.02 and include a statement that the comment is being submitted on matters raised in a request to the Department upon which the Department declined to comment.

Confidentiality of comments

.05 For rules regarding the confidentiality of contents of written comments submitted by interested parties to the Service pursuant to section 17.02 or 17.04, see § 601.201(o)(5) of the Statement of Procedural Rules.

Availability of comments

.06 For rules regarding the availability to the applicant of copies of all comments on the application submitted pursuant to section 17.01(1), (2), (3) and (4) of this revenue procedure, see § 601.201(o)(5) of the Statement of Procedural Rules.

When comments are deemed made

.07 An application for an advance determination, a comment to EP Determinations, or a request to the Department of Labor shall be deemed made when it is received by EP Determinations, or the Department. Notification by the Department that it declines to comment shall be deemed given when it is received by the interested party or designated representative. The notice described in section 18.01 below shall be deemed given when it is posted or sent to the person in the manner described in § 1.7476–2. In the case of an application, comment, request, notification, or notice that is sent by mail or a private delivery service that has been designated under § 7502(f), the date as of which it shall be deemed received will be determined under § 7502. However, if such an application, comment, request, notification, or notice is not received within a reasonable period from the date determined under § 7502, the immediately preceding sentence shall not apply.

SECTION 18. WHAT ARE THE GENERAL RULES FOR NOTICE TO INTERESTED PARTIES?

Notice to interested parties

.01 Notice that an application for an advance determination regarding the qualification of a plan that is described in §§ 401, 403(a), 409 and 4975(e)(7) and that is subject to § 410 is to be made must be given to all interested parties in the manner prescribed in § 1.7476–2(c) and in accordance with the requirements of this section. A notice to interested parties is deemed to be provided in a manner that satisfies § 1.7476–2(c) if the notice is delivered using an electronic medium under a system that satisfies the requirements of § 1.402(f)–1 Q&A–5.

Time when notice must be given

.02 Notice must be given not less than 10 days nor more than 24 days prior to the day the application for a determination is made. If, however, an application is returned to the applicant for failure to adequately satisfy the notification requirements with respect to a particular group or class of interested parties, the applicant need not cause notice to be given to those groups or classes of interested parties with respect to which the notice requirement was already satisfied merely because, as a result of the resubmission of the application, the time limitations of this subsection would not be met.

Content of notice

.03 The notice referred to in section 18.01 shall contain the following information:

(1) A brief description identifying the class or classes of interested parties to whom the notice is addressed (*e.g.*, all present employees of the employer, all present employees eligible to participate);

(2) The name of the plan, the plan identification number, and the name of the plan administrator;

(3) The name and taxpayer identification number of the applicant for a determination;

(4) That an application for a determination as to the qualified status of the plan is to be made to the Service at the address in section 6.17, and stating whether the application relates to an initial qualification, a plan amendment, termination, or a partial termination;

(5) A description of the class of employees eligible to participate under the plan;

(6) Whether or not the Service has issued a previous determination as to the qualified status of the plan;

(7) A statement that any person to whom the notice is addressed is entitled to submit, or request the Department of Labor to submit, to EP Determinations, a comment on the question of whether the plan meets the requirements of § 401 or 403(a); that two or more such persons may join in a single comment or request; and that if such persons request the Department of Labor to submit a comment and the Department of Labor declines to do so with respect to one or more

matters raised in the request, the persons may still submit a comment to EP Determinations with respect to the matters on which the Department declines to comment. The Pension Benefit Guaranty Corporation (PBGC) may also submit comments. In every instance where there is either a final adverse termination or a distress termination, the Service formally notifies the PBGC for comments;

(8) The specific dates by which a comment to EP Determinations or a request to the Department of Labor must be received in order to preserve the right of comment (see section 17 above);

(9) The number of interested parties needed in order for the Department of Labor to comment; and

(10) Except to the extent that the additional informational material required to be made available by sections 18.05 through 18.09 are included in the notice, a description of a reasonable procedure whereby such additional informational material will be available to interested parties (see section 18.04). (Examples of notices setting forth the above information, in a case in which the additional information required by sections 18.05 through 18.09 will be made available at places accessible to the interested parties, are set forth in the Exhibit attached to this revenue procedure.)

Procedures for making information available to interested parties

.04 The procedure referred to in section 18.03(10), whereby the additional informational material required by sections 18.05 through 18.09 will (to the extent not included in the notice) be made available to interested parties, may consist of making such material available for inspection and copying by interested parties at a place or places reasonably accessible to such parties, or supplying such material by using a method of delivery or a combination thereof that is reasonably calculated to ensure that all interested parties will have access to the materials, provided such procedure is immediately available to all interested parties, is designed to supply them with such additional informational material in time for them to pursue their rights within the time period prescribed, and is available until the earlier of: 1) the filing of a pleading commencing a declaratory judgment action under § 7476 with respect to the qualification of the plan; or 2) the 92nd day after the day the notice of final determination is mailed to the applicant. Reasonable charges to interested parties for copying and/or mailing such additional informational material are permissible.

Information to be available to interested parties

.05 Unless provided in the notice, or unless section 18.06 applies, there shall be made available to interested parties under a procedure described in section 18.04:

(1) An updated copy of the plan and the related trust agreement (if any); and

(2) The application for determination.

Special rules if there are less than 26 participants

.06 If there would be less than 26 participants in the plan, as described in the application (including, as participants, former employees with vested benefits under the plan, beneficiaries of deceased former employees currently receiving benefits under the plan, and employees who would be eligible to participate upon making mandatory employee contributions, if any), then in lieu of making the materials described in section 18.05 available to interested parties who are not participants (as described above), there may be made available to such interested parties a document containing the following information:

(1) A description of the plan's requirements respecting eligibility for participation and benefits and the plan's benefit formula;

(2) A description of the provisions providing for nonforfeitable benefits;

(3) A description of the circumstances which may result in ineligibility, or denial or loss of benefits;

(4) A description of the source of financing of the plan and the identity of any organization through which benefits are provided;

(5) A description of any optional forms of benefits described in § 411(d)(6) which have been reduced or eliminated by plan amendment; and

(6) Any coverage schedule or other demonstration submitted with the application to show that the plan meets the requirements of §§ 401(a)(4) and 410(b).

However, once an interested party or designated representative receives a notice of final determination, the applicant must, upon request, make available to such interested party (whether or not the plan has less than 26 participants) an updated copy of the plan and related trust agreement (if any) and the application for determination.

Information described in § 6104(a)(1)(D) should not be included

.07 Information of the type described in § 6104(a)(1)(D) should not be included in the application, plan, or related trust agreement submitted to the Service. Accordingly, such information should not be included in any of the material required by section 18.05 or 18.06 to be available to interested parties.

Availability of additional information to interested parties

.08 Unless provided in the notice, there shall be made available to interested parties under a procedure described in section 18.04, any additional document dealing with the application which is submitted by or for the applicant to the Service, or furnished by the Service to the applicant; provided, however, if there would be less than 26 participants in the plan as described in the application (including, as participants, former employees with vested benefits under the plan, beneficiaries of deceased former employees currently receiving benefits under the plan, and employees who would be eligible to participate upon making mandatory employee contributions, if any), such additional documents need not be made available to interested parties who are not participants (as described above) until they, or their designated representative, receive a notice of final determination. The applicant may also withhold from such inspection and copying information described in § 6104(a)(1)(C) and (D) which may be contained in such additional documents.

Availability of notice to interested parties

.09 Unless provided in the notice, there shall be made available to all interested parties under a procedure described in section 18.04 the material described in sections 17.02 through 17.07 above.

PART III. PROCESSING DETERMINATION LETTER REQUESTS

SECTION 19. HOW DOES THE SERVICE HANDLE DETERMINATION LETTER REQUESTS?

Oral advice

.01 Oral advice.

(1) The Service does not issue determination letters on oral requests. However, personnel in EP Determinations ordinarily will discuss with taxpayers or their representatives inquiries regarding: substantive tax issues; whether the Service will issue a determination letter on particular issues; and questions relating to procedural matters about submitting determination letter requests. Any discussion of substantive issues will be at the discretion of the Service on a time available basis, will not be binding on the Service, and cannot be relied upon as a basis of obtaining retroactive relief under the provisions of § 7805(b). A taxpayer may seek oral technical assistance from a taxpayer service representative when preparing a return or report, under established procedures. Oral advice is advisory only, and the Service is not bound to recognize it in the examination of the taxpayer's return.

(2) The advice or assistance furnished, whether requested by personal appearance, telephone, or correspondence will be limited to general procedures, or will direct the inquirer to source material, such as pertinent Code provisions, regulations, revenue procedures, and revenue rulings that may aid the inquirer in resolving the question or problem.

Conferences

.02 EP Determinations may grant a conference upon written request from a taxpayer or his representative, provided the request shows that a substantive plan, amendment, etc., has been

developed for submission to the Service, but that special problems or issues are involved, and EP Determinations concludes that a conference would be warranted in the interest of facilitating review and determination when the plan, etc., is formally submitted. See section 6.21 and 6.22 regarding the right to a status conference on applications pending for at least 270 days.

Determination letter based solely on administrative record

.03 Administrative Record

(1) In the case of a request for a determination letter, the determination of EP Determinations or the appeals office on the qualification or non-qualification of the retirement plan shall be based solely upon the facts contained in the administrative record. The administrative record shall consist of the following:

(a) The request for determination, the retirement plan and any related trust instruments, and any written modifications or amendments made by the applicant during the proceedings within the Service;

(b) All other documents submitted to the Service by, or on behalf of, the applicant with respect to the request for determination;

(c) All written correspondence between the Service and the applicant with respect to the request for determination and any other documents issued to the applicant from the Service;

(d) All written comments submitted to the Service pursuant to sections 17.01(2), (3), and (4) above, and all correspondence relating to comments submitted between the Service and persons (including PBGC and the Department of Labor) submitting comments pursuant to sections 17.01(2), (3), and (4) above; and

(e) In any case in which the Service makes an investigation regarding the facts as represented or alleged by the applicant in the request for determination or in comments submitted pursuant to sections 17.01(2), (3), and (4) above, a copy of the official report of such investigation.

(2) The administrative record shall be closed upon the earlier of the following events:

(a) The date of mailing of a notice of final determination by the Service with respect to the application for determination; or

(b) The filing of a petition with the United States Tax Court seeking a declaratory judgment with respect to the retirement plan.

(3) Any oral representation or modification of the facts as represented or alleged in the application for determination or in a comment filed by an interested party, which is not reduced to writing shall not become a part of the administrative record and shall not be taken into account in the determination of the qualified status of the retirement plan by EP Determinations or the appeals office.

Notice of final determination

.04 In the case of final determination, the notice of final determination:

(1) Shall be the letter issued by EP Determinations or the appeals office which states that the applicant's plan satisfies the qualification requirements of the Code. The favorable determination letter will be sent by certified or registered mail where either an interested party, the Department of Labor, or the PBGC has commented on the application for determination.

(2) Shall be the letter issued, by certified or registered mail, by EP Determinations or the appeals office subsequent to a letter of proposed determination, stating that the applicant's plan fails to satisfy the qualification requirements of the Code.

Issuance of the notice of final determination

.05 EP Determinations or the appeals office will send the notice of final determination to the applicant, to the interested parties who have previously submitted comments on the application to the Service (or to the persons designated by them to receive such notice), to the Department

of Labor in the case of a comment submitted by the Department, and to PBGC if it has filed a comment.

SECTION 20. EXHAUSTION OF ADMINISTRATIVE REMEDIES

In general

.01 For purposes of § 7476(b)(3), a petitioner shall be deemed to have exhausted the administrative remedies available within the Service upon the completion of the steps described in sections 20.02, 20.03, 20.04, or 20.05 subject, however, to sections 20.06 and 20.07. If applicants, interested parties, or the PBGC do not complete the applicable steps described below, they will not have exhausted their respective available administrative remedies as required by § 7476(b)(3) and will, thus, be precluded from seeking declaratory judgment under § 7476 except to the extent that section 20.05 or 20.08 applies.

Steps for exhausting administrative remedies

.02 In the case of an applicant, with respect to any matter relating to the qualification of a plan, the steps referred to in section 20.01 are:

(1) Filing a completed application with EP Determinations pursuant to this revenue procedure;

(2) Complying with the requirements pertaining to notice to interested parties as set forth in this revenue procedure and § 1.7476–2 of the regulations; and,

(3) Appealing to the appropriate appeals office pursuant to paragraph 601.201(o)(6) of the Statement of Procedural Rules, in the event a notice of proposed adverse determination is issued by EP Determinations.

Applicant's request for § 7805(b) relief

.03 Consideration of relief under § 7805(b) will be included as one of the applicant's steps in exhausting administrative remedies only if the applicant requests EP Determinations to seek technical advice from EP Technical on the applicability of such relief. The applicant's request must be made in writing according to the procedures for requesting technical advice (*see* section 19 of Rev. Proc. 2005–5).

Interested parties

.04 In the case of an interested party or the PBGC, the steps referred to in section 20.01 are, with respect to any matter relating to the qualification of the plan, submitting to EP Determinations a comment raising such matter in accordance with section 17.01(2) above, or requesting the Department of Labor to submit to EP Determinations a comment with respect to such matter in accordance with section 17.01(3) and, if the Department of Labor declines to comment, submitting the comment in accordance with section 17.01(4) above, so that it may be considered by the Service through the administrative process.

Deemed exhaustion of administrative remedies

.05 An applicant, an interested party, or the PBGC shall in no event be deemed to have exhausted administrative remedies prior to the earlier of:

(1) The completion of those steps applicable to each as set forth in sections 20.01, 20.02, 20.03 or 20.04, which constitute their administrative remedies; or,

(2) The expiration of the 270-day period described in § 7476(b)(3), which period shall be extended in a case where there has not been a completion of all the steps referred to in section 20.02 and the Service has proceeded with due diligence in processing the application for determination.

Service must act on appeal

.06 The step described in section 20.02(3) will not be considered completed until the Service has had a reasonable time to act upon the appeal.

Service must act on § 7805(b) request

.07 Where the applicant has requested EP Determinations to seek technical advice on the applicability of § 7805(b) relief, the applicant's administrative remedies will not be considered exhausted until EP Technical has had a reasonable time to act upon the request for technical advice.

Effect of technical advice request

.08 The step described in section 20.02(3) will not be available or necessary with respect to any issue on which technical advice has been obtained from EP Technical.

SECTION 21. WHAT EFFECT WILL AN EMPLOYEE PLAN DETERMINATION LETTER HAVE?

Scope of reliance on determination letter

.01 A determination letter issued pursuant to this revenue procedure contains only the opinion of the Service as to the qualification of the particular plan involving the provisions of §§ 401 and 403(a) and the status of a related trust, if any, under § 501(a). Such a determination letter is based on the facts and demonstrations presented to the Service in connection with the application for the determination letter and may not be relied upon after a change in material fact or the effective date of a change in law, except as provided. The Service may determine, based on the application form, the extent of review of the plan document. Failure to disclose a material fact or misrepresentation of a material fact may adversely affect the reliance that would otherwise be obtained through the issuance by the Service of a favorable determination letter. Similarly, failure to accurately provide any of the information called for on any form required by this revenue procedure may result in no reliance. Applicants are advised to retain copies of all demonstrations and supporting data submitted with their applications. Failure to do so may limit the scope of reliance.

Effect of determination letter on minor plan amendment

.02 Determination letters issued on minor amendments to plans and trusts under this revenue procedure will merely express an opinion whether the amendment, in and of itself, affects the existing status of the plan's qualification and the exempt status of the related trust. In no event should such a determination letter be construed as an opinion on the qualification of the plan as a whole and the exempt status of the related trust as a whole.

Sections 13 and 14 of Rev. Proc. 2005–4 applicable

.03 Except as otherwise provided in this section, determination letters referred to in sections 21.01 and 21.02 are governed, generally, by the provisions of sections 13 and 14 of Rev. Proc. 2005–4.

Effect of subsequent publication of revenue ruling, etc.

.04 The prior qualification of a plan as adopted by an employer will not be considered to be adversely affected by the publication of a revenue ruling, a revenue procedure, or an administrative pronouncement within the meaning of § 1.6661–3(b)(2) of the regulations where:

(1) The plan was the subject of a favorable determination letter and the request for that letter contained no misstatement or omission of material facts;

(2) The facts subsequently developed are not materially different from the facts on which the determination letter was based;

(3) There has been no change in the applicable law; and

(4) The employer that established the plan acted in good faith in reliance on the determination letter.

However, all such plans must be amended to comply with the published revenue ruling for subsequent years. Unless specifically stated otherwise in the revenue ruling or in other published guidance of general applicability, the conforming amendment to an individually-designed plan must be adopted before the end of the first plan year that begins after the revenue ruling, revenue procedure, or administrative pronouncement is published in the Internal Revenue Bulletin and must be effective, for all purposes, not later than the first day of the first plan year beginning after the revenue ruling is published. For the rule as to the conforming amendment to an M&P plan, see section 12 of Rev. Proc. 2000–20.

Determination letter does not apply to taxability issues

.05 While a favorable determination letter may serve as a basis for determining deductions for employer contributions thereunder, it is not to be taken as an indication that contributions

are necessarily deductible as made. This latter determination can be made only upon an examination of the employer's tax return, in accordance with the limitations, and subject to the conditions of, § 404.

SECTION 22. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2004–6 is superseded.

SECTION 23. EFFECTIVE DATE

This revenue procedure is effective January 3, 2005.

SECTION 24. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1520.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 6.16, 6.18, 6.19, 6.20, 7.04, 9.08, 13, 14, 15, 16, 19.02, and 21.04. This information is required to determine plan qualification. This information will be used to determine whether a plan is entitled to favorable tax treatment. The collections of information are mandatory. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 163,186 hours.

The estimated annual burden per respondent/recordkeeper varies from 1 hour to 40 hours, depending on individual circumstances, with an estimated average of 2.02 hours. The estimated number of respondents and/or recordkeepers is 80,763.

The estimated annual frequency of responses (used for reporting requirements only) is once every three years.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Ingrid Grinde of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the Employee Plans' taxpayer assistance telephone service at 1–877–829–5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday. Ms. Grinde may be reached at 1–202–283–9888 (not a toll-free number).

EXHIBIT: SAMPLE NOTICE TO INTERESTED PARTIES The Exhibit set forth below may be used to satisfy the requirements of section 18 of this revenue procedure.

EXHIBIT: SAMPLE NOTICE TO INTERESTED PARTIES

1. Notice To: _____ [describe class or classes of interested parties]

An application is to be made to the Internal Revenue Service for an advance determination on the qualification of the following employee pension benefit plan:

2. _____

   (name of plan)

3. _____

   (plan number)

4. _____

   (name and address of applicant)

5. _____

   (applicant EIN)

6. _____

   (name and address of plan administrator)

7. The application will be filed on _____ for an advance determination as to whether the plan meets the qualification requirements of § 401 or 403(a) of the Internal Revenue Code of 1986, with respect to the plan's _____ [initial qualification, amendment, termination, or partial termination].

   The application will be filed with:

   EP Determinations
   Internal Revenue Service
   P.O. Box 192
   Covington, KY 41012–0192

8. The employees eligible to participate under the plan are:

9. The Internal Revenue Service _____ [has/has not] previously issued a determination letter with respect to the qualification of this plan.

RIGHTS OF INTERESTED PARTIES

10. You have the right to submit to EP Determinations, at the above address, either individually or jointly with other interested parties, your comments as to whether this plan meets the qualification requirements of the Internal Revenue Code.

    You may instead, individually or jointly with other interested parties, request the Department of Labor to submit, on your behalf, comments to EP Determinations regarding qualification of the plan. If the Department declines to comment on all or some of the matters you raise, you may, individually, or jointly if your request was made to the Department jointly, submit your comments on these matters directly to EP Determinations.

REQUESTS FOR COMMENTS BY THE DEPARTMENT OF LABOR

11. The Department of Labor may not comment on behalf of interested parties unless requested to do so by the lesser of 10 employees or 10 percent of the employees who qualify as interested parties. The number of persons needed for the Department to comment with respect to this plan is _____. If you request the Department to comment, your request must be in writing and must specify the matters upon which comments are requested, and must also include:

(1) the information contained in items 2 through 5 of this Notice; and

(2) the number of persons needed for the Department to comment.

A request to the Department to comment should be addressed as follows:

Deputy Assistant Secretary
Employee Benefits Security
Administration
ATTN: 3001 Comment Request
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

COMMENTS TO THE INTERNAL REVENUE SERVICE

12. Comments submitted by you to EP Determinations must be in writing and received by it by _____. However, if there are matters that you request the Department of Labor to comment upon on your behalf, and the Department declines, you may submit comments on these matters to EP Determinations to be received by it within 15 days from the time the Department notifies you that it will not comment on a particular matter, or by _____, whichever is later, but not after _____. A request to the Department to comment on your behalf must be received by it by _____ if you wish to preserve your right to comment on a matter upon which the Department declines to comment, or by _____ if you wish to waive that right.

ADDITIONAL INFORMATION

13. Detailed instructions regarding the requirements for notification of interested parties may be found in sections 17 and 18 of Rev. Proc. 2005–6. Additional information concerning this application (including, where applicable, an updated copy of the plan and related trust; the application for determination; any additional documents dealing with the application that have been submitted to the Service; and copies of section 17 of Rev. Proc. 2005–6 are available at _____ during the hours of _____ for inspection and copying. (There is a nominal charge for copying and/or mailing.)

APPENDIX

Checklist As part of a § 401(h) or § 420 determination letter request described in section 16 of this revenue procedure, the following checklist may be completed and attached to the determination letter request. If the request relates to § 401(h) but not to § 420, complete Part I only. If the request relates to § 420, complete Parts I and II.

PART I

		CIRCLE	*SECTION*
1.	Does the Plan contain a medical benefits account within the meaning of § 401(h) of the Code? If the medical benefits account is a new provision, items "a" through "h" should be completed.	Yes No	
a.	Does the medical benefits account specify the medical benefits that will be available and contain provisions for determining the amount that will be paid?	Yes No	_____
b.	Does the medical benefits account specify who will benefit?	Yes No	_____
c.	Does the medical benefits account indicate that such benefits, when added to any life insurance protection in the Plan, will be subordinate to retirement benefits? (This requirement will not be satisfied unless the amount of actual contributions to provide § 401(h) benefits (when added to actual contributions for life insurance protection under the Plan) does not exceed 25 percent of the total actual contributions to the Plan (other than contributions to fund past service credits), determined on an aggregate basis since the inception of the § 401(h) arrangement.)	Yes No	_____
d.	Does the medical benefits account maintain separate accounts with respect to contributions to key employees (as defined in § 416(i)(1) of the Code) to fund such benefits?	Yes No	_____
e.	Does the medical benefits account state that amounts contributed must be reasonable and ascertainable?	Yes No	_____
f.	Does the medical benefits account provide for the impossibility of diversion prior to satisfaction of liabilities (other than item "7" below)?	Yes No	_____
g.	Does the medical benefits account provide for reversion upon satisfaction of all liabilities (other than item "7" below)?	Yes No	_____
h.	Does the medical benefits account provide that forfeitures must be applied as soon as possible to reduce employer contributions to fund the medical benefits?	Yes No	_____

PART II

2.	Does the Plan limit transfers to "Excess Assets" as defined in § 420(e)(2) of the Code?	Yes No	_____

3. Does the Plan provide that only one transfer may be made in a taxable year (except with regard to transfers relating to prior years pursuant to § 420(b)(4) of the Code)? Yes No _____

4. Does the Plan provide that the amount transferred shall not exceed the amount reasonably estimated to be paid for qualified current retiree health liabilities? Yes No _____

5. Does the Plan provide that no transfer will be made after December 31, 2013? Yes No _____

6. Does the Plan provide that transferred assets and income attributable to such assets shall be used only to pay qualified current retiree health liabilities for the taxable year of transfer? Yes No _____

7. Does the Plan provide that any amounts transferred (plus income) that are not used to pay qualified current retiree health liabilities shall be transferred back to the defined benefit portion of the Plan? Yes No _____

8. Does the Plan provide that amounts paid out of a health benefits account will be treated as paid first out of transferred assets and income attributable to those assets? Yes No _____

9. Does the Plan provide that participants' accrued benefits become nonforfeitable on a termination basis (i) immediately prior to transfer, or (ii) in the case of a participant who separated within 1 year before the transfer, immediately before such separation? Yes No _____

10. In the case of transfers described in § 420(b)(4) of the Code relating to 1990, does the Plan provide that benefits will be recomputed and become nonforfeitable for participants who separated from service in such prior year as described in § 420(c)(2)? Yes No _____

11. Does the Plan provide that transfers will be permitted only if each group health plan or arrangement contains provisions satisfying § 420(c)(3) of the Code, as amended? Yes No _____

12. Does the Plan define "applicable employer cost", "cost maintenance period" and "benefit maintenance period", as needed, consistently with § 420(c)(3) of the Code, as amended? Yes No _____

13. Do the Plan's provisions reflect the transition rule in section 535(c)(2) of TREA '99, if applicable? Yes No _____

14. Does the Plan provide that transferred assets cannot be used for key employees? Yes No _____