



# Instructions for Form 6406 (Revised November 1992)

## Short Form Application for Determination for Amendment of Employee Benefit Plan

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

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

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

Recordkeeping . . . . .	12 hr., 55 min.
Learning about the law or the form . . . . .	.3 hr., 23 min.
Preparing the form. . . . .	.6 hr., 32 min.
<b>Copying, assembling, and sending the form to the IRS . . . . .</b>	<b>48 min.</b>

If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, Washington, DC 20224, Attention: IRS Reports Clearance Officer, T:FP; and the **Office of Management and Budget**, Paperwork Reduction Project (1545-0229), Washington, DC 20503. **DO NOT** send the form to either of these offices. Instead, see **Where To File** on page 2.

**Public Inspection.**—The application is open to public inspection if there are more than 25 participants. The total number of participants must be shown on line 4e. "Participant" includes retirees, other former employees, and a beneficiary of a deceased employee who is receiving or will in the future receive benefits under the plan.

**Disclosure Requested by Taxpayer.**—The Tax Reform Act of 1976 permits a taxpayer to request the IRS to disclose and discuss their return and/or return information with any person(s) the taxpayer designates in a written request. You may use **Form 2848**, Power of Attorney and Declaration of Representative, or submit a privately designed authorization form. A privately designed authorization form **must** provide the following:

1. Your name, address, employer identification number, and plan number(s).
2. A paragraph that clearly identifies the person or persons authorized to receive the return and/or return information. This must include the name, address, telephone number(s), and social security number(s) of the authorized person(s).
3. A paragraph that clearly and explicitly describes the return and/or return information that you authorize the IRS to disclose.
4. Your signature as the taxpayer making the authorization.

**Signature.**—The application must be signed by the employer, plan administrator, or an authorized representative.

## General Instructions

### Purpose of Form

**Form 6406**, Short Form Application for Determination for Amendment of Employee Benefit Plan, is used to apply for a determination for an amendment for an employee benefit plan and the exempt status of any related trust, if that plan has already been issued a favorable determination letter.

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

### Type of Plan

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

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

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

### Completing the Application

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

1. N/A (not applicable) is accepted as a response only if an N/A block is provided.
2. If a numeric response is requested, a numeric response must be entered.
3. If an item provides a choice of boxes to be checked, only one box should be checked unless instructed otherwise.
4. If an item provides a box or boxes to be checked, written responses are not acceptable.
5. If the governmental or church plan box is checked in line 7, certain line items need not be completed. See **What To File** on page 2.
6. All applications must include the appropriate user fee and **Form 8717**, User Fee for Employee Plan Determination Letter Request. Form 8717 may be obtained by contacting your local IRS District office or by calling 1-800-TAX-FORM (1-800-829-3676).
7. The IRS may, at its discretion, require a plan restatement, additional information, or the submission of a Form 5300 series application anytime it is deemed necessary.

### Who May File

This form may be filed by any:

1. Employer, including a sole proprietor, a partnership, a plan sponsor or a plan administrator that has adopted an individually designed plan desiring a determination letter on the qualification of an amendment on a plan, provided the plan has an outstanding favorable determination letter.
2. Plan sponsor or plan administrator desiring a determination letter as to the qualification of an amendment of a plan that involves a controlled group of corporations (section 414(b)), or trades or businesses under common control (section 414(c)), or an affiliated service group (section 414(m)).

**Note:** This form may **not** be filed by anyone desiring approval of an amendment, if:

- a. The amendment results in a plan termination, merger, consolidation, or a transfer of plan assets or liabilities to another plan. Amendments to these plans must be submitted on **Form 5310**, Application For Determination Upon Termination.
- b. The plan is restated. Amendments to these plans must be submitted on **Form 5300**, Application For Determination For Employee Benefit Plan.
- c. The employer is an adopter of a master or prototype, regional prototype or volume submitter plan. Amendments to these plans must be submitted on **Form 5307**, Application for

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

d. The plan is a multiple-employer plan described in Section 413(c). Use **Form 5300**, Application for Determination for Employee Benefit Plan.

e. If you are not sure if you have leased employees or not, file Form 5300 instead of Form 6406.

## What To File

### All Plans

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

2. **Form 5302**, Employee Census. One copy of the form must accompany each plan (other than a governmental or church plan) of an employer.

3. Two copies of page one of Form 6406. One copy must be an original (printed in special red ink). The other copy may be a reproduction or carbon, however the signature must be original.

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

5. All applications must be accompanied by a:

- a. Copy of the new amendments;
- b. Copy of the latest determination letter including caveats; and
- c. Statement as to how the amendments affect or change the plan or any other plan maintained by the employer.

### Specific Plans—Additional Requirements

1. A **restated plan** is required if four or more amendments have been made since the last restated plan was submitted. For restatement purposes, an amendment making only nonsubstantive plan changes need not be counted as a plan amendment. **You may not use Form 6406 if your plan is required to be restated.** If you have a restated plan, you must use either Form 5300 or Form 5303.

2. **You may not use Form 6406 for plan amendments made to comply with the Tax Reform Act of 1986.**

3. For a **termination**, use Form 5310. For a partial termination, use Form 5300 or 5303, depending on your particular circumstances.

4. For amendments to a **governmental or church plan**, a plan administrator may request a determination letter by filing the following:

a. For a plan that is subject to ERISA, complete all items of Form 6406; or

b. For a plan that is not subject to ERISA, file Form 6406 skipping line 8.

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

## Where To File

1. **Single Employer Plans.**—File the form where the employer's or employee organization's principal place of business is located.

2. **Plan Maintained by More Than One Employer.**—File the form where the principal place of business of the plan sponsor is located. This means the principal place of business of the association, committee, joint board of trustees, or other similar group or representatives of those who established or maintain the plan.

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

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

If entity is in	Send fee and request for determination letter or notification letter to this address
Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont	Internal Revenue Service EP/EO Division P.O. Box 1680, GPO Brooklyn, NY 11202
Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, any U.S. Possession or foreign country	Internal Revenue Service EP/EO Division P.O. Box 17288 Baltimore, MD 21203
Indiana, Kentucky, Michigan, Ohio, West Virginia	Internal Revenue Service EP/EO Division P.O. Box 3159 Cincinnati, OH 45201
Arizona, Colorado, Kansas, Oklahoma, New Mexico, Texas, Utah, Wyoming.	Internal Revenue Service EP/EO Division Mail Code 4950 DAL 1100 Commerce Street Dallas, TX 75242
Alabama, Arkansas, Florida, Georgia, Louisiana, North Carolina, Mississippi, South Carolina, Tennessee	Internal Revenue Service EP/EO Division P.O. Box 941 Atlanta, GA 30370
Alaska, California, Hawaii, Idaho, Nevada, Oregon, Washington	Internal Revenue Service EP/EO Division McCaslin Industrial Park 2 Cupania Circle Monterey Park, CA 91784-7406
Illinois, Iowa, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wisconsin	Internal Revenue Service EP/EO Division 230 S. Dearborn, DPN 20-6 Chicago, IL 60604

## Specific Instructions

**Line 1a.** Enter the name, address, and telephone number of the plan sponsor. "Plan Sponsor" means in the case of a plan:

1. That covers the employees of one employer, the employer;
2. Maintained by two or more employers (other than a plan sponsored by a group of entities required to be combined under section 414(b), (c), or (m)), the association, committee, joint board of trustees or other similar group of representatives of those who established or maintain the plan;
3. Sponsored by two or more entities required to be combined under section 414(b), (c), or (m), one of the members participating in the plan; or
4. That covers the employees and/or partner(s) of a partnership, the partnership.

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

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

**Note:** If a change in address occurs after the application is filed, the plan should use **Form 8822**, Change of Address, to notify the IRS of the new address.

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

The plan of a group of entities required to be combined under section 414(b), (c), or (m) whose sponsor is more than one of the entities required to be combined should enter only the EIN of one of the sponsoring members. This EIN must be used in all

subsequent filings of determination letter requests, and for filing annual returns/reports unless there is a change of sponsor.

**Line 1c.** Enter the two digits representing the month the employer's tax year ends. This is the employer whose EIN was entered on line 1b. For plans of more than one employer, enter N/A.

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

See **Disclosure Requested by Taxpayer** on page 1. If you want to designate a person or persons to represent you before the IRS in connection with an application for a determination.

**Line 3a.** If a determination is requested based on a proposed amendment, enter 9/9/99. The term "Date amendment effective" means the date the amendment becomes operative, takes effect, or changes.

**Line 3b.** If you checked "Yes," and do not have a copy of the latest determination letter, explain in the cover letter. Form 6406 may not be used if the plan has never received a favorable determination letter.

**Line 3c.** Section 3001 of ERISA requires the applicant to provide evidence that each employee who qualifies as an interested party has been notified of the filing of the application. Rules defining "interested parties" and providing for the form of notification are contained in regulations section 1.7476-1. For an example of an acceptable format, see Rev. Proc. 92-6, 1992-1 I.R.B. 105. If you check "No" or leave this blank, the application will be returned.

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

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

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

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

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

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

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

**Line 8. COVERAGE.**

**Note:** In completing line 8, include all employees of all employers combined with the employer under section 414(b), (c) or (m). In addition, include all self-employed individuals, common law employees and leased employees as defined in section 414(n) of any of the entities above, other than those excluded by section 414(n)(5).

The part of a plan that is an ESOP must be treated as an independent plan that must separately satisfy the coverage rules. If this plan contains an ESOP component, submit a demonstration that the ESOP component separately satisfies the coverage rules. For purposes of testing the rest of the plan, disregard the ESOP.

**Line 8a.** In general, if the employer operates separate lines of business or operating units as defined in section 414(r) for a year, the employer may apply the coverage requirements separately for employees in each separate line of business. Attach a demonstration using applicable regulations, revenue rulings or revenue procedures that shows the separate lines of business are qualified separate lines of business satisfying the rules of sections 414(r) and 410(b)(5).

In addition, if this plan, or any plan combined with this plan for purposes of satisfying the coverage requirements, covers employees in more than one separate line of business or operating unit, submit the coverage data requested in line 8 separately for each separate line of business or operating unit.

**Line 8c.** In general, if the plan satisfies one of the tests on at least one day in each quarter of the year being tested, the plan will be considered as passing the coverage tests for the entire year if the quarterly testing dates reasonably represent the coverage of the plan over the entire plan year. Enter the date for which the coverage data is submitted on line 8c.

**Line 8d.** Divide the number of nonexcludable employees who benefit and are not highly compensated employees, as defined in section 414(q), by the total number of nonexcludable nonhighly compensated employees; show the result as a percentage on line 8d.

Generally, a qualified plan may exclude from coverage all employees who have not attained age 21 and completed one year of service. However, if a plan covers any such excludable employee, it must test coverage based on the lowest minimum age and service requirements for any employee under this or any other plan combined with this plan for the purpose of satisfying the coverage rules. To compute the percentage on line 8d, exclude employees who have not attained the lowest age and service requirements for any employee under this or any other plan combined with this plan for the purpose of satisfying the coverage requirements.

On the other hand, employees who are not yet age 21 and have completed one year of service may be tested for coverage separately. If electing this alternative, demonstrate in an attachment that the group of employees who are not yet age 21 and have one year of service but have attained the lowest age and service requirements under this or any other plan combined with this plan to satisfy the coverage requirements, independently passes one of the coverage tests.

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

To compute the percentage on line 8d, exclude the employees that are covered by a collective bargaining agreement described above, including employees covered under this plan. However, do not exclude any employee covered under a collective bargaining agreement if more than 2% of the employees who are covered under the collective bargaining agreement are professionals as defined in Regulations section 1.410(b).

In computing the percentage on line 8d, exclude the total number of nonresident aliens who receive no earned income as defined in section 911(d)(2) from the employer that constitutes income from sources within the United States as defined in section 861(a)(3).

In computing the percentage on line 8d, exclude the employees who do not accrue a benefit or receive an allocation only because they do not satisfy a minimum hour of service or a last day of the plan year requirement under the plan, provided

they do not have more than 500 hours of service, and they are not employed on the last day of the plan year. Do **not** exclude any employees who have more than 500 hours of service, because they are not employed on the last day of the plan year.

In general, an employee is treated as benefiting, for purposes of the coverage tests, only if the employee receives an allocation of contributions or forfeitures, or accrues a benefit under the plan for the plan year. Certain other employees are treated as benefiting if they fail to receive an allocation of contributions and/or forfeitures, or to accrue a benefit only because the employee is subject to plan provisions that limit plan benefits, such as a provision for maximum years of service, maximum retirement benefits, or limits designed to satisfy section 415.

An employee is treated as benefiting under a plan (or part of a plan) to which elective contributions or after tax employee contributions and matching contributions subject to section 401(k) or 401(m) may be made if the employee is currently eligible to make elective or after tax employee contributions, whether or not the employee actually makes the contributions. However, for purposes of line 8d, do not treat these employees as benefiting only because they are eligible under a plan (or part of a plan) subject to section 401(k) or (m). Data for these employees will be entered on lines 8f and 8g.

**Line 8e.** To compute the ratio on line 8e, divide the number of nonexcludable employees who benefit under the plan and are not highly compensated, as defined in section 414(q), by the total number of nonexcludable nonhighly compensated employees; put the result in the numerator. Divide the number of nonexcludable employees who benefit under the plan and who are highly compensated by the total number of nonexcludable highly compensated employees; put the result in the denominator.

See the instructions for line 8d to determine which employees are nonexcludable employees and which employees benefit under the plan. For purposes of line 8e, do not include employees who are treated as benefiting only because they are eligible under a plan (or part of a plan) subject to section 401(k) or (m). Data for these employees will be entered on lines 8f and 8g.

**Line 8f.** If the plan (or part of the plan) contains a CODA component, enter the ratio (using the instructions for line 8e) for the CODA component in line 8f. **Note:** *The instructions in the last paragraph for line 8d contain a special definition of who is benefiting under a CODA.*

**Line 8g.** If the plan (or part of the plan) consists of employee and/or matching contributions subject to section 401(m), enter the ratio for this portion on line 8g. **Note:** *The instructions in the last paragraph for line 8d contain a special definition of who is benefiting under the plan or part of a plan that consists of employee and matching contributions.*

**Line 8h.** If this plan does not, by itself, satisfy the coverage requirements, certain other qualified plans may be combined with this plan for purposes of satisfying the coverage requirements.

**Note:** *The following plans may not be combined: (1) an ESOP with a non-ESOP, (2) a collectively bargained plan with a noncollectively bargained plan, and (3) a plan that contains a*

*CODA (section 401(k)), or employee or matching contributions (section 401(m)) with a plan that does not include such a feature.*

If any other plan is considered in combination with this plan, complete line 8 as though the combined plans were a single plan. Also attach a description, including the allocation or benefit formula, of the other plan(s) along with a demonstration in accordance with applicable regulations, revenue rulings, or revenue procedures that shows the combined plans provide comparable benefits and together satisfy section 401(a)(4).

**Line 8i.** If any one of lines 8e, 8f or 8g, if applicable, is less than 70%, the plan must satisfy the average benefit test to pass coverage. A plan satisfies the average benefit test if it satisfies both the nondiscriminatory classification test and the average benefit percentage test.

**Line 8i. (1)** A plan satisfies the **Nondiscriminatory classification test** if benefiting employees are defined by reasonable and objective business criteria set out in the plan and the classification is nondiscriminatory. A classification will be considered nondiscriminatory if the ratio on line 8e, 8f or 8g, whichever applies, is equal to or greater than the safe harbor percentage.

The safe harbor percentage is 50%, reduced by  $\frac{3}{4}$  of a percentage point for each percentage point by which the nonhighly compensated employee concentration percentage exceeds 60%. The nonhighly compensated employee concentration percentage is the percentage of all the employees of the employer who are not highly compensated employees. Enter the safe harbor percentage on line 8i(1). See Regulations section 1.410(b)-4.

**Line 8i. (2)** A plan satisfies the **average benefit percentage test** if the average benefit percentage for nonhighly compensated employees is at least 70% of the average benefit percentage for highly compensated employees.

All qualified plans (or parts of plans) of the employer, including CODAs and plans containing employee or matching contributions (section 401(k) or (m)) are combined in determining the average benefit percentage. Do not combine plans that may not be combined for purposes of satisfying the ratio percentage test, other than plans subject to section 401(k) or (m). See the instructions for line 8h.

Also, all nonexcludable employees, including those with no benefit under any qualified plan of the employer, are included in determining the average benefit percentage. Enter the average benefit percentage on line 8i.(2). Also, attach a demonstration in accordance with applicable regulations, revenue rulings or revenue procedures that shows the plan satisfies the average benefit percentage test.

**Line 9a.** Section 411(d)(6) protected benefits include the accrued benefit of a participant as of the later of the amendment's adoption date or effective date, any early retirement benefit, retirement-type subsidy or optional form of benefit for benefits from service before the amendment. If the answer is "Yes," attach an explanation of how the amendment satisfies one of the exceptions to the prohibition, reduction or elimination of section 411(d)(6) protected benefits.