

Form 8398 (March 2010)	Department of Treasury – Internal Revenue Service Employee Plans Deficiency Checksheet Attachment #8 Employee Leasing	Date
<i>For IRS Use</i>	Please furnish the amendment(s) requested in the section(s) checked	
813, 814, 815	Your application indicates that you received services provided by leased employees. However, your plan does not provide that all such employees are treated as common law employees for all purposes under the 813, 814, 815 plan. In order to receive a determination letter under section 401(a) or 403(a) of the Code that will be a determination as to the effect of section 414(n) upon the plan's qualified status, the following information must be submitted:	
I.b.	<ol style="list-style-type: none"> 1. A description of the nature of the business of your organization; 2. A copy of the relevant leasing agreement(s); 3. A description of the function of all leased employees within your trade or business (including data as to whether all leased employees are performing services on a substantially full-time basis and whether services are performed under the primary direction or control of the recipient organization). 4. If your organization is relying on any qualified plan(s) maintained by the employee leasing organization for purposes of qualification of your 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 your organization, plan eligibility, and vesting). Rev. Proc. 85-43, 1985-2 C.B. 501. 	
802	Please tell us whether the services of employees provided by another organization are provided according to an agreement between the recipient and the leasing organization. IRC section 414(n)(2)(A) and Notice 84-11, 1984-2 C.B. 469, Q&A 6.	
II.b.		
803	Your application shows that you are the recipient of services provided by employees leased to you by another employer. Such employees are not covered by the plan. Please tell us if any of these employees 803 have performed, during a consecutive 12-month period, either 1500 hours of service or 75 percent of the average number of hours customarily performed by an employee of the recipient in that particular position. IRC section 414(n)(2)(B) and Notice 84-11, 1984-2 C.B. 469, Q&A 7.	
804	Your application shows that you are the recipient of services provided by employees leased to you by another employer. Such employees are not covered by the plan. Please show that the service performed by such leased employees are not performed under the primary direction or control of the recipient organization. IRC section 414(n)(2)(C).	
II.d.		
805, 806	Section 414(n)(5) of the Code provides a safe harbor for a recipient organization if the leasing organization maintains a qualified, nonintegrated money purchase pension plan that provides for immediate III.a., b., c. participation, full and immediate vesting, and an annual contribution of 10 percent of total compensation for the leased employee. If these requirements are met and leased employees do not constitute more than 20 percent of the recipient organization's nonhighly compensated workforce, the leased employee does not need to be considered an employee of the recipient for any purpose pertaining to the qualified plan of the recipient organization. Please tell us whether these requirements are met. If so, furnish a copy of the plan maintained by the leasing organization and show that leased employees constitute 20 percent or less of your nonhighly compensated workforce. IRC section 414(n)(5) and Notice 84-11, 1984-2 C.B. 469, Q&A 18 and 19.	
III.a., b., c		
818	A plan maintained by the recipient of services of leased employees must specifically provide how leased employees will be treated under the recipient's plan. Your application indicates that you receive services provided by leased employees. Your plan should be amended. Notice 84-11, 1984-2 C.B. 469, Q&A 16.	
IV.a.		

CYCLE E

<p>836, 837 IV.b.</p>	<p>Section of the plan should be amended to provide that each leased employee must be considered in determining whether the recipient's plan satisfies the minimum coverage requirement of section 410(b) of the Code. The leased employee is considered the recipient organization's employee for purposes of Code sections 401(a)(3), (4), (7), (16), (17) and (26) and sections 408(k), 408(p), 410, 411, 415, and 416, as well as sections 79, 106, 117(d), 120, 125, 127, 129, 132, 137, 274(j), 505 and 4980B, after performing services for the recipient (or related organizations) on a "substantially full-time basis" for at least one year. A person has performed services on a substantially full-time basis within the meaning of section 414(n)(2)(B), if that person is credited with the lesser of 1,500 hours of service or 75% of the hours that are customarily performed by an employee of that recipient in the particular position. IRC sections 414(n)(1), (2), (3) and (4) and Notice 84-11, 1984-2 C.B. 469, Q&A 7.</p>
<p>812 IV.c</p>	<p>Section of the plan should be amended to provide that all service performed for the recipient by a leased employee (including any creditable service performed prior to the existence of the employee leasing agreement and service during any period for which the employee would have been a leased employee but for the fact that the employee did not perform services for the recipient on a substantially full-time basis for at least one year) will be credited under the recipient's plan. IRC sections 414(n)(1), (2), (3) and (4) and Notice 84-11, 1984-2 C.B. 469, Q&A 8 and 12.</p>
<p>V.</p>	<p>If the plan was not timely amended to (1) terminate the plan or (2) cause the plan to become a multiple employer plan, plan qualification issues other than the exclusive benefit rule, may be resolved under the Employee Plans Compliance Resolution System, Rev. Proc. 2006-27, 2006-22 I.R.B. 945 (or its successors).</p>