Rev. Proc. 96–6

TABLE OF CONTENTS

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. 95–6, 1995–1 C.B. 452, which contains the Service's general procedures for employee plans determination letter requests. Most of the changes to Rev. Proc. 95–6 involve minor revisions, such as updating citations to other revenue procedures.

Rev. Proc. 93–39 as modified by Rev. Proc. 94–37 is superseded by this procedure

.02 Rev. Proc. 93–39, 1993–2 C.B. 513, as modified by Rev. Proc. 94–37, 1994–1 C.B. 683, sets forth additional procedures regarding applications for determination letters on the qualified status of pension, profit-sharing, and annuity plans under § 401(a) or 403(a) of the Code filed with the Service on or after October 12, 1993. The procedures in Rev. Proc. 93–39 reflect changes to the plan qualification requirements made by the Tax Reform Act of 1986 (TRA '86), Pub. L. 99–514, as well as the final nondiscrimination regulations under § 401(a)(4) that were published in 1993. The procedures in Rev. Proc. 93–39, as modified by Rev. Proc. 94–37, have now been incorporated into this revenue procedure or in the revised determination letter application forms, as described below. Accordingly, this revenue procedure supersedes Rev.

Proc. 93–39, with the exception of section 12 (regarding the time by which plans must be amended to comply with the requirements of § 401(a)(31)) and section 13 (regarding extended reliance).

New section describing scope of determination letter added

.03 Section 5, which describes the scope of determination letters, particularly with respect to the nondiscrimination requirements, has been added.

Application forms revised

.04 The Service is revising the forms that are used to apply for determination letters. The following forms are being revised:

1 Form 5300, Application for Determination for Employee Benefit Plan;

2 Form 5303, Application for Determination for Collectively Bargained Plan;

3 Form 5307, Application for Determination for Adopters of Master or Prototype, Regional Prototype or Volume Submitter Plans;

4 Form 5310, Application for Determination for Terminating Plan; and

5 Form 6406, Short Form Application for Determination for Minor Amendment of Employee Benefit Plan.

New Schedule Q (Form 5300), nondiscrimination requirements

.05 The Service is also issuing new Schedule Q (Form 5300), Nondiscrimination Requirements. Schedule Q (Form 5300) will take the place of the attachment that was required by section 5.03 of Rev. Proc. 93–39 to be included with determination letter applications. (A model attachment was included in Appendix A of Rev. Proc. 93–39.) This revenue procedure requires Schedule Q (Form 5300) to be filed with all determination letter applications, other than applications filed on Form 6406, Short Form Application for Determination for Minor Amendment of Employee Benefit Plan; applications relating to the qualified status of group trusts; and applications relating solely to the requirements of § 420 of the Code, regarding the transfer of assets in a defined benefit plan to a health benefit account described in § 401(h).

Service will accept applications filed under prior procedures for limited time

.06 The Service will continue to accept determination letter applications that are filed on Form 5300 series forms with revision dates before January 1996, and that do not include Schedule Q (Form 5300), through the 120th day following the date of the Service's announcement in the Internal Revenue Bulletin of the availability of the revised forms, provided such applications would satisfy the requirements of Rev. Proc. 93–39.

Rev. Proc. 81–19 is superseded by this procedure

.07 Rev. Proc. 81–19, 1981–1 C.B. 689, provides optional procedures for employers to obtain determination letters on certain amendments to plans for which favorable determination letters have been issued. Rev. Proc. 81–19 provides that determination letters that express an opinion only as to whether amendments, in and of themselves, affect a plan's qualification may be requested on either Form 6406 or on Form 5300. It also provides that a determination letter on the qualification of the entire plan, as amended, may be requested only by filing Form 5300 with a copy of the plan that includes all plan amendments made to the date of the application. This revenue procedure provides that ''amendment only'' letters will be issued only for applications filed on Form 6406. (See sections 7, 11, and 22.) Accordingly, Rev. Proc. 81–19 is superseded.

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 (other than collectively bargained)	5300, Schedule Q	7
b. ESOPs	5300, 5309, Schedule Q	7
c. Collectively Bargained Plans	5303, Schedule Q,	7
d. Adoption of Master & Prototype or Regional prototype plans (including a collectively bargained plan if no non-collectively bargained employees are in the plan)	5307, Schedule Q	8
e. Volume Submitter Plans (including a collectively bargained plan if no non-collectively bargained employees are in the plan)	5307, Schedule Q	9
f. Multiple Employer Plans	5300, Schedule Q	10
g. Foreign Situs Trusts	5300, Schedule Q	13
h. Group Trusts	Cover letter	14
i. Section 420 determination letters	Cover letter, Checklist, Appendix	17
2. Minor Amendments	6406	11
3. Termination		
a. In general	5310, 6088, Schedule Q	12
b. Multiemployer plan covered by PBGC insurance	5303, 6088, Schedule Q	12
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.		
4. Special Procedures		
a. Affiliated Service Group Status (§ 414(m)), Leased Employees (§ 414(n))	5300, Schedule A	15
b. Minimum Funding Waiver	5300, Schedule Q	16

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 Assistant Commissioner (Employee Plans and Exempt Organizations):

(1) Issues involving §§ 72, 79, 105, 125, 127, 129, 402, 403 (other than 403(a)), 404, 409(1), 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. 96–4, page 94, this Bulletin.

(2) Plans or plan amendments for which automatic approval is granted pursuant to section 8.05 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;

(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.

(5) Transactions which include transfers of excess assets from ongoing defined benefit plans to defined contribution plans (including the allocation of excess assets in an ongoing defined benefit plan to separate accounts that are established in that plan creating a plan described in § 414(k)) or transfers in connection with the amendment of a defined benefit plan to create a floor offset arrangement with a defined contribution plan (including the establishment of the separate accounts used as offsets in the plan that had been solely a defined benefit plan resulting in a plan described in § 414(k)).

GATT

.03 Until further notice is given, determination letters, other than those issued for terminating plans, will not include consideration by the Service of any amendments to the qualification requirements made by the Uruguay Round Agreements Act, Pub. L. 103–465 (GATT). Until such notice is given, plans, other than terminating plans, that include provisions that reflect the GATT amendments to the qualification requirements will not be subject to adverse determination letters by reason of the inclusion of such provisions. However, favorable letters issued for plans, other than terminating plans, may not be relied upon with respect to whether such provisions satisfy the qualification requirements as amended by GATT.

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

Employee Plans and Exempt Organizations

.01 Other procedures for obtaining rulings, determination letters, opinion letters, etc., on matters within the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations) are contained in the following revenue procedures:

(1) National office letter rulings, information letters, etc.: *See* Rev. Proc. 96–4.

(2) Master and Prototype (M&P) plans: *See* Rev. Proc. 89–9, 1989–1 C.B. 780, as modified by Rev. Proc. 90–21, 1990–1 C.B. 499, sections 8.03—8.08 of Rev. Proc. 91–66, Rev. Proc. 92–41, 1992–1 C.B. 870, and Rev. Proc. 93–10, 1993–1 C.B. 476.

(3) Regional prototype plans: *See* Rev. Proc. 89–13, 1989–1 C.B. 801, as modified by Rev. Proc. 90–21, 1990–1 C.B. 499, sections 8.03—8.08 of Rev. Proc. 91–66, Rev. Proc. 92–41, and Rev. Proc. 93–10.

(4) Technical advice requests: *See* Rev. Proc. 96–5, page 129, 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 Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), and the Associate Chief Counsel (International), see Rev. Proc. 96–1, page 8, this Bulletin.

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

Scope

.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 section 22 of this revenue procedure.

All form and certain non-form requirements generally reviewed

.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, certain non-form qualification requirements, including the minimum participation requirements of § 401(a)(26), are considered by the Service in its review of a plan. As described below, certain other nondiscrimination requirements are not considered unless the applicant specifically requests that they be considered.

Nondiscrimination in amount requirement

.03 Unless the applicant elects otherwise, a plan that is not intended to satisfy one of the design-based safe harbors described in §§ 1.401(a)(4)–2(b)(2), 1.401(a)(4)–3(b)(3), 1.401(a)(4)–3(b)(4)(i)(C)(1), 1.401(a)(4)–3(b)(4)(i)(C)(2), 1.401(a)(4)–3(b)(5), 1.401(a)(4)–8(b)(3), or 1.401(a)(4)–8(c)(3)(iii)(B) of the Income Tax Regulations (herein referred to as the ''design-based safe harbors'') will not be reviewed for (and a determination letter may not be relied on with respect to) the nondiscrimination in amount of contributions or benefits requirement of § 1.401(a)(4)–1(b)(2).

Average benefit test requirement

.04 Unless the applicant elects otherwise, a plan that does not satisfy the ratio percentage test of § 410(b)(1) and the regulations thereunder will not be reviewed for (and determination letters may not be relied on with respect to) the average benefit test of § 410(b)(2) and the regulations thereunder.

Nondiscriminatory current availability requirement

.05 Any determination letter that expresses an opinion that the plan satisfies the minimum coverage requirements of § 410(b) also will express an opinion that 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.

Effective availability requirement

.06 In no event will any plan be reviewed to determine (and determination letters 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

.07 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; *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 minimum participation requirements, a determination letter will take into account whether the plan satisfies the nondiscriminatory classification test of § 410(b)(5)(B), and, 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.

Good faith

.08 Generally, the nondiscrimination regulations under § 401(a)(4) and certain related sections of the Code apply only to plan years beginning on or after January 1, 1994. In the case of plans maintained by tax-exempt organizations (other than nonelecting church plans described in § 410(c)(1)(B)), the regulations apply only to plan years beginning on or after January 1, 1997. In the case of nonelecting church plans, the regulations apply only to plan years beginning on or after January 1, 1999. A special extended effective date also applies to governmental plans. For plan years beginning before the regulations under § 401(a)(4) are effective for the plan, a plan (other than a governmental plan) must be operated in accordance with a reasonable, good faith interpretation of § 401(a)(4) and certain related sections of the Code. A determination letter may not be relied on as to whether a plan has been operated in accordance with a reasonable, good faith interpretation or whether plan provisions constitute such an interpretation unless the plan has been amended to comply with the regulations retroactively to the 1989 plan year (or, if a later effective date under the TRA '86 is applicable, such later year). Furthermore, the issuance of a favorable determination letter will not preclude an adverse effect on the qualification of a plan resulting from a failure to operate the plan in accordance with a reasonable, good faith interpretation of § 401(a)(4) or related sections of the Code.

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

This section contains procedures that are generally applicable to all determination letter requests. Additional procedures for specific requests are contained in sections 7 through 17.

Qualified trusteed plans

.01 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

.02 A nontrusteed annuity plan that meets the applicable requirements of § 401 of the Code 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

.03 An applicant requesting a determination letter must file the material required by this revenue procedure with the appropriate key district director. 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

.04 Except in the case of applications involving master and prototype plans filed on Form 5307, or minor amendments described in section 11, 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. 96–4 applies

.05 Section 9 of Rev. Proc. 96–4 is generally applicable to requests for determination letters under this revenue procedure.

Separate application for each single § 414(l) plan

.06 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.

Schedule Q

.07 Schedule Q (Form 5300) must be filed with all determination letter applications, other than applications filed on Form 6406, applications relating to the qualified status of group trusts, and applications relating solely to the requirements of § 420. The applicant must indicate on Schedule Q whether a determination of any of the requirements referred to in sections 5.03 through 5.05 is requested, and must include with the application form the material and demonstrations called for in the instructions to Schedule Q.

Prior letters

.08 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.

User fees

.09 The appropriate user fee must be paid according to the procedures of Rev. Proc. 96–8. Form 8717, User Fee for Employee Plan Determination Letter Request, should accompany each determination letter request submitted to a key district office.

Interested party notification and comment

.10 Before filing an application, the applicant requesting a determination letter must satisfy the requirements of § 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 18 and 19 of this revenue procedure.

Contrary authority must be distinguished

.11 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

.12 When, in connection with an application for a determination on the qualification of the plan, it is necessary to determine whether an employer-employee relationship exists, the key district director will make such determinations. 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, Information for Use in Determining whether a Worker is an Employee for 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, the key district director may issue a determination letter as to the qualification of the plan.

Incomplete applications returned

.13 If an applicant requesting a determination letter does not comply with all the required provisions of this revenue procedure, the key district director, in his or her discretion, may return the application and point out to the applicant those provisions which have not been met. The request will also be returned pursuant to Rev. Proc. 96–8 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

.14 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 which 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

.15 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 by Schedule Q. 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.

Where to file request

.16 Requests for determination letters are to be addressed to the key district director specified below, except as indicated.

(1) In the case of a plan of a single employer, the request is to be addressed to the key district director for the district in which the employer's principal place of business is located.

(2) In the case of a multiemployer plan established or proposed by contributing employers with principal places of business located within the jurisdiction of more than one key district director, as an alternative to (1) above, the request may be addressed to the key district director for the district in which the trustee's principal place of business is located. If the plan has more than one trustee, the request may be addressed to the key district director for the district where the trustees usually meet.

(3) In the case of a plan maintained by more than one employer, the applicant or plan administrator must file the appropriate form with the key district director for the key district in which 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 establish or maintain the plan.

(4) In the case of related employers described in § 414(b), (c), or (m), the request for any plan maintained by any member of the group must be addressed to the key district director for the district where the principal place of business for the group of employers is located.

(5) In the case of a group trust arrangement under Rev. Rul. 81–100, the request on behalf of the master trust must be addressed to the key district director for the district where the principal place of business of the trustee is located. Requests on behalf of the participating trusts and related plans must be addressed as otherwise provided in this section.

Withdrawal of requests

.17 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.

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 and collectively bargained 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 that takes into account the requirements of the TRA '86 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 plans other than collectively bargained plans.

(2) Form 5303, Application for Determination for Collectively Bargained Plan, must be filed by a sponsor of a collectively bargained plan. If there is more than one plan, a separate Form 5303 must be filed for each plan.

(3) Form 5309, Application for Determination of Employee Stock Ownership Plan, must be filed as an attachment with a Form 5300 or Form 5303 (if the ESOP is collectively bargained), in order to request a determination whether the plan is an ESOP under § 409 or § 4975(e)(7).

(4) Schedule Q, (Form 5300) Nondiscrimination Requirements, must be filed as an attachment with Form 5300 and Form 5303.

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, for example when there have been major changes in law. A restated plan or a working copy of the plan in a restated format must be submitted for a plan that has not previously received a determination letter that takes into account all requirements of the TRA '86.

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. MASTER & PROTOTYPE PLANS; REGIONAL PROTOTYPE PLANS

Scope

.01 This section contains procedures for requesting determination letters relating to M&P plans or regional prototype plans.

Determination letter may be necessary for reliance

.02 Except as provided in section 8.05, the issuance of a favorable opinion letter or notification letter for an M&P plan or regional prototype plan does not constitute a determination that an employer adopting the sponsoring organization or sponsor's plan has reliance that the plan is qualified under § 401(a). In order to have reliance, an employer must obtain a favorable determination letter according to this revenue procedure. In general, determination letters are requested for the employer's adoption of an M&P plan or regional prototype plan, or for a change by the employer in the choice of options offered by the sponsoring organization of an M&P plan or sponsor of a regional prototype plan.

Forms

.03 Form 5307, Application for Determination for Adopters of Master or Prototype, Regional Prototype, or Volume Submitter Plan, must be filed to request a determination letter for the adoption of an M&P plan or a regional prototype plan. Schedule Q, (Form 5300) Nondiscrimination Requirements, must be filed as an attachment to Form 5307. Form 5307 may also be filed by adopters of pre-approved plans that are single employer collectively bargained plans that benefit only collectively bargained employees described in § 1.410(b)–6(d)(2) and that automatically satisfy the requirements of § 1.410(b)–2(b)(7).

Required information

.04 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 or notification letter;

(3) In the case of a determination letter request for a regional prototype plan, the application must include a certification by the sponsor that the notification letter has not been withdrawn and is still in effect with respect to the plan being submitted; and

(4) In the case of a determination letter request for a regional prototype plan that uses a separate trust or custodial account, a copy of the employer's trust or custodial account document.

Special rules for standardized plans

.05 The following procedures apply for an employer's adoption of an M&P or regional prototype standardized form plan or paired plan.

(1) An employer adopting a standardized form or paired plan may rely on that plan's opinion or notification letter, except as provided in section 8.05(2), (3), and (4) below, if the following conditions are satisfied:

(a) The sponsoring organization or sponsor of such plan or plans has a currently valid favorable opinion or notification letter; and

(b) 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.

(2) Except in the case of a combination of paired plans, an employer may not rely on opinion letters for standardized form plans without obtaining a determination letter if the employer maintains at any time, or has maintained at any time, another plan, including a standardized form 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 form plan is not considered another plan. The plan that has been replaced and the standardized form 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 form plan's opinion or notification letter without obtaining a determination letter.

(3) With respect to M&P plans, a standardized plan sponsored by a trade or professional organization which is adopted by an employer that is not a bona fide member of such organization will be considered an individually designed plan unless the following conditions are satisfied:

(a) The trade or professional organization is exempt from federal income taxation under § 501(c)(6);

(b) The plan is a standardized defined contribution plan;

(c) The trade or professional organization makes the plan available for adoption by nonmember employers by furnishing it to those of its members that independently qualify as sponsoring organizations; and

(d) The requirements of section 5.01(2) through 5.01(5) of Rev. Proc. 90–21 are satisfied.

Amended plan is treated as an individually designed plan

.06 An employer that amends any provision of an M&P plan or regional prototype plan or its adoption agreement (other than to choose among the options offered by the sponsoring organization or 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 sponsoring organization or sponsor and does not substitute another approved plan referred to in section 8 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 or notification letter

.07 An application submitted by an employer with respect to an M&P plan or regional prototype plan will be treated as an application for an individually designed plan if it is submitted prior to the time the M&P plan or regional prototype plan is approved.

SECTION 9. VOLUME SUBMITTER PLANS

Scope

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

Definition of volume submitter plan

.02 A volume submitter plan is a profit-sharing plan (including a § 401(k) plan), a money purchase pension plan or a defined benefit plan, the form of which meets certain criteria established by an individual key district office and which is submitted pursuant to procedures established by the key district office for filing requests for volume submitter advisory letters (with respect to the specimen plan) and requests for determination letters (with respect to the adoption of an approved specimen plan). The Service will not accept volume submitter requests with respect to ESOPs, stock bonus plans, or cross-tested defined contribution plans (other than target benefit plans that satisfy the safe harbor in § 1.401(a)(4)–8(b)(3)).

Purpose of volume submitter program

.03 The volume submitter program enables key district offices to expedite the issuance of determination letters in response to applications for approval of individually designed plans. The program is administered locally by each key district office.

Description of volume submitter program

.04 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 which are identical or substantially similar to the provisions in plans that such practitioner's clients have adopted or are expected to adopt. Once the Service has approved the specimen plan, the practitioner will be able to file determination letter requests on behalf of employers adopting substantially similar plans.

User fees

.05 Rev. Proc. 96–8 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 with the lower fees, the volume submitter practitioner must certify at the time of filing the specimen plan that at least 30 employers within any two regions of the Service 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.

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 submitted to the key district office in which the practitioner has its principal place of business. The request must include the following:

(a) A copy of the specimen plan 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; and

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

(2) A practitioner who has received approval of a volume submitter specimen plan in a key district office must receive separate approval of the plan from each other key district office in which there are clients adopting substantially similar plans. Once the practitioner has received approval from the key district office in which the practitioner's principal place of business is located, the practitioner may file for approval of the same specimen plan in other key district offices where there are employers who will adopt substantially similar plans. If the practitioner certifies at the time of filing with the second key district office that the specimen plan is identical to a specimen plan approved by another key district office with respect to that practitioner and attaches a copy of that office's advisory letter, then the user fee that would otherwise be charged for the specimen plan will not be charged.

Determination letter for adoption of volume submitter plan

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

(1) Form 5307, Application for Determination for Adopters of Master or Prototype, Regional Prototype, or Volume Submitter Plan, is filed to request a determination letter on an employer's adoption of a volume submitter plan, including adopters of single-employer collectively bargained plans that automatically satisfy the requirements of § 1.410(b)–2(b)(7).

(2) Schedule Q, (Form 5300) Nondiscrimination Requirements, must be filed as an attachment to Form 5307.

(3) A copy of the advisory letter for the practitioner's volume submitter specimen plan must be submitted with each Form 5307.

(4) The volume submitter practitioner must be the representative of the employer when the employer's determination letter application is filed.

(5) All applications submitted by adopters of district approved volume submitter plans must be accompanied by a copy of the plan and trust instrument and by a written representation made by the volume submitter which states whether the plan is word-for-word, and if not, explains how the plan and trust instrument are not word-for-word identical to the key district approved specimen plan and which describes the location, nature and effect of each difference from the language of the approved specimen plan. The extent to which the plan and trust instrument may differ from the approved specimen plan will be governed by the procedures of the appropriate key district office.

(6) All applications submitted by adopters of key district approved volume submitter plans must also be accompanied by any other information or material required by the key district office.

(7) All applications for plans that have at any time in the past received a favorable determination letter must submit a copy of the plan's latest determination letter.

SECTION 10. MULTIPLE EMPLOYER PLANS

Scope

.01 This section contains procedures for applications filed with respect to plans described in § 413(c).

Form 5300 and Schedule Q

.02 An application filed with respect to a multiple employer plan must include a completed Form 5300 filed on behalf of one employer and a separate Form 5300 completed through line 8 for each other employer maintaining the plan. One Schedule Q, (Form 5300) Nondiscrimination Requirements, should be filed for the plan. In accordance with the instructions for Schedule Q, separate coverage and other information must be submitted for each employer.

Multiple employer M&P plans

.03 Certain multiple employer plans have in the past received Service approval as M&P plans. In the case of such a plan that will continue to use an adoption agreement format, the application must also include a completed adoption agreement for each employer maintaining the plan. Regardless of whether an adoption agreement format continues to be used for such a plan, the rules of § 1.414(l)–1 will apply in determining whether the plan is a single plan for which only one determination letter will be issued and which requires only one user fee.

Where to file

.04 The complete application, including all Forms 5300 (and, if applicable, adoption agreements) for employers maintaining the plan as of the date of the application, must be filed as one package submission in the key district office where the association maintaining the plan, the trustees, or the plan administrators have their principle place of business. The application is to be directed to the attention of the key district office volume submitter coordinator.

Preliminary approval for certain multiple employer M&P plans

.05 Multiple employer plan applicants who previously received Service approval for a plan as an M&P plan and who will continue to use an adoption agreement format are encouraged to request preliminary approval of the provisions of the plan, including the permitted adoption agreement elections, prior to making the submission described above. Preliminary approval may be requested by submitting a copy of the plan and trust instrument, including a blank adoption agreement, and a copy of the latest opinion letter to the volume submitter coordinator for the key district where the complete application will be filed, requesting preliminary approval pursuant to this procedure. The request should not include an application form or user fee. The key district will notify the applicant in writing if preliminary approval is granted, and the complete application may then be filed. Adopting employers will not be entitled to rely on the preliminary approval as to the qualified status of the plan. If the applicant requests preliminary approval of the plan on or before November 14, 1990, the Service will treat the TRA '86 § 401(b) remedial amendment period for the plan as not expiring earlier than the date that is twelve months after the date of the key district office's preliminary approval.

Determination letter sent to each employer

.06 The Service will mail a copy of the determination letter issued with respect to the plan to each employer maintaining the plan.

Addition of employers

.07 If other employers become participating employers under the plan after a favorable determination letter has been issued, the employers may not continue to rely on such favorable determination letter. However, an applicant may request a determination that the addition of new participating employers to the plan does not adversely affect the plan's qualified status by filing 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, if applicable, adoption agreement) for each new participating employer. The Service will send copies of such a determination only to the applicant and the new participating 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) or permitted changes to adoption agreement elections in master or prototype or regional prototype plans, provided the changes constitute minor amendments. The Service may also designate other specific amendments which 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, regional prototype, or volume submitter plan, a copy of the opinion, notification, 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

.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.

Key district office has discretion to determine whether use of minor amendment procedures is appropriate employers

.05 The key district office has discretion to determine whether a plan amendment may be submitted as a minor plan amendment. The key district office 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) A 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 5303 is filed in the case of a multiemployer plan covered by PBGC insurance.

(3) Schedule Q, (Form 5300) Nondiscrimination Requirements, is required to be filed as an attachment to Form 5310 or Form 5303.

(4) A 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.

Required demonstration of nondiscrimination requirements

.03 An applicant requesting a determination letter upon termination may not decline to elect that the plan be reviewed for the average benefit test (if applicable) or the nondiscrimination in amount requirement, as otherwise permitted under sections 5.03 and 5.04, unless the following conditions are satisfied:

(1) with respect to the average benefit test, the plan must have received a favorable determination letter that stated that the plan satisfied the requirements of the test;

(2) with respect to the nondiscrimination in amount requirement, the plan must have received a favorable determination letter that stated that the plan satisfied the requirements of either a nondesign-based safe harbor or the general test for nondiscrimination in amount;

(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) upon which the determination was based.

Compliance with Title IV of ERISA

.04 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

.05 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. However, see Notice 88–131, 1988–2 C.B. 546, Rev. Proc. 89–65, 1989–2 C.B. 86, Notice 89–92, 1989–2 C.B. 410, Notice 90–73, 1990–2 C.B. 353, Notice 91–38, 1991–2 C.B. 636, Notice 92–36, 1992–2 C.B. 634, and Announcement 95–48, 1995–23 I.R.B. 13.

SECTION 13. FOREIGN SITUS TRUSTS, FOREIGN EMPLOYERS

Scope

.01 This section contains procedures for requesting determination letters involving foreign situs trusts and foreign employers.

Forms

.02 A domestic employer adopting a foreign situs trust may request a determination letter regarding the qualification of its plan under § 401(a) by filing Form 5300, Form 5303 or Form 5307, whichever is appropriate, and Schedule Q.

Where to file

.03 Such a request should be addressed to the district director for the key district office in which the employer's principal place of business is located. If there is a plan administrator, this material should be filed where the plan administrator is located.

Foreign employers

.04 In the case of a foreign employer and U.S. possessions, the request should be addressed to the:

Internal Revenue Service
EP/EO Division
P.O. Box 17288
Baltimore, MD 21203

SECTION 14. 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.

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.

SECTION 15. 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) or § 414(n)

.02 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 15.09 below.

Forms

.04 Form 5300 (with Schedule Q) 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 15.09 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 15.09(11), is an omission of a material fact. The failure of the adopting 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; regional prototype plans

.08 An employer that has adopted an M&P plan or a regional prototype plan (including a standardized form plan within the meaning of section 3.08 of Rev. Proc. 89–9 or a standardized regional prototype plan within the meaning of section 4.11 of Rev. Proc. 89–13) 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 15.09 of this revenue procedure to Form 5300 and submit the information, Form 5300, Schedule Q, and any other materials necessary to make a determination to the appropriate key district office.

Required information

.09 Required information. 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 national 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.

(11) 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) or 403(a) will be a determination as to the effect of § 414(n) upon the plan's qualified status only if the application includes:

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

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

(c) 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) and whether it is not unusual for the services to be performed by employees of organizations in the recipient organization's business field in the United States; and

(d) 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 16. 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. 94–41

.02 The procedures of Rev. Proc. 94–41, 1994–1 C.B. 711, which supersedes Rev. Proc. 83–41, 1983–1 C.B. 775, as modified by Rev. Proc. 88–5, 1988–1 C.B. 587, and Rev. Proc. 88–29, 1988–1 C.B. 828, apply to the request for a waiver of the minimum funding requirement.

Waiver and determination letter request submitted to national office

.03 Under this section, both the request for a waiver ruling and the request for a determination letter on the effect of any amendment necessary to satisfy section 3 of Rev. Rul. 78–223, 1978–1 C.B. 125, must be submitted by the taxpayer to the national office where it will be treated as a mandatory request for technical advice. The request that is submitted to the national office must include the following:

(1) All the procedural requirements described in section 2 of Rev. Proc. 94–41 must be satisfied;

(2) The submission must include a completed Form 5300 (with Schedule Q) and all necessary documents, plan amendments, and information required by the Form 5300 and by this revenue procedure for approval of the plan amendments;

(3) The request must indicate which key district office has audit jurisdiction over the return; and

(4) The request and the applicable user fee (required by Rev. Proc. 96–8) for both the waiver request and the determination letter request should be sent to:

Internal Revenue Service
Assistant Commissioner (Employee Plans and Exempt Organizations)
Attention: CP:E:EP:A:1
P.O. Box 14073
Ben Franklin Station
Washington, D.C. 20044

Additional information sent after the initial request should be sent to:

Chief, Actuarial Branch 1
CP:E:EP:A:1
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224

Handling of the request

.04 The waiver request will be handled by the national office as follows:

(1) The waiver request and supporting documents will be forwarded to Actuarial Branch, CP:E:EP:A:1, 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 key district 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 sent by the national office to the key district director for consideration while the technical advice request is completed.

(3) The national office will consider both the application for a funding waiver and the proposed plan amendment. If a waiver is to be granted and if the national office believes that qualification of the plan is not adversely affected by the plan amendment, the mandatory technical advice memorandum will be issued to the key district director. The key district director 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 an 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 key district director does not ask for reconsideration of the technical advice memorandum within 10 working days, the Actuarial Branch will issue the waiver ruling. This ruling will not contain the caveat described in section 3.02 of Rev. Proc. 94–41.

Interested party notice and comment

.05 The notice and comment requirements for interested parties provided in sections 18 and 19 of this revenue procedure must be satisfied. Comments are to be forwarded to the key district office that is considering the determination letter request for the plan amendments. With respect to the waiver request the notice requirements applicable to waiver requests found in Rev. Proc. 94–41 must be satisfied.

When waiver request should be submitted

.06 In the case of a plan other than a multiemployer plan, no waiver may be granted under § 412(d) with respect to any plan for any plan year unless an application therefor is submitted to the Service not later than the 15th day of the third month beginning after the close of such plan year. The Service may not extend this 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 which 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 17. SECTION 420 DETERMINATION LETTERS

Scope

.01 This section provides procedures for requesting determination letters 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

.02 The key district director 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). The cover letter must specifically state the location of a plan provision that satisfies each of the following requirements. 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 in any taxable year beginning after December 31, 2000.

(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). 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 18. 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 19 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 the key district director by the 45th day after the day on which the application for determination is received by the key district director. (However, see sections 18.03 and 18.04 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 9.01(7) of Rev. Proc. 96–4), addressed to the key district director to whom the application for determination was submitted, 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 the key district director a comment pursuant to § 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 the key district director. However, if the parties requesting the Department to submit a comment wish to preserve the right to comment to the key district director 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 the key district director.

(2) The request to the Department of Labor to submit a comment to the key district director must:

(a) Be in writing;

(b) Be signed as provided in section 18.02 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 18.02(6) above;

(d) Contain the information prescribed in section 18.02(2), (3), (4), (5) and (6) above;

(e) Contain the address of the key district director to whom the application was or will be submitted;

(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
Pension and Welfare Benefits 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 18.03 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 the key district director 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 the key district director 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 18.07 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 18.02 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 18.02 or 18.04, 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 18.01(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 the key district director, or a request to the Department of Labor shall be deemed made when it is received by the key district director, 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 19.01 below shall be deemed given when it is given in person, posted as prescribed in the regulations under § 7476 of the Code, or received through the mail. In any case where such an application, comment, request, notification, or notice is sent by mail, it shall be deemed received as of the date of the postmark (or if sent by certified or registered mail, the date of certification or registration), if it is deposited in the mail in the United States in an envelope or other appropriate wrapper, first class postage prepaid, properly addressed. However, if such an application, comment, request, notification, or notice is not received within a reasonable period from the date of postmark, the immediately preceding sentence shall not apply.

SECTION 19. 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 described in §§ 401, 403(a), 409 and 4975(e)(7) is to be made must be given to all interested parties in the manner set forth in § 1.7476–2(c) and in accordance with the requirements of this section.

Time when notice must be given

.02 When the notice referred to in section 19.01 is given by posting or in person, such notice must be given not less than 7 days nor more than 21 days prior to the day the application for a determination is made. When the notice is given by mailing, it should 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 19.01 shall be in writing and 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, stating whether the application relates to an initial qualification, a plan amendment, termination, or a partial termination and the address of the key district director to whom the application will be submitted;

(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 the key district director described in section 19.03(4), 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 the key district director with respect to the matters on which the Department declines to comment. The 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 the key district director or a request to the Department of Labor must be received in order to preserve the right of comment (see section 18 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 19.05 through 19.09 are included in the notice, a description of a reasonable procedure whereby such additional informational material will be available to interested parties (see section 19.04). (Examples of notices setting forth the above information, in a case in which the additional information required by sections 19.05 through 19.09 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 19.03(10), whereby the additional informational material required by sections 19.05 through 19.09 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 in person or by mail, or by a combination of the foregoing, 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 19.06 applies, there shall be made available to interested parties under a procedure described in section 19.04:

(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 19.05 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) Whether the applicant is claiming in the application that the plan meets the requirements of § 410(b)(1)(A), and, if not, the coverage schedule required by the application in the case of plans not meeting the requirements of such section. 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 19.05 or 19.06 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 19.04, 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 19.04 the material described in sections 19.02 through 19.07 above.

PART III. PROCESSING DETERMINATION LETTER REQUESTS

SECTION 20. 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 the key district offices 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 in a district office or Service Center 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 A key district director 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 the key district director concludes that a conference would be warranted in the interest of facilitating review and determination when the plan, etc., is formally submitted.

Determination letter based solely on administrative record

.03 Administrative Record

(1) In the case of a request for a determination letter, the determination of the key district director 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 18.01(1), (2), and (3) 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 18.01(1), (2), and (3) above;

(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 18.01(1), (2), and (3) 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 the key district director, 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 the key district director, 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 the key district director, 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 The key district director, 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.

Key district offices

.06 Following are the key district offices that issue determination letters and the areas covered by each:

KEY DISTRICT	*IRS DISTRICTS COVERED*
Cincinnati	Indiana, Kentucky, Michigan, Ohio, West Virginia
Baltimore	Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, any U.S. possession or foreign country
Chicago	Illinois, Iowa, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wisconsin

Brooklyn	Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont
Atlanta	Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee
Dallas	Arizona, Colorado, Kansas, Oklahoma, New Mexico, Texas, Utah, Wyoming
Los Angeles	Alaska, California, Hawaii, Idaho, Nevada, Oregon, Washington

NOTE: The preceding list does not reflect the reorganization of districts and regions pursuant to Treasury Order No. 150–01, dated September 28, 1995, 1995–44 I.R.B. 23. Previously, on January 28, 1995, the Commissioner of Internal Revenue announced that the Service will centralize its employee plans and exempt organizations determination letter program in Cincinnati, Ohio. The centralization will be phased in, one key district at a time, beginning in 1996. Announcement 95–51, 1995–25 I.R.B. 132, states that the Service will notify the public in advance of the phase in of each key district office. Until such notice is given, employers and organizations should continue to submit their requests for determination letters to the key district offices designated above.

SECTION 21. 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 21.02, 21.03, 21.04, or 21.05 subject, however, to sections 21.06 and 21.07. 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 21.05 or 21.08 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 21.01 are:

(1) Filing a completed application with the appropriate Key District Director 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 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 the key district director.

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 the key district director to seek technical advice from the national office 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 18 of Rev. Proc. 96–5).

Interested parties

.04 In the case of an interested party or the PBGC, the steps referred to in section 21.01 are, with respect to any matter relating to the qualification of the plan, submitting to the Key District Director a comment raising such matter in accordance with section 18.01(1) above, or requesting the Department of Labor to submit to the key district director a comment with respect to such matter in accordance with section 18.01(2) and, if the Department of Labor declines to comment, submitting the comment in accordance with section 18.01(3) 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 21.01, 21.02, 21.03 or 21.04, 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 21.02 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 21.02(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 the key district director to seek technical advice on the applicability of § 7805(b) relief, the applicant's administrative remedies will not be considered exhausted until the national office has had a reasonable time to act upon the request for technical advice.

Effect of technical advice request

.08 The step described in section 21.02(3) will not be available or necessary with respect to any issue on which technical advice has been obtained from the national office.

SECTION 22. 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. For example, a determination letter issued pursuant to this revenue procedure may not be relied upon after a significant change in plan coverage resulting from the operation of the plan. 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 which 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 12 and 13 of Rev. Proc. 96–4 applicable

.03 Except as otherwise provided in this section, determination letters referred to in sections 22.01 and 22.02 are governed, generally, by the provisions of sections 12 and 13 of Rev. Proc. 96–4.

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. 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 and a regional prototype plan, see section 14 of Rev. Proc. 89–9 and Rev. Proc. 89–13, as modified by Rev. Proc. 90–21, sections 8.03–8.08 of Rev. Proc. 91–66, and Rev. Proc. 92–41.

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 23. EFFECT ON OTHER REVENUE PROCEDURES

Superseded revenue procedure

.01 Rev. Proc. 93–39, with the exception of section 12 and section 13, is superseded. Rev. Proc. 94–37, which modified Rev. Proc. 93–39, is also superseded.

Superseded revenue procedures

.02 Rev. Proc. 81–19 and Rev. Proc. 95–6 are superseded.

SECTION 24. EFFECTIVE DATE

This revenue procedure is effective January 2, 1996. The Service will, however, continue to accept determination letter applications filed in accordance with the instructions in Rev. Proc. 93–39, as modified by Rev. Proc. 94–37, through the 120th day following the date of the Service's announcement in the Internal Revenue Bulletin of the availability of the revised 5300 series forms and new Schedule Q (Form 5300).

DRAFTING INFORMATION

The principal author of this revenue procedure is Sanford Karo of the Employee Plans Division. For further information regarding this revenue procedure, contact the Employee Plans Division's telephone assistance service between the hours of 1:30 and 4:00 p.m. Eastern time, Monday through Thursday, on (202) 622-6074 (not a toll-free call). Mr. Karo can be contacted by calling (202) 622-6214 (also not a toll-free call).

EXHIBIT: SAMPLE NOTICES TO INTERESTED PARTIES

The Exhibit set forth below, may be used to satisfy the requirements of section 19 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 _____ with the Key District Director, Internal Revenue Service at _____ 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].

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 the Key District Director, 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 the Key District Director 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 the Key District Director.

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 lessor 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
    Pension and Welfare Benefits 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 the Key District Director must be in writing and received by him 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 the Key District Director to be received by him 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 18 and 19 of Rev. Proc. 96–6. 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 submitted to the Service; and copies of section 18 of Rev. Proc. 96–6 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 § 420 determination letter request described in section 17 of this revenue procedure the following checklist may be completed and attached to the determination letter request:

ITEM	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 which 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?	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	_____
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 in any taxable year beginning after December 31, 2000?	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?	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?	Yes	No	_____
13. Does the Plan provide that transferred assets cannot be used for key employees?	Yes	No	_____