



Instructions for Form 6406

(Revised January 1996)

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

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

Paperwork Reduction Act

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

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

Recordkeeping . . . 6 hr., 3 min.

Learning about the law or the form . . . 1 hr., 44 min.

Preparing the form . . . 3 hr., 47 min.

Copying, assembling, and sending the form to the IRS . . . 32 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send the form to this office. Instead, see the instructions for Form 8717.

Public Inspection.—The application is open to public inspection if there are more than 25 participants. The total number of participants must be shown on line 4e.

“Participant” includes retirees, other former employees, and a beneficiary of a deceased employee who is or will in the future receive benefits under the plan.

Disclosure Request by

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

Declaration of Representative, or a privately designed authorization form providing the following:

1. Your name, address, employer identification number, and plan number(s).

2. A paragraph that clearly identifies the person or persons authorized to receive the return and/or return information. This must include the name, address, telephone number(s), and social security number(s) of the authorized person(s).

3. A paragraph that clearly describes the return and/or return information that you authorize the IRS to disclose.

4. Your signature as the taxpayer making the authorization.

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

General Instructions

Purpose of Form

Use **Form 6406** to apply for a determination for a minor amendment for an employee benefit plan if that plan has already received a favorable determination letter that takes into account the requirements of the Tax Reform Act of 1986 (TRA of 1986).

Type of Plan

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

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

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

Completing the Application

Applications are screened for completeness. Incomplete applications may be returned to the applicant. For this reason, it is important that an appropriate response be entered for each line item (unless instructed otherwise). In completing the application, pay careful attention to the following:

- N/A (not applicable) is accepted as a response **only** if an N/A block is provided.
- If a number is requested, a number must be entered.
- If an item provides a choice of boxes to check, check only one box unless instructed otherwise.
- If an item provides a box to check, written responses are not acceptable.
- If a governmental or nonelecting church plan, line 8a does not have to be completed.
- All applications must include the appropriate user fee and **Form 8717**, User Fee for Employee Plan Determination Letter Request. Please submit a separate check for each application. Form 8717 may be obtained by contacting your local IRS District office or by calling 1-800-TAX-FORM (1-800-829-3676).
- The IRS may, at its discretion, require a plan restatement, additional information, or the submission of a Form 5300 series application anytime it is deemed necessary.

Who May File

This form may be filed by any:

• Employer, including a sole proprietor, partnership, plan sponsor or plan administrator that wants a determination letter on the qualification of a minor amendment to their plan. However, use Form 6406 only if the plan has an outstanding favorable determination letter under the TRA of 1986.

This form may be filed to obtain a determination letter on the qualification of 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 these changes constitute minor amendments. For this purpose, a minor amendment does not include an amendment that involves a significant change to plan benefits or coverage or that may affect other portions of the plan so as to cause disqualification. For example, an amendment to add a cash or deferred arrangement to a plan is not a minor amendment.

- Plan sponsor or plan administrator desiring a determination letter as to the qualification of an amendment of a plan that involves a controlled group of corporations (section 414(b)), or trades or businesses under common control (section 414(c)), or an affiliated service group (section 414(m)). Provided the plan has a favorable determination letter under TRA of 1986.

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

- a. The amendment results in a plan termination, partial termination, merger, consolidation, or a transfer of plan assets or liabilities to another plan.

- b. The plan is restated. A plan is required to be restated if four or more amendments have been made to the plan. For restatement purposes, an amendment making only nonsubstantive plan changes is not counted as a plan amendment.

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

- d. Amendments are made to comply with the TRA of 1986.

Use the appropriate Form 5300 series form, if Form 6406 may not be used.

What To File

All plans must attach the following:

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

- Attach a duplicate copy of Form 6406, page 1, to the original Form 6406 printed in special red ink. The duplicate copy may be a reproduction or carbon; however, the signature must be original.

- All applications must be accompanied by:

- a. A copy of the new amendments or adoption agreement;

- b. A copy of the latest determination letter including caveats; and

- c. A statement as to how the amendments or changes in adoption agreement elections affect or change the plan or any other plan maintained by the employer.

Specific Plans—Additional Requirements

Controlled Groups of Corporations

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

Where To File

For information on **Where To File**, see Form 8717.

Specific Instructions

Line 1a. Enter the name, address, and telephone number of the plan sponsor. A plan sponsor for:

- 1. A plan that covers the employees of one employer, is the employer;

- 2. A plan maintained by two or more employers (other than a plan sponsored by a group of entities required to be combined under section 414(b), (c), or (m)), is the association, committee, joint board of trustees or other similar group of representatives of those who established or maintain the plan;

- 3. A plan sponsored by two or more entities required to be combined under section 414(b), (c), or (m), is one of the members participating in the plan; or

- 4. A plan that covers the employees and/or partner(s) of a partnership, is the partnership.

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

Address.—Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address

and the plan has a P.O. box, show the box number instead of the street address.

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

Use **Form SS-4**, Application for Employer Identification Number, to apply for an EIN. Form SS-4 can be obtained at most IRS or Social Security Administration (SSA) offices or by calling 1-800-TAX-FORM (1-800-829-3676).

The plan of a group of entities required to be combined under section 414(b), (c), or (m) whose sponsor is more than one of the entities required to be combined should enter only the EIN of one of the sponsoring members. This EIN must be used in all later filings of determination letter requests, and for filing annual returns/reports unless there is a change of sponsor.

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

Line 2. The contact person will receive copies of all correspondence as authorized in a power of attorney or other written designation. This line must be completed as described; a reference such as "see attached" is not acceptable.

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

Line 3b. If "Yes," is checked and you do not have a copy of the latest determination letter, explain in the cover letter. Form 6406 may not be used if the plan has not received a favorable determination letter that takes into account the TRA of 1986.

Line 3c. Section 3001 of ERISA requires the applicant to provide evidence that each employee who qualifies as an interested party has been notified of the filing of the application. Rules defining "interested parties" and the form of notification are in Regulations section 1.7476-1. For an example of an acceptable format, see Rev.

Proc. 96-6. If "No" is checked or this line is left blank, the application will be returned.

Line 4a. Enter a name for your plan.

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

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

Line 4d. Enter the year the plan **originally** became effective.

Line 4e. Enter the total of: **(1)** the total number of employees participating in the plan including employees under a section 401(k)

qualified cash or deferred arrangement who are eligible, but do not make elective deferrals, **(2)** retirees and other former employees who have a nonforfeitable right to benefits under the plan, and **(3)** beneficiaries of deceased employees who are or will be receiving benefits under the plan. (This means one beneficiary for each former employee regardless of the number of individuals receiving benefits. For example, payment of a former employee's benefit to three children is considered as a payment to one beneficiary.)

Line 6. If the plan sponsor is a member of a controlled group of corporations, trades or businesses under common control, or an affiliated service group, all employees of the group will be treated as employed by a single employer for purposes of certain qualification requirements. Attach a

statement showing in detail all members of the group, their relationship to the plan sponsor, the type of plans each member has, and the plans common to all members.

Miscellaneous

Line 8a. Section 411(d)(6) protected benefits include:

- The accrued benefit of a participant as of the later of the amendment's adoption date or effective date; and
- Any early retirement benefit, retirement-type subsidy or optional form of benefit for benefits from service before the amendment.

If the answer is "Yes," attach an explanation of how the amendment satisfies one of the exceptions to the prohibition on reduction or elimination of section 411(d)(6) protected benefits.

