

**Instructions for Schedule Q, (Form 5300) Elective
Determination Requests
(Rev. March 2010)**

Purpose: This is the first circulated draft of March 2010 revision of the Instructions for Schedule Q, (Form 5300) for your review and comments. See below for a discussion of major changes.

TPCC Meeting: None, but one may be arranged if requested.

Prior Version: The August 2004 revision of the Instructions for Schedule Q, (Form 5300) is available at:

<http://www.irs.gov/pub/irs-pdf/i5300q.pdf>

Instructions: The March 2010 revision of the Schedule Q, (Form 5300) is attached.

Other Products: Circulations of draft tax forms, instructions, notices, and publications are posted at:

<http://taxforms.web.irs.gov/Circulations/index.htm>.

Comments: Please email, fax, call, or mail any comments by March 9, 2010. Comments submitted by telephone must be followed up in writing to be considered. Send a copy of any email comments to the forms reviewer, Jason Langley at Jason.P.Langley@irs.gov.

Major Changes

We have revised this form per instructions from TEGE/EP.

Line 2 is now obsolete and is marked as reserved, the instructions for line 2 have been removed.

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Instructions for Schedule Q (Form 5300) (Rev. March 2010)



Department of the Treasury
Internal Revenue Service

DRAFT

Elective Determination Requests

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

What's New

- Line 2 has been obsoleted. It will be deleted in the next revision.
- A request for a description of the gateway requirements under Regulations section 1.401(a)(4)-8 has been added. See *Cross -Tested Plans Only under Demo 6 - General Test*.
- Due to processing requirements, fillable fields (Plan Sponsor, EIN, and Name of Plan) are now limited to a certain number of characters, including spaces.

General Instructions

Purpose of Schedule

Schedule Q (Form 5300) allows you to indicate whether you wish certain qualification requirements relating to minimum participation, coverage, and nondiscrimination to be considered by the IRS in its review of your plan in conjunction with an application for determination letter.

Who May File

The use of this form is optional. However, filers of Form 5300, Application for Determination for Employee Benefit Plan; Form 5307, Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans; and Form 5310, Application for Determination for Terminating Plan, may elect to complete and file Schedule Q (Form 5300) with their application to broaden the scope of a determination letter by requesting determinations for certain coverage and nondiscrimination requirements that are not routinely addressed in conjunction with an application for determination letter.

Note. If Schedule Q is not filed, the determination letter issued for this plan will not consider and may not be relied upon with regard to the general test and certain other provisions under section 401(a)(4), the average benefit test under section 410(b), and the definition of compensation provisions of section 414(s).

What to Complete

If you elect to use this form, complete all lines unless otherwise directed.

Note. Applicants requesting specific determinations are required to submit demonstrations showing how their plans satisfy the minimum participation, coverage, and nondiscrimination requirements, as applicable. The demonstrations are explained in these instructions. Information or computations used for more than one purpose may not be cross-referenced but must be repeated for each applicable demonstration.

Specific Instructions

Minimum Participation, Coverage, and Nondiscrimination Requirements

Line 1. If "Yes" is checked, attach Demo 1 to show how a plan using the qualified separate lines of business rules of section 414(r) satisfies the gateway test of section 410(b)(5)(B) or satisfies the special rules for employer-wide plans. See *Guidelines for Certain Demonstrations* on page 2.

Note. If a request for an administrative scrutiny determination on any separate line of business of the employer is pending with the IRS, submit a copy of the confirmation receipt issued by the IRS with the application.

Line 3. Determination letters generally do not provide reliance that benefits, rights, and features under a plan satisfy the nondiscriminatory current availability requirement of Regulations section 1.401(a)(4)-4(b).

Answer "Yes" only if you are requesting a determination that any specified benefit, right, or feature meets the nondiscriminatory current availability requirement of Regulations section 1.401(a)(4)-4(b). If "Yes" is checked, attach Demo 3 to provide a demonstration for each benefit, right, and feature you wish considered. Also see *Guidelines for Certain Demonstrations* on page 2.

Line 4. Check "Yes" and attach Demo 4 if any of the following apply.

1. The plan is restructured into component plans under Regulations section 1.401(a)(4)-9.

2. The plan is disaggregated because:

a. The plan includes a section 401(k) or 401(m) plan and a portion that is not a section 401(k) or 401(m) plan,

b. The plan includes an ESOP and a portion that is not an ESOP,

c. The employer applies section 410(b) separately to the portion of the plan that benefits only employees who satisfy age and service conditions under the plan that are lower than the greatest minimum age and service conditions permissible under section 410(a),

d. The plan benefits employees of more than one qualified separate line of business (unless the plan is tested under the special rule for employer-wide plans in Regulations section 1.414(r)-1(c)(2)(ii)),

e. The plan benefits the noncollectively bargained employees of more than one employer, or

f. The plan benefits both collectively bargained and noncollectively bargained employees.

3. The plan is permissively aggregated with another plan under Regulations section 1.410(b)-7(d).

Note. If you are requesting a determination that the plan satisfies the average benefit test of section 410(b) or the nondiscrimination requirements of section 401(a)(4) and if any of the conditions above apply attach a Demo 4.

See *Guidelines for Certain Demonstrations* on page 2. Also, see the instructions for line 9 for additional information that may be required in Demo 4.

Line 5. This line is a request for a determination that the plan satisfies the minimum coverage requirements of section 410(b) due to satisfying the average benefit test of Regulations section 1.410(b)-2(b)(3).

If a determination regarding the average benefit test is being requested, check "Yes" and see instructions for Demo 5 under *Guidelines for Certain Demonstrations*.

This determination relates only to the satisfaction of the requirements of section 410(b). This determination is

mutually exclusive of any determination that the plan may satisfy section 401(a)(4). If the plan must satisfy a general test in order to satisfy section 401(a)(4), a determination that the plan satisfies the average benefit test is not a determination that the plan's rate groups satisfy the modified average benefit test that is included in the general test.

Line 6. This is exclusively a request for a determination that the plan satisfies the nondiscrimination in amount or benefits requirements under section 401(a)(4) using a nondesign-based safe harbor or a general test. This determination is mutually exclusive of any determination that the plan may satisfy section 410(b).

If this is a request for a determination regarding a nondesign-based safe harbor or a general test, see the instructions for Demo 6 under *Guidelines for Certain Demonstrations*. The Demo 6 must show that the plan satisfies either:

1. The contributions or benefits general test in Regulations sections:
 - 1.401(a)(4)-2(c),
 - 1.401(a)(4)-3(c),
 - 1.401(a)(4)-8(b)(2),
 - 1.401(a)(4)-8(c)(2),
 - 1.401(a)(4)-8(c)(3)(iii)(C), or
 - 1.401(a)(4)-9(b).
2. The nondesign-based safe harbors described in Regulations section 1.401(a)(4)-2(b)(3) (safe harbor for uniform point plans) or Regulations section 1.401(a)(4)-3(b)(4)(i)(C)(3) (alternative safe harbor for flat benefit plans).

Also enter the letter in the space provided on line 6 that indicates if the determination requested relates to:

1. A Defined Benefit Plan (DBP) being tested under the general test in Regulations section 1.401(a)(4)-3(c) that involves a facts and circumstances determination under the "safety valve" rule in Regulations section 1.401(a)(4)-3(c)(3);
2. A plan being tested under a general test that does not involve a determination under the safety valve rule; or
3. A plan intended to satisfy a nondesign-based safe harbor.

Line 7. Check "Yes" on line 7(i) and attach Demo 7 if a determination is being requested regarding any plan provision which provides for pre-participation or imputed service as defined in Regulations section 1.401(a)(4)-11(d)(3)(ii).

Check "Yes" on line 7(ii) and attach Demo 7 if a determination is being requested for a plan amendment or, in

the case of an initial determination, a plan provision which provides for a period of past service that exceeds the period set forth in the safe harbor in Regulations section 1.401(a)(4)-5(a)(3).

Do not check "Yes" if past service, pre-participation service, or imputed service is credited under the plan solely to the extent required by one or more of the following:

1. The service crediting rules under sections 410(a) (eligibility), 411(a) (vesting), 413 (collectively bargained plans), or 414(a) (service for predecessor employer);
2. The hour of service or elapsed time service-crediting methods under 29 CFR 2530.200b-2 and Regulations section 1.410(a)-7; and
3. The prohibition on double proration of service and compensation in 29 CFR section 2530.204-2(d).

See the instructions for Demo 7 under *Guidelines for Certain Demonstrations*.

Line 8. Check "Yes" and attach Demo 8 if a determination is being requested for a plan that is part of a floor arrangement. See the instructions for Demo 8 under *Guidelines for Certain Demonstrations*.

Nondiscriminatory Compensation and Employee Contributions

Line 9. Check "Yes" and attach Demo 9 if a determination is being requested in which any of the following apply:

1. The plan bases contributions or benefits on a definition of compensation that does not satisfy the requirements of Regulations sections 1.414(s)-1(c)(2) or (3); or
2. The plan includes a section 401(k) and/or section 401(m) plan that incorporates an actual deferral percentage or actual contribution percentage test using a definition of compensation that does not satisfy the requirements of Regulations sections 1.414(s)-1(c)(2) or (3).

If this plan has been disaggregated into separate plans or restructured into component plans, this line may be checked "Yes" to request a determination if any of the separate disaggregated plans or restructured component plans are described in 1. or 2. above. Also complete Demo 4 and indicate on the Demo 4 each disaggregated plan or component plan to which 1. or 2. applies.

Note. Sections 401(k) and 401(m) plans may not be restructured.

See the instructions for Demo 9 under *Guidelines for Certain Demonstrations*.

Line 10. Check "Yes" if this is a DBP and a determination is being requested

regarding employee contributions not allocated to separate accounts.

Line 11. Enter the letter shown on the schedule that corresponds to the method being used to determine the employer-provided benefit for purposes of Regulations section 1.401(a)(4)-6(b).

The composition-of-workforce and minimum benefit methods may only be used with plans that satisfy the unit credit safe harbor in Regulations section 1.401(a)(4)-3(b)(3).

If you enter the letter "A," attach Demo 10 and see the instructions for Demo 10 under *Guidelines for Certain Demonstrations*. If applicable, also indicate the plan factor.

Line 12. Enter the letter that corresponds to the method used to show that the employee-provided benefit is nondiscriminatory in amount. See Regulations section 1.401(a)(4)-6(c).

If you enter the letter "C," attach Demo 11. See the instructions for Demo 11 under *Guidelines for Certain Demonstrations*.

Guidelines For Certain Demonstrations

The following instructions describe additional information that must be included in the demonstrations.

Note. Applicants must follow these instructions and indicate in their demonstrations where the elements in the guidelines are addressed. Applicants must explain why any elements have not been addressed.

Information or computations that are used for more than one purpose or provided elsewhere in the application may not be cross-referenced.

Clearly label each demonstration as Demo 1, Demo 2, etc.

Demo 1 – Qualified Separate Lines of Business

Provide a schedule with the following information, as applicable:

1. The Code section(s) for which the employer is testing on a separate line of business basis (i.e., section 410(b) or section 401(a)(26)),
2. The separate lines of business that have employees benefiting under the plan,
3. A demonstration of how the plan meets the nondiscriminatory classification requirement of section 410(b)(5)(B) and Regulations section 1.414(r)-8(b)(2) on an employer-wide basis, and
4. If the requirements of section 410(b) or section 401(a)(26) are to be applied to this plan on an

employer-wide basis under the special rules for employer-wide plans, a demonstration of how the plan meets the requirements of the applicable special rule in Regulations section 1.414(r)-1(c)(2)(ii) or Regulations section 1.414(r)-1(c)(3)(ii).

Demo 2

Line 2 has been obsoleted, so a demonstration is not required.

Demo 3 – Nondiscriminatory Current Availability of Benefits, Rights and Features

1. An applicant requesting a determination that a plan satisfies the nondiscriminatory current availability requirement of Regulations section 1.401(a)(4)-4(b) for any benefit, right, or feature (BRF) specified by the applicant should ordinarily demonstrate the following for each BRF that the applicant wants considered:

- a. Identify the specific BRF, including terms pertaining to the BRF, such as eligibility conditions, timing, election rights, etc.;
 - b. Cite the plan provisions that describe the BRF and all terms relating to the BRF;
 - c. Describe any conditions on the availability of the BRF that were disregarded in determining current availability;
 - d. If the BRF is contingent on an unpredictable event, describe the contingency and determine current availability as if the event had occurred; and
 - e. If applicable, describe how the special rule in Regulations section 1.401(a)(4)-4(d)(3), relating to early retirement window benefits, has been applied;
2. If the BRF is an optional form of benefit, ancillary benefit, or other right or feature that has been aggregated for testing purposes with another optional form of benefit, ancillary benefit, or other right or feature, respectively, show how the requirements of Regulations section 1.401(a)(4)-4(d)(4)(i)(A) and (B) are satisfied.

3. Describe the group of employees to whom the BRF is available and indicate if this group includes any nonexcludable employees with accrued benefits who are not currently benefiting (“frozen plan participants”).

4. Demonstrate one of the following with respect to the specified BRF:

- a. The group of employees to whom the benefit is currently available satisfies the section 410(b) ratio percentage test;

b. The BRF has been prospectively eliminated and satisfies the section 410(b) ratio percentage test as of the elimination date;

c. The BRF is available only to an acquired group of employees, and the requirements of Regulations sections 1.401(a)(4)-4(d)(1)(i)(A) and (B) are satisfied;

d. The plan is a permissively aggregated plan, and the BRF is a spousal benefit described in Regulations section 1.401(a)(4)-4(d)(5);

e. The plan is an ESOP, and the BRF is an investment diversification right or feature or distribution option available only to all qualified participants (as defined in section 401(a)(28)(B)(iii)) or the failure of the BRF to satisfy current availability results solely from the restrictions of section 409(n); or

f. The plan is a permissively aggregated defined benefit/defined contributions plan; the BRF is not a single sum benefit, loan, ancillary benefit, or benefit commencement date (including the availability of in-service withdrawals); the BRF is provided under only one type of plan; and the BRF is currently available to all non-highly compensated employees (NHCEs) in all plans of the same type as the plan under which it is provided.

5. If the BRF is available to frozen plan participants, show how one of the requirements in Regulations sections 1.401(a)(4)-4(d)(2)(i) through (iv) is satisfied.

Demo 4 – Test for Restructuring, Mandatory Disaggregation, or Permissive Aggregation

Explain the basis of the disaggregation, permissive aggregation, or restructuring, identifying the aggregated or separate disaggregated plans or component plans, and demonstrate how any restructured component plans satisfy section 410(b) as if they were separate plans.

Any other plan that has been permissively aggregated with this plan should be identified by:

- name,
- plan number, and
- Employer Identification Number (EIN).

Describe the benefit or allocation formula of the other plan and indicate if that plan has received or been submitted for a determination letter.

Demo 5 – The Average Benefit Percentage Test

Demo 5 must satisfy the following requirements.

1. An applicant requesting a determination that a plan satisfies the average benefit test must demonstrate compliance with the nondiscriminatory classification test of Regulations section 1.410(b) including, if applicable, the facts and circumstances determination under Regulations section 1.410(b)-4(c)(3).

Note. The determination regarding the average benefit test is not available to a plan that satisfies the ratio percentage test.

The demonstration for the average benefit test should provide, for each highly compensated employee (HCE) and each non-highly compensated employee (NHCE), the compensation used in the test, the allocation or benefit being tested, and the actual benefit percentages. The average benefit percentages for HCEs and NHCEs must be provided.

2. A plan that is deemed to satisfy the average benefit percentage test under the special rule in Regulations section 1.410(b)-5(f) must demonstrate that the plan would satisfy the ratio percentage test if the excludable employee and mandatory disaggregation rules for collectively bargained and noncollectively bargained employees did not apply.

3. In addition to the above information, the average benefit percentage demonstration must identify and describe the method used for determining employee benefit percentages under Regulations sections 1.410(b)-5(d) and (e), including the information listed below, under *All Plans*, as applicable.

Note. The demonstration must include the portion of the coverage test showing the data used in the calculations and the calculations for each participant. Participants need not be identified. However, the IRS may request that additional information be submitted if necessary.

All Plans

All plans using the average benefit test must also include the following information on Demo 5.

1. The testing period (see Regulations section 1.410(b)-5(e)(5) for an optional averaging rule).
2. The definition of testing service (including imputed and pre-participation service).
3. A description of the testing group (see Regulations section 1.410(b)-7(e)).
4. Whether the employee benefit percentages are determined on a contributions or benefits basis.
5. Whether permitted disparity under Regulations section 1.401(a)(4)-7

is imputed in determining employee benefit percentages.

6. An explanation of how allocation or accrual rates are grouped on the test.

7. A description of how contributions or benefits are normalized on the test, including the actuarial assumptions used.

8. The definition of section 414(s) compensation used in determining plan year compensation or average annual compensation and a demonstration showing the definition as nondiscriminatory. If plan year compensation or average annual compensation is determined using a definition of compensation that satisfies Regulations sections 1.414(s)-1(c)(2) or (3), the explanation should state whether the definition satisfies Regulations sections 1.414(s)-1(c)(2) or (3). See the instructions under Demo 9 on page 6 pertaining to nondiscriminatory compensation.

9. A description of the method of determining compensation used in determining employee benefit percentages.

10. The testing age of employees (not applicable to defined contribution plans (DCPs) testing on a contribution basis).

Plans with Defined Benefits Plans in the Testing Group

Plans with DBPs in the testing group must also provide the following information if applicable.

11. Show if accruals after normal retirement age are taken into account and, if such accruals are disregarded as provided in Regulations section 1.401(a)(4)-3(f)(3), the basis on which they are disregarded.

12. Show if most valuable rates must be used under Regulations section 1.410(b)-5(d)(7), and, if so, show how those rates are determined.

13. Show if a DBP disregards offsets described in Regulations section 1.401(a)(4)-3(f)(9), give a description of such offsets, and show how they satisfy Regulations section 1.401(a)(4)-3(f)(9).

14. Show if any disability benefits are taken into account in determining employees' accrued benefits under Regulations section 1.401(a)(9)-3(f)(2), and, if so, cite the plan provisions that permit these disability benefits to be taken into account.

15. Show if any other special rules in testing a plan for nondiscrimination in amounts are applied, for example, the rules applicable to the determination of benefits on other than a plan-year basis described in Regulations section 1.401(a)(4)-3(f)(6), the adjustments for certain plan distributions provided in Regulations section 1.401(a)(4)-3(f)(7), and the adjustment for certain qualified

preretirement survivor annuity charges as provided in Regulations section 1.401(a)(4)-3(f)(8).

16. Plans with employee contributions not allocated to separate accounts must give a description of the method for determining the employer-provided accrued benefit under Regulations section 1.401(a)(4)-6(b) and the location of relevant plan provisions. If the method for determining the employer-provided accrued benefit is the composition-of-workforce method, the demonstration must show that the eligibility requirements of Regulations section 1.401(a)(4)-6(b)(2)(ii) are satisfied. If the grandfather rule of Regulations section 1.401(a)(4)-6(b)(4) is used, the demonstration must show, if applicable, that the benefits provided on account of employee contributions at lower levels of compensation are comparable to those provided on account of employee contributions at higher levels of compensation.

Employee Benefit Percentages Determined Using Cross-Testing

17. Provide a description of the method used to determine equivalent allocations and benefits on the test.

Demo 6 – General Test

Demo 6 covers a request for a determination that a plan satisfies a general test under any of the following Regulations sections:

- 1.401(a)(4)-2(c),
- 1.401(a)(4)-3(c),
- 1.401(a)(4)-8(b)(2),
- 1.401(a)(4)-8(c)(2),
- 1.401(a)(4)-8(c)(3)(iii)(C), or
- 1.401(a)(4)-9(b).

Demo 6 must include a nondiscrimination test showing that the plan passes the relevant general test and provide the information listed below *All Plans (unless otherwise noted)*, and if applicable, under *Defined Benefit Plans Only* or *Cross-Tested Plans Only*. However, the IRS may request that additional information be submitted if necessary.

All Plans (Unless Otherwise Noted)

All plans must submit the information requested in items 1 through 11 below.

1. Provide the portion of the nondiscrimination test that provides the data for each participant and demonstrates that the plan satisfies 401(a)(4). Participants need not be identified by name. Tests that include two or more component plans (such as profit sharing, money purchase, 401(k) and 401(m)) should separately show the allocations or benefits under each component plan.

2. Identify each rate group under the plan and include a demonstration of how each rate group satisfies section 410(b). If the plan is a DBP that is being tested on the basis of the amount of benefits, rate groups must be determined on the basis of both normal and most valuable accrual rates which are expressed as a dollar amount or a percentage of compensation. If the most valuable accrual rate is determined in accordance with the special rule in Regulations section 1.401(a)(4)-3(d)(3)(iv) (floor on most valuable accrual rate), this must be indicated.

3. State whether the plan is being tested on a contributions or benefits basis.

4. Provide the plan year being tested.

5. Provide a description of the method of determining allocation or accrual rates, and if the plan is tested on a benefits basis, the measurement period and definition of testing service (including imputed and pre-participation service).

6. State whether the test is imputing permitted disparity under Regulations section 1.401(a)(4)-7.

7. Provide an explanation of how allocation or accrual rates are grouped.

8. Provide an explanation of how benefits are normalized on the test, including the actuarial assumptions used (not applicable to DCPs testing on a contributions basis).

9. State the definition of section 414(s) compensation used in determining plan year compensation or average annual compensation and include a demonstration showing the definition as nondiscriminatory. If plan year compensation or average annual compensation is determined using a definition of compensation that satisfies Regulations sections 1.414(s)-1(c)(2) or (3), state whether the definition satisfies Regulations section 1.414(s)-1(c)(2) or section 1.414(s)-1(c)(3). See the Demo 9 instructions pertaining to nondiscriminatory compensation for guidance.

10. Provide the method of determining average annual compensation used in testing the plan for nondiscrimination as defined in Regulations section 1.401(a)(4)-3(e)(2) or give a description of the period used in determining plan year compensation.

11. Provide the testing age of employees, include fractions of year if the test is based on fractional age (not applicable to a DCP testing on a contributions basis).

Defined Benefit Plans Only

All DBPs must also provide the following information, if applicable.

12. State whether accruals after normal retirement age are taken into account, and if such accruals are disregarded as provided in Regulations section 1.401(a)(4)-3(f)(3), provide the basis on which they are disregarded.

13. State whether early retirement window benefits are taken into account in determining accrual rates and whether such benefits are being disregarded under Regulations section 1.401(a)(4)-3(f)(4)(ii). Also provide the basis on which they are disregarded.

14. State whether any unpredictable contingent event benefits were taken into account in determining accrual rates under Regulations section 1.401(a)(4)-3(f)(5) and provide the basis on which they are taken into account.

15. State whether the plan disregards offsets described in Regulations section 1.401(a)(4)-3(f)(9), provide a description of such offsets, and show how they satisfy Regulations section 1.401(a)(4)-3(f)(9).

16. State whether any disability benefits are taken into account in determining employees' accrued benefits under Regulations section 1.401(a)(4)-3(f)(2), and if so, cite the plan provisions that permit these disability benefits to be taken into account.

17. State whether any other special rules in Regulations section 1.401(a)(4)-3(f) are applied in testing a plan for nondiscrimination in amount, for example:

- The rules applicable to the determination of benefits on other than a plan-year basis described in Regulations section 1.401(a)(4)-3(f)(6),
- The adjustment for certain plan distributions provided in Regulations section 1.401(a)(4)-3(f)(7), and
- The adjustment for certain qualified preretirement survivor annuity charges as provided in Regulations section 1.401(a)(4)-3(f)(8).

18. Plans with employee contribution not allocated to separate accounts should include:

- A description of the method for determining whether employee-provided accrued benefits are nondiscriminatory under Regulations section 1.401(a)(4)-6(c),
- The method for determining the employer-provided accrued benefit under Regulations section 1.401(a)(4)-6(b), and
- The location of relevant plan provisions.

If the method for determining the employer-provided accrued benefit is the composition-of-workforce method, the demonstration must show that the eligibility requirements of Regulations section 1.401(a)(4)-6(b)(2)(ii) are satisfied.

If the grandfather rule of Regulations section 1.401(a)(4)-6(b)(4) is used, the demonstration must show, if applicable, that the benefits provided on account of employee contributions at lower levels of compensation are comparable to those provided on account of employee contributions at higher levels of compensation.

19. If the plan would otherwise fail to satisfy the general test in Regulations section 1.401(a)(4)-3(c)(1), and a determination is being sought that the failure may be disregarded as permitted by the special rule in Regulations section 1.401(a)(4)-3(c)(3), describe the relevant facts and circumstances that support the use of this rule.

Aggregated Defined Benefit and Defined Contribution Plans Only

20. If a DBP is aggregated with a DCP, provide a description of the special testing rules outlined in Regulations section 1.401(a)(4)-9(b). The description should provide:

- Which test is being satisfied and supporting demonstrations of satisfaction,
- If using the minimum amount test, provide the DB and DC information and rates separately, and
- State whether the NHCE rates are averaged or tested separately.

Cross-Tested Plans Only

21. Provide a description of the gateway requirements of Regulations section 1.401(a)(4)-8. The description should provide:

- Which test is being satisfied,
- If using the minimum amount test, provide the DB and DC information and rates separately, and
- State whether the NHCE rates are averaged or tested separately.

22. Provide a description of the method used to determine equivalent allocations and benefits.

23. For DCPs, the demonstration must list each participant's allocation rate for the plan being tested and list the equivalent benefit accrual rate (including component plans) for each participant.

Demo 6 – Safe Harbor for Uniform Points Plans

Each demonstration of the safe harbor for uniform points plans in Regulations section 1.401(a)(4)-2(b)(3) should include the following information:

1. Provide a description of the plan's allocation formula and the location of relevant plan provisions.
2. State the definition of section 414(s) compensation used in determining plan year compensation and give a demonstration showing the definition as nondiscriminatory. If the plan determines plan year

compensation using a definition of compensation that satisfies Regulations section 1.414(s)-1(c)(2) or (3), state whether the definition satisfies Regulations section 1.414(s)-1(c)(2) or (3).

See the instructions for Demo 9, later, pertaining to nondiscriminatory compensation for guidance.

3. Provide the portion of the nondiscrimination test that provides the data for each participant and demonstrates that the plan satisfies section 401(a)(4). The data must include the units for each participant being tested and the underlying basis for the units such as age, years of service, or compensation. Show the allocation rate for each eligible participant. Show the average of the allocation rates (determined without imputing permitted disparity) for the HCEs and NHCEs benefiting under the plan.

Demo 6 – Alternative Safe Harbor for Flat Benefit Plans

Each demonstration of the alternative safe harbor for flat benefit plans in Regulations section 1.401(a)(4)-3(b)(4)(i)(C)(3) must set forth the average of the normal accrual rates for all nonhighly compensated nonexcludable employees and the average of the normal accrual rates for all highly compensated nonexcludable employees. In addition, the demonstration should provide the additional information described under "Demo 6–General Test," relating to the determination of normal accrual rates, except for the information described in paragraphs 1, 2, 6, 18, and 19.

Demo 7 – Test for Pre-participation or Imputed Service

If "Yes" is checked on line 7(i) or 7(ii), attach a demonstration that includes the following:

1. A description of the nature of the grant of past service or pre-participation or imputed service,
2. The location of the various plan provisions that provide for the granting of the service, and
3. In the case of pre-participation or imputed service, state if the service is being taken into account in determining if the plan satisfies Regulations section 1.401(a)(4)-1(b)(2).

Note. The information provided should also include who receives the credit, classification, and how many years are being credited. The information should also provide which employees are highly compensated and which are not.

If no more than 5 years of service is granted, then Regulations section 1.401(a)(4)-11(d)(3) is satisfied and no Demo 7 is needed.

Demonstration 8 – Test for Floor Offset Arrangement

If a determination is being requested attach a statement giving the name, EIN, and plan type (for example, defined benefit or profit sharing) of the other plan that is part of the arrangement.

Also indicate if the other plan has received a favorable determination letter or is requesting a determination letter simultaneously with this application.

Demo 9 – Nondiscriminatory Compensation

If a determination is being requested, a demonstration that a definition of compensation is nondiscriminatory under the test in Regulations section 1.414(s)-1(d) should include the following information.

1. It should state if the demonstration relates to a definition used to determine contributions or benefits or a definition used in a section 401(k) and/or section 401(m) plan's ADP and/or ACP test.
2. It should state the definition of compensation being tested (and cite the plan provision where applicable) and indicate whether the definition uses rate of compensation or includes prior-employer compensation or imputed compensation.
3. It should identify the period for which compensation data is given.
4. It should state whether the test is based on the compensation of all

employees benefiting under the plan or all employees benefiting under all plans of the employer for which the same alternative definition of compensation is used to determine that the plan satisfies section 401(a)(4). It should also state whether all employees with zero total compensation have been excluded from the test. The demonstration should state the numbers of HCEs and NHCEs whose compensation is taken into account in the demonstration.

5. For both the highly compensated and nonhighly compensated groups of employees, it should state whether the test uses an aggregate, individual, or other reasonable method to calculate inclusion percentages. If an "other" method is used, it should be described.

6. With regard to the determination of total compensation and compensation included under the definition being tested, the demonstration should:

- a. Specify the section 415(c)(3) definition of compensation used in determining total compensation;
- b. Indicate if total compensation includes elective contributions and deferred compensation and, if applicable, if and how the adjustment required by Regulations section 1.414(s)-1(d)(3)(ii)(B) has been made; and
- c. State if, for purposes of the test, compensation included under the definition being tested is limited to total compensation and if both total compensation and compensation included under the definition being tested are limited to amounts not in excess of the limit in section 401(a)(17).

7. The demonstration should show, for both groups of employees, the respective inclusion percentages and also describe the manner in which such conclusion percentages are determined.

8. Finally, if the HCE's inclusion percentage is greater than the NHCE's inclusion percentage, the demonstration should set forth any facts relevant to whether the difference is *de minimis*. If the amount is not *de minimis* then Demo 6 can be submitted to show that the definition is non-discriminatory.

Demo 10 – Employer-Provided Benefit Method

If a determination is being requested, attach a demonstration showing that the eligibility requirements of Regulations section 1.401(a)(4)-6(b)(2)(ii) are satisfied. If applicable, also indicate the plan factor.

Demo 11 – Test to Show Employer-Provided Benefit Is Nondiscriminatory in Amount

If a determination is being requested, attach a demonstration, if applicable, that the benefits provided on account of employee contributions at lower levels of compensation are comparable to those provided on account of employee contributions at higher levels of compensation, as required by Regulations section 1.401(a)(4)-6(c)(4)(ii)(D).