

**SUPPORTING STATEMENT**  
Internal Revenue Service  
Application for Determination  
of Employee Stock Ownership Plan  
OMB # **1545-0284**

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

An employee stock ownership plan (ESOP) is an individually designed stock bonus plan, which is qualified under Internal Revenue Code Section 401(a), or a stock bonus and a money purchase plan both of which are qualified under IRC Section 401(a), and which are designed to invest primarily in qualifying employer securities. An ESOP may form a portion of a plan the balance of which includes a tax-qualified pension, profit-sharing, or stock bonus plan which isn't an ESOP. ESOPs generally have participation, vesting and allocation features common to all qualified plans. ESOPs are subject to the distribution provisions of IRC Section 401(a)(14), but must also comply with the distribution and payment requirements of IRC Section 409(o).

ESOPs generally are also required to:

- provide participants with the right to demand distributions in the form of employer securities;
- prohibit allocations of certain securities acquired in a sale to which IRC Section 1042 applies;
- prohibit allocations of securities in an S corporation under certain circumstances; and
- provide certain voting rights if the employer has a registration-type class of securities. In addition, ESOPs may have distinctive features, for example:
  - plan provisions related to the debt-financed acquisition of stock to generate cash for the employer's corporation; and
  - plan provisions related to a C corporation plan sponsor's ability to deduct dividends paid on stock held by the ESOP.

In 2009 and 2010, Employee Plans issued a series of [Responses to Technical Assistance Requests](#) (Memoranda), which addressed certain ESOP issues.

Form 5309 is used to apply for a determination letter for an employee stock ownership plan (ESOP) that meets the requirements of section 4975(e)(7). Attach Form 5309 to Form 5300, Application for Determination for Employee Benefit Plan.

2. USE OF DATA

A team of ESOP specialists reviews all ESOP determination letter applications to ensure that the plan document meets applicable requirements under the Internal Revenue Code and related regulations.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

Electronic filing of Form 5309 is not currently available due to the low number of filers. IRS has determined that the relatively low volume does not justify the cost of electronic enabling.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

The Internal Revenue Service provides information and guidance to taxpayers through the following web site: <https://www.irs.gov/retirement-plans/employee-stock-ownership-plans-determination-letter-application-review-process>.

Taxpayers may review the application process, as well as check the status of their application.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

To be an “ESOP” (employee stock ownership plan), a plan described in section 4975(e)(7)(A) must meet certain requirements. To be an ESOP, a plan must be formally designated as such in the plan document.

A failure to disclose a material fact or misrepresentation of a material fact on the application adversely affects the reliance that would otherwise be obtained through issuance by the Internal Revenue Service of a favorable determination letter. Similarly, failure to accurately provide any of the information called for on any form required may result in no reliance on the determination letter.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding Form 5309.

In response to the *Federal Register* notice dated October 17, 2017 (82 FR 48317), we received no comments during the comment period regarding Form 5309.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the “Employee Plan Master File” system and Privacy Act System of Records Notices (SORN) has been issued for these systems under IRS 50.222—Tax Exempt/Government Entities (TE/GE) Case Management Records, IRS 24.030—Individual Master File; IRS 24.046—Business Master File, and IRS 34.037—IRS Audit Trail and Security Records System. The Internal Revenue Service PIAs can be found at <http://www.treasury.gov/privacy/PIAs/Pages/default.aspx>.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

<b>OMB Collection</b>	<b>Authority</b>	<b>Form</b>	<b>Annual Responses</b>	<b>Hours per Response</b>	<b>Total Burden</b>
IRS 1545-0284	IRC 4975(e)(7)	5309	2,500	10.79	26,975
	<b>IRS TOTAL</b>		<b>2,500</b>	<b>10.79</b>	<b>26,975</b>

Please continue to assign OMB number 1545-0284 to these regulations.

54.4975-11

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

After consultation with various functions within the Service, we have determined that the cost of developing, printing, processing, distribution and overhead for the Form is \$17,226.

15. REASONS FOR CHANGE IN BURDEN

There are no changes being made to Form 5309.

This submission is being made for renewal purposes.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the form and / or regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

**Note:** The following paragraph applies to all the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

