



# Instructions for Form 5307

(Rev. June 2023)

## Application for Determination for Adopters of Modified Nonstandardized Pre-Approved Plans

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

### What's New

The form and instructions have been updated to be completed on Pay.gov as of July 1, 2023. Revised form. The form and the instructions have undergone major revisions in the format and information required.

Review these documents before completing the application.

**Note.** The Determination Letter (DL) program is administered under Rev. Proc. 2023-4 (updated annually), and Rev. Proc. 2016-37, as modified by Rev. Proc. 2017-41 and 2019-20.

### Future Developments

For the latest information related to Form 5307 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/Form5307](http://www.irs.gov/Form5307).

### Disclosure Request by Taxpayer

A taxpayer can authorize the IRS to disclose and discuss the taxpayer's 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, if the representative is qualified to sign, or Form 8821, Tax Information Authorization, for this purpose. See Pub. 947, Practice Before the IRS and Power of Attorney, for more information.

### Public Inspection

Form 5307 is open to public inspection if there are more than 25 plan participants. The total number of participants must be shown on line 3e. See the instructions for line 3e for a definition of participant.

## General Instructions Purpose of Form

### Type of Plan

A defined contribution (DC) plan is a plan that provides an individual account

for each participant and for benefits based only on:

1. The amount contributed to the participant's account; and
2. 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 (DB) plan is any plan that is not a DC plan.

**Note.** A DB plan cannot be amended to become a DC plan. If a sponsor of a DB plan attempts to amend the plan to become a DC plan, or if the merger of a DB plan with a DC plan results solely in a DC plan, the DB plan is considered terminated.

### Termination of Plan

If the plan is terminated, file Form 5310, Application for Determination Upon Terminating Plan. If benefit accruals or contributions have ceased, the plan and trust will not be considered terminated until an official action to terminate has occurred.

### Who May File

File Form 5307, if this is a nonstandardized pre-approved plan and the employer has made limited modifications to the pre-approved plan that do not create an individually designed plan or an employer amends its standardized or nonstandardized plan solely to add language to satisfy the requirements of sections 415 and 416, due to the required aggregation of plans. See section 7.05 and 8.06(3) of Rev. Proc. 2017-41 and section 12.02 of Rev. Proc. 2023-4 for further information.

**Note.** Adopters of standardized or nonstandardized plans that do not meet the above conditions may not use Form 5307.

In the following circumstances, an application for a DL that would otherwise use Form 5307, must be filed on Form 5300.

1. Multiple employer plans,
2. Money purchase, target benefit, and defined benefit pension plans that

are not a governmental plan, with a normal retirement age that does not satisfy any of the safe harbors of the proposed regulations, or.

3. A nonstandardized plan regarding a partial termination.

See Rev. Proc. 2023-4 section 12.02 for a description of issues for which a Form 5300 may be filed.

### Where To File

File Form 5307 at the address indicated below.

As of July 1, 2023, the IRS requires that Form 5307 be completed and submitted through Pay.gov. To submit Form 5307, you must:

1. Register for an account on Pay.gov;
2. Enter "5307" in the search box, select Form 5307; and
3. Complete the form. Pay.gov can accommodate only one uploaded file. Consolidate your attachments into a single PDF file, which cannot exceed 15MB. If your PDF file exceeds the 15MB, limit remove any items over the limit and fax them to IRS Employee Plans at 844-255-4818.

### How To Complete the Application

The application must be signed by the employer, plan administrator, or authorized representative. The signature must be accompanied by the title or authority of the signer and the date.

It is important that an appropriate response be entered for each line item (unless instructed otherwise). When completing the application, use the following guidelines.

- 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 mark, mark only one box unless instructed otherwise.
- If an item provides a box to mark, written responses are not acceptable.
- The IRS may, at its discretion, require a plan restatement or additional

information any time it is deemed necessary.

## What To File

All applications must contain an original signature and be accompanied by the following.

1. A completed Form 5307.
  2. For paper applications submitted prior to June 1, 2023, Form 8717, User Fee for Employee Plan Determination Letter Request. If applicable, include the check for the appropriate user fee. Submit a separate check for each application. Make checks payable to "United States Treasury." If the user fee is paid through IRS.gov, submit a copy of the payment confirmation in lieu of Form 8717.
- Note.** For plans submitted on or after July 1, 2023, submitting and paying the user fee through Pay.gov is required.
3. A copy of the plan's latest favorable DL letter, if applicable.
  4. A copy of the most recent opinion letter issued to the pre-approved plan adopted.
  5. A complete copy of the pre-approved plan document, including a copy of the completed adoption agreement, if applicable.
  6. A written representation (signature optional) made by the provider of the nonstandardized pre-approved plan under penalty of perjury which explains that the plan of the employer is not word-for-word identical to the pre-approved plan and describes the location, nature, and effect of each deviation from the language of the pre-approved plan.
  7. Form 2848 or other written authorization allowing the nonstandardized pre-approved plan provider to act as a representative of the employer with respect to the request for a DL.
  8. Do not submit any interim or other amendments to the plan that were adopted by the nonstandardized provider on behalf of the employer and considered by the IRS in issuing the opinion letter for the plan.

**Note.** The IRS may, in any event, request evidence of adoption of interim amendments during the course of its review of a particular plan.

**Note.** Deviations from the language of the approved nonstandardized pre-approved plan will be evaluated based on the extent and complexity of the changes. If the changes are

determined not to be compatible with the nonstandardized pre-approved plan, the application and user fee may be returned.

9. A copy of any compliance statement(s) or closing agreement(s) regarding this plan completed during the current remedial amendment cycle (RAC).

10. A copy of the required notice to interested parties, if applicable.

See Rev. Proc. 2016-37, as amended by Rev. Proc. 2019-20, for a description of the RACs.

**Note.** See the Procedural Requirements Checklist to ensure that the application package is complete before submitting it. Incomplete applications may be closed if required items aren't included in the submission. If the application package is closed as incomplete, the application won't be returned and any user fee paid with the application won't be refunded. (See Rev. Proc. 2023-4.)

## Specific Instructions

**Line 1.** Enter the name, address, and telephone number of the plan sponsor/ employer. A "plan sponsor" means:

1. In the case of a plan that covers the employees of one employer, the employer;
2. In the case of a plan sponsored by two or more entities required to be combined under section 414(b), (c), or (m), one of the members participating in the plan; or
3. In the case of a plan that covers the employees and/or partner(s) of a partnership, the partnership.

**Note.** The name of the plan sponsor/ employer should be the same name that is used when the Form 5500 series, Annual Return/Report is filed for this plan. Line 1a is limited to 70 characters.

**Line 1f.** Enter the nine-digit employer identification number (EIN) assigned to the plan sponsor/employer. This should be the same EIN that is used when the Form 5500 series Annual Return/Report is filed for this plan.



*Do not use a social security number or the EIN of the trust.*

The plan sponsor/employer must have an EIN. A plan sponsor/employer without an EIN can apply for one in one of the following ways.

- Online—Generally, a plan sponsor/ employer can receive an EIN over the

Internet and use it immediately to file a return. Go to the IRS website at [www.irs.gov/EIN](http://www.irs.gov/EIN) and click on Employer ID Numbers (EINs).

- By telephone—Call 800-829-4933.
- By mail or fax—Send in a completed Form SS-4, Application for Employer Identification Number, to apply for an EIN.

The plan of a group of entities required to be combined under section 414(b), (c), (m), or (o) whose sponsor is more than one of the entities required to be combined, should only enter the EIN of one of the sponsoring members.

This EIN must be used in all subsequent filings of DL requests, and annual returns/reports unless there is a change of sponsor.

**Line 1i.** Enter the two digits representing the month the plan sponsor/employer's tax year ends.

**Note.** If you have a foreign address, do not enter information in lines 1c - 1e.

**Line 1j-m.** If applicable, complete these lines and follow the country's practice for entering the name of the province, county, or state and the postal code.

**Line 2.** The contact person will receive copies of all correspondence as authorized on a Form 2848 or Form 8821. Either complete the contact's information on this line, or check the box and attach a completed Form 2848 or Form 8821.

**Note.** If your person to contact has a foreign address, do not enter information in lines 2c-2e.

**Lines 2h-k.** If a foreign contact, follow the country's practice for entering the name of the province, county, or state, and the postal code.

**Line 3a.** This field is limited to 70 characters, including spaces. Fill in the plan name as it should appear on the DL to the extent permitted. Keep in mind that "Employees" and "Trust" are not necessary in the plan name and will be left off if space does not permit.

**Line 3b.** Enter the three-digit plan number, beginning with "001" and continuing in numerical order for each plan you adopt (001-499). The numbering will differentiate your plans. The number assigned to a plan must not be changed or used for any other plan. This should be the same number that is used on the Form 5500 series Annual Return/Report

**Line 3c.** Plan month means the month in which the plans year ends. Enter the two-digit month (MM).

**Line 3d.** Enter the plan's original effective date.

**Line 3e.** Enter the total number of participants. A "participant" is:

1. Any employee participating in the plan, including employees under a section 401(k) qualified cash or deferred arrangement who are eligible but don't make elective deferrals;

2. Retirees and other former employees who have a nonforfeitable right to benefits under the plan; and

3. The beneficiary of a deceased employee who is receiving or will in the future receive benefits under the plan. Include one beneficiary for each deceased employee regardless of the number of individuals receiving benefits.

**Example.** Payment of a deceased employee's benefit to three children is considered a payment to one beneficiary.

**Lines 3f and 3g.** See Notice 2002-1, as amplified by Notice 2017-1, for further details, including how to determine compensation.

**Line 4a.** Enter the number that corresponds to the request being made.

**Enter 1 for Initial Qualification—New Plan.** For this purpose, a new plan is a new plan with an initial remedial amendment period within the meaning of Regulations section 1.401(b)-1(d)(1).

**Enter 2 for Initial Qualification—Existing Plan.** If the IRS has not issued a DL for the plan or the plan sponsor previously did not rely on an opinion/advisory letter.

**Enter 3 for Request after Initial Qualification.** If the IRS has previously issued a DL for this plan or the plan sponsor previously relied on an opinion/advisory letter.

**Line 4b.** If the plan relied on a favorable opinion/advisory letter of a preapproved plan for the plan's RAC immediately preceding the cycle in which the application is submitted, provide (i) the name of the sponsor/practitioner/provider, (ii) date of the opinion/advisory letter, and (iii) serial number of the opinion/advisory letter.

**Line 5a.** Enter the applicable plan type in the box.

**Line 5b(1).** If the plan is an ESOP, check the box to indicate whether or not

the plan sponsor is an S corporation or a C corporation.

**Line 5b(2).** If there has been a change in corporate status, enter the effective date of the change.

**Line 6.** If "Yes," attach a statement identifying the plan section(s) that satisfies the safe harbor (including, if applicable, the permitted disparity requirements) and specify the applicable Regulations section (listed below) intended to be satisfied.

- 1.401(a)(4)-2(b)(2) DC plan with uniform allocation formula.
- 1.401(a)(4)-3(b)(3) unit credit DB plan.
- 1.401(a)(4)-3(b)(4)(i)(C)(1) unit credit DB fractional rule plan.
- 1.401(a)(4)-3(b)(5) insurance contract plan.

**Line 7.** Section 3001 of the Employee Retirement Income Security Act (ERISA) of 1974 requires the applicants subject to section 410 to provide evidence that each employee who qualifies as an interested party has been notified of the filing of the application. If "Yes" is marked, it means that each employee has been notified as required by Regulation section 1.7476-1. If this is a one-person plan or if this plan is not subject to section 410, a copy of the notice is not required to be attached to this application. If "No" is marked or this line is blank, the application will be returned.

Rules defining "interested parties" and the form of notification are in Regulation section 1.7476-1.

**Line 8.** Check "Yes" if the plan is a governmental plan under section 414(d).

**Line 9.** Check "Yes" if the plan is a church plan under section 414(e) that hasn't made the section 410(d) election.

**Line 10.** Check "Yes" if the plan benefits any collectively bargained employees under Regulations section 1.410(b)-6(d)(2).

**Line 11.** Check "Yes" if the plan is an insurance contract plan under section 412(e)(3). Fully insured section 412(e)(3) plans, other than plans that by their terms satisfy the safe harbor in Regulations section 1.401(a)(4)-3(b)(5), are not eligible to have a Nonstandardized plan.

**Line 12.** Check "Yes" if the plan utilizes the permitted disparity rules of 401(l).

**Line 13.** If "Yes," attach a statement providing the plan name, the EIN of the plan sponsor/employer, the plan type of

the other plan, and a copy of pertinent provisions from the other plan regarding the offset.

**Line 14.** Attach a statement that provides the following.

1. Name of plans involved.
2. Type of plan.
3. Date of merger, consolidation, spinoff, or a transfer of plan assets or liabilities.
4. Verification that each plan involved was qualified at the time of the merger, consolidation, spinoff, or a transfer of plan assets or liabilities.

If the plan previously obtained a DL, only provide information on a transaction that occurred after the most recent DL was issued.

**Note.** Verification includes (1) a copy of a prior DL or opinion/advisory letter; (2) plan document and, if applicable, adoption agreement; and (3) interim and discretionary amendments.

The plan and amendments submitted to verify the plan was qualified prior to the merger, consolidation, spinoff, or a transfer of plan assets or liabilities are for information purposes only and will not be ruled on.

If applicable, file Form 5310-A, Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business, 30 days prior to the merger, consolidation, or transfer of assets or liabilities.

**Line 15.** If the plan has been restated to change the type of plan under Regulations section 1.401-1, answer this question "Yes" and attach a statement explaining the change.

**Line 16.** Check "Yes" and attach an explanation if the plan has any matter pending before any of the following.

1. The IRS (including the Voluntary Compliance Program).
2. Department of Labor.
3. Pension Benefit Guaranty Corporation (PBGC).
4. Any court (including bankruptcy court).

The attachment should include a contact person's name and telephone number and agency or court.

## How To Get Forms and Publications

### Internet

You can access the IRS website 24 hours a day, 7 days a week at [www.IRS.gov](http://www.IRS.gov) to:

- Download forms, instructions, and publications, including accessible versions for people with disabilities;
- Order IRS products; and
- Use the [Interactive Tax Assistant \(ITA\)](#) to research your tax questions. No need to wait on the phone or stand in line. The ITA is available 24 hours a day, 7 days a week, and provides you with a variety of tax information related to general filing topics, deductions, credits, and income. When you reach the response screen, you can print the entire interview and the final response for your records. New subject areas are added on a regular basis.

### By Phone and in Person

Call 800-TAX-FORM (800-829-3676) to order current-year forms, instructions and publications, and prior-year forms and instructions (limited to 5 years). You should receive your order within 10 business days.

For questions regarding this form, call the Employee Plans Customer Service toll free at 1-877-829-5500.

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**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United

States. Our legal right to ask for the information on this form is sections 401(a), 501(a), and 6109, and their regulations. You are not required to obtain approval of the plan; however, if you apply for approval, you are required to provide the information requested on this form. We need it to determine whether you meet the legal requirements for plan approval. Failure to provide the requested information may delay or prevent processing of your request. Providing false or fraudulent information may subject you to penalties.

We may disclose this information to the Department of Justice for civil or criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws. We may disclose this information to the Department of Labor or the PBGC for administration of ERISA. This information may be open to public inspection if the plan has over 25 plan participants. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as

their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

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

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<b>Recordkeeping</b>	28 hr., 27 min.
<b>Learning about the law or the form</b>	7 hr., 28 min.
<b>Preparing the form</b>	13 hr., 51 min.
<b>Copying, assembling, and sending the form to the IRS</b>	1 hr., 36 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 send us comments from [www.IRS.gov/FormComments](http://www.IRS.gov/FormComments). Or you can send your comments to the Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224.

Do not send any of these forms or schedules to this address. Instead, see *Where to File* earlier.

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