

## IRS Publishes New Form 5300 and Instructions

October 19, 2011

The Internal Revenue Service (IRS) recently published a revised form and instructions for Form 5300, Application for Determination for Employee Benefit Plan. Form 5300 requests the IRS to determine whether the documentation of an individually designed retirement plan meets tax qualification standards under Section 401(a) of the Internal Revenue Code. Because the new Form 5300 has numerous changes, plan sponsors and their advisors should carefully review the new instructions before completing and submitting a Form 5300 and should allow extra time to prepare Cycle A determination letter filings that are due on or before January 31, 2012.

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The revised form generally tracks the prior version, though it asks the plan sponsor to provide some additional information. For example, the plan sponsor must:

- Provide the signature date and effective date for each amendment submitted
- Note whether any issue is pending before the Employee Benefits Security Administration or the Voluntary Compliance Program of the Employee Plans Compliance Resolution System
- Identify the filing as on-cycle or off-cycle and provide the basis for that determination
- State whether the plan has been involved in a merger not considered in a prior favorable determination letter
- Classify the plan as an employee stock ownership plan (ESOP) if the plan contains any ESOP provisions, and identify the ESOP as leveraged if the plan contains leveraged ESOP loan language (regardless of whether the plan has utilized this provision)
- For multiple employer plans, submit a Form 5300 (lines 1–8 only) for each employer who adopts the plan, signed by the respective employer
- Report whether the filing is for a foreign plan or foreign trust (including Puerto Rico), and, for plans in Puerto Rico, disclose whether the plan sponsor has made an irrevocable dual qualification election

In addition, the instructions formalize previous guidance that the IRS has released regarding formatting guidelines, including that Courier 10 point font should be used, that all letters should be capitalized, and that written responses are not acceptable if an item provides a box to check.

Because the new Form 5300 has numerous changes, plan sponsors and their advisors should carefully review the new instructions before completing and submitting a Form 5300, and should allow extra time to prepare Cycle A determination letter filings that are due on or before January 31, 2012. View the new [form](#) and [instructions](#).

For more information on the new Form 5300, please contact your regular McDermott attorney or an author.

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