

**Application for Determination of  
Employee Stock Ownership Plan**  
(Under section 4975(e)(7) of the Internal Revenue Code)

► Attach to Form 5300.

OMB No. 1545-0284

For IRS Use Only

**1** Name of plan sponsor (employer if single-employer plan)**2** Employer identification number (EIN)**3** Plan number**All Plans** (Complete lines 4a through 4k.)**Yes No**

- 4a** ☐ ☐ Is the plan designated as an employee stock ownership plan (ESOP) within the meaning of section 4975(e)(7)?
- b** ☐ ☐ Is the plan designed to invest primarily in employer securities as defined in section 409(l)?
- c** ☐ ☐ Is each participant or beneficiary entitled to direct the plan to vote the allocated securities as required by section 409(e)?
- d** ☐ ☐ Does the plan provide that each participant who is entitled to a distribution from the plan has a right to demand that the benefit be distributed in the form of employer securities?

**If the answer to d is "No," please answer the following questions:**

- (i)** ☐ ☐ If the charter or bylaws of the corporation restrict substantially all outstanding stock ownership to employees or to a 401(a) trust, does the plan provide that participants are entitled to receive distributions in cash, except that such plan may distribute employer securities subject to a requirement that such securities may be resold to the employer under a fair valuation formula? (See section 409(h)(2))
- (ii)** ☐ ☐ If the plan is maintained by an S corporation, does the plan provide that participants are entitled to receive distributions in cash, except that such plan may distribute employer securities subject to a requirement that such securities may be resold to the employer under a fair valuation formula? (See section 409(h)(2))
- e** ☐ ☐ If the plan is established and maintained by a bank which is legally prohibited from redeeming or purchasing its stock, does the plan provide that participants are entitled to receive distributions in cash? (See section 409(h)(3))
- f** ☐ ☐ If the trust makes a distribution in stock and the securities are not readily tradable on an established market, can the participant require the employer to repurchase the securities under a fair valuation formula within the time frames prescribed by law? (See section 409(h)(1)(B))
- g** ☐ ☐ If the plan holds employer securities consisting of stock in an S corporation, does the plan provide that no portion of the assets of the plan attributable to (or allocable in lieu of) such employer securities may, during a nonallocation year, accrue (or be allocated directly or indirectly under any section 401(a) plan of the employer) for the benefit of any disqualified person? (See section 409(p))
- h** ☐ ☐ Does the plan provide that a qualified participant may elect to diversify a portion of his or her account investment in employer securities, as described in section 401(a)(28)(B)?

**If the answer to h is "No," please answer the following question:**

- (i)** ☐ ☐ Does the plan provide that an applicable individual may elect to diversify a portion of his or her account investment in employer securities as described in section 401(a)(35)?
- i** ☐ ☐ With respect to activities that are carried on by the plan, are all valuations of employer securities acquired after December 31, 1986, which are not readily tradable on an established securities market, made by an independent appraiser? (See section 401(a)(28)(C))

**Yes No**

j ☐ ☐ Does the plan provide that a participant may begin receiving a distribution of his or her account that is attributable to employer securities after the participant has separated from service upon reaching normal retirement age, or after death, disability, or other separation from service, within the time frames specified in section 409(o)?

k ☐ ☐ If the plan is maintained by a C corporation, does the plan provide that the assets of the plan attributable to (or allocable in lieu of) employer securities acquired by the plan in a sale to which section 1042 applies cannot accrue (or be allocated directly or indirectly under any section 401(a) plan of the employer) for the benefit of persons specified in section 409(n) during the nonallocation period?

**Plans Applying Under Section 4975(d)(3) and Regulations Section 54.4975-7 (Leveraged ESOPs)** (Complete lines 5a through 5g.)

- 5a ☐ ☐ Does the plan provide that the exempt loan proceeds must be used within a reasonable time to acquire qualifying employer securities, repay such loan, or repay a prior loan as required under Regulations section 54.4975-7(b)(4)?
- b ☐ ☐ Does the plan provide for the establishment and maintenance of a suspense account as required under Regulations section 54.4975-11(c)?
- c ☐ ☐ Does the plan provide that the collateral must be limited to qualifying employer securities purchased with such exempt loan or qualifying employer securities used as collateral on a prior exempt loan repaid with the proceeds of the current exempt loan as required under Regulations section 54.4975-7(b)(5)?
- d ☐ ☐ Does the plan provide that no person entitled to payment under an exempt loan shall have any right to assets of the ESOP other than collateral given for such loan, contributions (other than contributions of employer securities) made to repay such exempt loan, and earnings attributable to such collateral and the investment of such contributions as required under Regulations section 54.4975-7(b)(5)?
- e ☐ ☐ Does the plan provide that payments made with respect to an exempt loan by the ESOP during the year must not exceed an amount equal to the sum of contributions and earnings received during or prior to such year less such payments in prior years as required under Regulations section 54.4975-7(b)(5)?
- f ☐ ☐ Do plan terms provide that qualifying employer securities will be forfeited only after other assets as required under Regulations section 54.4975-11(d)(4)?
- g ☐ ☐ Does the plan provide that the protections and rights provided to participants and beneficiaries with respect to employer securities are nonterminable as required in Regulations section 54.4975-11(a)(3)(i) and (ii)?

Under penalties of perjury, I declare that I have examined this application, including accompanying statements and schedules, and to the best of my knowledge and belief, it is true, correct, and complete.

**SIGN HERE ►** \_\_\_\_\_

**Date ►**

**Type or print name**

**Type or print title**

## What's New

The IRS has created a page on [IRS.gov](http://IRS.gov) for information about Form 5309 and its instructions, at [www.irs.gov/form5309](http://www.irs.gov/form5309). Information about any recent developments affecting Form 5309 will be posted on that page.

## General Information

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

Use this form 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.

The plan you establish must be designed to invest primarily in employer securities. For a definition of employer securities and how it applies to your plan, see section 409(l) or section 4975(e)(8). Also see Regulations section 54.4975-11 for the formal plan requirements of an ESOP.

**More information.** For more information about the latest developments on Form 5309 and its instructions, go to [www.irs.gov/form5309](http://www.irs.gov/form5309).

## General Instructions

### A Change To Note

The questions with regard to tax credit ESOPs have been deleted. If your plan involves such a plan, please state so in the cover letter and refer to Regulations section 1.46-8(d) for the formal requirements of a tax credit ESOP. The question relating to type of plan has been deleted from the form.

### Who May File

1. Any corporate employer who has established an ESOP intended to meet the requirements under section 4975(e)(7).

2. Any corporate employer who amends an ESOP under section 4975(e)(7).

An S corporation-sponsored ESOP must provide that no prohibited allocation of employer stock may be made to a disqualified person for a nonallocation year. This applies to all plan years beginning on or after January 1, 2005. This applies to plan years ending after March 14, 2001, if:

1. The ESOP was established after March 14, 2001, or

2. The ESOP was established on or before March 14, 2001, if the employer maintaining the ESOP had not made an S-corporation election in effect on such date.

### How To Complete the Application

- If a number is requested, a number must be entered.
- If an item provides a box to check, written responses are not acceptable.
- The application has formatted fields that will limit the number of characters entered per field.
- All data input will need to be entered in Courier 10 point font.
- Alpha characters should be entered in all capital letters.
- Enter spaces between any words. Spaces do not count as characters.

### What To File

To receive a determination on whether a plan, initially or as a result of a plan amendment, meets the requirements of section 4975(e)(7), submit Form 5309, Form 5300, and a copy of all documents and statements required by those forms. Attach the completed Form 5309 to Form 5300.

### Signature

Form 5309 must be signed by the principal officer authorized to sign.

**Note. Stamped signatures are not acceptable; see Rev. Proc. 2012-4, 2012-1 I.R.B. 125, at [www.irs.gov/pub/irs-irbs/irb12-01.pdf](http://www.irs.gov/pub/irs-irbs/irb12-01.pdf).**

### Paperwork Reduction Act Notice.

We ask for the information on this form to determine whether you meet the legal requirements for the plan approval you request. Your filing of this information is only required if you wish the IRS to determine if your plan qualifies under section 4975(e)(7).

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:

**Recordkeeping** . . . 6 hr., 13 min.

**Learning about the law or the form** . . . 2 hr., 10 min.

**Preparing and sending the form to the IRS** . . . 2 hr., 22 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 Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224.