

ADMINISTRATIVE MEMORANDUM

SUBJECT Application to the Internal Revenue Service for determination that the Optional Retirement Program as proposed for amendment qualifies under IRC Section 401(a)

NUMBER 292

DATE August 2, 1990

Introduction.

Changes in the Internal Revenue Code have made necessary certain revisions to the Optional Retirement Program. The attached materials include a revised ORP plan document that is to be submitted to the Internal Revenue Service for approval as continuing to constitute a "qualified plan." This action is not related to on-going consideration of new investment options within TIAA-CREF or alternative financial institutions.

This Administrative Memorandum tells you what your institution needs to do to assist this office in seeking and obtaining from the Internal Revenue Service a determination letter for the Optional Retirement Program (ORP) with respect to qualification of the Plan as proposed for amendment under Internal Revenue Code Section 401(a). It is important that you insure that your institution does the things indicated, on the schedule indicated, in support of the filing with the IRS. Failure of any one constituent institution to do the things requested on the required timetable may cause delay or denial of the determination to be sought from the IRS. The determination is being sought to assure continuation of the enhanced tax treatment of employee compensation under the ORP as proposed for amendment. Our failure to obtain, or delay in obtaining, the IRS determination might adversely impact on the tax-advantaged status of individual University employees. Therefore, I request your earnest attention to this Administrative Memorandum.

Documents Attached.

There are attached to this Administrative Memorandum documents having the following item designations:

- Item 1 - Notice to Interested Parties.
- Item 2 - Section 6 of Revenue Procedure 80-30, Rights of Notice to and Comment by Interested Parties and the Pension Benefit Guaranty Corporation.
- Item 3 - Letter dated August 2, 1990, transmitting Application for Determination for Defined Contribution Plan to the IRS.
- Item 4 - Copy of Proposed Amendment and Restatement to Optional Retirement Program.
- Item 5 - Form 5300 (with attachments), Application for Determination for Defined Contribution Plan.

Actions you must take.

- A. Item 1 (Notice to Interested Parties) must be first posted on your campus not earlier than August 2, 1990, nor later than August 16, 1990, "in the principal places where such notices regarding labor-management relations are usually posted." Item 1 must remain posted until November 23, 1990. Item 1 has an attachment listing those persons at each constituent institution and General Administration who administer the Optional Retirement Program, and these persons should be responsible for carrying out each action or function with respect to Items 1 through 5. If the listing for the individual who functions in this manner at your institution has changed in any way, you may change the listing for your institution accordingly before posting Item 1 as required. However, we believe the list to be current.
- B. Items 1 through 5 must be maintained by the indicated administrator at your institution for viewing and possible copying by any employee of The University of North Carolina who is an administrator or faculty member of the rank of instructor or above, whether serving your constituent institution or another. Such University employees may also request that they be mailed copies of any of Items 1 through 5. Your institution may require payment of "a reasonable charge" for any copying or mailing under this procedure. Access for inspection or copying of Items 1 through 5 must continue until November 23, 1990.

Assistance in acting on this Memorandum.

Should you have any question about the proper completion of actions to be taken pursuant to this Administrative Memorandum, please make prompt inquiry of Mr. David Edwards, Special Assistant to the President.


C.D. Spangler, Jr.

Attachments

NOTICE TO INTERESTED PARTIES

1. Notice to: All Active Employees (and all Former Employees with a Non-Forfeitable Right to a Benefit)

An application is to be made to the Internal Revenue Service for an advance determination on the qualification of the following employee pension benefit plan:

2. Name of Plan: Optional Retirement Program of The University of North Carolina
3. Plan Number: 001
4. Name and address of applicant: The University of North Carolina
Post Office Box 2688
Chapel Hill, N.C. 27515-2688
5. Applicant EIN: 56-6172047
6. Name and Address of plan administrator: The University of North Carolina
Post Office Box 2688
Chapel Hill, N.C. 27515-2688
7. The application will be filed on August 23, 1990, with the Key District Director, Internal Revenue Service, EP/EO Division, P. O. Box 17010, Baltimore, Maryland 21203, for an advance determination as to whether the plan meets the qualification requirements of section 401 of the Internal Revenue Code of 1986, with respect to the plan's amendment.
8. The employees eligible to participate under the plan

For purposes of eligibility, "Employee" means any of the administrators or faculty of the University of North Carolina with the rank of instructor or above. Faculty shall only include those employed as full-time or three-quarter-time permanent faculty members.
9. The Internal Revenue Service has previously issued a determination letter with respect to the qualification of this plan.

RIGHTS OF INTERESTED PARTIES

10. You have the right to submit to the Key District Director, at the above address, either individually or jointly with other interested parties, your comments as to whether this plan meets the qualification requirements of the Internal Revenue Code.

You may, instead, individually or jointly with other interested parties, request the Department of Labor to submit, on your behalf, comments to the Key District Director regarding qualification of the plan. If the Department declines to comment on all or some of the matters you raise, you may, individually, or jointly if your request was made to the Department jointly, submit your comments on these matters directly to the Key District Director.

REQUESTS FOR COMMENTS BY THE DEPARTMENT OF LABOR

11. The Department of Labor may not comment on behalf of interested parties unless requested to do so by the lesser of 10 employees or 10% of the employees who qualify as interested parties. The number of persons needed for the Department to comment with respect to this plan is 10. If you request the Department to comment, your comment must be in writing and must specify the matters upon which comments are requested, and must also include:

- (1) the information contained in items 2 through 5 of this Notice and
- (2) the number of persons needed for the Department to comment.

A request to the Department to comment should be addressed as follows:

Administrator of Pension and Welfare Benefit Programs
U. S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20216
Attn: 3001 Comment Request

COMMENTS TO THE INTERNAL REVENUE SERVICE

12. Comments submitted by you to the Key District Director must be in writing and received by him by October 7, 1990. However, if there are matters that you request the Department of Labor to comment upon on your behalf, and the Department declines, you may submit comments on these matters to the Key District director to be received by him within 15 days from the time the Department notifies you that it will not comment on a particular matter, or October 7, 1990, whichever is later. (In no event may the request be received later than the 60th day after the application for determination was received.) A request to the Department to comment on your behalf must be received by it by September 7, 1990, if you wish to preserve your right to comment on a matter upon which the Department declines to comment, or by September 17, 1990, if you wish to waive that right.

ADDITIONAL INFORMATION

13. Detailed instructions regarding the requirement for notification of interested parties may be found in section 6, 7, and 8 of Revenue Procedure 80-30. Additional information concerning this application (including, where applicable, an update copy of the plan and related trust; the application for determination; any additional documents dealing with the application that have been submitted to the IRS; and copies of section 6 of Revenue Procedures 80-30) is available at

[See Attachment to Notice to Interested Parties]

during the hours of 9:00 a.m. and 4:00 p.m. for inspection and copying. (There may be a nominal charge for copying and/or mailing.)

ATTACHMENT TO NOTICE TO INTERESTED PARTIES

PERSONNEL DIRECTORS

7/27/90

APPALACHIAN STATE UNIVERSITY, Boone, NC 28608

Mr. Larry Nance, Director of Personnel, Founders Hall
Telephone 704/262-3186

EAST CAROLINA UNIVERSITY, Greenville, NC 27858-4353

Mr. Richard Farris, Director of Personnel, 701 East Fifth St
Telephone 919/757-6352

ELIZABETH CITY STATE UNIVERSITY, Elizabeth City, NC 27909

Ms. Brenda Overton, Director of Personnel, Cottage 23
Telephone 919/335-3252

FAYETTEVILLE STATE UNIVERSITY, Fayetteville, NC 23801-4298

Mr. Matthew A. Jarmond, Jr., Director of Personnel
Administration Building; Telephone 919/486-1146

NORTH CAROLINA A & T STATE UNIVERSITY, Greensboro, NC 27411

Mrs. Lillian M. Couch, Director of Personnel, Dudley Bdg;
Telephone 919/334-7862

NORTH CAROLINA CENTRAL UNIVERSITY, Durham, NC 27707

Ms. Mavis Lewis, Director of Personnel, Personnel Cottage
Telephone 919/560-6205

NORTH CAROLINA SCHOOL OF THE ARTS, Winston-Salem, NC 27117-2189

Mrs. Isabelle Johnston, Director of Personnel,
Administration Building; Telephone 919-770-3399

NORTH CAROLINA STATE UNIVERSITY AT RALEIGH, Raleigh, NC 27650

Mr. Ronnie Ellis, Manager Employee Relations, Administrative
Service Center; Telephone 919/737-2151

PEMBROKE STATE UNIVERSITY, Pembroke, NC 28372

Mrs. Kate Locklear, Personnel Officer, Sampson Hall
Telephone 919/521-4214

UNIVERSITY OF NORTH CAROLINA AT ASHEVILLE, Asheville, NC 28804-3299

Mr. Andy Brantley, Director of Personnel, Phillips
Administration Building; Telephone 704/251-6605

UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL, CHAPEL HILL, NC 27514

Ms. Laurie Charest, Director of Personnel, 108 Vance Hall 057A,
CB# 1040; Telephone 919/962-3894

UNIVERSITY OF NORTH CAROLINA AT CHARLOTTE, Charlotte, NC 28223

Mr. Ralph Pedersen, Director of Personnel, Reese Building
Telephone 704/547-2275

UNIVERSITY OF NORTH CAROLINA AT GREENSBORO, Greensboro, NC 27412
Mr. Bob Tomlinson, Acting Director of Personnel, Forney Building
Telephone 919/334-5009

UNIVERSITY OF NORTH CAROLINA AT WILMINGTON, Wilmington, NC 28403-3297
Mr. William Calloway, Director of Personnel, Administration
Building; Telephone 919/395-3162

WESTERN CAROLINA UNIVERSITY, Cullowhee, NC 28723
Mr. James R. Holland, Personnel Director, H. F. Robinson
Administration Building; Telephone 704/227-7218

WINSTON-SALEM STATE UNIVERSITY, Winston-Salem, NC 27110
Ms. Yvonne Willis, Director of Personnel, Eller Hall
Telephone 919/750-2835

GENERAL ADMINISTRATION, Chapel Hill, NC 27515-2688
Ms. Gayle Davis, Personnel Officer, P. O. Box 2688
Telephone 919/962-1000

Sec. 6 Rights of Notice to and Comment by Interested Parties and the Pension Benefit Guaranty Corporation

.01 Persons who qualify as interested parties under section 1.7476-1(b) of the regulations, and the Pension Benefit Guaranty Corporation shall have the following rights:

- 1 To receive notice, in accordance with section 7 below, that there will be filed an application for an advance determination regarding the qualification of plans described in sections 401, 403(a), and 405(a) of the Code or with respect to plans described in section 15.01 below, to receive notice, in accordance with section 8 below, of the adoption or amendment of such plans;
- 2 To submit written comments with respect to the qualification of such plans to the Internal Revenue Service;
- 3 To request the Department of Labor to submit a comment to the Service on behalf of the interested parties; and
- 4 To submit written comments to the Service on matters with respect to which the Department of Labor was requested to comment but declined.

.02 Comments submitted by interested parties must be received by the Key District Director by the 45th day after the date on which the application for determination is received by the Key District Director (see sections 6.03 and 6.04 for filing deadlines where the Department of Labor has been requested to comment). Such comments must be in writing, signed by the interested parties or by an authorized representative of such parties (as provided in section 601.201(e)(6) of the Statement of Procedural Rules), addressed to the Key District Director to whom the application for determination was submitted, and contain the following information:

- 1 The names of the interested parties making the comments;
- 2 The name and taxpayer identification number of the applicant for a determination;
- 3 The name of the plan, the plan identification number, and the name of the plan administrator;
- 4 Whether the parties submitting the comment are:
 - (a) Present employees eligible to participate under the plan,
 - (b) Present employees with accrued benefits under the plan, former employees with vested benefits under the plan, beneficiaries of deceased former employees currently receiving benefits under the plan, or
 - (c) Present employees not eligible to participate under the plan.
- 5 The specific matters raised by the interested parties on the question of whether the plan meets the requirements for qualification involving sections 401, 403(a), and 405(a) of the Code, and how such matters relate to the interests of the parties making the comment; and
- 6 The address of the interested party submitting the comment (or if a comment is submitted jointly by more than one party, the name and address of a designated representative) to which all correspondence, including a notice of the Service's final determination with respect to qualification, should be sent. (The address designated for notice by the Service will also be used by the Department of Labor in communicating with the parties submitting a request for comment.) The designated representative may be one of the interested parties submitting the comment or an authorized representative. If two or more interested parties submit a single comment and one person is not designated in the comment as the representative for receipt of correspondence, a notice of determination mailed to any interested party who submitted the comment shall be notice to all the interested parties who submitted the comment for purposes of section 7476(b)(5) of the Code.

.03 A request to the Department of Labor to submit to the Key District Director a comment pursuant to section 3001(b)(2) of the Act must be made in accordance with the following procedures.

- 1 The request must be received by the Department of Labor by the 25th day after the day the application is received by the Key District Director. However, if the parties requesting the Department to submit a comment wish to preserve the right to comment to the Key District Director in the event the Department declines to comment, the request must be received by the Department by the 15th day after the application is received by the Key District Director.
- 2 The request to the Department of Labor to submit a comment to the Key District Director must:
 - (a) Be in writing;
 - (b) Be signed as provided in section 6.02 above;
 - (c) Contain the names of the interested parties requesting the Department to comment and the address of the interested party or designated representative to whom all correspondence with respect to the request should be sent. See also section 6.02(6) above;
 - (d) Contain the information prescribed in sections 6.02(2), (3), and (4), above;
 - (e) Contain the address of the Key District Director to whom the application was or will be submitted;
 - (f) State the specific matters upon which the Department's comment is sought, as well as how such matters relate to the interested parties making the request; and
 - (g) Be addressed as follows:
 Administrator of Pension and Welfare Benefit Programs
 U. S. Department of Labor
 200 Constitution Avenue, N.W.
 Washington, D. C. 20216
 Attention: 3001 Comment Request

.04 If a request described in section 6.02 is made and the Department of Labor notifies the interested parties making the request that it declines to comment on a matter concerning qualification of the plan which was raised in the request, the parties submitting the request may still submit a comment to the Key District Director on such matter. The comment must be received by the later of the 45th day after the day the application for determination is received by the Key District Director or the 15th day after the day on which notification is given by the Department that it declines to submit a comment on such matter. (See section 6.07 for the date of notification.) In no event may the request be received later than the 60th day

after the application for determination was received. Such a comment must comply with the requirements of section 6.02 and include a statement that the comment is being submitted on matters raised in a request to the Department upon which the Department declined to comment.

.05 For rules regarding the confidentiality of contents of written comments submitted by interested parties to the Service pursuant to section 6.02 or 6.04, see section 601.201(o)(5) of the Statement of Procedural Rules.

.06 For rules regarding the availability to the applicant of copies of all comments on the application submitted pursuant to sections 6.01(1), (2), or (3) of this revenue procedure, see section 601.201(o)(5) of the Statement of Procedural Rules.

.07 An application for an advance determination, a comment to the Key District Director or a request to the Department of Labor shall be deemed made when it is received by the Key District Director or the Department. Notification by the Department that it declines to comment shall be deemed given when it is received by the interested party or designated representative. The notice described in section 7.01 below shall be deemed given when it is given in person, posted as prescribed in the regulations under section 7476 of the Code, or received through the mail. In any case where such an application, comment, request, notification, or notice is sent by mail, it shall be deemed received as of the date of the postmark (or if sent by certified or registered mail, the date of certification or registration), if it is deposited in the mail in the United States in an envelope or other appropriate wrapper, first class postage prepaid, properly addressed. However, if such an application, comment, request, notification, or notice is not received within a reasonable period from the date of postmark, the immediately preceding sentence shall not apply.

THE UNIVERSITY OF NORTH CAROLINA

General Administration

P.O. BOX 2688
CHAPEL HILL 27515-2688

DAVID N. EDWARDS, JR.
Special Assistant to the President

TELEPHONE (919) 962-1000

August 2, 1990

Key District Director
Internal Revenue Service
Post Office Box 17010
Baltimore, Maryland 21203
Attention: EP/EO Division

Re: Amendment to the Optional Retirement Program of The University of North Carolina

Dear Sir:

Pursuant to Rev. Proc. 80-30, the following are submitted:

- (1) Copy of the proposed Amendment and Restatement to the captioned Plan together with a copy of the current law, as most recently amended, which authorizes the Plan.
- (2) Copy of notice to interested parties regarding submission of Plan to Internal Revenue Service for determination;
- (3) Completed Form 5300, Form 5302, and any applicable attachments;
- (4) Copy of certification for individually designed plans as required by Rev. Proc. 90-20;
- (5) Completed form 8717 with a check in the amount of \$750 attached; and
- (6) Copy of the most recent favorable determination letter issued for this plan.

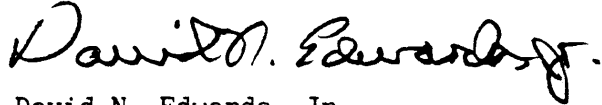
All existing documents have been previously submitted.

This information is submitted for the purpose of obtaining a determination that the captioned Plan, as amended, continues to meet the requirements of Section 401(a) of the Internal Revenue Code of 1986.

Edwards: Key District Director
Page Two
August 2, 1990

Under the penalties of perjury, I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested ruling or determination letter are true, correct, and complete. If you should require any further information concerning the qualification of this Plan, please notify me.

Submitted By:

A handwritten signature in black ink, appearing to read "David N. Edwards, Jr.", written in a cursive style.

David N. Edwards, Jr.

Enclosures

cc: Jane S. Shapiro
William M. Mercer, Incorporated

OPTIONAL RETIREMENT PROGRAM
OF
THE UNIVERSITY OF NORTH CAROLINA

Effective Date
July 1, 1985

Amended and Restated
July 1, 1989

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INTRODUCTION

The University of North Carolina adopted an Optional Retirement Program effective January 14, 1972. That Program was implemented pursuant to Internal Revenue Code (IRC) Section 403(b), requiring both employer and participant contributions.

Effective July 1, 1985, the Optional Retirement Program was amended but remained the same except for the operative provisions of the Internal Revenue Code under which it was to be qualified. As of said July 1, the plan was amended to reflect that it was to be maintained pursuant to IRC Sections 403(a) and 414(h).

The amended and restated Money Purchase Pension Plan herein contained constitutes an amendment, effective July 1, 1989 to the earlier plan provisions, rather than a replacement of such plan. The plan provisions as in effect immediately prior to this July 1, 1989, amendment, modified by Section 8.02 of this amended and restated Plan, shall remain in effect for those Participants who are not actively employed by the participating Employers at any time after such date. The assets held under the Contracts used to fund the Plan will continue to be held pursuant to the Plan as herein amended.

It is intended that this amended and restated Plan, together with the Contracts, meets all the requirements of the Internal Revenue Code of 1986, as amended ("Code"), and the Plan shall be interpreted, wherever possible, to comply with the terms of the Code and all formal regulations and rulings issued under such Code and amendments thereto.

Effective July 1, 1989, the Plan as amended and restated has the terms and provisions hereinafter set forth.

ARTICLE I
DEFINITIONS

As used herein, unless otherwise required by the context, the following words and phrases shall have the meanings indicated:

- 1.01 Adjustment means the net increases and decreases in the market value of the Fund during a Plan Year or other period exclusive of any Contribution during such year or other period. Such increases and decreases shall include such items as realized or unrealized investment gains and losses, investment income, and may include expenses of administering the Investment Fund and the Plan.
- 1.02 Affiliate means an instrumentality of the State of North Carolina which has not adopted the Plan.
- 1.03 Annual Additions means, for any Employee in any Limitation Year, the sum of (a) Employer Contributions and (b) Employee Contributions.
- 1.04 Beneficiary means any person designated by a Participant or otherwise entitled to receive such benefits as may become payable hereunder after the death of such Participant.
- 1.05 Board means the Board of Governors of The University of North Carolina.
- 1.06 Compensation means, for any Employee, total earnings, prior to withholding, as reported on Form W-2, paid to him by the Employing Institution of The University and (a) any portion of said Employee's pay which would be due and payable had he not signed a salary reduction agreement in order to participate in a tax sheltered annuity program pursuant to IRC Section 403(b) and (b) any portion of an employee's pay which is contributed by The University pursuant to IRC Section 414(h). Compensation shall exclude extraordinary compensation such as the imputed value of group life insurance and any University Contributions to this or any other employee benefit program.

Notwithstanding the preceding, effective for Plan Years commencing on and after July 1, 1989, in no event shall Compensation exceed two hundred thousand dollars (\$200,000) or such larger amount as may be determined by the Secretary of the Treasury pursuant to IRC Section 401(a)(17).

- 1.07 Contract means any type of annuity contract issued by the Insurance Company to effect the purposes of the Plan.
- 1.08 Contributions means payments as provided herein by The University and/or the Participants to the insurance carrier or Trustee for the purpose of providing the benefits under this plan.
- 1.09 Defined Benefit Plan means a plan established and qualified under IRC Section 401 or 403(a), except to the extent it is, or is treated as, a Defined Contribution Plan.
- 1.10 Defined Contribution Plan means a plan which is established and qualified under IRC Section 401 or 403(a), which provides for an individual account for each participant therein and for benefits based solely on the amount contributed to each participant's account and any income and expenses or gains or losses (both realized and unrealized) which may be allocated to such accounts.
- 1.11 Effective Date means July 1, 1985, or such later date as of which an Employing Institution shall have adopted the Plan for this Employees.
- 1.12 Employee means any of the administrators or faculty of the University with the rank of instructor or above who (i) had been Participants of the Optional Retirement Program under the provisions of Chapter 338, Session Laws of 1971, immediately prior to July 1, 1985, or (ii) have sought participation under Article II. **For purposes of this Plan, faculty shall only include those employed as full-time or three quarter time faculty members.**
- 1.13 Employee Account means that portion of an individual's Individual Account attributable to (a) the Employee's Contribution allocated to such Participant pursuant to Section 3.03 and (b) the Participant's proportionate share of the Adjustment attributable to his Employee Account.

- 1.14 Employee Contributions means Contributions made by an Employee pursuant to Section 3.03.
- 1.15 Employing Institution means, collectively or individually, as the context may indicate, The University or any of its constituent institutions.
- 1.16 Fiduciary means The University, the Insurance Company, the Board and any individual, corporation, firm or other entity which has responsibility for the management of the Plan or the disposition of its assets.
- 1.17 Forfeiture means any amount held upon the termination of participation of a Participant which he is not entitled to receive as a distribution in accordance with the terms of Section 4.01.
- 1.18 Former Participant means a Participant whose participation in the Plan terminated but who has not received payment in full of the balance in his Individual Account to which he is entitled.
- 1.19 Individual Account means the detailed record kept of the amounts credited or charged to each Participant in accordance with the terms hereof. Such Individual Account is comprised of a University Account and an Employee Account.
- 1.20 Insurance Company means the Teachers Insurance and Annuity Association-College Retirement Equities Fund.
- 1.21 Investment Fund or Fund means an Investment Fund as described in Article V.
- 1.22 IRC or Code means the Internal Revenue Code of 1986, as amended.
- 1.23 Limitation Year means the twelve (12) month period commencing July 1 and ending June 30.
- 1.24 Participant means any Employee who becomes a Participant as provided in Article II.
- 1.25 Plan or Program means the Optional Retirement Program of The University of North Carolina, as contained herein or as duly amended.
- 1.26 Plan Administrator means that person at each Employing Institution who has been named by the President of The University to administer the Plan with respect to the Employees of the Employing Institution. If a Plan

Administrator is not so appointed, The University shall be deemed the Plan Administrator with respect to the pertinent Employing Institution.

- 1.27 Plan Year means the twelve (12) month period beginning on July 1 and ending on June 30.
- 1.28 Retirement System means The Teachers' and State Employees' Retirement System of North Carolina.
- 1.29 Trust Agreement means the agreement entered into between the Employing Institution and the Trustee.
- 1.30 Trustee means such individual, individuals or financial institution, or a combination of them as shall be designated in the Trust Agreement to hold in trust any assets of the Plan for the purpose of providing benefits under the Plan, and shall include any successor trustee to the trustee initially designated thereunder.
- 1.31 University or The University means The University of North Carolina.
- 1.32 University Account means that portion of a Participant's Individual Account attributable to (a) the University Contribution allocated to such Participant pursuant to Section 3.02 and (b) the Participant's proportionate share of the Adjustment attributable to his University Account.
- 1.33 University Contributions means Contributions made by the Employing Institution of The University pursuant to Section 3.02.
- 1.34 Valuation Date means the last day of each Plan Year subsequent to the Effective Date, as of which date the Fund shall be valued at fair market value. The Plan Administrator may from time to time value the Fund as of any other date as it deems desirable.

ARTICLE II
ELIGIBILITY AND PARTICIPATION

2.01 Eligibility -

- 2.01(a) Those participating in the Optional Retirement Program immediately prior to July 1, 1985, under the provisions of Chapter 338, Session Laws of 1971, are deemed automatically enrolled in the Program as provided hereunder.
- 2.01(b) Eligible Employees initially appointed on or after July 1, 1985, shall at the same time of entering upon eligible employment elect (i) to join the Retirement System in accordance with provisions of law applicable thereto or (ii) to participate in this Optional Retirement Program. This election shall be in writing and filed with the Retirement System and with the Employing Institution and shall be effective as of the date of entry into eligible service.
- 2.01(c) An election to participate in the Optional Retirement Program shall be irrevocable. An eligible Employee failing to elect to participate in the Optional Retirement Program at the time of entry into eligible service shall automatically be enrolled as a member of the Retirement System.
- 2.01(d) No election by an eligible Employee of the Optional Retirement Program shall be effective unless it is accompanied by an appropriate application for the issuance of a Contract or Contracts or trust participation under the Program.

2.02 Participation - Each person who becomes a Participant shall remain a Participant as long as he remains an Employee, or is entitled to future benefits under the terms of the Plan.

2.03 Beneficiary Designation - Upon commencing participation, each Participant shall designate a Beneficiary on forms furnished by the Plan Administrator, and such forms shall be maintained in files held by the Plan Administrator.

The Participant may from time to time change his Beneficiary by written notice to the Plan Administrator, and, upon such change, the rights of all previously designated Beneficiaries to receive any benefits under this Plan shall cease.

If, at the date of death of the Participant, no duly designated Beneficiary exists, or if the Beneficiary designated shall have died prior to the death of the Participant, or if the Participant has revoked a prior designation by a writing filed with the Plan Administrator without having filed a new designation, then any death benefits which would have been payable to the Beneficiary shall be payable to the Participant's spouse, if living; if not living, to the Participant's children, equally; or if none survive, then to the Participant's estate.

2.04 Notification of Individual Account Balance - After the close of each Plan Year or more frequently as determined by the Plan Administrator, the Plan Administrator shall notify each Participant of the amount of his share in the Adjustments and Contributions for the Plan Year (or other period) just completed, and the new balance of his Individual Account.

ARTICLE III
CONTRIBUTIONS AND ALLOCATIONS

- 3.01 Individual Accounts - The Plan Administrator shall establish and maintain an Individual Account comprised of a University Account and an Employee Account in the name of each Participant to which the Plan Administrator shall credit all amounts allocated to each such Participant pursuant to the following Sections of this Article III.

Under the Optional Retirement Program, the State of North Carolina and the Participant shall contribute, to the extent authorized or required, toward the purchase of Contracts or deposited in a trust (if applicable) on the Participant's behalf.

Separate accounts shall be maintained for all inactive Participants who have an interest in the Plan. Such separate accounts shall not require a segregation to the Fund assets and no Participant shall acquire any right to or interest in any specific asset of the Fund as a result of the allocations provided for in the Plan. All allocations shall be made as of the Valuation Date referred to in Article II.

- 3.02 University Contributions - Each Employing Institution of The University shall contribute on behalf of each Participant in the Optional Retirement Program an amount equal to the amount which the Employee would be required to contribute to the Retirement System as a member of the Retirement System as specified in G.S. 135-8(b)(1).

- 3.03 Employee Contributions - Each Participant shall contribute the amount which he or she would be required to contribute if a member of the Retirement System. Contributions authorized or required by the provisions of this Section on behalf of each Participant shall be made, consistent with IRC Section 414(h), by salary reduction according to rules and regulations established by The University.

- 3.04 Voluntary TSA Contributions - Additional personal contributions may also be made by a Participant by such payroll deduction or salary reduction to an annuity or retirement income plan established pursuant to G.S. 116-17. Such contribution shall be made pursuant to IRC Section 403(b). Payment of Contributions shall be made by the Employing Institution of The University to the designated company or companies underwriting the annuities for the benefit of each Participant.
- 3.05 Allocation of Adjustment - The Insurance Company shall determine the investment gains and losses under the Contract for the period elapsed since the last preceding Valuation Date. Such Adjustment shall be allocated to accounts of all then Participants who maintain a credit balance in their Individual Account, in relation to that portion of their Individual Account attributable to their University Account or Employee Account. The allocation shall be separately made within the Investment Funds on the basis of the ratio of each such Participant's Individual Account invested in the Investment Fund to the total of all such Participants' Individual Accounts invested in such Investment Fund at such Valuation Date. The Plan Administrator shall maintain the accounting to ensure that each Participant's allocation is properly credited or debited, as the case may be, to his University Account or Employee Account.
- 3.06 Equitable Allocations - The Plan Administrator shall establish accounting procedures for the purpose of making the allocations, valuations and adjustments to Participants' accounts provided for in the Article III. Should the Plan Administrator determine that the strict application of its accounting procedures will not result in an equitable and non-discriminatory allocation among the accounts of Participants, it may modify its procedures for the purpose of achieving an equitable and non-discriminatory allocation in accordance with the general concepts of the Plan and the provisions of this Article.

- 3.07 Maximum Additions - Anything herein to the contrary notwithstanding, the total Annual Additions made to the Individual Account of a Participant for any Limitation Year commencing on or after July 1, 1985, when combined with any similar Annual Additions credited the Participant for the same period from another qualified Defined Contribution Plan maintained by the Employing Institution, shall not exceed the lesser of Section 3.07(a) or Section 3.07(b) following:
- 3.07(a) Thirty thousand dollars (\$30,000) or such larger amount as may be allowed under regulations issued pursuant to IRC Section 415(d); or
- 3.07(b) Twenty-five percent (25%) of the Participant's total non-deferred compensation received from the Employing Institution for such Plan Year. For purposes of this paragraph, "compensation" shall mean a Participant's earned income, wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with an Employing Institution maintaining the Plan (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses) and excluding the following:
- (i) Employer contributions to a plan of deferred compensation to the extent contributions are not included in gross income of the Employee for the taxable year in which contributed, or on behalf of an Employee to a Simplified Employee Pension plan to the extent such contributions are deductible under IRC Section 219(b)(7), and any distributions from a plan of deferred compensation whether or not includable in the gross income of the Employee when distributed;
 - (ii) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held

- by an Employee becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- (iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and
 - (iv) Other amounts which receive special tax benefits, or contributions made by an Employing Institution (whether or not under a salary reduction agreement) towards the purchase of an IRC Section 403(b) annuity contract (whether or not the contributions are excludable from the gross income of the Employee).

Compensation for any Limitation Year is the compensation actually paid or includable in gross income during such year.

In the event a Participant is covered by one or more Defined Contribution Plans maintained by the Employing Institution, the maximum Annual Additions as noted above shall be decreased as determined necessary by the Employing Institution, prior to the reduction of such other Defined Contribution Plans, to ensure that all such plans will remain qualified under the IRC.

In the event that, as of any Valuation Date, corrective adjustments in the Annual Addition to any Individual Account are required pursuant to the Section, the Employee Account shall be first reduced by the amount required to ensure compliance with this Section 3.07, and then the University Account.

Any amounts withheld or taken from a Participant's Individual Account pursuant to the above shall be segregated in the Fund in a separate account and applied toward the Contribution of the University for the next Limitation Year.

3.08 Multiple Plan Participation - If a Participant is a participant of a Defined Benefit Plan maintained by The University, the sum of his defined benefit plan fraction and his defined contribution plan fraction for any Limitation Year may not exceed 1.0.

For purposes of maximum Annual Additions to Defined Contribution Plans and maximum annual benefits payable from Defined Benefit Plans, all Defined Contribution Plans and all Defined Benefit Plans, whether or not terminated, shall be combined and treated as one (1) plan.

For purposes of this Section 3.08, the term "defined contribution plan fraction" shall mean a fraction the numerator of which is the sum of all of the Annual Additions to the Participant's Individual Account under this Plan as of the close of the Limitation Year and the denominator of which is the sum of the lesser of the following amounts determined for such Limitation Year and for each prior Limitation Year of employment with the Employing Institution:

- 3.08(a) the product of 1.25 multiplied by the dollar limitation in effect in Section 3.07(a) for such year determined without regard to IRC Section 415(c)(6); or
- 3.08(b) the product of 1.4 multiplied by an amount determined pursuant to Section 3.07(b) with respect to each individual under the Plan for such Limitation Year.

For purposes of this Section 3.08, the term, "defined benefit plan fraction" shall mean a fraction the numerator of which is the Participant's projected annual benefit (as defined in the said defined benefit plan) determined as of the close of the Limitation Year and the denominator of which is the lesser of:

- 3.08(c) the product of 1.25 multiplied by the dollar limitation in effect pursuant to IRC Section 415(b)(1)(A) for such Limitation Year; or
- 3.08(d) the product of 1.4 multiplied by the amount which may be taken into account pursuant to IRC Section 415(b)(1)(B) with respect to each individual under the Plan for such Limitation Year.

The limitation on aggregate benefits from a Defined Benefit Plan and a Defined Contribution Plan which is contained in Section 2004 of ERISA, as amended, shall be complied with by a reduction (if necessary) in the

Participant's benefits under the Defined Benefit Plan(s) (in accordance with the provisions of the said plan(s)) before a reduction of any Defined Contribution Plan.

ARTICLE IV
DISTRIBUTIONS

4.01 Vesting - If any Participant having less than five (5) years coverage under the Optional Retirement Program leaves the employ of an Employing Institution and either retires or commences employment with an employer not having a retirement program with the same company underwriting the Participant's annuity contract, regardless of whether the annuity contract is held by the Participant, a trust, or the Retirement System, the Participant's interest in the Optional Retirement Program attributable to contributions of the Employing Institution shall be forfeited and shall either (i) be refunded through the Employing Institution to The University and forthwith paid by it to the Retirement System and credited to the pension accumulation fund or (ii) be paid directly to the Retirement System and credited to the pension accumulation fund.

4.02 Normal Retirement - The normal retirement date of a Participant shall be the first day of that July coinciding with or next following the date on which the Participant attains age seventy (70).

Upon the retirement of a Participant in accordance with the provisions of this Section 4.02, the vested balance of his Individual Account shall become payable, and the Plan Administrator shall thereupon direct the Insurance Company to distribute to such Participant such amount in accordance with Section 4.06.

4.03 Delayed Retirement - In the event a Participant remains in the employ of the Employing Institution beyond his normal retirement date, he shall thereafter retire on his delayed retirement date. The delayed retirement date of a Participant shall be the first day of the month coinciding with or next following the actual date the Participant retires from the employment of the Employing Institution.

Upon the retirement of a Participant in accordance with the provisions of this Section 4.03, the vested balance of his Individual Account shall become payable and the Plan Administrator shall thereupon direct the Trustee to distribute to such Participant such amount in accordance with Section 4.06.

- 4.04 Death Before Retirement or Termination of Employment - Upon the death of a Participant before retirement or termination of employment, the **value** of such Participant's Individual Account as of the date of death of the Participant shall become payable and the Plan Administrator shall direct the Insurance Company to distribute to such Participant's Beneficiary such amount in accordance with Section 4.06(b) with the Beneficiary being substituted for the Participant in such Section.
- 4.05 Death After Retirement or Termination of Employment - Upon the death of a Former Participant who has elected to receive benefit payments in accordance with Section 4.06(c), the Plan Administrator shall direct the Insurance Company to distribute to such Former Participant's Beneficiary the **vested balance** of the Participant's Individual Account as of the date of death in accordance with Section 4.06(c). For any Former Participant who is receiving benefit payments in accordance with Section 4.06(b), the provisions of said Section shall control concerning any payments upon the death of such Former Participant.
- 4.06 Method of Payment
- 4.06(a) Application for Benefits - In order to receive a benefit under the Plan, Participant, Former Participant, his Beneficiary, committee, or next of kin must make written application therefor on a form or forms provided by the Plan Administrator. The Plan Administrator may require that there be furnished to it in connection with such application all information pertinent to any question of eligibility and the amount of any benefit.

4.06(b) Normal Form - The normal form of payment of benefits to a Participant shall be a life only annuity unless the Participant elects payment in accordance with Section 4.06(c).

4.06(c) Optional Form - In lieu of receiving payment in accordance with Section 4.06(b), a Participant, Former Participant or Beneficiary may elect in writing to receive his distribution in any optional form of payment provided by the Contract.

4.07 Maximum Option Payable - In the event a Participant, with the approval of the Plan Administrator, elects to have his benefit paid under Section 4.06(c) and the designated Beneficiary is not the spouse of the Participant, the option elected shall be restricted so that the present value of payments expected to be made to the Participant is more than fifty percent (50%) of the present value of the total payment expected to be made to the Participant and his Beneficiary.

4.08 Benefits to Minors and Incompetents - In case any person entitled to receive payment under the Plan shall be a minor, the Plan Administrator, in its discretion, may dispose of such amount in any one or more of the following ways:

4.08(a) By payment thereof directly to such minor;

4.08(b) By application thereof for benefit of such minor;

4.08(c) By payment thereof to either parent of such minor or to any adult person with whom such minor may at the time be living or to any person who shall be legally qualified and shall be acting as guardian of the person or the property of such minor; provided only that the parent or adult person to whom any amount shall be paid shall have advised the Plan Administrator in writing that he will hold or use such amount for the benefit of such minor.

In the event that it shall be found that a person entitled to receive payment under the Plan is physically or mentally incapable of personally receiving and giving a valid receipt for any payment due (unless prior claim

therefor shall have been made by a duly qualified committee or other legal representative), such payment may be made to the spouse, son, daughter, parent, brother, sister or other person deemed by the Plan Administrator to have incurred expense for such person otherwise entitled to payment.

4.09 Payment of Benefits - In the event that there shall be a portion of a Participant's Individual Account which shall be due and payable, and the Participant or Former Participant has not elected otherwise in accordance with the provisions of the Plan, any payment of benefits or commencement thereof to the Participant or Former Participant shall begin not later than sixty (60) days after the close of the Plan Year in which occurs the latest of:

4.09(a) The Participant's having attained his normal retirement age; and

4.09(b) termination of service of the Participant.

Notwithstanding anything contained herein to the contrary, the Plan shall start to distribute the entire interest of each Participant not later than the April 1 of the calendar year following the calendar year in which the Participant attains age seventy and one-half (70 1/2) in accordance with IRC Section 401(a)(9) and the regulations issued thereunder.

ARTICLE V

FUNDING

- 5.01 Contributions - Contributions by the Employing Institution and by the Participants as provided for in Article III shall be paid over to the Insurance Company and/or Trustee. All Contributions by the Employing Institution shall be irrevocable, except as herein provided, and may be used only for the exclusive benefit of the Participants, Former Participants and their Beneficiaries.
- 5.02 Investment Fund - The Board of Governors of The University of North Carolina shall designate the Insurance Companies from which Contracts are to be purchased or the Trustee responsible for the investment of contributions under the Optional Retirement Program, and shall approve the form and contents of such Contracts or Trust Agreement. In making this designation and giving such approval, the Board shall give due consideration to the following:
- (1) The nature and extent of the rights and benefits to be provided by these Contracts or Trust Agreement for Participants and their Beneficiaries;
 - (2) The relation of these rights and benefits to the amount of contributions to be made;
 - (3) The suitability of these rights and benefits to the needs of the Participants and the interest of the institutions of The University of North Carolina in recruiting and retaining faculty in a national market; and
 - (4) The ability to the designated Insurance Company or Companies underwriting the annuity contracts or Trust Agreement to provide these suitable rights and benefits under such contracts or trust agreement for these purposes.

OPTIONAL RETIREMENT PROGRAM OF
THE UNIVERSITY OF NORTH CAROLINA

Employer Identification Number/Plan Number: 56-6172047/001

ATTACHMENT TO FORM 5300 - ITEM 8(a)

OTHER QUALIFIED PLANS MAINTAINED BY PLAN SPONSOR:

| | |
|---------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Name of Plan: | Teachers' and State Employees' Retirement System of North Carolina |
| Type of Plan: | Defined Benefit |
| Form of Plan: | Non-Standardized |
| Paired Plan: | No |
| Rate of Employer Contributions: | N/A |
| Allocation Formula: | N/A |
| Benefit Formula: | Under North Carolina General Statutes Section 135-5(b9)(2)a, maximum "service retirement" rate is 1.63% of FAC multiplied by number of years of credited service. |
| Monthly Benefit: | See above |
| Number of Participants: | 22,274 |

**OPTIONAL RETIREMENT PROGRAM OF
THE UNIVERSITY OF NORTH CAROLINA**

Employer Identification Number/Plan Number: 56-6172047/001

ATTACHMENT TO FORM 5300 - ITEM 10(a)

Pursuant to Proposed Reg. 1.401(a)(26)-9:

"Section 401(a)(26) is treated as satisfied for plan years beginning before January 1, 1993, in the case of a plan maintained by the government of any State or political subdivision thereof, or by any agency or instrumentality of either of the foregoing. Also, a section 403(b) plan for employees who perform services for an educational organization described in section 170(b)(1)(A)(ii), by an employer which is a State, a political sub-division of a State, or an agency or instrumentality of any one or more of the foregoing is deemed to satisfy section 401(a)(26) for plan years beginning before January 1, 1993."

**OPTIONAL RETIREMENT PROGRAM OF
THE UNIVERSITY OF NORTH CAROLINA**

Employer Identification Number/Plan Number: 56-6172047/001

ATTACHMENT TO FORM 5300 - ITEM 15(b)(ii)

MONEY PURCHASE - ENTER RATE OF CONTRIBUTION

Each Employing Institution of The University of North Carolina shall contribute on behalf of each participant in the Optional Retirement Program an amount equal to a percentage of the participant's compensation as established from time to time by the General Assembly. [This rate was 6.1% of covered salary as of July 1, 1989.]

Employee Census

OMB No. 1545-0416

▶ **Attach to application for determination—defined benefit and defined contribution plans.** (Round off to nearest dollar)**This Form is NOT Open
to Public Inspection**

Schedule of 25 highest paid participating employees for 12-month period ended ▶

| Name of employer | | The University of North Carolina | | Date business incorporated | | Employer identification number | | | | | | | | | |
|-------------------------------------------|------------------------------------------------------------|----------------------------------|--------------------|----------------------------|-----|--------------------------------|-----------------------------------------------------------------|----------|-------|----------------------------------------------------|-----------------------------------------|----------------------------------------------------------------|---------------------------------|-----------------------------------|-----------------------------------------------------------------------|
| Line no. | Participant's last name and initials (See instructions) | Check | Highly compensated | Percent of business owned | Age | Years of service | Annual Nondeferred Compensation | | | Defined Benefit | | Defined Contribution | | | |
| | | | | | | | Used in computing benefits or employee's share of contributions | Excluded | Total | Employee and matching contributions under the plan | Annual benefit expected under this plan | Annual benefit under each other qualified defined benefit plan | Employer contribution allocated | Forfeitures allocated in the year | Amount allocated under each other qualified defined contribution plan |
| | (a) | (b) | (c) | (d) | (e) | (f) | (g) | (h) | (i) | (j) | (k) | (l) | (m) | (n) | (o) |
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| 25 | | | | | | | | | | | | | | | |
| Total for above | | | | | | | | | | | | | | | |
| Totals for all others (specify number ▶) | | | | | | | | | | | | | | | |
| Total for all participants | | | | | | | | | | | | | | | |

GOVERNMENTAL ENTITY - FORM 5302 IS NOT APPLICABLE.

General Information

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

Paperwork Reduction Act Notice.—We ask for this information to carry out the Internal Revenue laws of the United States. We need it to determine whether taxpayers meet the legal requirements for plan approval. If you want to have your plan approved by IRS, you are required to give us this information.

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

| | |
|-------------------------------------------------------------|------------------|
| Recordkeeping | 10 hrs., 31 min. |
| Learning about the law or the form | 42 min. |
| Preparing, copying, assembling, and sending the form to IRS | 54 min. |

If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to the Internal Revenue Service, Washington, DC 20224, Attention: IRS Reports Clearance Officer, T:FP; or the Office of Management and Budget (1545-0416), Washington, DC 20503.

Purpose of Form.—This schedule is to be used by the Internal Revenue Service in its analysis of an application for determination as to whether a plan of deferred compensation qualifies under section 401(a).

Public Inspection.—Section 6104(a)(1)(B) provides, generally, that applications filed for the qualification of a pension, profit-sharing, or stock bonus plan will be open to public inspection. However, section 6104(a)(1)(C) provides that information concerning the compensation of any participant will not be open to public inspection. Consequently, the information contained in this schedule will not be open to public inspection, including inspection by plan participants and other employees of the employer who established the plan.

General Instructions

Prepare the employee census for a current 12-month period. Generally the 12-month period should be the plan year. If the actual information is not available, compensation, contributions, etc., may be projected for a 12-month period. However, such projection must be clearly identified.

Who Must File.—Every employer or plan administrator who files an application for determination for a defined benefit plan or a defined contribution plan is required to attach this schedule, complete in all details.

For collectively bargained plans a Form 5302 is required only if the plan benefits any employees who are not included in a unit of employees who are covered under a collective bargaining agreement, or if more than 2 percent of the employees

who are included in a unit of employees covered under a collective bargaining agreement are professional employees. If so, a separate Form 5302 is required for each employer of such employees. For a plan, described in section 413(c), other than a collectively bargained plan, maintained by more than one employer where all employers in each affiliated service group, controlled group of corporations, or group of trades or businesses under common control are considered one employer, a separate Form 5302 is required for each such employer.

Specific Instructions

Column (a), first list any participant who at any time during the 5-year period prior to the start of the current 12-month period owned directly or indirectly 5% or more of the voting stock or 5% or more of the business. Next, list the remaining participants in order of current compensation (see Note 2 and instructions for column (h), below) starting with the highest paid, followed by the next highest paid and so on. If there are fewer than 25 participants, list all the participants. Otherwise, only the first 25 who fall under the priorities listed above need be listed on lines 1 through 25.

Note 1: For purposes of this form, "participant" means any employee who satisfies the participation requirements prescribed by the plan.

Column (b), enter a check mark or an "X" to indicate that a participant is a highly compensated employee under section 414(q). Enter N/A if the participant is not a highly compensated employee under section 414(q).

Column (c), (i) enter the percentage of total voting power of the stock owned by a participant. For example, participant "P" owns 200 shares of voting stock of the employer's 5,000 shares outstanding. The percentage is 4% ($200 \div 5,000$). If a participant owns any nonvoting stock of the employer, enter the percentage of ownership of all types of stock issued, if greater.

(ii) if an unincorporated business, enter the percentage of the business owned by the participant.

If a participant owns neither of the above, enter N/A.

Column (d), enter the attained age of each participant as of the end of the year for which this schedule applies. For example, if a participant's 47th birthday was on January 7, 1990, and the schedule covers the calendar year 1990, enter 47 for that participant.

Column (e), enter the number of full years of service recognized for plan purposes that each participant has been employed by the employer, and any prior employer.

Column (f), enter the amount of each participant's compensation that is recognized for plan purposes in computing the benefit (for a defined benefit plan) or in computing the amount

of employer contribution that is allocated to the account of each participant (for a defined contribution plan). Do not include any portion of the employer contributions to this or any other deferred plan as compensation for any participant.

Column (g), enter the amount of compensation that is not recognized for purposes of column (f). For example, if a participant received \$12,500 compensation for the year, \$1,000 of which was a bonus and the plan does not recognize bonuses for plan purposes, enter \$11,500 in column (f) and \$1,000 in column (g).

Note 2: "Compensation" for purposes of column (h) is defined as all amounts (including bonuses and overtime) paid to the participant for services rendered the employer. Do not enter employer contributions made to this or any other deferred compensation plan.

Column (h), enter the total amount of compensation for the year for each participant. The amount entered in this column will be the sum of the amounts entered in columns (f) and (g) for each participant.

Column (i), enter the total amount of mandatory and voluntary contributions and matching contributions made by each participant. If the plan does not provide for employee contributions of any kind, enter "N/A."

Column (j), enter the amount of benefit each participant may expect to receive at normal retirement age based on current information, assuming no future compensation increases. For example, under a 30% benefit plan, a participant whose benefit is based on annual compensation of \$10,000 may expect an annual benefit of \$3,000 ($\$10,000 \times 30\%$) at retirement. In this case enter \$3,000.

Column (k), enter the amount of benefit each participant may expect to receive under another qualified defined benefit plan(s) of the employer.

Column (l), enter the amount of the employer's contribution that is allocated to the account of each participant.

Column (m), enter the amount of the forfeitures that is allocated to each participant, unless forfeitures are allocated to reduce employer contributions.

Column (n), enter the employer's contribution allocated to the account of each participant under all qualified defined contribution plans of the employer other than this plan.

Column (o), enter any other amounts allocated to each employee, including any allocation/deferral to a section 408(k) arrangement or a section 403(b) annuity contract.

Caution: Before submitting this schedule, be sure that all relevant items are complete. Failure to meet this requirement will result in the return of the schedule for completion.

THE UNIVERSITY OF NORTH CAROLINA

General Administration

P.O. BOX 2688
CHAPEL HILL 27515-2688

DAVID N. EDWARDS, JR.
Special Assistant to the President

TELEPHONE (919) 962-1000

August 2, 1990

Key District Director
Internal Revenue Service
Post Office Box 17010
Baltimore, Maryland 21203
Attention: EP/EO Division

Re: Amendment to the Optional Retirement Program of The University of North Carolina

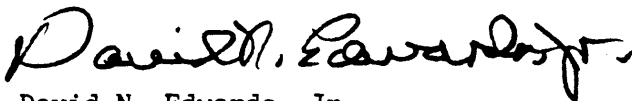
Dear Sir:

The University of North Carolina, Employer Identification Number 56-6172047, hereby authorizes the following individual to assist in matters relating to the application for determination for plan number 001:

Mr. Michael Footer
William M. Mercer, Incorporated
6606 West Broad Street
(Post Office Box 27506)
Richmond, Virginia 23261
Telephone: (804) 285-7385
Social Security Number: 579-52-1367

The IRS may discuss with this individual any information contained in Form 5300, plus attachments, and Form 5302.

Sincerely,



David N. Edwards, Jr.

**CERTIFICATION FOR INDIVIDUALLY DESIGNED PLANS
AS REQUIRED UNDER REVENUE PROCEDURE 90-20**

Plan Name: Optional Retirement Program of The University of
North Carolina

Employer Identification Number/Plan Number: 56-6172047/001

Participating Employer(s): The University of North Carolina

I hereby certify that the above plan and/or employer(s) listed above satisfy the following requirements set forth in Internal Revenue Service Revenue Procedure 90-20 for the determination letter application procedure.

1. This plan is a defined contribution plan (other than a target benefit plan, a stock bonus plan, an ESOP, or a plan under which the test for prohibited discrimination under section 401(a)(4) of the Code is made by reference to benefits rather than contributions).
2. The employer is not using the average benefit percentage test under section 410(b)(2) of the Code to demonstrate that the minimum coverage requirements are met by the plan with which it would have to be aggregated under section 1.410(b)-7(e) of the proposed regulations.
3. The employer is not applying the line of business exception under section 410(b)(5) for purposes of determining whether the minimum coverage requirements are met.
4. This plan does not provide for disparity in contributions that favors highly compensated employees.
5. This plan does not rely on any other plan to satisfy the minimum coverage requirements of section 410(b) or the nondiscrimination requirements of section 401(a)(4) of the Code.


Employer/Representative

August 2, 1990

Date

User Fee for Employee Plan Determination Letter Request

Attach to determination letter applications.

For IRS Use Only
Control number _____
Amount paid _____
User fee screener _____

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|
| 1 Sponsor's name The University of North Carolina | 2 Sponsor's employer identification number 56-6172047 |
| 3 Plan name Optional Retirement Program of The University Of NC | 4 Plan number 001 |
| 5 Type of request (check only one box and include a check or money order made payable to Internal Revenue Service for the amount indicated) | |
| a <input type="checkbox"/> Form 5300/5301 for plan with fewer than 100 participants \$ 450 | |
| b <input checked="" type="checkbox"/> Form 5300/5301 for plan with 100 or more participants 750 | |
| c <input type="checkbox"/> Form 5310 (for plan terminations only) with fewer than 100 participants 225 | |
| d <input type="checkbox"/> Form 5310 (for plan terminations only) with 100 or more participants 450 | |
| e <input type="checkbox"/> Form 5303 550 | |
| f <input type="checkbox"/> Form 5307 100 | |
| g <input type="checkbox"/> Form 6406 100 | |
| h <input type="checkbox"/> Volume submitter lead or specimen plan (Form 5300, 5301, or 5303 for lead plan; letter request for specimen plan) . . . 1,000 | |
| i <input type="checkbox"/> Form 4461 or Form 4461-A (Uniform plan) 500 | |
| j <input type="checkbox"/> Form 4461 or Form 4461-A (Regional Prototype Plan) 1,000 | |
| k <input type="checkbox"/> Group trust 400 | |

Instructions

The Revenue Act of 1987 requires payment of a user fee for determination letter requests submitted to the Internal Revenue Service. The fee must accompany each request submitted to a key district office. For more information see Rev. Proc. 89-4 1989-3 I.R.B. 18.

The fee for each type of request for an employee plan determination letter is listed in item 5 of this form. For determining the category when submitting Form 5300, 5301, or 5310, the term "participant" includes active employees participating in the plan as well as retirees, other former employees, and beneficiaries of both, who are receiving benefits under the plan. If the plan is adopted by multiple employers, the combined participants of all adopting employers must be considered. For a further definition of participant, see the instructions for Form 5300, 5301, or 5310.

Check the block that describes the type of request you are submitting, and attach this form to the front of your request form along with a check or money order for the amount indicated. Make the check or money order payable to the Internal Revenue Service.

Determination letter requests received with no payment or with an insufficient payment will be returned to the applicant and will have to be resubmitted with the proper fee.

To avoid delays in receiving a determination letter, please be sure that the proper application is sent to the appropriate address from the list shown below. Restated plans and plans amended to comply with the Tax Reform Act of 1986 will not be accepted on Form 6406, Short Form Application for Determination for Amendment of Employee Benefit Plan. Nor will a multiple plan (e.g., a profit-sharing and a money purchase plan) be accepted on one application form.

If entity is in this
IRS District

Send fee and request
for determination letter
or notification letter to
this address

Brooklyn, Albany, Augusta,
Boston, Buffalo, Burlington,
Hartford, Manhattan,
Portsmouth, Providence
Baltimore, District of
Columbia, Pittsburgh,
Richmond, Newark,
Philadelphia, Wilmington, any
U.S. possession or foreign
country

Internal Revenue Service
EP/EO Division
P. O. Box 1680, GPO
Brooklyn, NY 11202

Internal Revenue Service
EP/EO Division
P. O. Box 17010
Baltimore, MD 21203

Cincinnati, Cleveland,
Detroit, Indianapolis,
Louisville, Parkersburg
Internal Revenue Service
EP/EO Division
P. O. Box 3159
Cincinnati, OH 45201

Dallas, Albuquerque, Austin,
Cheyenne, Denver, Houston,
Oklahoma City, Phoenix,
Salt Lake City, Wichita
Internal Revenue Service
EP/EO Division
Mail Code 4950 DAL
1100 Commerce Street
Dallas, TX 75242

Atlanta, Birmingham,
Columbia, Ft. Lauderdale,
Greensboro, Jackson,
Jacksonville, Little Rock,
Nashville, New Orleans
Internal Revenue Service
EP/EO Division
Room 1112
P. O. Box 941
Atlanta, GA 30301

Honolulu, Laguna Niguel,
Las Vegas, Los Angeles,
San Jose
Internal Revenue Service
EP Application Receiving
Room 5127
P. O. Box 536
Los Angeles, CA
90053-0536

Chicago, Aberdeen,
Des Moines, Fargo, Helena,
Milwaukee, Omaha,
St. Louis, St. Paul,
Springfield
Internal Revenue Service
EP/EO Division
230 S. Dearborn DPN 20-6
Chicago, IL 60604

Sacramento,
San Francisco
Internal Revenue Service
EP Application Receiving
Stop SF 4446
P. O. Box 36001
San Francisco, CA 94102

Anchorage, Boise,
Portland, Seattle
Internal Revenue Service
EP Application Receiving
P. O. Box 21224
Seattle, WA 98111

Attach Check or
Money Order Here

Department of the Treasury
Internal Revenue Service

P. O. Box 941
Atlanta, Georgia 30370-000

Person to Contact: TECHNICAL SCREENER

Contact Phone Number: (404) 331-4829

Date: SEPTEMBER 18, 1986

THE UNIVERSITY OF NORTH CAROLINA
P O BOX 2688
CHAPEL HILL, NC 27515

Name of Plan:

The University of North Carolina
Optional Retirement Program

Application Form:

5301

Date Adopted:

10-11-85

Date Amended:

Dear Applicant:

Based on the information supplied, we have made a favorable determination on your application identified above. Please keep this letter in your permanent records.

Continued qualification of the plan will depend on its effect in operation under its present form. (See section 1.401-1(b)(3) of the Income Tax Regulations.) The status of the plan in operation will be reviewed periodically.

The enclosed document describes some events that could occur after you receive this letter that would automatically nullify it without specific notice from us. The document also explains how operation of the plan may affect a favorable determination letter, and contains information about filing requirements.

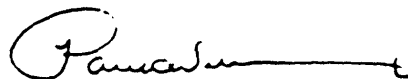
This letter relates only to the status of your plan under the Internal Revenue Code. It is not a determination regarding the effect of other Federal or local statutes.

All correspondence should be sent to the address shown above.

The enclosed Caveat Listing(s) should be considered a part of this determination letter.

If you have any questions, please contact the person whose name and telephone number are indicated above.

Sincerely yours,



Paul Williams
District Director

Enclosures:

Publication 794

OPWBP 515

Caveat Listing(s)

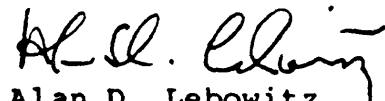
503-4-361 (4-86)



To: Administrators of Employee Pension
and Welfare Benefit Plans

The Employee Retirement Income Security Act of 1974 (ERISA) requires administrators of employee pension benefit plans (pension, profit sharing and other plans that provide retirement income to employees or result in a deferral of income by employees for periods extending to the termination of covered employment or beyond), and employee welfare benefit plans (medical, surgical, hospital, sickness, accident, disability, death, unemployment, vacation, training, scholarship funds, prepaid legal services, etc.) to meet certain reporting and disclosure requirements. Within 120 days after a new plan comes into existence, plan administrators are to file a summary plan description (SPD) with the Secretary of Labor. A summary plan description also must be provided to each plan participant and beneficiary within 120 days after the establishment of a plan. However, certain fully insured welfare plans with fewer than 100 participants are exempt from the requirement to file a summary plan description with the Secretary.

For further information about the summary plan description and other reporting and disclosure requirements of ERISA, contact the nearest Area Office of the Labor Department's Office of Pension and Welfare Benefit Programs (see list on reverse side).


Alan D. Lebowitz
Acting Administrator
Office of Pension and
Welfare Benefit Programs

OPWBP 515 (4/85)



Department of the Treasury
Internal Revenue Service

Publication 794
(Rev. March 1985)

Favorable Determination Letter

Introduction

This publication points out some operational features that may affect the qualified status of your employee benefit plan, and provides information on the reporting requirements for your plan.

How to Use a Favorable Determination Letter

A favorable determination letter gives the employer a basis for deducting contributions to an employee benefit plan. Whether a plan qualifies is determined from the information in the written plan document and the supporting information submitted by the employer. A favorable determination letter indicates that the terms of the plan conform to the requirements of section 401(a) of the Internal Revenue Code. The actual operation of the plan determines whether it will continue to qualify.

Generally, a plan qualifies in operation if it is maintained according to the terms on which the favorable determination letter was issued. However, conditions may develop in operation that do not follow the written plan document, and they may jeopardize the plan's qualification.

Conditions Adversely Affecting a Favorable Determination Letter

Examples of common operational features that adversely affect a favorable determination are:

1) **Not meeting coverage requirements.** If a plan satisfies the coverage requirements of section 410, when the favorable determination letter is received, by meeting either the percentage test under section 410(b)(1)(A) or

the classification test under section 410(b)(1)(B), but the plan fails to meet the coverage requirements in operation, the letter will no longer apply to the plan. The letter will cease to apply when the defect in coverage arises.

A plan is considered as meeting these requirements for the whole plan year if it meets the requirements on at least one day of each quarter of that year.

2) **Allocation of forfeitures.** If employee turnover results in the allocation of forfeitures principally to officers, shareholders, and highly compensated employees, a favorable determination letter will cease to apply.

3) **Amendments to the plan.** A favorable determination letter may no longer apply if there is a change in a statute, a regulation, or a revenue ruling applicable to the qualification of the plan. If the determination letter no longer applies to the plan, the plan must be amended to comply with the new requirements to maintain its qualified status. However, the determination letter will continue to apply for years before the effective date of the statute, regulation, or revenue ruling.

Generally, if a regulation changes, an amendment must be adopted by the end of the first plan year beginning after the adoption date of the regulation. Generally, if a revenue ruling changes, the amendment must be adopted by the end of the first plan year beginning after the publication date of the revenue ruling. The amendment must be effective not later than the first day of the first plan year beginning after the revenue ruling is published. However, if certain requirements are satisfied, the amendment may be adopted retroactively after the close of that year. For further information on retroactive amendments, see Rev. Rul. 82-66, 1982-1 C.B. 61.

Reporting Requirements

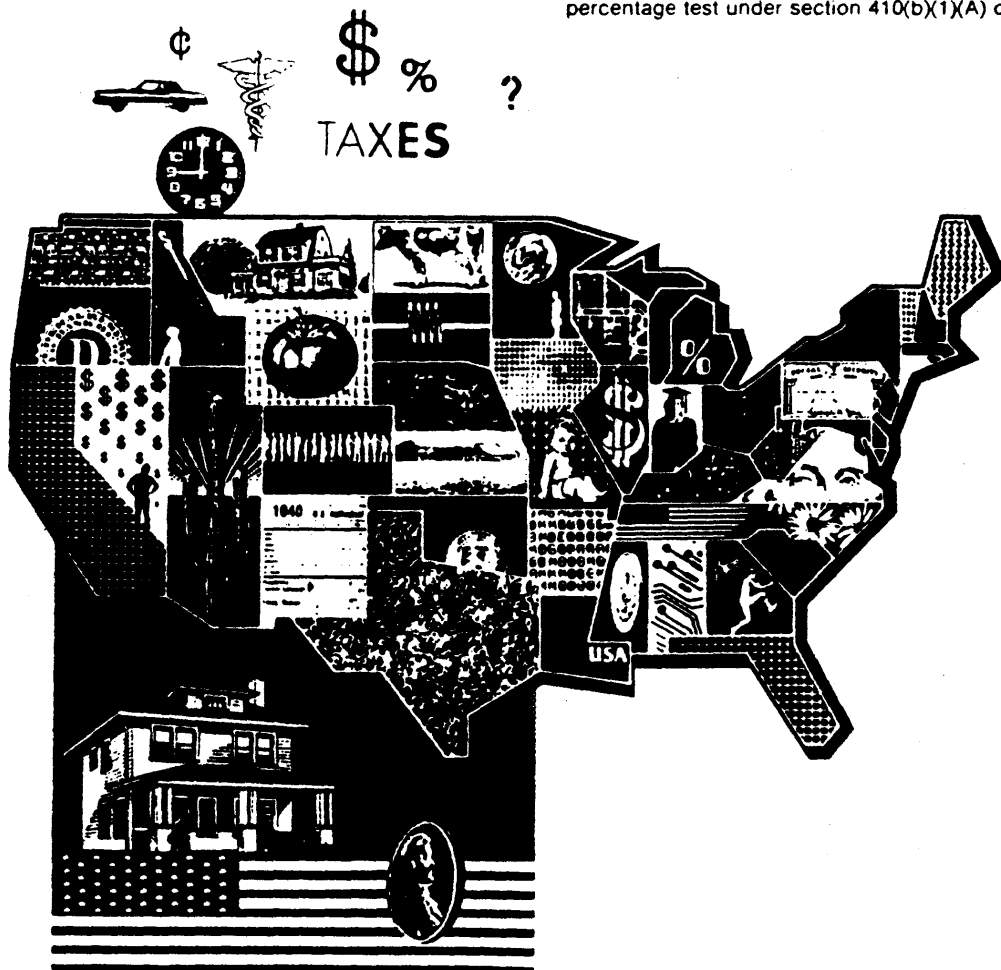
Most plan administrators or employers who maintain an employee benefit plan must file an annual return/report with the Internal Revenue Service. The following forms should be used for this purpose:

Form 5500 — for a pension benefit plan with 100 or more participants at the beginning of the plan year.

Form 5500-C and Form 5500-R — for a pension benefit plan with fewer than 100 participants at the beginning of the plan year. **Form 5500-K**, will be eliminated after the 1983 plan year filing is completed. Keogh (H.R. 10) plans are required to file an annual return even if the only participants are owner-employees. This new requirement applies to both defined contribution and defined benefit plans.

When to file. Form 5500 must be filed annually. Form 5500-C must be filed for (i) the initial plan year, (ii) the year a final return/report would be filed, and (iii) at three-year intervals. Form 5500-R must be filed in the years when 5500-C is not filed. However, 5500-C will be accepted in place of 5500-R. For more information, see Publication 1048 *Filing Requirements for Employee Benefit Plans*.

Disclosure. The Internal Revenue Service will process the returns and provide the Department of Labor and the Pension Benefit Guaranty Corporation with the necessary information and copies of the returns on microfilm for disclosure purposes.



U.S. DEPARTMENT OF LABOR
Office of Pension and Welfare Benefit Programs

Area Offices

ATLANTA

Room 205
1371 Peachtree St., N.E.
Atlanta, GA 30367
(404) 881-4090

BOSTON

Room 211
New Studio Bldg.,
110 Tremont St.
Boston, MA 02108
(617) 223-6734

CHICAGO

Suite 1201A
175 W. Jackson Blvd.
Chicago, IL 60604
(312) 353-7264

DALLAS

Federal Office Bldg.
525 Griffin St.
Dallas, TX 75202
(214) 767-6831

DETROIT

Room 619
Federal Bldg. & U.S. Courthouse
231 W. Lafayette St.
Detroit, MI 48226
(313) 226-7450

KANSAS CITY

Room 2200
Federal Office Bldg.
911 Walnut St.
Kansas City, MO 64106
(816) 374-5131

LOS ANGELES

7th Floor
3660 Wilshire Blvd.
Los Angeles, CA 90010
(305) 651-6464

NEW YORK

Room 537
26 Federal Plaza
New York, NY 10278
(212) 264-4830

PHILADELPHIA

Room 7401
James A. Byrne Courthouse
601 Market St.
Philadelphia, PA 19104
(215) 597-4960

SAN FRANCISCO

Room 317
211 Main Street
San Francisco, CA 94105
(415) 974-0544

Notwithstanding the provisions of this Section, no contractual relationship established under the Optional Retirement Program pursuant to the authority granted by Chapter 338, Session Laws of 1971, is deemed terminated by the provisions of this Plan.

ARTICLE VI
AMENDMENT AND TERMINATION OF THE PLAN

- 6.01 Amendment of the Plan - The Board shall have the right at any time by action of the Board to modify, alter or amend the Plan in whole or in part; provided, however, that the duties, powers and liability of the Insurance Company or Trustee hereunder shall not be increased without its written consent; and provided, further, that the amount of benefits which at the time of any such modification, alteration or amendment shall have accrued for any Participant, Former Participant or Beneficiary hereunder shall not be adversely affected thereby; and provided, further, that no such amendment shall have the effect of revesting in The University any part of the principal or income of the Fund.
- 6.02 Termination of the Plan - The University expects to continue the Plan indefinitely, but continuance is not assumed as a contractual obligation and The University reserves the right at any time by action of the board of Governors to terminate the Plan. If the University terminates or partially terminates the Plan or discontinues authorization of Contributions at any time, each Participant affected thereby shall be then vested with the amount of his credit in his Individual Account.

In the event of termination of the Plan by The University, the Plan Administrator shall value the Investment Fund as of the date of termination. That portion of the Investment Fund applicable to any Employing Institution of The University for which the Plan has not been terminated shall be unaffected. The Individual Accounts of the Participants, Former Participants and Beneficiaries affected by the termination, as determined by the Plan Administrator, shall continue to be administered as part of the Investment Fund or distrusted to such Participants, Former Participants or Beneficiaries pursuant to Section 4.06.

ARTICLE VII
MISCELLANEOUS

- 7.01 Governing Law - The Plan shall be construed, regulated and administered according to the laws of the State of North Carolina except in those areas preempted by the laws of the United States of America.
- 7.02 Construction - The headings and subheadings in the Plan have been inserted for convenience of reference only and shall not affect the construction of the provisions hereof. In any necessary construction the masculine shall include the feminine and the singular, the plural and vice versa.
- 7.03 Administrative Expenses - The Board of Governors of the University of North Carolina may provide for the administration of the Optional Retirement Program and may perform or authorize the performance of all functions necessary for its administration. The expenses of administering the Investment Fund and the Plan may be paid either by The University or from the Investment Fund.
- 7.04 Participation in Other Plans - Any eligible Employee electing to participate in the Optional Retirement Program is ineligible for membership in the Retirement System so long as he or she remains employed in any eligible position within The University of North Carolina, and, in this event, he or she shall continue to participate in the Optional Retirement Program.
- 7.05 Other Benefits - No retirement benefit, death benefit or other benefit under the Optional Retirement Program shall be paid by the State of North Carolina, or The University of North Carolina, or the Board of Trustees of the Retirement System with respect to any Employee selecting and participating in the Optional Retirement Program or with respect to any Beneficiary of that Employee. Benefits shall be payable to Participants or their Beneficiaries only by the designated company in accordance with the terms of the Contracts or Trust Agreement.

- 7.06 Participant's Rights; Acquittance - No Participant in the Plan shall acquire any right to be retained in the employ of an Employing Institution of The University by virtue of the Plan; nor, upon his dismissal, or upon his voluntary termination of employment, shall he have any right or interest in and to the Investment Fund other than as specifically provided herein. The Employing Institution shall not be liable for the payment of any benefit provided for herein; all benefits hereunder shall be payable only from the Investment Fund.
- 7.07 Spendthrift Clause - Except as may be required by IRC Section 401(a)(13)(B) relating to Qualified Domestic Relations Orders, and except for the applications of the provisions of G.S. 110-136 (garnishment to enforce child support) and in connection with a court-ordered equitable distribution under G.S. 50-20, none of the benefits, payments, proceeds, or distributions under this Plan shall be subject to the claims of any creditor of the Participant, Former Participant or to the claim of any creditor of any Beneficiary hereunder or to any legal process by any creditor of such Participant, Former Participant or of any such Beneficiary; and neither such Participant, Former Participant or any such Beneficiary shall have any right to alienate, commute, anticipate, or assign any of the benefits, payments, proceeds or distributions under this Plan.
- 7.08 Mistake of Fact - Notwithstanding anything herein to the contrary, there shall be returned to the Employing Institution any Contribution which was (a) made by a mistake of fact, or (b) conditioned upon initial qualification of the Plan. Any determination under item (b) above shall be made by the Internal Revenue Service or such other manner as the Internal Revenue Service may prescribe. The return of any Contribution to the Employing Institution by the Trustee or Insurance Company shall be made within one (1) year after the payment of the Contribution or the denial of the qualification whichever is applicable. The portion of any Contribution returned hereunder to the Employing Institution shall be reduced by its proportionate share of losses

and expenses of the Fund, if any, but shall not be increased by any income or gains of the Fund, if any.

- 7.09 Counterparts - The Plan, the Contract and the Trust Agreement (if applicable) may be executed in any number of counterparts, each of which shall constitute but one and the same instrument and may be sufficiently evidenced by any one counterpart.

ARTICLE VIII
ADOPTION OF THE PLAN

Anything herein to the contrary notwithstanding, this Plan is amended and restated under the condition that it shall be approved and qualified by the Internal Revenue Service under IRC Section 401(a) and/or IRC Section 4.03(a) and that the Trust (if applicable) is exempt under IRC Section 501(a), or under any comparable Sections of any future legislation which amends, supplements or supersedes such Sections. In the event that it should be found by the Internal Revenue Service that the Plan as herein created is not qualified, The University may modify the Plan to meet Internal Revenue Service requirements.

As evidence of its adoption of the Plan, the Board of Governors of The University of North Carolina has caused this instrument to be signed by its chairman thereunder duly authorized, and its corporate seal to be affixed hereto this _____ day of _____, 1990.

THE BOARD OF GOVERNORS OF
THE UNIVERSITY OF NORTH CAROLINA

By: _____
Chairman

ATTEST:

By: _____
Secretary
The University of North Carolina

§ 135-5.1. Optional retirement program for State institutions of higher education.

(a) An Optional Retirement Program provided for in this section is authorized and established and shall be implemented by the Board of Governors of The University of North Carolina. The Optional Retirement Program shall be underwritten by the purchase of annuity contracts, which may be both fixed and variable contracts or a combination thereof, or financed through the establishment of a trust, for the benefit of administrators and faculty of The University of North Carolina with the rank of instructor or above who (i) had been members of the Optional Retirement Program under the provisions of Chapter 338, Session Laws of 1971, immediately prior to July 1, 1985, or (ii) have sought membership as required in subsection (b), below. Under the Optional Retirement Program, the State and the participant shall contribute, to the extent authorized or required, toward the purchase of such contracts or deposited in such trust on the participant's behalf.

(b) Participation in the Optional Retirement Program shall be governed as follows:

- (1) Those participating in the Optional Retirement Program immediately prior to July 1, 1985, under the provisions of Chapter 338, Session Laws of 1971, are deemed automatically enrolled in the Program as established by this section.
- (2) Eligible employees initially appointed on or after July 1, 1985, shall at the same time of entering upon eligible employment elect (i) to join the Retirement System in accordance with the provisions of law applicable thereto or (ii) to participate in the Optional Retirement Program. This election shall be in writing and filed with the Retirement System and with the employing institution and shall be effective as of the date of entry into eligible service.
- (3) An election to participate in the Optional Retirement Program shall be irrevocable. An eligible employee failing to elect to participate in the Optional Retirement Program at the time of entry into eligible service shall automatically be enrolled as a member of the Retirement System.
- (4) No election by an eligible employee of the Optional Retirement Program shall be effective unless it is accompanied by an appropriate application for the issuance of a contract or contracts or trust participation under the Program.
- (5) If any participant having less than five years coverage under the Optional Retirement Program leaves the employ of The University of North Carolina and either retires or commences employment with an employer not having a retirement program with the same company underwriting the participant's annuity contract, regardless of whether the annuity contract is held by the participant, a trust, or the Retirement System, the participant's interest in the Optional Retirement Program attributable to contributions of The University of North Carolina shall be forfeited and shall either (i) be refunded to The University of North Carolina and forthwith paid by it to the Retirement System and credited to the pension accumulation fund or (ii) be paid directly to the Retirement System and credited to the pension accumulation fund.

(c) Each employing institution shall contribute on behalf of each participant in the Optional Retirement Program an amount equal to a percentage of the participant's compensation as established from time to time by the General Assembly. Each participant shall contribute the amount which he or she would be required to contribute if a member of the Retirement System. Contributions authorized or required by the provisions of this subsection on behalf of each participant shall be made, consistent with Section 414(h) of the Internal Revenue Code, by salary reduction according to rules and regulations established by The University of North Carolina.

Additional personal contributions may also be made by a participant by payroll deduction or salary reduction to an annuity or retirement income plan established pursuant to G.S. 116-17. Payment of contributions shall be made by the employing institution to the designated company or companies underwriting the annuities or the trustees for the benefit of each participant, and this employer contribution shall not be subject to any State tax if made under the Optional Retirement Program or, otherwise, by salary reduction.

(d) The Board of Governors of The University of North Carolina shall designate the company or companies from which contracts are to be purchased or the trustee responsible for the investment of contributions under the Optional Retirement Program, and shall approve the form and contents of such contracts or trust agreement. In making this designation and giving such approval, the Board shall give due consideration to the following:

- (1) The nature and extent of the rights and benefits to be provided by these contracts or trust agreement for participants and their beneficiaries;
- (2) The relation of these rights and benefits to the amount of contributions to be made;
- (3) The suitability of these rights and benefits to the needs of the participants and the interest of the institutions of The University of North Carolina in recruiting and retaining faculty in a national market; and
- (4) The ability of the designated company or companies underwriting the annuity contracts or trust agreement to provide these suitable rights and benefits under such contracts or trust agreement for these purposes.

Notwithstanding the provisions of this subsection, no contractual relationship established under the Optional Retirement Program pursuant to the authority granted by Chapter 338, Session Laws of 1971, is deemed terminated by the provisions of this section.

(e) The Board of Governors of The University of North Carolina may provide for the administration of the Optional Retirement Program and may perform or authorize the performance of all functions necessary for its administration.

(f) Any eligible employee electing to participate in the Optional Retirement Program is ineligible for membership in the Retirement System so long as he or she remains employed in any eligible position within The University of North Carolina, and, in this event, he or she shall continue to participate in the Optional Retirement Program.

(g) No retirement benefit, death benefit, or other benefit under the Optional Retirement Program shall be paid by the State of North Carolina, or The University of North Carolina, or the Board of Trustees of the Teachers' and State Employees' Retirement System with respect to any employee selecting and participating in the Optional Retirement Program or with respect to any beneficiary of that employee. Benefits shall be payable to participants or their beneficiaries only by the designated company in accordance with the terms of the contracts or trust agreement. (1971, c. 338, s. 2; c. 916; 1973, c. 1425; 1977, c. 1070; 1985, c. 309; 1987 (Reg. Sess., 1988), c. 1086, s. 28.)

CHAPTER 338

Session Laws—1971

S. B. 462

CHAPTER 338

AN ACT TO AMEND THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM ACT SO AS TO PROVIDE AN OPTIONAL RETIREMENT PROGRAM FOR FACULTY MEMBERS AT STATE INSTITUTIONS OF HIGHER EDUCATION.

The General Assembly of North Carolina do enact:

Section 1. G.S. 135-1(25) as the same appears in the 1969 Cumulative Supplement to the General Statutes is hereby amended by changing the period at the end of the first sentence in line eight to a comma and adding "and shall not include those participating in an optional retirement program provided for in G.S. 135-5.1."

Sec. 2. Chapter 135 of the General Statutes is hereby amended by adding a new section immediately following G.S. 135-5, to be designated G.S. 135-5.1, and to read as follows:

"§ 135-5.1. *Optional retirement program for State institutions of higher education* —(a) An optional retirement program provided for in this section shall be adopted within one year following the effective date of this section by the following boards, or their successors with respect to the institution or institutions governed by that board:

- (1) Board of Trustees of the University of North Carolina.
- (2) Board of trustees of each of the regional universities, and
- (3) Board of Trustees of the North Carolina School of the Arts, established under Article 4 of Chapter 116 of the General Statutes.

The optional retirement program shall be underwritten by the purchase of annuity contracts, which may be both fixed and variable contracts or a combination thereof, for faculty of the particular institution or institutions with the rank of instructor or above who (a) have been members of the Retirement System less than five years as of the effective date of this section or (b) were appointed to eligible positions on or after the effective date of this section, hereinafter called 'eligible employees'. Under such optional retirement program, the State and the participants shall contribute, to the extent authorized or required, toward the purchase of such contracts which shall be issued to such participants.

(b) Elections to participate in the optional retirement program shall be made as follows:

- (1) An election to participate in the optional retirement program shall be irrevocable. An eligible employee failing to elect to participate in the optional retirement program within the period prescribed in this section shall automatically remain a member of the Retirement System.
- (2) Eligible employees initially appointed on or after the effective date of the adoption of the optional retirement program, shall at the time of entering upon his employment elect (i) to join the Retirement System in accordance with the provisions of law applicable thereto or (ii) to participate in the optional retirement program established pursuant to this section. Such election shall be in writing and filed with the Retirement System and with the employing institution and shall be effective as of the date of entry into service.

- (3) Each eligible employee initially appointed prior to the effective date of the adoption of the optional retirement program, may, within one year from the date of adoption, elect to participate in the optional retirement program. Such election shall be in writing and filed with the Retirement System and with the employing institution and shall become effective on the first day of the second month next following the date of such election and shall constitute a notice of termination of membership in said Retirement System and a request for withdrawal of his accumulated contributions, with regular interest, from the annuity savings fund, thereby waiving all rights and benefits provided by said Retirement System. No matching State funds shall be transferred from the Retirement System.
 - (4) No election by an eligible employee of the optional retirement program shall be effective unless it shall be accompanied by an appropriate application for the issuance of a contract or contracts under the program.
 - (5) If any participant, having less than five years' coverage under the optional retirement program, leaves the employ of the participating institution and either retires or commences employment with an employer not having a retirement program with the same company, his contract shall, on his request, be repurchased and the participating institution's contribution shall be refunded to the participating institution and forthwith paid by it to the Retirement System and credited to the pension accumulation fund.
- (c) Each board of trustees shall contribute on behalf of each participant in such optional retirement program the amount which it or the State of North Carolina would be required to allocate and contribute to the Retirement System for current service for each participant as a member of said Retirement System. Each participant shall contribute the amount which he would be required to contribute if he were a member of said Retirement System. Contributions authorized or required by the provisions of this subsection on behalf of each participant may be made by payroll deduction or salary reduction according to rules and regulations established by each participating board. Additional personal contributions may also be made by a participant in a like manner. Payment of contributions shall be made by the employing institution to the designated company for the benefit of each participant and such contributions shall not be subject to any State tax.
- (d) A board adopting the optional retirement program shall designate the company from which contracts are to be purchased under the optional retirement program, and shall approve the form and contents of such contracts. In making such designation and giving such approval, the board shall give due consideration to
- (1) the nature and extent of the rights and benefits to be provided by such contracts for participants and their beneficiaries;
 - (2) the relation of such rights and benefits to the amount of contributions to be made;
 - (3) the suitability of such rights and benefits to the needs of the participants and the interests of the institutions in recruiting and retaining faculty in a national market; and
 - (4) the ability of the designated company to provide such suitable rights and benefits under such contracts for these purposes.
- (e) A board adopting the optional retirement program is hereby authorized to provide for the administration of such program and to perform or authorize the performance of all such functions as may be necessary for such purposes.

(f) Any eligible employee electing to participate in the optional retirement program shall be ineligible for membership in the Retirement System so long as he or she shall remain employed in any eligible position by the employing institution or by any other institution governed by the Board of Trustees of the University of North Carolina or the board of trustees of any regional university or the Board of Trustees of the NCSA, and, in any such event, he or she shall continue to participate in the optional retirement program.

(g) No retirement benefit, death benefit or other benefit under the optional retirement program shall be paid by the State of North Carolina, or the board of trustees of the employing institution, or the Board of Trustees of the Teachers' and State Employees' Retirement System with respect to any employee selecting and participating in the optional retirement program or with respect to any beneficiary of any such employee. Benefits shall be payable to participants or their beneficiaries only by the designated company in accordance with the terms of the contracts."

Sec. 3. This act shall become effective July 1, 1971.

In the General Assembly read three times and ratified, this the 7th day of May, 1971.

Application for
Determination for Employee Benefit Plan

Department of the Treasury
Internal Revenue Service

(Under sections 401(a) and 501(a) of the Internal Revenue Code)

File page 1 of Form 5300 in duplicate.

Note: User fee must be attached to this application. (See Instruction B—What To File.)

The information provided herein will be read by computer. Therefore page 1 must be typed (except the signature). Please enter information exactly as requested and only in the space provided. Do not type in areas that are shaded.

Review the Procedural Requirements Checklist before submitting this application.

| | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|------------------------------------------------------|-----------------------------------------------|
| 1a Name of plan sponsor (employer if single-employer plan): | | 1b Employer identification number: | |
| < <u>The University of North Carolina</u> > | | < <u>56-6172047</u> > | |
| Address (number and street): | | 1c Employer's tax year ends: Enter MM/DD/YYYY | |
| < <u>P. O. Box 2688</u> > | | < <u>N/A</u> > | |
| City | State | ZIP code | 1d Telephone number: |
| < <u>Chapel Hill</u> > | < <u>NC</u> > | < <u>27515-2688</u> > | < <u>(919) 962-1000</u> > |
| 2 Person to be contacted if more information is needed. (See Specific Instructions.) (If same as 1a, leave blank.) (Complete even if Power of Attorney is attached.) | | | |
| Name | | | |
| < <u>David N. Edwards, Jr.</u> > | | | |
| Address (number and street): | | | |
| < _____ > | | | |
| City | State | ZIP code | Telephone number: |
| < _____ > | < _____ > | < _____ > | < <u>(919) 962-1000</u> > |
| 3a Determination requested for (enter applicable number(s) at left and fill in required information). (See Specific Instructions.) | | | |
| < _____ > Enter 1 for Initial Qualification—Date plan signed _____ | | | |
| < <u>2</u> > Enter 2 for Amendment after initial qualification—Is plan restated? Yes < <u>X</u> > No < _____ > | | | |
| Date amendment signed _____ Date amendment effective <u>7/1/89</u> | | | |
| < _____ > Enter 3 for Affiliated Service Group status (section 414(m))—Date effective _____ | | | |
| < _____ > Enter 4 for Leased Employee Status | | | |
| < _____ > Enter 5 for Partial termination—Date effective _____ | | | |
| b Has the plan received a determination letter? If "Yes," submit a copy of the latest letter. Yes < <u>X</u> > No < _____ > | | | |
| c Have interested parties (as defined in Treasury Regulation section 1.7476-1) been given the required notification of this application? Yes < <u>X</u> > No < _____ > | | | |
| d Does the plan have a cash or deferred arrangement, or employee or matching contributions (section 401(k) or (m))?. Yes < _____ > No < <u>X</u> > | | | |
| Name of Plan: | | | |
| < <u>Optional Retirement Program of The University of North Carolina</u> > | | | |
| < <u>001</u> > | b Enter plan number (3 digits) <u>070185</u> | | d Enter date plan effective (MMDDYY) |
| < <u>0630</u> > | c Enter date plan year ends (MMDD) < <u>4,958</u> > | | e Enter number of participants in plan |
| 5a If this is a defined benefit plan, enter the appropriate number in box at left. | | | |
| < _____ > Enter 1 for unit benefit Enter 3 for flat benefit | | | |
| Enter 2 for fixed benefit Enter 4 for other (Specify) _____ | | | |
| b If this is a defined contribution plan, enter the appropriate number in box at left. | | | |
| < <u>3</u> > Enter 1 for profit sharing Enter 4 for target benefit | | | |
| Enter 2 for stock bonus Enter 5 for other (Specify) _____ | | | |
| Enter 3 for money purchase | | | |
| 6a Is the employer a member of an affiliated service group? | | | |
| < <u>2</u> > Enter 1 if "Yes" Enter 2 if "No" Enter 3 if "Not Certain" | | | |
| b Is the employer a member of a controlled group of corporations or a group of trades or businesses under common control? | | | |
| < <u>2</u> > Enter 1 if "Yes" Enter 2 if "No" | | | |
| 7 Enter type of plan: | | | |
| < <u>1</u> > Enter 1 if governmental plan or church plan not subject to ERISA | | | |
| Enter 2 if multiple employer plan (described in section 413(c)). Enter number of participating employers _____ | | | |
| Enter 3 if other | | | |

Under penalties of perjury, I declare that I have examined this application, including accompanying statements, and to the best of my knowledge and belief it is true, correct, and complete. **Both copies of this page must be signed.**

Signature David N. Edwards, Jr. Title Special Assist. to the Pres. Date August 2, 1990

Instructions are separate. See page 1 for Paperwork Reduction Act Notice.

**Application for
Determination for Employee Benefit Plan**
(Under sections 401(a) and 501(a) of the Internal Revenue Code)

OMB No 1545-0197
Expires 1-31-93

For IRS Use Only
File folder number ►
Case number ►

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| Address (number and street) | | 1c Employer's tax year ends—Enter N/A or (MM) | |
| < <u>P. O. Box 2688</u> > | | < <u>N/A</u> > | |
| City | State | ZIP code | 1d Telephone number |
| < <u>Chapel Hill</u> > | < <u>NC</u> > | < <u>27515-2688</u> > | < <u>(919) 962-1000</u> > |
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| Name | | | |
| < <u>David N. Edwards, Jr.</u> > | | | |
| Address (number and street) | | | |
| < _____ > | | | |
| City | State | ZIP code | Telephone number |
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| c Have interested parties (as defined in Treasury Regulation section 1.7476-1) been given the required notification of this application? | | Yes < <u>X</u> > No < _____ > | |
| d Does the plan have a cash or deferred arrangement, or employee or matching contributions (section 401(k) or (m))? | | Yes < _____ > No < <u>X</u> > | |
| Name of Plan: | | | |
| < <u>Optional Retirement Program of The University of North Carolina</u> > | | | |
| < <u>001</u> > | b Enter plan number (3 digits) | <u>070185</u> | d Enter date plan effective (MMDDYY) |
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Under penalties of perjury, I declare that I have examined this application, including accompanying statements, and to the best of my knowledge and belief, it is true, correct, and complete. Both copies of this page must be signed.

Signature David N. Edwards, Jr. Title Special Assist. to the Pres. Date August 2, 1990
Instructions are separate. See page 1 for Paperwork Reduction Act Notice. Form **5300** (Rev. 2-90)

- 8a** Do you maintain any other qualified plan(s)? (See Specific Instructions.) ☒ Yes ☐ No
If "Yes," complete 8b and 8c.
- b** If this is a defined contribution plan and you also maintain a defined benefit plan, or if this is a defined benefit plan and if you also maintain a defined contribution plan, when the plan is top-heavy, do non-key employees covered under both plans receive:
- (i) the top-heavy minimum benefit under the defined benefit plan? ☒ N/A ☐ Yes ☐ No
 - (ii) at least a 5% minimum contribution under the defined contribution plan? ☒ N/A ☐ Yes ☐ No
 - (iii) the minimum benefit offset by benefits provided by the defined contribution plan? ☒ N/A ☐ Yes ☐ No
 - (iv) benefits under both plans that, using a comparability analysis, are at least equal to the minimum benefit? (See Specific Instructions.) ☒ N/A ☐ Yes ☐ No
- c** Do the provisions of the plan preclude the possibility that the section 415 limitations will be exceeded with respect to any employee who is or has been a participant in this plan and any other qualified plan of the employer? ☐ Yes ☐ No

9 COVERAGE (See Specific Instructions.):

- a** Is the employer applying the separate line of business rules of section 414(r)? ☒ Yes ☐ No
(If "Yes," see Specific Instructions.)
- b** Does the employer receive services from any leased employees within the meaning of section 414(n)? ☐ Yes ☐ No
- c** Coverage of plan at (give date) _____
- d** Enter the percentage of nonhighly compensated employees who benefit under the plan, excluding employees who benefit only under a part of the plan containing a CODA or employee or matching contributions. (If 70 percent or more, proceed to f.) ☐ N/A _____ %
- e** Divide the percentage of nonhighly compensated employees who benefit under the plan (9d) by the percentage of highly compensated employees who benefit under the plan, excluding employees who only benefit under a part of the plan containing a CODA or employee or matching contributions ☐ N/A _____
- f** If the plan contains a CODA, compute the ratio in line e above on the basis of employees eligible to make elective deferrals under the CODA portion of the plan ☐ N/A _____
- g** If the plan provides for employee or matching contributions, compute ratio in line e above on the basis of employees eligible to make employee contributions or to receive matching contributions under the plan ☐ N/A _____
- h** Are the results in line e, f, or g based on the aggregated coverage of more than one plan? ☐ Yes ☐ No
(If "Yes," see Specific Instructions.)
- i** If line e, f, or g is less than .7, does the plan pass the average benefit test? ☐ N/A ☐ Yes ☐ No
- (i) Enter the safe harbor percentage _____
 - (ii) Enter the average benefit percentage _____
(See Specific Instructions.)

10 PARTICIPATION (See Specific Instructions.):

- a** Is a determination requested as to whether the plan satisfies the participation test under section 401(a)(26) with respect to each of the plan's current benefit structures? ☒ Yes ☐ No
- b** (For defined benefit plans only) Do at least the lesser of 50 employer's employees or 40 percent of the employer's employees accrue the minimum current accrual under the plan? ☒ N/A ☐ Yes ☐ No
- c** (For defined benefit plans only) If the answer to b is "No," does the plan satisfy section 401(a)(26) with respect to its prior benefit structure under one of the other tests in the Proposed Regulations under section 401(a)(26)? (See Specific Instructions.) ☒ N/A ☐ Yes ☐ No

- 11** Is a determination requested as to whether the plan satisfies the coverage or participation tests with respect to former employees benefiting under the plan? ☐ Yes ☒ No
If "Yes," has a demonstration been attached showing how the plan satisfies sections 410(b) and 401(a)(26) with respect to former employees? ☒ N/A ☐ Yes ☐ No

12 PERMITTED DISPARITY:

- a If the plan provides for disparity in contributions or benefits, is the plan intended to meet the requirements of section 401(l)?

If N/A, do not complete lines b through f. If "Yes" or "No," complete lines b through f, and also see the Specific Instructions.

- b In the case of a defined contribution plan, does the excess contribution percentage exceed the base contribution percentage by a uniform amount that does not exceed the maximum excess allowance?

Base Contribution Percentage _____ Excess Contribution Percentage _____

- c In the case of a defined benefit excess plan, does the excess benefit percentage exceed the base benefit percentage by a uniform amount no greater than the maximum excess allowance?

Base Benefit Percentage _____ Excess Benefit Percentage _____

- d In the case of a defined benefit offset plan, is the offset uniform and is it less than the maximum offset allowance?

Benefit formula _____ Offset _____

- e What is the plan's integration level? _____

- f In the case of a defined benefit plan, does the plan reduce the 3/4 percent factor by 1/15th for the first five years, 1/30th for the next five years and actuarially thereafter for benefits beginning before social security retirement age?

| N/A | Yes | No |
|-----|-----|----|
| X | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

13 General eligibility requirements —Complete a, b, and c below.

- a Check one box:

(i) ☐ All employees

(ii) ☐ Hourly rate employees only

(iii) ☐ Salaried employees only

(iv) ☒ Other (Specify) Full-time and 3/4-time administrators and faculty members of

b Length of service (number of years) _____ ☒ N/A the rank of instructor or above

c Minimum age (Specify) _____ ☒ N/A

14 Vesting:

Check one box to indicate the vesting provisions of the plan:

a ☐ Full and immediate.

b ☐ Full vesting after two years of service.

c ☐ Full vesting after three years of service.

d ☐ Full vesting after five years of service.

e ☐ Six year graded vesting.

f ☐ Three to seven year graded vesting.

g ☐ Other (Specify—see Specific Instructions and attach a schedule)

15 Benefits and requirements for benefits:

- a For defined benefit plans—Method for determining accrued benefit: _____

(i) Benefit formula at normal retirement age is _____

(ii) Benefit formula at early retirement age is _____

(iii) Normal form of retirement benefit is _____

- b For defined contribution plans—Employer contributions:

(i) Profit-sharing or stock bonus plan contributions are determined under:

☐ A definite formula ☐ An indefinite formula ☐ Both

(ii) Money purchase—Enter rate of contribution See attached

(iii) State target benefit formula

16 Miscellaneous Provisions:

- a Does any amendment to the plan reduce or eliminate any section 411(d)(6) protected benefit? (See Specific Instructions.)

b Are contributions or benefits allocated on the basis of total compensation within the meaning of section 414(s)? If "No," explain. (See Specific Instructions)

c Are forfeitures allocated, in the case of a defined contribution plan, on the basis of total compensation? If "No," explain.

d Are trust earnings and losses allocated on the basis of account balances in a defined contribution plan?

e Is this plan or trust currently under examination or is any issue related to this plan or trust currently pending before the Internal Revenue Service, the Department of Labor, the Pension Benefit Guaranty Corporation, or any court? If "Yes," attach explanation

f Is this application also expected to satisfy the notice requirement for this plan for merger, consolidation, or transfer of plan assets or liabilities involving another plan? (See Specific Instructions)

| N/A | Yes | No |
|-----|-----|----|
| | | X |
| | X | |
| X | | |
| | X | |
| | | |
| | | X |
| | | X |

Procedural Requirements Checklist

This checklist identifies certain basic data required to process your application. The checklist identifies items that **MUST** be included with your application. Completion of this checklist is optional and is for the benefit of the plan sponsor.

| | Yes | No |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|
| a Have you attached Form 5302 , Employee Census? | | |
| b Have you attached the appropriate user fee and Form 8717 , User Fee for Employee Plan Determination Letter Request? | | |
| c Have you attached a copy of the plan? (Initial applications and Restated plans only) | | |
| d Have you attached a copy of the plan's latest determination letter? (Previously approved plans only) | | |
| e Have you submitted page one in duplicate (at least one must be an original)? | | |
| f Have you signed both copies of page one of the application? | | |
| g Have you entered the plan sponsor's 9-digit employer identification number in line 1b? | | |
| h If appropriate, have you attached Form 2848 , Power of Attorney and Declaration of Representative, or Form 2848-D , Tax Information Authorization and Declaration of Representative (see General Information)? | | |
| i Have you entered the effective date of the plan in line 4d? | | |
| j Affiliated Service Groups, Controlled Groups or Entities Under Common Control —Have you attached the information requested in General Instructions B, "What To File," and line 6 of the Specific Instructions? | | |
| k Multiple-Employer Plans —Have you attached the information required by General Instruction B.II.g.? | | |

ALL APPLICATIONS ARE SCREENED BY COMPUTER. FAILURE TO INCLUDE A REQUIRED ITEM WILL RESULT IN THE RETURN OF THIS APPLICATION TO YOU.