

October 2011

Form **4461**  
(Rev. ~~October 2006~~)  
Department of the Treasury  
Internal Revenue Service

# Application for Approval of Master or Prototype or Volume Submitter Defined Contribution Plans

OMB No. 1545-0169

This Form Is Open to Public Inspection

File This Form With the Internal Revenue Service

**For IRS Use Only**

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

File folder number

Complete every applicable item on this form. ~~You may only answer "not applicable" (N/A) where an N/A answer is indicated as one of your options.~~ and Attachment 1 (see Rev. Proc. 2011-49, XXXX-XX I.R.B. XXX).

~~Part I All Filers Complete This Part~~ See instructions before completing this form.

1 Enter amount of user fee submitted  
\$

2a Approval requested:  Initial application  
 Amendment—Enter file folder number or letter serial number and date of last letter issued ▶

2b M&P - File folder number or VS - Letter serial number

2c Date of last letter issued

3a Name of applicant  
Address (number, street, room or suite no.) (If a P.O. box, see instructions.)  
City State ZIP code

3b Employer identification number of applicant

3c Applicant's telephone no.  
( )

3d Type of applicant (see Definitions in the instructions):  
 M&P sponsor  Volume submitter practitioner  
 M&P mass submitter  Volume submitter mass submitter  
 ~~M&P national sponsor  Volume submitter national sponsor~~

4a Name of person to be contacted

4b Telephone number  
( )

4c Email address

4d If a power of attorney is attached, check box . . . ▶

5a Basic plan document number

5b Adoption agreement number

6 Form of plan:  
 Prototype plan  Master plan  Volume submitter plan

Note: A master plan has only one trust or custodial account for all adopting employers.

7 Type of plan:  
 Money purchase  Target benefit  
 Profit-sharing  Profit-sharing/401(k)

8 Filing status of plan:  
 Standardized plan  Volume submitter plan  Volume submitter nongovernmental plan  
*(i.e., described in section 424(d))*

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.

Signature ▶ Title ▶ Date ▶

For Paperwork Reduction Act Notice, see page 12 of the instructions. Cat. No. 41676M Form **4461** (Rev. ~~10-2006~~)

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(4) Copy of Certification of Interim Amendments?

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Have

9 Procedural requirements:

Yes No

a If this is an initial request, have the following been submitted as required by instructions—

- (1) Adoption agreement?
- (2) Copy of plan?
- (3) Copy of trust indenture or custodial agreement?

b Amended or restated plans (see specific instructions):

- (1) If the amendment is not incorporated into the plan document, have the following been submitted—
  - (a) A copy of the amendment?
  - (b) A description of the amendment and its effect on the plan?
  - (c) A working copy of the plan currently in effect?
- (2) If the amendment is incorporated into the plan document, has a copy of the restated plan with amendments highlighted been submitted?

b (3) For all M&P sponsors and those VS practitioners who are choosing to include a provision in their specimen plans that allows them to amend on behalf of their adopting employers, will you advise those employers who cannot or do not adopt the amended or restated plan providing for such authority that they may not continue to participate under the M&P plan or the VS plan?

d Is the plan and trust (or custodial agreement) patterned after and substantially the same as another plan and trust (or custodial agreement) on which a favorable letter has been received? (If "Yes," see specific instructions.)

d Non-mass submitter request (M&P complete (1) and (2). VS complete (3))

- e (1) Do you have at least 30 employer-clients which are reasonably expected to adopt this plan's basic plan document and one or more of the adoption agreements associated with this basic plan document? If "No," complete (2)
- (2) If "No" to (1), enter the file folder number of the basic plan document for which the requisite number of adopting employer-clients requirement is met: \_\_\_\_\_
- (3) If you are a VS (non-mass submitter) practitioner, do you have at least 30 employer-clients reasonably expected to adopt a plan that is substantially similar to the VS practitioner specimen plan (or 10 employer-clients reasonably expected to adopt a money purchase pension plan (MP), if you have a specimen MP and at least one other type of specimen plan that satisfies the 30 employer-client requirement)?

f Mass submitter or national sponsor request (M&P mass submitter complete (1), (2), and (3); VS mass submitter complete (4); national sponsor complete (5): make bold

- (1) Are applications on behalf of the requisite number of sponsors who are adopting the same basic plan document on a word-for-word identical basis included? If "No," complete (2)
- (2) If "No" to (1), enter the file folder number of the basic plan document for which the requisite number of adopting sponsors requirement is met: \_\_\_\_\_
- (3) If this is a flexible plan, answer (a) and (b):
  - (a) Have you bracketed and identified the optional provisions of the plan?
  - (b) Have you included a copy of the written representation describing the choices available to sponsors and the coordination of optional provisions?
- (4) For a VS mass submitter, are applications on behalf of at least 30 unaffiliated practitioners sponsoring the same specimen plan on a word-for-word identical basis included?
- (5) If this is a national sponsor request, do you maintain a list of: (a) 30 or more adopting employers in each of 30 or more states, or (b) 3,000 or more adopting employers that have adopted any master or prototype plan of the sponsor or any VS specimen plan of the practitioner which has a GUST opinion or advisory letter? (The determination as to whether there are 30 or more adopting employers or 3,000 or more adopting employers may be made on any one date during the 12 month period ending April 18, 2005.)

Note: This application is designed to be used in conjunction with Rev. Proc. 2005-16. A List of Required Modifications (LRMs) is also recommended for use and may be obtained from the IRS website at www.irs.gov/ep.

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c For all M&P sponsors and those VS practitioners who are choosing to include a provision in their specimen plans that allows them to amend on behalf of their adopting employers, is there a procedure in place for the adoption and distribution of the amendments? [ ] [ ]

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In items **10** through **13** indicate the article or section and page number of the plan or trust where the following provisions are contained. All questions must be answered. If not applicable, check "N/A" column; otherwise complete the "Article or Section and Page Number" column.

**10** Provisions applicable to all plans:

**a** Definitions:

Where does the plan define the following terms—

- (1)** Year of service? . . . . .
- (2)** Break in service? . . . . .
- (3)** Hour of service under Department of Labor Regulations, including service with all employers aggregated under sections 414(b), (c), (m), or (o), and service of any individual considered an employee for purposes of this plan under section 414(n) or (o)? . . . . .
- (4)** Elapsed time? . . . . .
- (5)** Plan year? . . . . .
- (6)** Compensation as defined in section 414(s) as limited by section 401(a)(17)? . . . . .
- (7)** Earned income as defined in section 401(c)(2)? . . . . .
- (8)** Disability? . . . . .
- (9)** Employee as described in sections 414(b), (c), (m), (n), or (o)? . . . . .
- (10)** Leased employee as described in section 414(n) or (o)? . . . . .
- (11)** Highly compensated employee as defined in section 414(q)? . . . . .
- (12)** Owner-employee? . . . . .
- (13)** Self-employed individual? . . . . .
- (14)** Normal retirement age? . . . . .
- (15)** Benefiting? . . . . .
- (16)** Straight life annuity? . . . . .

**b** Minimum participation standards:

- (1)** Are the requirements for participation under the plan determined without regard to maximum age? . . . . .
- (2)** Will a new employee, otherwise eligible, participate on the earlier of the first day of the first plan year after meeting the minimum age and service requirements of section 410(a)(1) or 6 months after satisfying such requirements? . . . . .
- (3)** Does the initial eligibility computation period begin with the date on which the employee first performs an hour of service, and do subsequent eligibility computation periods: (1) begin with the anniversary of such date, or (2) shift to the plan year in accordance with section 2530.202- 2(b) of the Department of Labor regulations? . . . . .
- (4)** Is the computation period for determining a break in service the same as is used to compute a year of service for eligibility after the initial computation period? . . . . .
- (5)** If all years of service are not counted for participation purposes, is the service not counted excludable under sections 410(a)(5)(B), (C), or (D)? . . . . .
- (6)** Does this plan include the one-year hold-out rule? . . . . .
- (7)** Will an employee otherwise eligible, who is in an ineligible class of employees, immediately participate on becoming a member of an eligible class? . . . . .

**c** Employer contributions:

- (1)** If this is a money purchase plan, are contributions on behalf of each participant determined under a definite, uniform formula? . . . . .
- (2)** If this is a profit-sharing plan, are contributions allocated under a definite, uniform formula? . . . . .
- (3)** If the plan contains a uniform points allocation formula, does the formula meet the requirements of section 1.401(a)(4)-2(b)(3)(i)(A) of the Regulations? . . . . .
- (4)** If this is a target benefit plan, answer **(i)** and **(ii)**, below.
  - (i)** Does the plan include a target benefit with permitted disparity? . . . . .
  - (ii)** Does the plan provide for the calculation of employer contributions? . . . . .

	N/A	Article or Section and Page Number	Change	For IRS Use Only
				(1)
				(2)
				(3)
				(4)
				(5)
				(6)
				(7)
				(8)
				(9)
				(10)
				(11)
				(12)
				(13)
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				(16)
				(17)
				(18)
				(19)
				(20)
				(21)
				(22)
				(23)
				(24)
				(25)
				(25A)
				(26), (27)
				(28)

10c (continued)	N/A	Article or Section and Page Number	Change	For IRS Use Only
<b>(5)</b> Does the contribution or allocation formula provide for permitted disparity per section 401(l)? . . . . .				(29)
<b>(6)</b> Does the plan continue to allocate contributions to participants without reduction in the rate of allocations on account of the attainment of any specified age? . . . . .				(30)
<b>(7)</b> Are annual additions limited as required by section 415? . . . . .				(31)
<b>(8)</b> Does the plan require separate accounting for each employee's accrued benefit? . . . . .				(34)
<b>d</b> Employee contributions:				
<b>(1)</b> If the plan permits:				
<b>(a)</b> Does the plan comply with section 401(m)? . . . . .				(35)
<b>(b)</b> Does the plan either provide for separate accounts for employer contributions and nondeductible employee contributions, or identify what portion of an account balance is attributable to employer contributions and nondeductible employee contributions according to section 411(c)(2)? . . . . .				(36)
<b>(c)</b> Are all employee contributions and earnings thereon nonforfeitable at all times? . . . . .				(37)
<b>(2)</b> Does the plan prohibit deductible voluntary employee contributions for a tax year beginning after 1986? . . . . .				(38)
<b>(3)</b> If the plan permits deemed IRAs:				
<b>(a)</b> Does the plan meet the applicable requirements of section 408 and 408A of the Code and address every applicable point of the IRA LRMs? . . . . .				(38A)
<b>(b)</b> Does the plan either provide for separate individual trusts, a single trust separate from a trust maintained by the defined contribution plan, or (if in a single trust that includes the defined contribution plan) provide that the trustee must maintain a separate account for each deemed IRA? . . . . .				(38A)
<b>e</b> Forfeiture provisions:				
<b>(1)</b> Are forfeitures used either to reduce employer contributions or to increase benefits according to a definite uniform formula? . . . . .				(39)
<b>(2)</b> If participants may withdraw employee contributions or the earnings on them, may the withdrawal be made without forfeiting vested benefits based on employer contributions? . . . . .				(40)
<b>(3)</b> If benefits under the plan are forfeited when a participant or beneficiary cannot be located, does the plan provide for a reinstatement of the benefit if a claim is made? . . . . .				(41)
<b>f</b> Distribution provisions:				
<b>(1) (a)</b> If this is not a profit-sharing plan described in <b>(6)</b> below, does a married participant receive a qualified joint and survivor annuity (QJSA) and an unmarried participant a life annuity? . . . . .				(42)
<b>(b)</b> Is the participant given an opportunity to make a Qualified Election to waive the QJSA in a manner which satisfies section 417(a)(2) during an election period beginning no later than 90 days before the annuity starting date? . . . . .				(42)
<b>(2) (a)</b> Does the plan provide that the spouse of a deceased participant will receive a qualified preretirement survivor annuity (QPSA) that requires payments not less than the amount specified in section 417(c)(2) in the event of death before the annuity starting date? . . . . .				(42)
<b>(b)</b> Is the participant given an opportunity to make a Qualified Election to waive the QPSA in a manner which satisfies section 417(a)(2) during the election period beginning on the first day of the plan year in which the participant attains age 35 and ending on the date of the participant's death? . . . . .				(42)
<b>(3)</b> Does the plan designate or enable the employer to elect the percentage (not less than 50% nor more than 100%) of the survivor annuity provided under the QJSA? . . . . .				(42)

10f (continued)	N/A	Article or Section and Page Number	Change	For IRS Use Only
(4) Does the plan define annuity starting date in a manner that satisfies Q&A 10(b) of Regulations section 1.401(a)-20? . . . . .				(42)
(5) (a) Does the plan provide for a written explanation of the QJSA in a manner which satisfies section 417(a)(3)(A)? . . . . .				(42)
(b) Does the plan provide for a written explanation of the QPSA in a manner which satisfies section 417(a)(3)(B)? . . . . .				(42)
(6) If this is a profit-sharing plan which does not offer a life annuity form of payment, does the plan satisfy the conditions described in Q&A 3 of Regulations section 1.401(a)-20, including the requirement that the value of the participant's vested account balance on the date of death be paid in full to the surviving spouse? . . . . .				(42)
(7) If the plan permits distributions prior to 5 consecutive 1-year breaks in service (upon termination of employment, hardship distributions, change to an ineligible class, etc.), does the plan contain either (A) cashout, buy-back, or (B) separate account provisions required under Regulations sections 1.411(a)-7(d)(4) and (5)? . . . . .				(43)
(8) If the vested account balance is greater than \$5,000, is consent of the participant and spouse (if applicable) required when benefits are immediately distributable within the meaning of Regulations section 1.411(a)-11? . . . . .				(44)
(9) Do benefits under the plan begin, unless otherwise elected in writing, no later than the 60th day after the latest of the close of the plan year in which: (i) the participant attains the earlier of age 65 or the plan's normal retirement age, (ii) the 10th anniversary of the year in which the participant began participation under the plan occurs, or (iii) the participant terminates his or her service with the employer? . . . . .				(45)
(10) If the plan contains an early retirement provision which requires or could require both a minimum age and service for eligibility, does a participant who meets the service requirement but separates from service before meeting the age requirement begin to receive benefits (unless otherwise elected) upon meeting the age requirement? . . . . .				(46)
(11) Are annuity contracts nontransferable when distributed? . . . . .				(47)
(12) Does the plan provide that the terms of any annuity contract purchased and distributed by the plan to a participant or spouse shall comply with the requirements of the plan? . . . . .				(48)
(13) Does the plan require, in accordance with section 401(a)(9) that:				
(a) Distributions be made beginning not later than the required beginning date? . . . . .				(49)
(b) Payment of the participant's interest be made at least as rapidly as under the method used prior to death, when the participant dies after distribution has started, using the participant's remaining life expectancy if there is no designated beneficiary and if there is a designated beneficiary using the remaining life expectancy of either the participant or the designated beneficiary, whichever is longer? . . . . .				(49)
(c) Payment of the participant's interest be made within 5 years of the participant's death or over the life expectancy method under either sections 401(a)(9)(B)(iii) or (iv) when payment of the participant's interest has not begun prior to death? . . . . .				(49)
(d) Distributions, if not made in a single sum, will satisfy minimum distribution rules of section 401(a)(9) and the regulations thereunder, including the minimum distribution incidental benefit requirement of Regulations section 1.401(a)(9)-6 Q&A-2? . . . . .				(49)
(14) Are optional forms of benefit:				
(a) Stated in the plan? . . . . .				(50)
(b) Made available to employees in a manner that does not discriminate in favor of highly compensated employees? . . . . .				(50)
(c) Not subject to employer discretion? . . . . .				(50)
(15) (a) Does the plan provide for the direct rollover of an eligible rollover distribution to an eligible retirement plan? . . . . .				(51)
(b) Does the plan provide for the automatic rollover of a mandatory distribution over \$1,000 to an individual retirement plan, unless the participant elects otherwise? . . . . .				(51)
(c) If provided in the adoption agreement, does the plan specify the types of plans that it will accept rollovers from? . . . . .				(51)



10 (continued)	N/A	Article or Section and Page Number	Change	For IRS Use Only
<b>g</b> Vesting provisions:				
(1) Is a computation period for vesting purposes specified in the plan? . . .				(52)
(2) Is the computation period for determining a break in service the same as is used to compute a year of service for vesting? . . . . .				(52)
(3) Does the plan provide that an employee will be fully vested on reaching normal retirement age? . . . . .				(53)
(4) If the plan contains vesting options, are they limited so that at all times they will provide a percentage of nonforfeitable rights which is not less than the percentage that would be provided under one of the options under section 411(a)(2)? . . . . .				(54)
(5) If all years of service are not counted for vesting purposes, is the service not counted excludable under section 411(a)(4)? . . . . .				(55)
(6) If the plan contains the vesting break in service rules, does the plan comply with section 411(a)(6)(B), (C), or (D), as applicable? . . . . .				(56, 57, 58)
(7) Does a participant who has at least 3 years of service have a reasonable period of time after the adoption of an amendment which directly or indirectly affects the calculation of his or her nonforfeitable percentage (including a change to or from a top-heavy vesting schedule) to elect to have his or her nonforfeitable percentage computed without regard to the amendment? . . . . .				(59)
(8) Does the plan provide protection against cutback of vested rights or rights to accrued benefits under sections 411(a)(10)(A) and 411(d)(6)? . . . . .				(60)
<b>h</b> Top-heavy:				
(1) If this plan is not designed to operate as if it were top-heavy at all times, does the plan define the following terms—				
(a) Key employee? . . . . .				(61)
(b) Top-heavy plan? . . . . .				(61)
(c) Top-heavy ratio (as defined in section 416(g))? . . . . .				(61)
(d) Permissive aggregation group? . . . . .				(61)
(e) Required aggregation group? . . . . .				(61)
(f) Determination date? . . . . .				(61)
(g) Valuation date? . . . . .				(61)
(h) Present value? . . . . .				(61)
(2) Does the adoption agreement provide a section for the employer to specify the interest rate and mortality table used in determining the top-heavy ratio because of the required aggregation of multiple plans? . . . . .				(61)
(3) Does the plan provide that for the purpose of determining the top-heavy ratio, the accrual rate used will be that used to accrue benefits under all defined benefit plans of the employer, or where there is no such uniform rate, the slowest accrual rate permitted under section 411(b)(1)(C)? . . . . .				(61)
(4) Does the plan provide for a minimum contribution (determined without regard to social security) for each nonkey-employee participant, who has not separated from service at the end of the plan year, equal to the lesser of: (a) 3% of compensation, or (b) the highest contribution rate applicable to any key employee, including minimum contributions for nonkey employees who:				
(a) fail to complete 1,000 hours of service? . . . . .				(62)
(b) fail to make mandatory contributions, or in the case of a cash or deferred arrangement, elective contributions to the plan? . . . . .				(62)
(5) Does the plan prohibit forfeitures of required minimum contributions because of withdrawal of mandatory contributions described in section 411(a)(3)(B) or 411(a)(3)(D)? . . . . .				(63)
(6) Does the plan provide for vesting not less favorable than the vesting described in section 416(b)? . . . . .				(64)

	N/A	Article or Section and Page Number	Change	For IRS Use Only
<b>10</b> (continued)				
<b>i</b> Death benefits:				
<b>(1)</b> If life insurance is provided, are premiums properly limited? . . . . .				(65)
<b>(2)</b> If ordinary life insurance contracts are purchased, will such contracts be either converted to cash or an annuity contract at or before retirement, or distributed to the participant? . . . . .				(66)
<b>(3)</b> Are insurance contracts owned and held by the trustee or custodian, if applicable, in accordance with the terms of the plan, including joint and survivor annuity requirements, if any? . . . . .				(67)
<b>j</b> Investment provisions:				
<b>(1)</b> Trust or custodial accounts:				
<b>(a)</b> Are assets valued at least annually, on a specified date, and at current fair market value? . . . . .				(68)
<b>(b)</b> Are trust earnings and losses allocated on the basis of account balances?				(68)
<b>(2)</b> If the plan provides for investment in insurance contracts, does it provide for the disposition of dividends and other credits? . . . . .				(69)
<b>(3)</b> If investments, including insurance contracts, may be earmarked, are such investments subject to the employee's consent or purchased ratably where employee consent is not required? . . . . .				(70)
<b>(4)</b> Does the plan contain any sub-trusts for life insurance? . . . . .				
<b>k</b> Amendment and termination:				
<b>(1)</b> Is there a provision for the sponsor or practitioner to amend the plan? . . . . .				(71)
<b>(2)</b> For an M&P plan, is there a provision for the employer to amend the plan to satisfy sections 415 and 416 because of the required aggregation of multiple plans? . . . . .				(72)
<b>(3)</b> For an M&P plan, does the plan prohibit adopting employers from amending other than elective provisions (except to the extent necessary to satisfy section 415 or 416 because of the required aggregation of multiple plans, or as permitted by sections 5.06, 5.09 and 19.03 of Rev. Proc. 2005-16) unless the employer wants to cease participation in the plan? . . . . .				(72)
<b>(4)</b> Is there a provision for the employer to amend the plan to add certain model, sample or other required good faith amendments that specifically provide that their adoption will not cause the plan to be treated as individually designed? . . . . .				(72)
<b>(5)</b> Are amounts credited to participants' accounts nonforfeitable upon termination or partial termination of the plan? . . . . .				(73)
<b>(6)</b> Under a profit-sharing plan, are the employees' rights under the plan nonforfeitable upon complete discontinuance of contributions? . . . . .				(74)
<b>(7)</b> Does the plan provide that after merger or consolidation with, or transfer of assets or liabilities to any other plan, benefits on a termination basis will be no less than before the merger, consolidation, or transfer? . . . . .				(75)
<b>(8)</b> If a VS plan allows the practitioner to amend on behalf of adopting employers, does the plan provide that:				
<b>(a)</b> the practitioner will amend the plan on behalf of all adopting employers? . . . . .				
<b>(b)</b> the practitioner will no longer have the authority to amend on behalf of any adopting employer as of the date the Service requires the employer to file Form 5300, Application for Determination for Employee Benefit Plan, as an individually designed plan due to an employer amendment to the plan to incorporate a type of plan not allowable in the VS program or as of the date the plan is otherwise considered an individually designed plan due to the nature and extent of the amendments? . . . . .				
<b>(c)</b> if the employer is required to obtain a determination letter to maintain reliance on the advisory letter, the practitioner's authority to amend on behalf of the adopting employer is conditioned on the plan receiving a favorable determination letter? . . . . .				
<b>(d)</b> the practitioner maintains recordkeeping and notice requirements? . . . . .				
<b>(9)</b> Does the adoption agreement of the VS plan, if applicable, contain, in close proximity to the employer's signature line, the circumstances under which the employer may not rely on the advisory letter? . . . . .				

10 (continued)	N/A	Article or Section and Page Number	Change	For IRS Use Only
<b>I</b> Miscellaneous plan provisions:				
<b>(1)</b> Does the plan prohibit the assignment or alienation of benefits except as provided by sections 401(a)(13) and 414(p)? . . . . .				(76)
<b>(2)</b> Do loans to plan participants satisfy the requirements of section 4975(d)(1) and the joint and survivor requirements, if any? . . . . .				(77)
<b>(3)</b> Does the plan provide that corpus or income may not be diverted for purposes other than the exclusive benefit of employees or their beneficiaries? . . . . .				(78)
<b>(4)</b> If a nontrusteed plan, do insurance contracts provide for refunds or credits for the exclusive benefit of the participants? . . . . .				(79)
<b>(5)</b> Does the plan provide that if the employer's plan does not attain or retain qualification, the employer can no longer participate under the plan? . . . . .				(80)
<b>(6)</b> If this is a master plan:				
<b>(a)</b> Is only a single funding medium available for use by all adopting employers? . . . . .				(81)
<b>(b)</b> Does the plan provide that funds held in the master trust on behalf of an adopting employer will be removed as soon as administratively feasible if the employer's plan does not attain or retain qualified status? . . . . .				(82)
<b>(7)</b> Does the plan provide that if the employer maintains a plan of the predecessor employer, service with the predecessor employer is counted as service with the employer? . . . . .				(83)
<b>(8)</b> Does the adoption agreement contain the sponsor's or representative's name, address, and telephone number for the purpose of answering employer's inquiries? . . . . .				(85)
<b>(9)</b> Does the adopting agreement contain a cautionary statement describing the limitations on employer reliance on an opinion or advisory letter without a determination letter and that the failure to properly fill out the adoption agreement may result in disqualification of the plan? . . . . .				(85)
<b>(10)</b> Does the adoption agreement contain a statement which provides that the sponsor will inform the adopting employer of any amendments made to the plan or of the discontinuance or abandonment of the plan? . . . . .				(85)
<b>(11)</b> Does the adoption agreement contain an employer signature line? . . . . .				(85)
<b>(12)</b> Does the plan contain a provision that incorporates the requirements of section 414(u) of the Code (USERRA) (see instructions)? . . . . .				(86)

**Part II (M&P only) Complete This Part If You Are Filing for a Standardized Plan**

<b>11</b> With respect to this standardized plan:				
<b>a</b> Does the plan cover all employees (including individuals required to be considered employees according to section 414(n) or (o) and employees of other members of groups aggregated under section 414(b), (c), (m) or (o)) other than employees who may be excluded under section 410(a)(1) or (b)(3)? . . . . .				(87)
<b>b</b> Are the eligibility requirements not more favorable for highly compensated employees as defined in section 414(q) than for other employees? . . . . .				(88)
<b>c</b> Does the contribution formula satisfy the safe harbor requirements of Regulations section 1.401(a)(4)-2(b)(2) or section 1.401(a)(4)-8(b)(3)? . . . . .				(89)
<b>d</b> Does the adoption agreement contain, in close proximity to the employer's signature line, the circumstances under which the adopting employer may not rely on the opinion letter (as set forth in section 19 of Rev. Proc. 2005-16), including a statement that the employer, in order to obtain or retain reliance, must obtain a determination letter if the employer ever has maintained any other plan (including a welfare benefit plan)? . . . . .				(90)



**Part III (M&P only) Complete This Part If You Are Filing for a Nonstandardized Plan**

N/A	Article or Section and Page Number	Change	For IRS Use Only
			(91)
			(92)
			(93)
			(94)

**Part IV Complete This Part If You Are Filing for a Profit-Sharing/401(k) Plan**

- 13** With respect to this section 401(k) plan Cash or Deferred Arrangement (CODA):
- a** Are contributions pursuant to an election permitted before the related compensation is earned? . . . . .
  - b** Is an employee's eligibility to make elective deferrals conditioned on no more than one year of service or attainment of no more than age 21? . . . . .
  - c** Does the plan provide for a reasonable period during which participants may once a year elect to commence elective deferrals? . . . . .
  - d** Are participants' elective deferrals limited to the dollar limit in effect in section 402(g)? . . . . .
  - e** Will elective deferrals be distributed no later than April 15 to any participant who has excess elective deferrals for the preceding tax year? . . . . .
  - f** Do the elective deferrals meet the nondiscrimination test of section 401(k)(3)? . . . . .
  - g** Does the plan provide for the distribution of excess contributions no later than the 12 months after the plan year, if such excess contributions were allocated to the previous plan year? . . . . .
  - h** May a participant recharacterize an excess contribution? . . . . .
  - i** Can the employer make matching contributions? . . . . .
  - j** Are matching contributions subject to section 411(a)(2)? . . . . .
  - k** Can the employer make qualified matching contributions? . . . . .
  - l** Do employee contributions and matching contributions meet the ACP test of section 401(m)? . . . . .
  - m** Are the excess aggregate contributions distributed or forfeited no later than 12 months after the plan year? . . . . .
  - n** May the employer make qualified non-elective contributions? . . . . .
  - o** Are the participant's rights to his or her accrued benefit derived from employee contributions, qualified non-elective contributions, qualified matching contributions, and elective deferrals nonforfeitable? . . . . .
  - p** Do distributions of elective deferrals, qualified non-elective contributions, qualified matching contributions, and income allocable to each comply with section 401(k)(2)(B)? . . . . .
  - q** Does the plan permit hardship distributions of elective deferrals? . . . . .
  - r** Does the plan provide that elective deferrals are not taken into account to satisfy the minimum top-heavy contribution requirements? . . . . .
  - s** Does the plan permit 401(k) SIMPLE provisions? . . . . .
  - t** Does the plan permit 401(k) safe harbor provisions? . . . . .

			(I)
			(II)
			(III)
			(IV)
			(V)
			(VI)
			(VII)
			(VIII)
			(IX)
			(X)
			(XI)
			(XII)
			(XIII)
			(XIV)
			(XV)
			(XVI)
			(XVII)
			(XVIII)
			(XIX)
			(XX)

Submit one

and Attachment 1

Pre-approved Plans

, send

# General Instructions

## Purpose of Form

Form 4461 is used to apply for initial approval of or for approval of an amendment to Master or Prototype (M&P) or Volume Submitter (VS) defined contribution plans.

on Attachment 1

Be sure to submit a complete and accurate application. Complete every applicable line on the application. If an item does not apply, check the "N/A" box or enter "N/A" on the line. If your application is not complete, we will return it without processing it. The first page must be typed.

where indicated as an option.

The questions are designed so that, unless they are not applicable, the article or section and page numbers indicating the location in the plan of the provision should be entered in the appropriate column. The column marked "CHANGE" is for IRS use only.

move sentence up

Unless otherwise noted, the questions in Parts I and IV apply to both M&P and VS defined contribution plans. Parts II and III apply to M&P Plans. This Form was originally used only for M&P plans, and many items, unless specifically referring to VS plans, are based on a Listing of Required Modifications (LRMs) containing sample language designed for use in drafting M&P plans. VS practitioners may also use this language if appropriate, and should still complete applicable parts of the Form, or explain why a particular question is not applicable.

copy of the

**Requests for additional information.** If a letter requesting additional information or changes to plan documents, is sent to the sponsor or VS practitioner or an authorized representative, such information and/or changes must be received no later than 30 days from the date of the letter. Failure to respond timely may result in the application being considered withdrawn. An extension of the 30-day time limit will only be granted for good cause.

**Inadequate submissions.** We will return, without further action, plans that are not in substantial compliance with the qualification requirements or plans that are so deficient that they cannot be reviewed in a reasonable amount of time.

Attn: Pre-approved Plans Coordinator

## Who May File

**Master or prototype plans.** Sponsors, mass submitters and national sponsors (see *Definitions* later).

**Volume submitter plans.** Practitioners (including national sponsors) and mass submitters (see *Definitions* later).

in addition, you may not use the same basic plan document for governmental plans (i.e., plans described in section 414(d) and nongovernmental plans (i.e., plans not described in section 414(d)).

## What To File

One copy of Form 4461 should be submitted for each separate adoption agreement or for each separate specimen plan where no adoption agreement is utilized.

For initial approval, file this application and each applicable document listed in item 9(a). For approval of an amendment, file this application and a copy of each applicable document listed in item 9(b).

Different parts of this form must be completed depending on the type of plan for which you want approval.

**M&P Standardized plans.** If you want to receive an opinion letter on a standardized plan, complete Parts I and II.

**M&P nonstandardized plans.** If you want to receive an opinion letter on a plan other than a standardized plan, complete Parts I and III.

**VS plans.** If you want to receive an advisory letter on a VS plan, complete Part I.

**Multiple plans.** A sponsor may utilize one basic plan document for several plans. A sponsor may, for example, use one basic plan document for a money purchase plan other than a target benefit plan, a target benefit plan, and a profit-sharing plan. A separate adoption agreement and completed application must be provided for each such defined contribution plan. In the case of a simultaneous submission, submit only one basic plan document. If the request is not simultaneous, separate basic plan documents must be submitted (but the number assigned to the basic plan document of a master or prototype plan remains the same).

A VS practitioner may not combine different categories in a single specimen plan or application, except that only one specimen plan and application is required for a VS profit-sharing plan, with or without a 401(k) arrangement.

## Where To File

Send applications for opinion and advisory letters to:

Internal Revenue Service  
P.O. Box 2508; Room 5106  
Cincinnati, OH 45201

Add "Attn: M&P Coordinator" in the case of an application for an opinion letter, and "Attn: VS Coordinator" in the case of an application for an advisory letter.

requests are not simultaneous, submit separate basic plan documents and include a cover letter identifying the original submission. The number assigned to the basic plan document of a master or prototype plan must remain the same as in the prior submission. One basic plan document may not be used for both defined benefit and defined contribution plans.

For both types of applications, a request shipped by Express Mail or a delivery service should be sent to the attention of the VS Coordinator or the M&P Coordinator, whichever is applicable, to:

Internal Revenue Service  
550 Main Street  
P.O. Box 2508; Room 5106  
Cincinnati, OH 45202

on Form 4461 and Attachment 1

**Signature.** The application must be signed by a partner or officer of the applicant who is authorized to sign, or other person authorized by a power of attorney. The power of attorney should be filed with the application.

## Disclosure requested by taxpayer. A

taxpayer may request the Service to disclose and discuss the return or return information with any person(s) the taxpayer designates in a written request. If you want to designate a person(s) to assist in an application for approval, you must provide the IRS office of jurisdiction with a written request that contains:

IRS

of plans using the same basic plan document

- The taxpayer's name, address, employer identification number, and plan number(s).
- The name, address, social security number, and telephone number(s) of the person or persons whom you are authorizing to receive return information.
- A paragraph that clearly describes the return or return information that you authorize the IRS to disclose.
- An authorized signature (see above).

As an alternative to providing the above statement, you may submit Form 2848, Power of Attorney and Declaration of Representative.

## Definitions

**Adoption agreement.** The portion of the plan containing all the options that the adopting employer may select. The adoption agreement may include blanks or fill-in provisions for the employer to complete if it also includes parameters on these provisions that preclude an employer from completing them in a manner that could violate the qualification requirements. Each separate adoption agreement is treated as a separate plan and will receive its own opinion or advisory letter.

**Basic plan document.** The portion of the plan containing all the nonelective provisions applicable to all adopting employers. No options (including blanks to be completed) may be provided in the basic plan document except for options in flexible plans.

**Volume Submitters without Adoption Agreements.** A VS specimen plan may include blanks or fill-in provisions for the employer to complete only if the plan also includes parameters on these provisions that preclude an employer from completing them in a manner that could violate the qualification requirements.

**Flexible plan.** A plan submitted by an M&P mass submitter which contains certain optional provisions as allowed by section 12.03(1) of Rev. Proc. 2005-16, 2005-10 I.R.B. 674. Sponsors which adopt a flexible plan may include or delete any optional provision designated as such in the mass submitter's plan. A flexible plan adopted by a sponsor which differs from the mass submitter plan only because of the deletion of certain optional provisions will be treated as a word-for-word identical plan to the mass submitter plan.

**Mass submitter.** As set forth in Rev. Proc. 2005-16, any entity that submits applications on behalf of at least 30 unaffiliated sponsors or practitioners each of which is sponsoring, on a word-for-word identical basis, the same basic plan document and one or more of the adoption agreements associated with that basic plan document or in the case of VS plans, one or more of the same lead specimen plans. For a mass submitter of an M&P, once the mass submitter has submitted applications on behalf of 30 unaffiliated sponsors with respect to any basic plan document, it will be treated as a mass submitter with respect to all the other basic plan documents and associated adoption agreements for which it requests opinion letters, regardless of the number of identical adopters of such other plans. A mass submitter of a VS plan will be treated as such with respect to each specimen plan for which the 30 unaffiliated practitioner requirement is separately met.

Notwithstanding the above, for an M&P plan, any entity that received a favorable TRA '86 opinion letter for a plan as a mass submitter under Rev. Proc. 89-9, 1989-1 C.B. 780, will continue to be treated as a mass submitter if it submits applications on behalf of at least 10 sponsors (regardless of affiliation) each of which is sponsoring, on a word-for-word identical basis, the same basic plan document and one or more of the adoption agreements associated with that basic plan document. Once the mass submitter has submitted applications on behalf of 10 sponsors with respect to any basic plan document, it will be treated as a mass submitter with respect

to all the other basic plan documents and associated adoption agreements for which it requests opinion letters, regardless of the number of identical adopters of such other plans. Affiliation is determined under sections 414(b) and (c) of the Code. Additionally, the following will be considered to be affiliated: any law, accounting, consulting firm, etc. with its partners, members, associates, etc.

**Master plan.** A form of plan that is made available by a sponsor for adoption by employers for which a single funding medium (for example, a trust or custodial account, see section 4.01 of Rev. Proc. 2005-16) is established, as part of the plan, for the joint use of all adopting employers. A master plan consists of a basic plan document, an adoption agreement, and, unless included in the basic plan document, a trust or custodial account document.

**Prototype plan.** A form of plan that is made available by a sponsor for adoption by employers under which a separate funding medium is established for each adopting employer. A prototype plan consists of a basic plan document, an adoption agreement, and unless the basic plan document incorporates a trust or custodial account agreement the provisions of which are applicable to all adopting employers, a trust or custodial account document.

**Specimen plan.** A specimen plan is a sample plan, including the related trust or custodial account, of a VS practitioner (rather than the actual plan of an employer). A specimen plan may include an adoption agreement.

**Sponsor.** Any person that has an established place of business in the United States where it is accessible during every business day and represents to the Service that it has at least 30 employer-clients each of which is reasonably expected to adopt the sponsor's basic plan document and one or more of the adoption agreements associated with that basic plan document. Once a person represents to the Service that at least 30 employers are reasonably expected to adopt its basic plan document, it will be treated as a sponsor with respect to all the basic plan documents and associated adoption agreements for which it requests opinion letters, regardless of the number of employers that are expected to adopt such other plans. Notwithstanding the above, any person that has an established place of business in the United States where it is accessible during every business day and is a word-for-word identical adopter

or minor modifier adopter of an M&P plan of a mass submitter will be treated as a sponsor with respect to such plan, regardless of the number of employers that are expected to adopt such plan.

**Practitioner.** Any person that has an established place of business in the United States where it is accessible during every business day and represents to the Service that it has at least 30 employer-clients each of which is reasonably expected to adopt a plan that is substantially similar to the VS practitioner's specimen plan.

The required number of employer-clients is reduced to 10 for a money purchase pension specimen plan in the case of a VS practitioner that has specimen plans for two or more separate categories of plans (profit sharing, money purchase, target benefit), one of which is a money purchase plan, and the 30 employer-clients requirement has been satisfied with respect to the other specimen plan.

A VS practitioner may submit any number of specimen plans for advisory letters provided that the 30 employer-clients requirement (or 10, if applicable) is separately satisfied with respect to each specimen plan.

Notwithstanding the above, any person that has an established place of business in the United States where it is accessible during every business day may sponsor a specimen plan as a word-for-word identical adopter of a specimen plan of a VS mass submitter, regardless of the number of employers that are expected to adopt the plan.

~~A VS practitioner is also a practitioner that has either (a) 30 or more adopting employers in each of 30 or more states or (b) 3,000 or more adopting employers. The determination as to whether there are 3,000 or more adopting employers or 30 or more adopting employers in each of 30 or more states may be made on any one date during the 12 month period ending on April 18, 2005. For this purpose, an adopting employer is any employer that has adopted any plan of the practitioner that has a GUST advisory letter.~~

**M&P National Sponsor.** A sponsor which has either: (a) 30 or more adopting employers in each of 30 or more states, or (b) 3,000 or more adopting employers on any one date during the 12 month period ending on April 18, 2005. For this purpose, an adopting employer is any employer that has adopted any plan of the sponsor which has a GUST opinion letter.

For this purpose, where an adoption format is used, each adoption agreement is treated as one specimen plan.



**M&P Standardized plan.** A plan which meets the specific requirements of Part II of this form.

### Specific Instructions

**Line 1.** All applications submitted must be accompanied by the appropriate user fee and Form 8717, User Fee for Employee Plan Determination, Opinion and Advisory Letter Request, as determined from the schedule in Rev. Proc. 2006-8, 2006-1 I.R.B. 245 (or the most recent version, updated annually). Applications submitted without the proper user fee will not be processed and will be returned to the applicant.

**Line 3a.** Enter the name and address of the applicant. If the Post Office does not deliver mail to the street address and the sponsor has a P.O. box number, show the P.O. box number instead of the street address.

~~Line 3d.~~ Complete type of Applicant. If Volume Submitter Practitioner is the type that has either (a) 30 or more adopting employers in each of 30 or more states or (b) 3,000 or more adopting employers, check the box next to Volume Submitter National Sponsor.

**Line 4a.** If the person to be contacted is other than an employee of the applicant, please enclose an authorized power of attorney. See *Disclosure requested by taxpayer* on page 10.

**Line 4c.** The applicant should include an email address in order for the Service to send an interim email notifying the applicant that review of the applicable plan has been completed, subject to final approval by opinion or advisory letter.

~~Line 5a.~~ Enter the two digit basic plan document number you have assigned to the basic plan document designed to accompany the adoption agreement for which you are requesting approval. All basic plan documents from one sponsor which are the same (word-for-word) should use the same two digit number on all applications. The first basic plan document submitted should be numbered "01," the second, "02," etc.

**Line 5b.** Enter the three-digit number you have assigned to the adoption agreement for which this application is submitted. Each different adoption agreement designed to accompany a single basic plan document should be given a different three-digit number

beginning with "001." For example, if the first basic plan document of a sponsor has four separate adoption agreements, they should be numbered "001" through "004," and four separate Forms 4461 should be submitted. Adoption agreements submitted with the second or any subsequent basic plan documents (that are not word-for-word identical to a previously submitted basic plan document) should be similarly numbered beginning with "001."

**Line 9. Procedural requirements.** A separate application must be submitted for each different plan/adoption agreement combination.

In the case of a VS plan, a separate application must be submitted for each type of plan, except that only one specimen plan and application is required for a VS profit-sharing plan, either with or without a 401(k) arrangement.

~~Line 9b.~~ The applicant must submit, along with this application, either: (a) a copy of the amendment, a description of the amendment and its effect on the plan, and a working copy of the plan currently in effect, or (b) a copy of the amended plan in restated form with areas of change highlighted (a restated plan). If a restated plan is being submitted with this application, a copy of the amendment and a description of such amendment need not be submitted. The Internal Revenue Service may, at its discretion, require plan restatement any time it deems necessary.

~~In any event, a restated plan must be submitted by the deadline for the applicable remedial amendment cycle described in Rev. Proc. 2005-66.~~

**Line 9c.** If you checked "Yes," submit a copy of such plan with language differences highlighted. Attach a cover letter which provides the name and file folder number of the plan (including the name and employee identification number of the sponsor), a list of all plans written by the plan drafter which are substantially identical to the lead plan (including the information described above), a description of each place where the plan for which the application is being submitted is not word-for-word identical to the language of the lead plan (including an explanation of the purpose and effect of each difference), and a certification, made under penalty of perjury by the plan drafter, that the information describing where the plan language is not word-for-word identical is true and complete.

**Line 9e.** The mass submitter should use Form 4461-B, Application for Approval of Master or Prototype or Volume Submitter Plans, Mass Submitter Adopting Sponsor or Practitioner, when submitting applications on behalf of its adopting sponsors, and submit Form 8717.

~~Line 10i.~~ A plan sponsor or practitioner will be treated as satisfying the requirements of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and section 414(u) if the terms of the plan provide that an employee reemployed after qualified military service is not treated as incurring a break in service, for purposes of vesting and benefit accruals, solely because of an absence due to qualified military service.

**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to determine whether you meet the legal requirements for plan approval.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their content may become material in the administration of any Internal Revenue law. Generally, tax return and return information are confidential, as required by Code section 6103.

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

- Recordkeeping** . . . 8 hr., 22 min.
- Learning about the law or the form** . . . 1 hr., 42 min.
- Preparing the form** . . . 4 hr., 42 min.
- Copying, assembling, and sending the form to the IRS** . . . 48 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:V:SP, 1111 Constitution Ave. NW, IR-6406, Washington, DC 20224. Do not send this form to this office. Instead, see *Where To File* on page 10.

Enter the two-digit basic plan document number you have assigned to the specimen plan or basic plan document that accompanies (if applicable) the adoption agreement for which you are requesting approval. All basic or specimen plan documents from one sponsor or practitioner that are the same (word-for-word) should use the same two-digit number on all applications. The first basic plan document submitted should be numbered "01," the second, "02," etc. The first specimen plan document submitted should be numbered "01," the second, "02," etc.