

Part III

26 CFR § 601.201: Rulings and determination letters.
(Also Part I, §§ 401, 403, and 501; Reg. §§ 1.401(a)-1, 1.403(a)-1, and 1.501(a)-1.)

Rev. Proc. 2017-XX

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SECTION 1. PURPOSE

.01 This revenue procedure sets forth the procedures of the Internal Revenue Service (IRS) for issuing opinion letters regarding the acceptability under §§ 401, 403(a), and 4975(e)(7) of the Internal Revenue Code (Code) of the form of pre-approved plans. In addition, this revenue procedure modifies the IRS pre-approved letter program by merging the master and prototype (M&P) and volume submitter (VS) programs. This revenue procedure modifies and supersedes Rev. Proc. 2015-36, 2015-27 I.R.B. 20.

SECTION 2. BACKGROUND

.01 Prior to being superseded by this revenue procedure, procedures for the issuance of opinion and advisory letters by the IRS regarding the acceptability of the form of pre-approved plans were set forth in Rev. Proc. 2015-36 (as modified by Rev. Proc. 2016-37, 2016-29 I.R.B. 136, and Rev. Proc. 2017-4, 2017-1 I.R.B. 146).

.02 Rev. Proc. 2007-44, 2007-2 C.B. 54, (superseded by Rev. Proc. 2016-37), described a system of cyclical remedial amendment periods under which every individually designed plan qualified under § 401(a) or 403(a) had a regular five-year remedial amendment cycle and every pre-approved plan had a regular six-year remedial amendment cycle.

.03 Rev. Proc. 2016-37 modified the IRS determination letter program for qualified plans to eliminate the five year remedial amendment cycle for individually designed plans. This revenue procedure also described and made modifying changes to the remedial amendment cycle system for pre-approved qualified plans and modified the six-year cycle, as applicable, to reflect changes that had been made to the determination letter program.

.04 Under Rev. Proc. 2016-37, every pre-approved plan (that is, every M&P and VS plan) continues to have a regular, six-year remedial amendment cycle. As a result, M&P sponsors and VS practitioners, as defined in Rev. Proc. 2015-36, may apply for new opinion or advisory letters once every six years. M&P sponsors and VS practitioners generally have until January 31st of the calendar year following the opening of the six-year remedial amendment cycle to submit applications for opinion and advisory letters, although the application period has been periodically modified and extended.

.05 M&P sponsors and VS practitioners maintaining pre-approved defined contribution plans submitted their applications to the IRS for the second six-year remedial amendment cycle from February 1, 2011, to April 2, 2012. For employers that had adopted a pre-approved defined contribution plan prior to January 1, 2016, the deadline to adopt a modification or restatement of the pre-approved plan and apply for a determination letter, if eligible, was April 30, 2016. Pursuant to section 18 of Rev. Proc. 2016-37, the deadline for an employer to adopt a newly approved pre-approved

defined contribution plan and apply for a determination letter, if eligible, was extended from April 30, 2016, to April 30, 2017, for any newly approved pre-approved defined contribution plan adopted on or after January 1, 2016.

.06 Under Rev. Proc. 2016-37, the third six-year remedial amendment cycle for pre-approved defined contribution plans began on February 1, 2017, and ends on January 31, 2023. The 12-month applicable on-cycle submission period for pre-approved plan sponsors begins on August 1, 2017 and ends on July 31, 2018. The 2017 Cumulative List of Changes in Plan Qualification Requirements, **when issued**, will be used by pre-approved plan sponsors submitting applications for pre-approved plans during this on-cycle submission period.

.07 The second six-year remedial amendment cycle for pre-approved defined benefit plans began on February 1, 2013, and ends on January 31, 2019. As provided in Rev. Proc. 2016-37, once the review of a cycle for pre-approved plans has neared completion (after approximately a two-year review process), the IRS will announce the date by which adopting employers must adopt the newly approved plans.

.08 Rev. Proc. 2017-4 sets forth the general procedures of the IRS on the issuance of Employee Plans determination letters, including determination letters for M&P and VS plans.

.09 It is expected that the procedures for applying for opinion letters will be updated from time to time.

SECTION 3. CHANGES TO REVENUE PROCEDURE 2015-36

.01 This revenue procedure modifies the IRS pre-approved program by merging the master and prototype program and the volume submitter program into one comprehensive program. Similar features existing under the two separate programs have been combined and remain as part of the new pre-approved program.

.02

.03 Adopting employers may rely on the opinion letter issued to a pre-approved plan sponsor as described in section 7 of this revenue procedure.

.04 The effect of plan amendments, including amendments made by adopting employers, on the reliance by a sponsor or employer on a prior opinion letter is described in section 9 of this revenue procedure.

.05 Procedures for requesting opinion letters and other rules relating to the application process are described in section 9 of this revenue procedure.

.06 The scope of review of a pre-approved plan submitted for an opinion letter is described in section 12 of this revenue procedure.

SECTION 4. DEFINITIONS

.01 ESOP Definitions

(1) ESOP - An “ESOP” is an employee stock ownership plan within the meaning of § 4975(e)(7).

(2) Exempt Loan - An “exempt loan” is a loan described in § 4975(d)(3) that meets the requirements for exemption from the excise tax imposed under § 4975(a) and (b) described in § 54.4975-7(b).

(3) Readily Tradable Employer Securities - “Readily tradable employer securities” are publicly traded securities as defined in § 1.401(a)(35)-1(f)(5).

.02 Hybrid Plan Definitions

(1) Cash Balance Formula - A “cash balance formula” is a statutory hybrid benefit formula as defined in § 1.411(a)(13)-1(d)(4) used to determine all or any part of a participant’s accumulated benefit, under which the accumulated benefit provided under the formula is expressed as the current balance of a hypothetical account maintained for the participant. The hypothetical account balance generally consists of principal credits and hypothetical interest credits.

(2) Cash Balance Plan - A “cash balance plan” is a defined benefit plan that includes a cash balance formula.

(3) Conversion Amendment - A “conversion amendment” is defined in § 1.411(b)(5)-1(c)(4), as (i) an amendment that reduces or eliminates the benefits that, but for the amendment, a participant would have earned after the effective date of the amendment under a benefit formula that is not a statutory hybrid benefit formula, and (ii) with respect to which, after the effective date of the amendment, all or a portion of the participant’s benefit accruals under the plan are determined under a statutory hybrid benefit formula.

(4) Hypothetical Interest - “Hypothetical interest” is an interest credit as defined in § 1.411(b)(5)-1(d)(1)(ii)(A), which refers to an adjustment to a participant’s hypothetical account balance for a period that is not conditioned on service and that is determined by applying a rate of interest or rate of return to the participant’s hypothetical account balance as of the beginning of the period.

(5) Offset - An "offset" is the reduction of benefits under an employer's defined benefit plan by an amount attributable to the benefits payable under another plan of the employer.

(6) Principal Credit - "Principal credit" is defined in § 1.411(b)(5)-1(d)(1)(ii) (D) as any increase in a participant's hypothetical account balance that is not hypothetical interest.

(7) Statutory Hybrid Plan - A "statutory hybrid plan" is a defined benefit plan that contains a statutory hybrid benefit formula.

(8) Variable Annuity Plan - A "variable annuity plan" is any defined benefit plan that includes a variable annuity benefit formula as defined in § 1.411(a)(13)-1(d) (6).

.03 Mass Submitter - A "mass submitter" is any person that (1) has an established place of business in the United States where it is accessible during every business day and (2) submits opinion letter applications on behalf of at least 30 unaffiliated sponsors each of which is sponsoring, on a word-for-word identical basis, the same plan. A flexible plan (as defined in section 10) that is adopted by a sponsor will be considered a word-for-word identical plan. For purposes of determining whether 30 unaffiliated sponsors sponsor, on a word-for-word basis, the same **pre-approved plan**, the mass submitter is treated as an unaffiliated sponsor. For purposes of this definition, affiliation is determined under § 414(b) and (c). Additionally, the following will be considered to be affiliated: any law firm, accounting firm, consulting firm, etc., with its partners, members, associates, etc. A mass submitter will be treated as a mass submitter with respect to all of its plans provided the 30 unaffiliated sponsor requirement is met with respect to at least one plan. See section 10 of this revenue procedure for rules relating to mass submitter plans.

~~Notwithstanding the preceding paragraph, any person that received a favorable opinion letter under the Tax Reform Act of 1986, Pub. L. No. 99-514, for a plan as a M&P mass submitter under Rev. Proc. 89-9, 1989-1 C.B. 780, will continue to be treated as a mass submitter with respect to all of its plans if it submits applications on behalf of at least 10 sponsors (regardless of affiliation), each of which is sponsoring the same plan on a word-for-word identical basis. For purposes of determining whether 10 sponsors sponsor the same plan on a word-for-word identical basis, the mass submitter is counted as one of the 10 sponsors.~~

.04 Nonstandardized Plan - A "nonstandardized plan" is a **pre-approved plan** (including an ESOP or Hybrid Plan that meets the requirements of this revenue procedure) that is not a standardized plan.

.05 Opinion Letter - An "opinion letter" is a written statement issued by the IRS to a sponsor or mass submitter as to the acceptability of the form of a **plan** under

§ 401(a), § 403(a), or both §§ 401(a) and 4975(e)(7).

.06 Pre-approved plan- (1) A “pre-approved plan” is a plan (including a plan covering self-employed individuals) that is made available by a sponsor, as defined in section 4.07, for adoption by employers. The term pre-approved plan includes both standardized plans and nonstandardized plans, as defined in sections 4.08 and 4.04, respectively.

(2) A pre-approved plan may use a single funding medium (for example, a trust or custodial account) for the joint use of all adopting employers (formerly referred to as a Master Plan in section 4.01 of Rev. Proc. 2015-36) or separate funding mediums established for each adopting employer (formerly referred to as a Prototype Plan in section 4.02 of Rev. Proc. 2015-36).

(3) A pre-approved plan may be an “Adoption Agreement Plan” or a “Single Document Plan.” An Adoption Agreement Plan consists of a basic plan document and an adoption agreement. The basic plan document contains all of the non-elective provisions applicable to all adopting employers and the adoption agreement contains the options that may be selected by the adopting employer. No options (including blanks to be completed) may be provided in the basic plan document portion of the Adoption Agreement Plan (except as provided in section 10 of this revenue procedure regarding flexible plans). A Single Document Plan consists of a single plan document offered by a plan sponsor without an adoption agreement. A Single Document Plan may contain alternate paragraphs and options (including blanks to be completed by the employer in accordance with specified parameters) that may be selected by an adopting employer.

.07 Sponsor- A "sponsor" is any person that (1) has an established place of business in the United States where it is accessible during every business day and (2) represents to the IRS that it has at least 15 employer-clients, each of which is reasonably expected to adopt the same pre-approved plan of the plan sponsor.

A sponsor may request an opinion letter for more than one plan provided it represents to the IRS that it has at least 30 employer-clients in the aggregate, each of which is reasonably expected to adopt at least one of the sponsor’s plans. The IRS reserves the right at any time to request from the sponsor a list of the employers that have adopted or are expected to adopt the sponsor’s plans, including the employers’ business addresses and employer identification numbers.

Notwithstanding the preceding two paragraphs, any person that has an established place of business in the United States where it is accessible during every business day may sponsor a plan as a word-for-word identical adopter or minor modifier adopter of a plan of a mass submitter (as defined in section 4.03) regardless of the number of employers that are expected to adopt the plan.

By submitting an application for an opinion letter for a plan under this revenue procedure (or by having an application filed on its behalf by a mass submitter), a person represents to the IRS that it is a sponsor, as defined in this section 4.07, and that it agrees to comply with any requirements imposed on sponsors by this revenue procedure. Failure to comply with these requirements may result in the loss of eligibility to sponsor plans and the revocation of opinion letters that have been issued to the sponsor.

.08 Standardized Plan - A "standardized plan" is an Adoption Agreement Plan (other than an ESOP or Hybrid Plan) that meets the following requirements:

(1) Under the provisions governing eligibility and participation, the plan by its terms benefits all employees described in section 5.11 (regardless of whether any employer is treated as operating separate lines of business under § 414(r)) except those that may be excluded under § 410(a)(1) or (b)(3). The adoption agreement may provide options as to whether some or all of the employees described in § 410(a)(1) or (b)(3) are to be excluded, provided that the criteria for excluding employees described in § 410(a)(1) or (b)(3) apply uniformly to all employees. A standardized plan generally may not deny an accrual or allocation to an employee eligible to participate merely because the employee is not an active employee on the last day of the plan year or has failed to complete a specified number of hours of service during the year. However, the plan may deny an allocation or accrual to an employee who is eligible to participate if the employee terminates service during the plan year with not more than 500 hours of service and is not an active employee on the last day of the plan year.

A plan will not fail to satisfy the requirements of this paragraph (1) merely because the plan provides, either as the result of an elective provision or by default in the absence of an election to the contrary, that individuals who become employees, within the meaning of section 5.11, as the result of a § 410(b)(6)(C) transaction will be excluded from eligibility to participate in the plan during the period beginning on the date of the transaction and ending on a date that is not later than the last day of the first plan year beginning after the date of the transaction. A § 410(b)(6)(C) transaction is an asset or stock acquisition, merger, or other similar transaction involving a change in the employer of the employees of a trade or business.

(2) The eligibility requirements under the plan are not more favorable for highly compensated employees (as defined in § 414(q)) than for other employees.

(3) Under the plan, allocations, in the case of a defined contribution plan (other than any cash or deferred arrangement part of the plan), or benefits, in the case of a defined benefit plan, are determined on the basis of total compensation. For this purpose, total compensation means a definition of compensation that includes all compensation within the meaning of § 415(c)(3) and excludes all other compensation, or that otherwise satisfies § 414(s) and § 1.414(s)-1(c).

(4) Unless the plan is a target benefit plan or a § 401(k) and/or 401(m) plan, the plan must, by its terms, satisfy one of the design-based safe harbors described in § 1.401(a)(4)-2(b)(2) (taking into account § 1.401(a)(4)-2(b)(4)) or § 1.401(a)(4)-3(b)(3), (4), or (5) (taking into account § 1.401(a)(4)-3(b)(6)).

(5) All benefits, rights, and features under the plan (other than those, if any, that have been prospectively eliminated) are currently available to all employees benefiting under the plan.

(6) Any past service credit under the plan must meet the safe harbor in § 1.401(a)(4)-5(a)(3).

(7) Any hardship distribution must satisfy the safe harbor standards in the regulations under § 401(k).

.09 Trust or Custodial Account Document - A "trust or custodial account document" is the portion of a plan or a separate document that contains the trust agreement or custodial account agreement and includes provisions covering such matters as the powers and duties of trustees, investment authority, and the kinds of investments that may be made. All provisions of the trust or custodial account document must be applicable to all adopting employers of that trust, and no options (including blanks to be completed) may be provided in the trust or custodial account document.

SECTION 5. PROVISIONS REQUIRED IN PRE-APPROVED PLANS

.01 Sponsor Amendments – Pre-approved plans must provide a procedure for sponsor amendment, so that changes in the Code, regulations, revenue rulings, other statements published by the IRS, or corrections of prior approved plans may be applied to all employers who have adopted the plan. The provision for sponsor amendment must provide that, for purposes of reliance on the opinion letter, the sponsor will no longer have the authority to amend the plan on behalf of the adopting employer as of the date of the adoption of an employer amendment to the plan to incorporate a type of plan not allowable in the program described in section 6.03 (for example, the addition of enabling language for multiemployer plan features) or as of the date the IRS notifies the sponsor that the plan is being treated as an individually designed plan pursuant to section 8.06(3).

.02 Compensation Requirements in Nonstandardized Plans - Each nonstandardized plan may give the adopting employer the option to select total compensation as the compensation to be used in determining allocations or benefits. For this purpose, total compensation means a definition that includes all compensation within the meaning of § 415(c)(3) and excludes all other compensation or that otherwise satisfies § 414(s) under § 1.414(s)-1(c). See section 7 regarding reliance.

.03 Automatic or Optional Safe Harbor Provisions in Nonstandardized Plans - Each nonstandardized plan, other than a statutory hybrid plan as described in section 4.12, may automatically or by option allow the adopting employer to satisfy one of the design-based safe harbors described in § 1.401(a)(4)-2(b)(2) or in §1.401(a)(4)-3(b)(3), (4), and (5). See section 7 regarding reliance.

.04 Anti-Cutback Provisions – Pre-approved plans must specifically provide for the protection provided under § 411(a)(10) and (d)(6), to the extent required, in the event that the employer amends the plan in any manner, such as by revising the options selected in the adoption agreement or by adopting a new plan. A sponsor may not amend its plan in a manner that could result in the elimination of a benefit to the extent the benefit is required to be protected under § 411(d)(6) with respect to the plan of any adopting employer, unless permitted to do so under §§ 1.401(a)-4 and 1.411(d)-4. In addition, a plan that is subject to the top-heavy requirements and that does not contain vesting rules for all years that are at least as favorable to participants as those provided in § 416(b), must specifically provide that any vesting that occurs while the plan is top-heavy will not be cut back if the plan ceases to be top-heavy. See §§ 411(d)(6)(C) and 1.411(d)-4(d) for certain exceptions applicable to ESOPs.

.05 Adopting Employer Modification to Satisfy §§ 415 and 416 – Pre-approved plans must provide that plan provisions may be amended by plan language completed by the employer if such overriding language is necessary to satisfy § 415 or 416 because of the required aggregation of multiple plans under these sections. Generally, a space should be provided in the plan with instructions for the employer to add such language as necessary to satisfy §§ 415 and 416. In addition, a space must be provided in the plan for the employer to specify the interest rate and mortality tables used for purposes of establishing the present value of accrued benefits in order to compute the top-heavy ratio under § 416. Such a space must be included in both defined contribution plans and defined benefit plans. These provisions must be included in the adoption agreement of an Adoption Agreement Plan.

.06 Aggregation for § 415 compliance - Plan language must be incorporated that aggregates all defined contribution plans and all defined benefit plans to satisfy § 415(c) and (f).

.07 Top-heavy Requirements - Each pre-approved plan must either provide that all of the additional requirements applicable to top-heavy plans (described in § 416) apply at all times or provide that such requirements apply automatically if the plan is top-heavy regardless of how the adoption agreement is completed. In any such latter case, all of the requirements for determining whether the plan is top-heavy must be included in the plan. (See Questions T-35 and T-36 of § 1.416-1.)

.08 Provisions Required in Pre-Approved Plans Regarding Reliance – Pre-approved plans must include, in close proximity to the signature blank, a statement that describes the limitations on employer reliance on an opinion letter. See section 7.

.09 Other Provisions Required in Pre-Approved Plans - Each **plan** must contain a dated employer signature line. The plan must also contain a statement that 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. The employer must sign the plan when it first adopts the plan and must complete and sign a new adoption agreement or signature page if the plan has been restated. In addition, the employer must complete a new signature page or adoption agreement if it modifies any prior elections or makes new elections. The signature requirement may be satisfied by an electronic signature that reliably authenticates and verifies the adoption of the adoption agreement, or restatement, amendment or modification thereof, by the employer. In the case of an Adoption Agreement Plan, the adoption agreement must state that it is to be used with one and only one plan. In addition, the adoption agreement must contain a cautionary statement to the effect that the failure to properly fill out the adoption agreement may result in failure of the plan to qualify under § 401(a), 403(a), or 4975(e)(7), as applicable.

.10 Sponsor Telephone Numbers – The **plan** must include the sponsor's name, address, and telephone number (or a space for the address and telephone number of the sponsor's authorized representative) for inquiries by adopting employers regarding the adoption of the plan, the meaning of plan provisions, or the effect of the opinion letter.

.11 Definition of Employee under § 414(b), (c), (m), (n), and (o) - Each pre-approved plan must include a definition of employee as any employee of the employer maintaining the plan or any other employer aggregated under § 414(b), (c), (m), or (o) and the regulations thereunder. The definition of employee shall also include any individual treated under § 414(n) or under the regulations under § 414(o) as an employee of any employer described in the preceding sentence.

With respect to ESOPs, employees who meet this definition cannot participate in the ESOP unless they are employed by the employer corporation who issues the stock held by the ESOP or by any corporation that is a member of the same controlled group of corporations as the employer corporation (within the meaning of § 1563(a), as modified by § 409(l)(4)(B) and (C) and as determined without regard to §§ 1563(a)(4) and 1563(e)(3)(C)). With respect to ESOPs, for all other purposes, including nondiscrimination testing and coverage, employees who meet the definition of employee in the immediately preceding paragraph are treated as employees.

.12 Definition of Service under § 414(b), (c), (m), (n), and (o) - Each **plan** must specifically credit all service with any employer aggregated under § 414(b), (c), (m), or (o) and the regulations thereunder as service with the employer maintaining the plan. In addition, in the case of an individual treated under § 414(n) (or under regulations under § 414(o)) as the employee of any employer described in the previous sentence, service with such employer must be credited to such individual.

.13 Additional Provisions Required for ESOPs – ESOPs will not receive favorable opinion letters under this revenue procedure unless, in addition to complying with the requirements of subsections 5.01 through 5.12 of this revenue procedure, the pre-approved plan documents include the following:

(1) A statement that the plan is an employee stock ownership plan within the meaning of § 4975(e)(7) and is designed to invest primarily in employer stock;

(2) A provision that defines employer stock in accordance with § 409(l)(1) or (2);

(3) Provisions that meet the diversification requirements of § 401(a)(28)(B), or, if applicable, § 401(a)(35);

(4) Provisions that meet the valuation, independent appraiser, and allocation of earnings requirements set forth in § 401(a)(28)(C), §54.4975-11(d)(5), and Rev. Rul. 80-155, 1980-1 C.B. 84;

(5) Provisions that meet the voting requirements of § 409(e);

(6) Provisions that meet the right to demand and put option requirements of § 409(h), to the extent applicable;

(7) Provisions that meet the distribution requirements of § 409(o);

(8) Provisions that set forth the requirements relating to exempt loans as described in § 4975(d)(3), § 54.4975-7, and § 54.4975-11(c);

(9) Provisions that meet the ESOP annual addition requirements described in § 1.415(c)-1(f), and, if the ESOP is maintained by an employer that is a C corporation, the requirements described in § 415(c)(6);

(10) If an ESOP provides for forfeitures, provisions that meet the forfeiture requirement of § 54.4975-11(d)(4);

(11) If an ESOP holds employer securities consisting of stock in an S corporation, provisions that meet the requirements of § 409(p) and § 1.409(p)-1;

(12) If an ESOP is maintained by employers that are C corporations, provisions that meet the requirements of § 409(n); and

(13) Provisions (in the adoption agreement or in the plan if no adoption agreement is used) that identify the adopting employer as being either a C corporation or an S corporation.

.14 Additional Provisions Required for Cash Balance Plans – Plans containing cash balance features will not receive favorable opinion letters unless, in addition to complying with the requirements of subsections 5.01 through 5.12 of this revenue procedure, the pre-approved plan documents meet the following requirements:

(1) Prior benefit structures protected – All cash balance plans must ensure compliance with the anti-cutback provisions of § 411(d)(6). To receive a favorable opinion letter under this revenue procedure, a cash balance plan must provide that, at all times, prior accrued benefits (and other benefits protected under § 411(d)(6)(B)) are protected. A cash balance plan that was the subject of a conversion amendment must comply with the provisions of § 411(b)(5)(B)(iii) and must comply with § 1.411(b)(5)-1(c). However, a favorable opinion letter will not be issued for a plan that uses an opening hypothetical account balance as described in § 1.411(b)(5)-1(c)(3) to meet the requirements of § 1.411(b)(5)-1(c).

(2) Step-rate structure of principal credits - Cash balance plans that contain any structure of principal credits that increase with age, service, or other measure during a participant's employment must be definitely determinable, operationally nondiscriminatory, and at all times in compliance with the "133 1/3 percent rule" of § 411(b)(1)(B) and the regulations thereunder. Employers may not rely on the opinion letter with respect to the requirements of § 411(b)(1) for increasing principal credit schedules that are created by adopting employers by completing blanks in the plan formula, but may rely on the opinion letter with respect to the requirements of § 411(b)(1) for increasing principal credit schedules specified in the **pre-approved plan document**

SECTION 6. OPINION LETTERS - SCOPE

.01 General Limits on Opinion Letters – Opinion letters will be issued only to sponsors or mass submitters. Opinion letters constitute determinations as to the qualification of the plans as adopted by particular employers only under the circumstances, and to the extent, described in **section 9**. Opinion letters do not constitute rulings or determinations as to the exempt status of related trusts or custodial accounts.

.02 Nonapplicability of this Revenue Procedure to IRAs (including traditional IRAs, Roth IRAs, SEPS, and Simple IRAs) and to Section 403(b) Plans – Opinion letters will not be issued under this revenue procedure for prototype plans intended to meet the requirements for individual retirement arrangements under § 408 (see Rev. Proc. 87-50, 1987-2 C.B. 647; Rev. Proc. 97-29, 1997-1 C.B. 698; Rev. Proc. 98-59, 1998-2 C.B. 727; Rev. Proc. 2010-48, 2010-50 I.R.B. 828 for administrative procedures for seeking opinion letters for individual retirement arrangements under § 408). In addition, opinion letters will not be issued under this revenue procedure for § 403(b) plans (see Rev. Proc. 2013-22, 2013-18 I.R.B. 985 as modified by Rev. Proc. 2014-28,

2014-16 I.R.B. 944 and clarified by Rev. Proc. 2017-18, 2017-5 I.R.B. 743; and Rev. Proc. 2015-22, 2015-11 I.R.B. 754 for administrative procedures for the purpose of seeking opinion and advisory letters for § 403(b) arrangements).

.03 Areas Not Covered by Opinion Letters – Opinion letters will not be issued for:

(1) Multiemployer plans;

(2) Union plans (this does not preclude a plan from covering employees of the employer who are included in a unit covered by a collective bargaining agreement or the adoption of a plan pursuant to such agreement as a single-employer plan that covers only employees of the employer);

(3) Stock bonus plans other than ESOPs;

(4) ESOPs that are a combination of a stock bonus plan and a money purchase plan;

(5) ESOPs that provide for the holding of preferred employer stock, even if such stock is described in § 409(l)(3);

(6) Pooled fund arrangements contemplated by Rev. Rul. 81-100, 1981-1 C.B. 326 (as modified by Rev. Rul. 2004-67, 2004-2 C.B. 28; Rev. Rul. 2011-1, 2011-2 I.R.B. 251; Notice 2012-6, 2012-3 I.R.B. 293; and Rev. Rul. 2014-24, 2014-37 I.R.B. 529);

(7) Statutory hybrid plans with any of the following features:

(a) Any statutory hybrid benefit formula that is not a cash balance formula, such as a formula under which benefits are determined by reference to the current value of an accumulated percentage of the participant's average compensation (a Pension Equity Plan or "PEP");

(b) Provisions that allow for hypothetical interest crediting based on rates of return that are subject to participant choice, or any rate that does not meet the requirements of §1.411(b)(5)-1(d).

(c) Provisions that allow a rate used to determine hypothetical interest to be based on actual return on plan assets or a subset of plan assets (as described in §1.411(b)(5)-1(d)(5)(ii)) or the rate of return on certain RICs (as described in §1.411(b)(5)-1(d)(5)(iv)).

(d) A conversion amendment, except for plans providing that, after the effective date of the conversion amendment, a participant's accrued benefit is equal to

the sum of accruals under the prior formula plus the benefit based on the cash balance formula (“A+B Conversion”);

(e) Provisions that use the 3-percent accrual rule or the fractional accrual rule under § 411(b)(1)(A) or (C) to satisfy the accrued benefit requirements under § 411(b)(1);

(f) Provisions that provide for funding exclusively through insurance contracts as described in § 412(e)(3); and

(g) Provisions that provide for offsets of benefits accrued under another plan (the “offsetting plan”), unless:

(i) The offset is applied on an accumulated basis at the participant’s annuity starting date, rather than offsetting each year’s principal credit by that year’s accruals or contributions under the offsetting plan;

(ii) The cash balance formula is treated as a lump sum-based benefit formula under § 1.411(a)(13)-1(d)(3) only if the offsetting plan is a defined contribution plan and the offset is applied by subtracting the account balance under the defined contribution plan from the hypothetical account balance under the cash balance formula prior to converting the balance to an annuity benefit;

(iii) The offset meets the safe-harbor requirements of § 1.401(a)(4)-8(d) (except that the offset can be computed by subtracting the account balance under the offsetting plan from the hypothetical account balance under the cash balance formula), including the requirement that the offsetting plan cannot be a section 401(k) plan or a section 401(m) plan;

(iv) For the purpose of determining the amount of the offset against any defined benefit formula, the offset reflects the value of any distributions from the offsetting plan made prior to the participant’s annuity starting date under the cash balance plan;

(v) The offset is applied on a uniform basis for all participants;

(vi) The plan provides a minimum accrued benefit to participants (expressed as a lifetime annuity commencing at normal retirement age) of no less than 0.5% of compensation for each year of credited service, which is not reduced by the offset applied to other formulas under the plan;

(vii) Accrued benefits, considered in conjunction with defined contribution accounts subject to any offset, meet nondiscrimination requirements; and

(viii) The amount of the offset, including any procedures and actuarial assumptions for converting a defined contribution account balance (under a specifically-named defined contribution plan) to an annuity amount, is definitely determinable.

(8) Plans described in § 414(k) (relating to a defined benefit plan that provides a benefit derived from employer contributions that is based partly on the balance of the separate account of a participant);

(9) Target benefit plans, other than plans that, by their terms, satisfy each of the safe harbor requirements described in § 1.401(a)(4)-8(b)(3)(i), as well as the additional rules in § 1.401(a)(4)-8(b)(3)(ii) through (vii);

(10) Governmental defined benefit plans that include “deferred retirement option plan” (DROP) features, or similar provisions in which a participant earns additional benefits for continued employment post-normal retirement age in the form of credits to a separate account (including a cash balance account or other arrangement) under the same plan;

(11) Plans under which the § 415 limitations are incorporated by reference;

(12) Plans that incorporate the ADP test under § 401(k)(3) or the ACP test under § 401(m)(2) by reference;

(13) Standardized § 401(k) plans that provide for hardship distributions under circumstances other than those described in the safe harbor standards in the regulations under § 401(k);

(14) Nonstandardized § 401(k) plans that provide for hardship distributions under circumstances not described in the safe harbor standards in the regulations under § 401(k), unless these distributions are subject to nondiscriminatory and objective criteria contained in the plan;

(15) Fully-insured § 412(e)(3) plans, other than non-statutory hybrid plans that by their terms satisfy the safe harbor in § 1.401(a)(4)-3(b)(5);

(16) Plans that fail to contain a provision reflecting the requirements of § 414(u) (see Rev. Proc. 96-49, 1996-2 C.B. 369);

(17) Plans that include purported fail-safe provisions for § 401(a)(4) or the average benefit test under § 410(b);

(18) Plans that include blanks or fill-in provisions for the employer to complete, unless the provisions have parameters that preclude the employer from completing the provisions in a manner that could violate the qualification requirements;

(19) Plans designed to satisfy the provisions of § 105;

(20) Plans that include § 401(h) accounts;

(21) Eligible combined plans within the meaning of § 414(x)(2); or

(22) Variable annuity plans and plans that provide for accruals that are determined in whole or in part based on the value of or rate of return on identified assets, including plan assets.

.04 Opinion Letters Will Not Consider Title I Issues.- The IRS will not review for, and an opinion letter will not consider issues under the jurisdiction of the Department of Labor (DOL), including:

(1) Provisions (whether in the plan or in a separate written document) relating to loan program procedures that are designed to comply with DOL's participant loan regulations under section 408(b)(1) of ERISA.

(2) Provisions that conform a plan to the requirements of section 402(a) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. 93-406, 1974-3 C.B. 1, relating to named fiduciaries.

(3) Provisions that conform a plan to the requirements of section 503 of ERISA, relating to claims procedures.

(4) Provisions that conform the plan to the requirements of DOL Field Assistance Bulletin No. 2008-1 (issued February 1, 2008), which provides guidance on the need for plans to specify the duties of trustees with respect to the responsibility for collection of delinquent contributions.

.05 The IRS may, in its discretion, decline to issue opinion letters for other types of plans or issues not described in this section.

SECTION 7. EMPLOYER RELIANCE ON OPINION LETTER

.01 Standardized Pre-approved Plans - An employer adopting a standardized pre-approved plan may rely on that plan's opinion letter, except as provided in (1) through (3) and **section 7.03** below, if the sponsor of such plan or plans has a currently valid favorable opinion letter, the employer has followed the terms of the plan(s), and the coverage and contributions or benefits under the plan(s) are not more favorable for highly compensated employees (as defined in § 414(q)) than for other employees. Opinion letters will not be issued for standardized plans that include either an ESOP or a Hybrid Plan formula.

(1) An employer may not rely on an opinion letter for a standardized plan with respect to the requirements of §§ 415 and 416, without obtaining a determination letter, if the employer maintains at any time, or has maintained at any time, another plan, including a standardized plan, that was qualified or determined to be qualified covering some of the same participants. An employer that adopts a standardized defined contribution plan will not be considered to have maintained another plan merely because the employer has maintained another defined contribution plan(s), provided such other plan(s) has been terminated prior to the effective date of the standardized plan and no annual additions have been credited to the account of any participant under such other plan(s) as of any date within a limitation year of the standardized plan. For this purpose, a plan that has been properly replaced by the adoption of a standardized plan is not considered another plan. To be considered a replacement plan, and thus, for the employer to be able to rely on the standardized plan with respect to the requirements of §§ 415 and 416 without obtaining a determination letter, the plan that has been replaced and the standardized plan must be of the same type (for example, both defined benefit plans). An employer's addition of language to a standardized pre-approved plan to satisfy the requirements of §§ 415 and 416, given the required aggregation of plans, would require submission on Form 5300 in order to preserve reliance on the opinion letter, pursuant to **section 12.01(5)(a)** of Rev. Proc. 2017-4.

(2) An employer that has adopted a standardized defined benefit plan may rely on an opinion letter with respect to the requirements of § 401(a)(26) only if the plan satisfies the requirements of § 401(a)(26) with respect to its prior benefit structure or is deemed to satisfy § 401(a)(26) pursuant to regulations thereunder.

(3) An employer that adopts a standardized plan may not rely on an opinion letter with respect to: (a) whether the timing of any amendment to the plan (or series of amendments) satisfies the nondiscrimination requirements of § 1.401(a)(4)-5(a), except with respect to plan amendments granting past service that meet the safe harbor described in § 1.401(a)(4)-5(a)(3) and are not part of a pattern of amendments that significantly discriminates in favor of highly compensated employees; or (b) whether the plan satisfies the effective availability requirement of § 1.401(a)(4)-4(c) with respect to any benefit, right, or feature. An employer that adopts a standardized plan as an amendment to a plan other than a standardized plan may not rely on an opinion letter with respect to whether a benefit, right, or feature that is prospectively eliminated satisfies the current availability requirements of § 1.401(a)(4)-4.

.02 Nonstandardized Pre-approved Plans - An employer adopting a nonstandardized pre-approved plan may rely on that plan's opinion letter as described in this section 7 if the employer's plan is identical to an approved plan with a currently valid favorable opinion letter, the employer has not amended the plan other than to choose options provided under the approved plan or to make amendments as described in section 8.03, and the employer has followed the terms of the plan.

(1) Except as otherwise provided in this section 7.02, adopting employers of nonstandardized plans may not rely on a favorable opinion letter with respect to the requirements of:

(a) § 401(a)(4), 401(a)(26), 401(l), 410(b), or 414(s); or

(b) if the employer maintains or has ever maintained another plan covering some of the same participants, § 415 or 416.

For this purpose, whether an employer maintains or has ever maintained another plan will be determined using principles consistent with section 7.01(1).

(2) Adopting employers of nonstandardized plans may rely on the opinion letter with respect to the requirements of §§ 410(b) and 401(a)(26) (other than the § 401(a)(26) requirements that apply to a prior benefit structure) if 100 percent of all nonexcludable employees benefit under the plan.

(3) Nonstandardized plans may give an adopting employer the ability to select an allocation formula for employer nonelective contributions that satisfies one of the design-based safe harbors in § 1.401(a)(4)-2(b)(2) or a benefit formula that satisfies one of the design-based safe harbors under § 1.401(a)(4)-3(b)(3), (4), or (5), and the ability to select a safe harbor compensation definition for such formula that satisfies § 1.414(s)-1(c). If the plan of the adopting employer allocates contributions or provides benefits using one of the designed based safe harbors in § 1.401(a)(4)-2(b)(2) or § 1.401(a)(4)-3(b)(3), (4), or (5), and the plan defines compensation using a definition that satisfies § 1.414(s)-1(c) then the adopting employer may rely on an opinion letter with respect to the nondiscriminatory amounts requirement under § 401(a)

(4). Adopting employers of nonstandardized plans that are § 401(k) and/or § 401(m) plans may rely on an opinion letter with respect to whether the form of the plan satisfies the actual deferral percentage test of § 401(k)(3) or the actual contribution percentage test of § 401(m)(2) if the employer elects to use a safe harbor definition of compensation in the test. Adopting employers of nonstandardized plans described in § 401(k)(11) and/or § 401(m)(12) may rely on an opinion letter with respect to whether the form of the plan satisfies these requirements unless the plan provides for the safe harbor contribution to be made under another plan.

(4) Except as provided in section 5.14(2), adopting employers of plans that contain a cash balance formula with a structure of principal credits that increase with age, service, or other measure during a participant's employment may not rely on a favorable opinion letter with respect to the requirements of § 411(b)(1).

.03 Other Limitations and Conditions on Reliance - The following conditions and limitations apply with respect to **plans**:

(1) An adopting employer can rely on a favorable opinion letter for a plan that amends or restates a plan of the employer only if the plan that is being amended or restated was qualified.

(2) An adopting employer has no reliance if the employer's adoption of the plan precedes the issuance of an opinion letter for the plan.

(3) An adopting employer will not have reliance on the opinion letter if the adoption agreement or other elective provisions in the plan are not completed correctly when adopted by the employer.

(4) An adopting employer may rely on an opinion letter only if the requirements of this section 7 are met, and the employer's plan is identical (as described in section 8.03) to an approved plan with a currently valid favorable opinion letter; that is, the employer has not added any terms to the approved plan and has not modified or deleted any terms of the plan other than choosing options permitted under the plan or amended the document as permitted under section 8.03.

(5) An adopting employer of any pension plan in which the normal retirement age selected by the employer is less than age 62 will not have reliance on the opinion letter that such age is reasonably representative of the typical retirement age for the employer's industry, as required by § 1.401(a)-1(b)(2).

.04 Reliance Equivalent to Determination Letter - If an employer can rely on a favorable opinion letter pursuant to this section, the opinion letter shall be equivalent to a favorable determination letter. For example, the favorable opinion letter shall be treated as a favorable determination letter for purposes of section 21 of Rev. Proc. 2017-4, regarding the effect of a determination letter. As provided in this section, the extent of the employer's reliance may be limited.

SECTION 8. APPROVED PLANS – PLAN AMENDMENTS

.01 Sponsors are required to make reasonable and diligent efforts to ensure that each employer that, to the best of the sponsor's knowledge, continues to maintain the plan as a pre-approved plan, amends its plan when necessary. The date on which each amendment is adopted by the sponsor must be provided with the amendment. Sponsors must make reasonable and diligent efforts to ensure that adopting employers of the sponsor's plan have actually received and are aware of all plan amendments and that such employers complete and sign new adoption agreements, if applicable. Failure to comply with this requirement may result in the loss of eligibility to sponsor plans and the revocation of opinion letters that have been issued to the sponsor.

.02 Interim Amendment Requirement - A plan must be operated in accordance with the written plan document. When there are changes with respect to plan qualification requirements that will affect the provisions of the written plan document, the adoption of interim amendments will generally be required in accordance with the rules set forth in section 15 of Rev. Proc. 2016-37. See section 15.01 of Rev. Proc. 2016-37 regarding the time by which such amendments must be adopted. Failure to so amend could result in the loss of a plan's qualified status. Interim amendments

adopted by a pre-approved sponsor on behalf of adopting employers must be provided to the adopting employers. See section 9.04 for additional application submission requirements for interim amendments.

.03 Effect of Employer Amendments - Reliance As provided in section 7.03, an adopting employer may rely on an opinion letter issued with respect to a pre-approved plan only if its plan is identical to the approved plan. An employer that amends any provision of an approved pre-approved plan, including its adoption agreement, or an employer that chooses to discontinue participation in a plan as amended by its sponsor without substituting another approved pre-approved plan will lose reliance on the opinion letter. Notwithstanding the preceding sentence, the following types of amendments will not cause a plan to fail to be identical to a pre-approved plan and thus will not result in the employer losing reliance on the opinion letter.

(1) Amendments to the plan to add or change a provision (including choosing among options in the plan) and/or to specify or change the effective date of a provision, provided the employer is permitted to make the modification or amendment under the terms of the approved plan as well as under § 401(a) or 403(a), and, except for the effective date, the provision is identical to a provision in the approved plan;

(2) Amendments to the administrative provisions of the trust or custodial account document (such as provisions relating to investments and the duties of trustees), provided the amended provisions are not in conflict with any other provision of the plan and do not cause the plan to fail to qualify under § 401(a). For this purpose, an amendment includes modification of the language of the trust or custodial account document and the addition of overriding language. For example, an employer that adopts a standardized plan may amend the trust or custodial account document, provided such amendment merely involves the specification of the names of the plan, employer, trustee or custodian, plan administrator and other fiduciaries, the trust year, or the name of any pooled trust in which the plan's trust will participate.

(3) Sample or model amendments published by the IRS that specifically provide that their adoption will not cause such plan to fail to be identical to the preapproved plan;

(4) Amendments that adjust the limitations under §§ 415, 402(g), 401(a) (17), and 414(q)(1)(B) to reflect annual cost-of-living increases, other than amendments that add automatic cost-of-living adjustment provisions to the plan.

(5) Plan language completed by the employer if such overriding language is necessary to satisfy §§ 415 or 416 because of the required aggregation of multiple plans under these sections, in accordance with section 5.05.

(6) Interim or discretionary amendments adopted by the employer in accordance with section 15 of Rev. Proc. 2016-37;

(7) Amendments that reflect a change of a sponsor's name. The sponsor must notify the IRS, in writing, of the change in name and certify that it still meets the conditions for sponsorship described in section 4.07. (Also see section 14 regarding changes in employer identification numbers.)

.04 Obtaining Reliance After Employer Amendment – An employer maintaining a nonstandardized plan may obtain reliance on its plan by requesting a determination letter under certain circumstances. See section 20.03 of Rev. Proc. 2016-37 for application procedures and the conditions under which an employer who has made modifications to a pre-approved plan may file for a determination letter to obtain reliance. Section 20.03 provides guidance on (a) which form to use in applying for a determination letter (for example, Form 5307 or Form 5300) and (b) whether the Cumulative List or the Required Amendments List as described in section 17 or 9, respectively, of Rev. Proc. 2016-37 will be used by the IRS in reviewing an employer's plan. See also section 20.04 of Rev. Proc. 2016-37 for examples.

.05 Effect of Employer Amendments on Remedial Amendment Cycle

(1) Except as provided in section 8.06(2) with respect to certain amendments made to a pre-approved plan within one year of its initial adoption by an employer, employer amendments made to a pre-approved plan will not affect the plan's eligibility for a six-year remedial amendment cycle. If the amended plan remains eligible for the 6-year cycle and the adopting employer wishes to and is otherwise eligible to file for a determination letter for the plan, the determination letter application must be filed during the applicable two year window for employer adoption described in section 12.03. Except for plans that are treated as individually designed, as described in section 8.06, the plan submitted will be reviewed based on the Cumulative List applicable to the underlying pre-approved plan. See, also, section 8.07 of this revenue procedure and section 20 of Rev. Proc. 2016-37.

(2) A plan will not lose eligibility for the six-year remedial amendment cycle if a closing agreement under the Audit Closing Agreement Program or a compliance statement under the Voluntary Correction Program of the Employee Plans Compliance Resolution System (EPCRS) has been issued with respect to the employer's plan with regard to the amendment. See [section 6.05\(2\)\(b\)](#) of Rev. Proc. 2016-51 regarding the ability of the employer to rely on the opinion letter.

.06 Pre-approved Plans Treated as Individually Designed – A pre-approved plan will be treated as individually designed under the following circumstances:

(1) An employer makes any amendments to a standardized plan, as defined in section 4.08.

(2) An employer amends a pre-approved plan, including its adoption agreement, if applicable, to incorporate, within one year of the date the employer initially adopted the pre-approved plan, a type of plan not allowed in the pre-approved program, as described in section 20.02 of Rev. Proc. 2016-37.

(3) The IRS in its discretion determines that a plan is an individually designed plan due to the nature and extent of the amendments, as described in section 20.03(5) of Rev. Proc. 2016-37.

(4) An employer amends a pre-approved plan because of a waiver of the minimum funding requirement under section 412(d)..

The adoption of procedures outside of the pre-approved plan document that are intended to comply with the DOL participant loan regulations under section 408(b)(1) of ERISA will not cause a pre-approved plan to be considered an individually designed plan.

.07 Procedures for Pre-approved Plans Treated as Individually Designed - If a plan is treated as individually designed, the employer may not file for a determination letter using a Form 5307. However, if otherwise eligible to file pursuant to section 4 of Rev. Proc. 2016-37, the employer may file for a determination letter on Form 5300. In this case, the IRS will review the plan using the Required Amendments List (as described in section 12 of Rev. Proc. 2016-37) that was issued during the second calendar year preceding the submission of the determination letter application. See section 8.05(1) with respect to a plan's continued eligibility for the six-year remedial amendment cycle and the time period for filing a determination letter (if applicable).

SECTION 9. OPINION LETTER APPLICATIONS - INSTRUCTIONS TO SPONSORS AND OTHER RULES FOR APPLICATIONS AND LETTERS

.01 The IRS Issues Opinion Letters -The IRS will, upon the request of a sponsor issue an opinion letter as to the acceptability of the form of the sponsor's plan under §§ 401(a), 403(a), and 4975(e)(7).

.02 Submission of Opinion Letter Applications - Rev. Proc. 2016-37 contains the IRS's procedures for issuing letters for pre-approved plans under a regular, six-year remedial amendment cycle. Rev. Proc. 2016-37 provides that sponsors of pre-approved plans must submit requests for opinion letters during the applicable six-year cycle's on-cycle submission period. Sponsors may apply for opinion letters at other times, but these filings will be considered "off-cycle." See section 11 of this revenue procedure regarding IRS review of off-cycle filings.

.03 Procedure for Requesting Opinion Letters - A request for an opinion letter relating to a plan must be submitted on the current version of Form 4461, *Application for Approval of Master or Prototype or Volume Submitter Defined Contribution Plans*, Form 4461-A, *Application for Approval of Master or Prototype or Volume Submitter Defined Benefit Plan*, or Form 4461-B, *Application for Approval of Master or Prototype or Volume Submitter Plans (Mass Submitter Adopting Sponsor or Practitioner)*, as appropriate. Additionally, the request must be accompanied by the required user fee submitted with Form 8717-A, *User Fee for Employee Plan Opinion or Advisory Letter Request*, a signed certification that all necessary amendments required by the IRS to retain the qualified status of the sponsor's plan have been made and communicated to all adopting employers, and Attachment I to Form 4461, or Attachment I-A to Form 4461-A, as applicable. These forms and attachments may be downloaded from the Internet at the following address: <http://www.irs.gov/Retirement-Plans/Preapproved-Plan-Submission-Procedures>. All information on the first page of the application must be typed. The request must be sent to the address in section 19 of this revenue procedure. The application must include a copy of the **plan document** and any adoption agreement, if applicable. Copies of trusts or other funding mediums should not be submitted, except for a **plan** that uses a single funding medium as described in section 4.06(2). In such case, the entire plan, including the single funding medium (trust or custodial agreement), will be reviewed only for provisions relating to § 401(a) of the Internal Revenue Code. The IRS will not review for, and the opinion letter will not cover, any provisions included in other trust documents. Copies of such trusts should not be submitted with the opinion letter application.

.04 Additional Submission Requirements for Interim Amendments - In addition to the application set forth in section 9.03 of this revenue procedure, the sponsor must submit a copy of the plan's certification regarding interim amendments, a cover letter summarizing the changes to the plan that are affected by such amendment(s), and a copy of the plan that is being restated. The IRS retains the right to request and secure from the sponsor in appropriate circumstances copies of all interim amendments reflected on the applicable Cumulative List that the sponsor has adopted on behalf of its adopting employers.

.05 Expediting Review of Substantially Identical Plans - The IRS reserves the right to review applications in any order that will expedite the processing of opinion letter applications, subject to section 11 regarding off-cycle filing. To expedite the review of substantially identical plans that are not mass submitter plans, the IRS encourages plan drafters and sponsors to include with each opinion letter application, if appropriate, a cover letter setting forth the following information:

(1) The name and file folder number (if available) of the **plan** that, for review purposes, the plan drafter designates as the "lead plan" (including the name and EIN of the sponsor);

(2) A list of all plans written by the plan drafter that are substantially identical to the lead plan (including the information described in paragraph (1) above);

(3) A description of each location in the plan for which the application is being submitted that is not word-for-word identical to the language of the lead plan, including an explanation of the purpose and effect of each such difference; and

(4) A certification, made under penalty of perjury by the plan drafter, that the information described in paragraph (3) above is true and complete. If the sponsor or plan drafter is aware that a lead plan or any substantially identical plan has been assigned for review to a specialist, the cover letter should also indicate the name of the specialist, if possible. To the extent feasible, lead plans and substantially identical plans should be submitted together. The IRS will regard the information and certification described in paragraph (3) above and this paragraph (4) as a material representation for purposes of issuing an opinion letter.

.06 Use of Same Basic Plan Document by Multiple Plans/Separate Applications Required for Different Categories of Adoption Agreement Plans

(1) In general, provided that the provisions of a basic plan document are identical for all plans using that document, separate defined contribution adoption agreements may be associated with the same defined contribution basic plan document and separate defined benefit adoption agreements may be associated with the same defined benefit basic plan document. Defined benefit plans and defined contribution plans may not use the same basic plan document.

(2) A profit-sharing plan (with or without a § 401(k) arrangement) and a money purchase pension plan that is not a target benefit plan may use the same adoption agreement; however, separate adoption agreements are required for ESOPs and target benefit plans. Thus, for example, a profit-sharing plan, a money purchase pension plan other than a target benefit plan, a target benefit plan, and an ESOP may all use the same defined contribution basic plan document. The adoption agreement submitted for a defined benefit plan may contain any combination of plan provisions providing integrated formulas (that is, formulas that provide for permitted disparity) and non-integrated traditional formulas, and a cash balance formula.

(3) Notwithstanding the above, separate basic plan documents must be used for governmental plans (that is, plans that are described in § 414(d)) and nongovernmental plans (although separate governmental defined contribution plans may have the same basic plan document and separate governmental defined benefit plans may have the same basic plan document.) Similarly, separate basic plan documents must be used for non-electing church plans (church plans described in § 414(e) that have not made the election provided by § 410(d)) and other plans. Also, separate adoption agreements are required for governmental plans and non-electing church plans. Thus, for example, a sponsor that wishes to obtain opinion letters for an ESOP, as well as for a money purchase pension plan and a profit-sharing plan both of

which can be adopted by non-electing church plans as well as other plans, must submit two basic plan documents (one for the non-electing church plan and one for other defined contribution plans) and three adoption agreements (one for the ESOP, one for the plan with profit-sharing and money purchase plan features that can be adopted by non-electing church plans, and one for the plan with profit-sharing and money purchase plan features that can be adopted by other defined contribution plans).

(4) A separate application form must be submitted with respect to each adoption agreement for which an opinion letter is requested. A basic plan document and all associated adoption agreements should be submitted simultaneously. Only one copy of the basic plan document should be provided. If additional adoption agreements are submitted with respect to a basic plan document, the sponsor must submit a copy of the basic plan document with each submission and include a cover letter identifying the original submission. The number of such basic plan documents must remain the same as in the prior submission.

.07 Separate Applications Required for Single Document Plans

(1) Subject to (2) of this section 9.07, a separate plan and application is required for each of the following types of Single Document Plans; a target benefit plan, an ESOP, and a defined benefit plan. Different types of plans may not be combined except that a profit-sharing plan (with or without a § 401(k) arrangement) and a money purchase pension plan that is not a target benefit plan may be combined in a single plan and application.

(2) A separate plan and application is required for each of the following types of plan specified in (1) of this section 9.07 if the plan is a governmental plan or a non-electing church plan. Thus, for example, separate plans and application forms must be submitted for governmental Single Document Plan and nongovernmental Single Document Plan, even if they are both defined benefit plans.

.08 Sample Language - A Listing of Required Modifications (LRM) containing sample plan language is available from the IRS. Although the sample language is designed for use in plans that use an adoption agreement format, sponsors should refer to the sample language as a guide in drafting plans that do not use an adoption agreement format. To expedite the review of their plans, sponsors are encouraged to use LRM language if appropriate and to identify the location of such language in their pre-approved plan. LRMs may be downloaded from the Internet at <http://www.irs.gov/Retirement-Plans/Listing-of-Required-Modifications-LRMs>.

.09 Material Furnished to Adopting Employers - A sponsor must furnish each adopting employer with a copy of the approved plan, copies of any subsequent amendments, and the most recently issued opinion letter from the IRS.

.10 Effect of Failure to Disclose Material Fact or to Accurately Provide Information - The IRS may determine, based on the application, the extent of review of

the pre-approved plan. A failure to disclose a material fact or misrepresentation of a material fact in the application may adversely affect the reliance that would otherwise be obtained through issuance by the IRS of a favorable opinion letter. Similarly, failure to accurately provide any of the information called for on any form required by this revenue procedure may result in no reliance on the favorable opinion letter.

.11 Additional Information May Be Requested - The IRS may, in its discretion, require any additional information that it deems necessary, including a demonstration of how the variables (options or alternatives) in the pre-approved plan interrelate to satisfy the qualification requirements of the Code. If a letter requesting changes to the pre-approved plan is sent to the sponsor or an authorized representative, the changes must be received no later than 30 days from the date of the letter, and the response must include either a copy of the plan with the changes highlighted or, if the changes are not extensive, replacement pages. If the changes are not received within 30 days, the application may be considered withdrawn. An extension of the 30-day time limit will only be granted for good cause.

.12 Inadequate Submissions - The IRS will return, without further action, plans that are not in substantial compliance with the qualification requirements of § 401(a), 403(a), or 4975(e)(7), or plans that are so deficient that they cannot be reviewed in a reasonable amount of time. A plan may be considered not to be in substantial compliance if, for example, it omits or merely incorporates qualification requirements by reference to the applicable Code section. The IRS will not consider these plans until after they are revised, and they will be treated as new requests as of the date they are resubmitted. No additional user fee will be charged if an inadequate submission is amended to be in substantial compliance and is resubmitted to the IRS within 30 days following the date the sponsor is notified of such inadequacy.

.13 Nonidentification of Questionable Issues May Cause Delay - If the pre-approved plan submitted as part of an opinion letter request contains a provision that gives rise to an issue for which contrary published authorities exist, failure to disclose and address significant contrary authorities, as required in section 6.02(7) of Rev. Proc. 2017-4, may result in requests for additional information, which will delay action on the request.

SECTION 10. MASS SUBMITTERS

.01 Opinion Letters Issued to Mass Submitters

(1) The IRS will, upon request by a mass submitter, issue an opinion letter as to the acceptability of the form of the mass submitter's plan under §§ 401(a), 403(a), and 4975(e)(7). With respect to its plan, the mass submitter must submit the current version of Form 4461 or Form 4461-A and include a completed Attachment I for a defined contribution plan or Attachment I-A for a defined benefit plan. All information on the first page of the application must be typed. The request must be sent to the

address in section 19. In the case of an initial submission of a pre-approved plan under this revenue procedure, the mass submitter's application must also be accompanied by applications for opinion letters filed on behalf of the requisite number of identical adopters (as determined under section 4.03), unless the mass submitter has already satisfied this requirement in connection with a previous application under this revenue procedure involving another pre-approved plan. Any plan submitted by a mass submitter must include language designating the mass submitter as agent for the sponsor for purposes of making plan amendments. The request must be accompanied by the required user fee submitted with Form 8717-A, and a signed certification that all necessary amendments required by the IRS to retain the qualified status of the mass submitter's plan have been made and communicated to all adopting sponsors. These forms and attachments may be downloaded from the Internet at the following address: <http://www.irs.gov/Retirement-Plans/Preapproved-Plan-Submission-Procedures>. –

(2) After satisfying the requirement as to the number of adopting sponsors, the mass submitter may submit additional applications on behalf of other sponsors that wish to adopt a word-for-word identical plan or a plan that contains minor modifications from the mass submitter plan, as provided in section 10.03(2). In addition, the mass submitter may then submit requests for opinion letters under this section 10.01 for its other plans, regardless of the number of identical adopters of such other plans.

(3) The IRS intends to issue opinion letters to mass submitters and sponsors at approximately the same time within the applicable six-year cycle. In the interim, the IRS will send a notification to the applicable mass submitter, sponsor, if the IRS determines that the plan appears to be in full compliance with the applicable qualification requirements based on the submissions and the completed review. Notwithstanding the preceding sentence, this notification only provides assurance that the IRS believes the plan appears to meet the applicable qualification requirements under review as of the date of the notification. This notification is for the convenience of the applicable sponsor, or mass submitter, but does not constitute an official opinion letter. Until issuance of the official opinion letter, no reliance exists. The IRS reserves the right to require changes after the notification is sent, in its sole discretion.

.02 Reduced Procedural Requirements for Sponsors That Use Mass Submitter Plans - A sponsor of a plan of a mass submitter must obtain an opinion letter. For qualification, or if the sponsor's plan includes modifications, the mass submitter must submit on behalf of the sponsor a completed Form 4461-B which contains a declaration by the mass submitter under penalty of perjury that the sponsor has adopted a plan that is word-for-word identical to a plan of the mass submitter, or a plan that is a minor modification of the mass submitter's plan. The Form 4461-B must be typed. If the sponsor is sponsoring a word-for-word identical plan (including a flexible plan), a copy of the plan need not be submitted. If the mass submitter submits a plan with minor modifications, it must comply with the requirements of section 10.03(2). The request must be accompanied by the required user fee submitted with Form 8717-A and a signed certification that all necessary amendments required by the IRS to retain the

qualified status of the sponsor's plan have been made and communicated to all adopting employers. Upon receipt of the request for an opinion letter, the IRS will, as soon as administratively feasible, issue an opinion letter with respect to the sponsor's plan (provided that an opinion letter has been issued with respect to the mass submitter's plan).

.03 Definitions - (1) Flexible Plan

(a) In general - A "flexible plan" is a plan submitted by a mass submitter that contains optional provisions (as defined in (b) below). Sponsors that adopt the flexible plan may include or delete any optional provision that is designated as such in the mass submitter's plan, provided the inclusion or deletion of specific optional provisions conforms to the mass submitter's written representation to the IRS concerning the choices available to sponsors and the coordination of optional provisions. A mass submitter must bracket and identify the optional provisions when submitting such plan, and must also provide the IRS a written representation describing the choices available to sponsors and the coordination of optional provisions. Thus, such a representation must indicate whether a sponsor's plan may contain only one of a certain group of optional provisions, may contain only a specific combination of provisions, or may exclude the provisions entirely. Similarly, if the inclusion (or deletion) of a specific optional provision in a sponsor's plan will automatically result in the inclusion (or deletion) of any other optional provision, this must be set forth in the mass submitter's representation. A flexible plan may contain only optional provisions that meet the requirements of (b) below, and must be drafted so that the qualification of any sponsor's plan will not be affected by the inclusion or deletion of optional provisions. For example, if a sponsor's defined contribution plan contains an optional provision that allows a portion of a participant's account to be invested in life insurance, then under the terms of the sponsor's plan, the application of the proceeds must meet the requirements of §§ 401(a)(11) and 417. A flexible plan adopted by a sponsor that differs from the mass submitter plan only because the sponsor has deleted certain optional provisions from its plan in conformance with the mass submitter's representation described in this paragraph will be treated as a word-for-word identical plan to the mass submitter plan. The IRS encourages mass submitters to limit the number of optional provisions described in (b)(i) and (ii) below, that they provide under a flexible plan to six investment provisions and six administrative provisions.

(b) Optional Provisions - A flexible plan may contain optional provisions that comply with the requirements set forth in this paragraph. The optional provisions may be arranged as separate optional articles or as separate optional provisions within a single article. A flexible plan may also contain optional provisions in the adoption agreement. For example, if a mass submitter flexible plan plan document contains an optional provision that would allow for loans under a sponsor's plan, the adoption agreement could also include an optional provision that would enable an adopting employer to elect whether loans will be available under the plan it adopts. If the sponsor does not wish to enable adopting employers to make loans available under

their plans, both the plan document optional provision and the adoption agreement optional provision would be deleted from the sponsor's plan. Sponsors may include or delete optional provisions of mass submitter plans, but once the sponsor has decided to include an optional provision, it must offer that provision to all adopting employers. Any optional provision that the IRS determines does not meet the requirements of this section will have to be changed to a non-optional provision or deleted from the mass submitter's plan. The following is an exclusive list of the allowable optional provisions that a flexible plan may contain:

(i) Investment Provisions - A mass submitter may offer a variety of investment provisions in its plan for sponsors to include or delete from their version of the plan. However, the plan as adopted by the sponsor must provide some method for investing trust assets. Investment provisions are those provisions that describe the plan's methods of investing the trust or custodial funds, including provisions such as the availability of loans and investments in insurance contracts or other funding media, and self-directed investments. (Also see sections 4.09 and 8.03(2) regarding flexibility permitted in trust or custodial account documents.)

(ii) Administrative Provisions - A mass submitter may offer a variety of administrative provisions in its plan for sponsors to include or delete from their version of the plan. However, the plan as adopted by the sponsor must describe how the plan will be administered. Administrative provisions are those provisions that describe the administration of the plan, including the powers, duties, and responsibilities of a plan's custodian, trustee, administrator, employer, and other fiduciaries. Administrative provisions include the allocation of responsibilities among fiduciaries, the resignation or replacement of fiduciaries, claims procedures under the plan, and record-keeping requirements. However, procedural provisions that are required for plan qualification are not administrative provisions under this section. For example, provisions that provide for the notice to participants required by § 417 and record-keeping required by regulations under §§ 401(k) and (m) are not administrative provisions for purposes of this revenue procedure, and may not be optional provisions.

(iii) Cash or Deferred Arrangement - A defined contribution mass submitter (other than an ESOP) may include a self-contained cash or deferred arrangement (as defined in § 401(k)) for sponsors to include or delete.

(c) Addition of Optional Provisions by the Mass Submitter - A mass submitter may add additional optional provisions to its plan after a favorable opinion letter is issued. Generally, the addition of such optional provisions will not be treated as a plan amendment for purposes of this revenue procedure and Rev. Proc 2017-4. Accordingly, sponsors and adopting employers will not be required to obtain new opinion and determination letters in order to preserve reliance. However, the addition of a cash or deferred arrangement or any change to the language of the adoption agreement subsequent to the issuance of an opinion letter will be treated as a plan amendment to the mass submitter's plan, and the requirements of subsection .04 of

this section 10 will then apply. The mass submitter must submit such additional optional provisions to the IRS, along with a completed Form 4461 or 4461-A, as applicable, and a check or money order in the amount specified in section 6.04(6) of Appendix A of Rev. Proc. 2017-4. No opinion letter will be issued to the mass submitter or any adopting sponsor with respect to the addition of these optional provisions. Instead, a letter will be issued to the mass submitter notifying it that the addition of such optional provisions will not affect the status of favorable opinion and determination letters issued to sponsors and adopting employers.

(d) Notification to Employer - If a mass submitter adds optional provisions, as described in the preceding paragraph, all adopting sponsors who wish to include the additional optional provisions must furnish each adopting employer with a copy of the plan that includes such additional provisions. If a sponsor decides to include or delete an optional provision after it initially adopted the plan, it must also furnish each adopting employer with a copy of the new plan. However, if such inclusion or deletion results in a change to the language of the adoption agreement, such change will be treated as a plan amendment and the sponsor and its adopting employers may not continue to rely on previously issued opinion letters.

(2) Minor Modifications

(a) A "minor modification" is a minor change to an otherwise word-for-word identical plan of the mass submitter that does not require an in-depth technical review. For example, a change from five-year 100% vesting to three-year 100% vesting is a minor modification. On the other hand, a change in the method of accrual of benefits in a defined benefit plan would not be considered a minor modification. A minor modification must be submitted by the mass submitter on behalf of the sponsor that will adopt the modified plan. Subject to sections 10.05 and 11 and the provisions of this section, submissions with respect to minor modifications will be reviewed on an expedited basis and opinion letters will be issued to the sponsor as soon as possible.

(b) The IRS reserves the right to determine if such changes are actually minor. If it is determined that the changes are extensive or require an in-depth technical review, the plan submitted under the next paragraph will not be entitled to expedited review and will otherwise be treated as a non-mass submitter plan. In the event the plan is treated as a non-mass submitter plan, the IRS will notify the mass submitter in writing of its determination. Within 30 days following the date of such communication, either the mass submitter may revise the plan so that the modifications are minor and resubmit the revised plan, or the sponsor may submit Form 4461 or 4461-A, whichever is applicable, and an additional user fee in an amount equal to the difference between a non-mass submitter plan application user fee and a minor modifier application user fee. If, after such 30 day period neither action has been taken, the application may be considered withdrawn.

(c) The mass submitter must initially submit the first page of the applicable Form 4461-B, as a placeholder. Such form must be typed. When the IRS sends a notification to the applicable sponsor with respect to the lead plan indicating that the IRS has determined that the plan appears to be in full compliance with the applicable qualification requirements, as described above, the mass submitter must submit a copy of the mass submitter's plan with the modifications highlighted, as well as a statement indicating the location and effect of each change. The mass submitter must certify under penalty of perjury that the plan of the sponsor, except for the delineated changes, is word-for-word identical to the plan for which the mass submitter received a favorable opinion letter. If a mass submitter fails to identify each modification, such failure will be considered a material misrepresentation, and an employer may not rely on any opinion letter that may be issued with respect to the plan. If a mass submitter repeatedly fails to identify such modifications, the IRS may deny permission to that mass submitter to submit additional modifications.

.04 Amendments of Mass Submitter Plans - If a mass submitter amends the plan, the mass submitter must provide copies of the amendment to sponsors who have adopted the plan. Any sponsor that does not wish to make the amendments made by a mass submitter may switch to another mass submitter or may submit an application for an opinion letter on its own behalf during the next applicable on-cycle submission period for pre-approved plans. A mass submitter should not submit an application for an opinion letter with respect to plan amendments. The IRS will not issue an opinion letter with respect to amendments made between the applicable on-cycle submission periods, and the mass submitter should submit a restated plan, including the amendments, during the next six-year cycle.

.05 Expeditious Processing Accorded Mass Submitter Plans - Subject to section 11, all mass submitter plans, including the adoption of approved mass submitter plans by sponsors, will be accorded more expeditious processing than plans submitted by non-mass submitters, to the extent administratively feasible.

SECTION 11. OFF-CYCLE FILINGS

Off-Cycle Filing - An application for an opinion letter for a plan that is word-for-word identical to an approved mass submitter that has a current opinion letter will not be treated as off-cycle merely because it is submitted after the end of the applicable on-cycle submission period for the six-year cycle. Any other application for an opinion letter that is submitted after the applicable on-cycle submission period for the six-year remedial amendment cycle is treated as an off-cycle filing. If such an off-cycle application is submitted before the beginning of the two-year window for employer adoption announced by the IRS for an applicable six-year cycle (as described in section 12.03 of this revenue procedure), the IRS generally will not review the application until it has reviewed and processed all on-cycle plans. However, the IRS may, in its discretion, determine whether the processing of off-cycle filings may be prioritized and

accelerated under certain circumstances. Off-cycle applications that are submitted during or after the two-year window will not be accepted.

SECTION 12. REVIEW OF OPINION LETTER APPLICATIONS; ISSUANCE OF OPINION LETTERS

.01 The IRS will review the plans that have been submitted during the applicable on-cycle submission period (as well as off-cycle plans that the IRS will review in accordance with section 11) for a six-year cycle taking into account the applicable Cumulative List that identifies changes in the qualification requirements of the Code as well as items of published guidance relating to the plan qualification requirements, such as regulations and revenue rulings. However, in order to be qualified, a plan must comply in operation with all relevant qualification requirements, not just those on the applicable Cumulative List.

.02 Timing of Issuance of Opinion Letters - The IRS intends to issue opinion letters to mass submitters and sponsors at approximately the same time within the applicable six-year cycle. In the interim, the IRS will send a notification to the applicable mass submitter or sponsor, if the IRS determines that the plan appears to be in full compliance with the applicable qualification requirements, based on the submissions and the completed review. Notwithstanding the preceding sentence, this notification only provides assurance that the IRS believes the plan appears to meet the applicable qualification requirements under review as of the date of the notification. This notification is for the convenience of the applicable sponsor or mass submitter, but does not constitute an official opinion letter. Until issuance of the official opinion letter, no reliance exists. In addition, the IRS reserves the right to require changes after the notification is sent, in its sole discretion.

.03 As provided in Rev. Proc. 2016-37, when the review of the pre-approved documents is close to being completed, the IRS will announce the date by which adopting employers must adopt newly approved pre-approved plans. Depending upon the length of the review process employers will have approximately a two year period to adopt the updated plan (“two-year window”).

SECTION 13. WITHDRAWAL OF REQUESTS

.01 Notification and Effect - A sponsor may withdraw its request for an opinion letter at any time prior to the issuance of such letter by notifying the IRS in writing of such withdrawal, at the address provided in section 19.01. The sponsor must also notify each employer who adopted the plan that the request has been withdrawn. The plan of such an employer will become an individually designed plan unless the employer adopts another pre-approved plan. See Rev. Proc. 2016-37.

.02 IRS Retains Information - Even though a request is withdrawn, the IRS will retain all correspondence and documents associated with that request and will not

return them to the sponsor. If a request is withdrawn, the case may be referred to IRS Employee Plans Examinations, which has audit jurisdiction over the returns of any employers that have adopted the plan.

SECTION 14. NONTRANSFERABILITY OF OPINION LETTER

An opinion letter issued to a sponsor is not transferable to any other entity. In the case of a change in entity, a letter issued to a sponsor may not be relied upon by a different entity. If a different entity assumes sponsorship of the **plan**, it must submit an application for a new letter. Such an application may be filed at the time of the assumption of sponsorship and the filing is not limited to the applicable on-cycle submission period. The application will be subject to a reduced user fee as provided in section 6.03(8) or 6.04(4) of Rev. Proc. 2017-4. The new letter will recognize the change in sponsorship and will not modify the scope of or change the reliance on the original letter. The IRS may in appropriate circumstances request documentation of the assumption of sponsorship prior to issuing a letter to the new entity. Examples of a change in entity include, but are not limited to, a change in the employer identification number, the acquisition of a sponsor by another entity or the sale or transfer of the stock or assets of the sponsor to another entity.

SECTION 15. NOTIFICATION OF EMPLOYER REGARDING LOSS OF QUALIFIED STATUS

If a sponsor reasonably concludes that an employer's plan may no longer be a qualified plan and the sponsor does not or cannot submit a request to correct the qualification failure under EPCRS, it is incumbent on the sponsor to notify the employer that the plan may no longer be qualified, advise the employer that adverse tax consequences may result from loss of the plan's qualified status, and inform the employer about the availability of EPCRS. See Rev. Proc. 2016-51.

SECTION 16. ABANDONED PLANS

.01 Notification to the IRS - A sponsor must notify the IRS in writing if an approved plan is no longer in use by any adopting employer and the sponsor no longer intends to offer the plan for adoption. Such written notification must be sent to the address in section 19 and must refer to the file folder number appearing on the latest opinion letter issued.

.02 Notification to Employers - A sponsor that intends to abandon an approved plan that is in use by any adopting employer must inform each adopting employer that the form of the plan has been terminated, and that the employer's plan will become an individually designed plan (unless the employer adopts another pre-approved plan). After so informing all adopting employers, the sponsor should notify the IRS in accordance with subsection 16.01 above.

SECTION 17. REVOCATION

Revocation of Opinion Letter by the IRS - An opinion letter found to be in error or not in accord with the current views of the IRS may be revoked. Also, see sections 4.07 and 18.01. Except in rare or unusual circumstances, such revocation will not be applied retroactively. **See section 23 of Rev. Proc. 2017-4.** For this purpose, opinion letters will be given the same effect as rulings. Revocation may be effected by a notice to the sponsor to which the letter was originally issued, or by publication in the Internal Revenue Bulletin. The sponsor should then notify each adopting employer of the revocation as soon as possible. The content of the notification to each adopting employer must explain how the revocation affects any reliance an adopting employer has on the applicable opinion letter and on any determination letter issued.

SECTION 18. RECORD KEEPING REQUIREMENTS

.01 Filing of Opinion Letter Application Constitutes Agreement to Comply with Record Keeping Requirements - By submitting an application for an opinion letter under this revenue procedure (or by having an application filed on its behalf by a mass submitter), a plan sponsor agrees, as provided in section 4.07, to comply with the requirements imposed on the sponsor by this revenue procedure, including the record keeping requirements of this section. Failure to comply with the requirements imposed on the sponsor by this revenue procedure may result in the loss of eligibility to sponsor plans and the revocation of opinion letters that have been issued to the sponsor.

.02 Maintenance and Availability of Records of Adopting Employers - A plan sponsor must maintain, or have maintained on its behalf, for each of its **plans**, a record of the names, business addresses, and taxpayer identification numbers of all employers that have adopted the plan. However, a sponsor need not maintain records with respect to employers that, to the best of the sponsor's knowledge, ceased to maintain the plan as a plan more than three years earlier. Upon written request, a sponsor must provide to the IRS a list of such adopting employers that indicates, to the best of the sponsor's knowledge, which of such employers continue to maintain the plan as a pre-approved plan and which of such employers have ceased to maintain the plan as a plan within the preceding three years.

SECTION 19. WHERE TO FILE

.01 Opinion Letters - Applications for opinion letters, including applications filed by mass submitters, should be sent to:

Internal Revenue Service
Attn: Pre-Approved Plans Coordinator
Room 5106, Group 7521
P.O. Box 2508
Cincinnati, OH 45201-2508

.02 A request shipped by Express Mail or a delivery service should be sent to the attention of the Pre-Approved Plans Coordinator, to:

Internal Revenue Service
550 Main Street
Room 5106, Group 7521
Cincinnati, OH 45202

SECTION 20. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2015-36 is modified and superseded.

SECTION 21. EFFECTIVE DATE

This revenue procedure is effective XX, X, 2017.

SECTION 22. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1674.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in sections 5.09, 8.01, 8.02, 10, and 18. This information is required to enable the Commissioner, Tax Exempt and Government Entities Division of the Internal Revenue Service to make determinations in connection with plan qualification. This information will be used to determine whether a plan is entitled to favorable tax treatment. The likely respondents are banks, insurance companies, other financial institutions, law, actuarial, and consulting firms, employee benefit practitioners and employers.

The estimated total annual reporting and/or recordkeeping burden is 988,290 hours.

The estimated annual burden per respondent/recordkeeper varies from 1/2 to 2,000 hours, depending on individual circumstances, with an estimated average of 3.18 hours. The estimated number of respondents and/or recordkeepers is 310,315.

The estimated frequency of responses is occasional.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Kathleen Herrmann of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure, contact Kathleen Herrmann at (202) 317-6799 (not a toll-free number).