

Department of the Treasury  
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#### **PART I — OVERVIEW**

##### **SECTION 1. PURPOSE**

.1 This revenue procedure sets forth the procedures of the Internal Revenue Service (IRS) for issuing Opinion Letters regarding the satisfaction in form of § 403(b) Pre-approved Plans with respect to the requirements of § 403(b) of the Internal Revenue Code (Code) for the second Remedial Amendment Cycle (Cycle 2). This revenue procedure also sets forth the rules for determining when Remedial Amendment Periods expire for § 403(b) Pre-approved Plans.

.2 This revenue procedure modifies the procedures for the § 403(b) Pre-approved Plan program to be more similar to the procedures applicable under the § 401(a) pre-approved plan program in several ways, including:

- simplifying the § 403(b) Pre-approved Plan program by eliminating the distinction between prototype and volume submitter plans;
- providing that the IRS will issue a Cumulative List of Changes in the § 403(b) Requirements (Cumulative List) identifying the § 403(b) Requirements that the IRS will take into account in reviewing § 403(b) Pre-approved Plans submitted for Cycle 2;
- making § 403(b) Pre-approved Plan program provisions regarding reliance on an Opinion Letter more similar to the provisions applicable under the § 401(a) pre-approved plan program, including provisions that permit the submission during the Employer Adoption Window of an application for a determination letter using Form 5307, *Application for Determination for Adopters of Modified Volume Submitter Plans*, by (1) an Adopting Employer of a Nonstandardized Plan that makes amendments to the plan that are not extensive, or (2) an Adopting Employer of any § 403(b) Pre-approved Plan (whether a Standardized Plan or a Nonstandardized Plan) that adds language to satisfy the requirements of § 415 due to the required aggregation of plans;<sup>2</sup> and
- providing details regarding the system of cyclical Remedial Amendment Periods that follows the Initial Remedial Amendment Period.

.3 This revenue procedure provides that the On-Cycle Submission Period for Cycle 2 applications will begin on

May 2, 2022, and end on May 1, 2023.

.4 This revenue procedure extends the plan amendment deadline for making interim amendments with respect to a change in § 403(b) Requirements, for most plans, until the end of the second calendar year following the calendar year in which the change in § 403(b) Requirements is effective with respect to the plan.

.5 This revenue procedure sets forth the date on which the limited extension of the Initial Remedial Amendment Period described in section 4.11<sup>3</sup> expires and extends the deadline for adopting an initial amendment (if applicable) that is required under certain circumstances in order for the limited extension of the Initial Remedial Amendment Period to apply.

.6 This revenue procedure provides rules for permitting the participation of employees of certain church-related organizations, as described in § 414(e)(3)(B) , in a § 403(b) Pre-approved Plan that is intended to be a Retirement Income Account, including special rules for amending a Cycle 1 § 403(b) Pre-approved Plan that is intended to be a Retirement Income Account to permit the participation of employees of certain church-related organizations, as described in § 414(e)(3)(B) retroactive to the beginning of Cycle 2.

## SECTION 2. BACKGROUND

.01 Final regulations under § 403(b) were published on July 26, 2007 (T.D. 9340, 72 FR 41128 ). Section 1.403(b)-3(b)(3)(i) generally provides that a contract does not satisfy the requirements of § 1.403(b)-3(a) (regarding exclusion of contributions from gross income) unless it is maintained pursuant to a plan. For this purpose, a plan is a written defined contribution plan that, in both form and operation, satisfies the requirements of the final regulations under § 403(b) .<sup>4</sup>

.02 Rev. Proc. 2013-22 , *201318 I.R.B. 985* , as modified by Rev. Proc. 2014-28 , *2014-16 I.R.B. 944* , and Rev. Proc. 2015-22 , *201511 I.R.B. 754* , and clarified by Rev. Proc. 2017-18 , *20175 I.R.B. 743* ,<sup>5</sup> sets forth the procedures of the IRS for issuing opinion and advisory letters for § 403(b) Pre-approved Plans for Cycle 1, which began on the later of January 1, 2010, or the effective date of the plan, and that, ended on June 30, 2020. The IRS began accepting Cycle 1 applications for opinion and advisory letters regarding the acceptability under § 403(b) of the form of prototype plans and volume submitter plans, respectively, on June 28, 2013. Section 16.01 of Rev. Proc. 201322 provides that the IRS expects future guidance to require the restatement of every § 403(b) Pre-approved Plan by the plan's Provider every six years. It further provides that upon issuance of a new opinion or advisory letter for the restated plan, Adopting Employers generally are required to adopt the restated plan. Section 4.01(3) of Rev. Proc. 2013-22 noted that the IRS was not establishing a determination letter program for § 403(b) plans at that time, so that an employer adopting a § 403(b) Pre-approved Plan would not be able to apply for an individual determination letter for the plan.

.03 Rev. Proc. 2013-22 provides that an employer that adopts a volume submitter plan and amends the terms of the approved specimen plan loses reliance on the advisory letter only to the extent of the amendment (as long as, after the amendment, the plan remains substantially similar to the terms of the approved specimen plan), but that the employer has no option to obtain a determination letter on the amended portions of the plan.

.04 The IRS issued Cycle 1 opinion and advisory letters for § 403(b) Pre-approved Plans beginning in March 2017. As provided in those letters, the IRS considered changes set forth in the final regulations under § 403(b) and the applicable requirements of the 2012 Cumulative List of Changes in Plan Qualification Requirements set forth in Notice 2012-76 , *2012-52 I.R.B. 775* .

.05 Rev. Proc. 2013-22 provides that a § 403(b) Pre-approved Plan that is intended to be a Retirement Income Account may be maintained only by a Church or convention or association of churches, including an

organization described in § 414(e)(3)(A) , to provide benefits under § 403(b) for its employees or their beneficiaries as described in § 1.403(b)-9 . Accordingly, under Rev. Proc. 2013-22 , employees of a Qualified Church-Controlled Organization (QCCO) or a non-QCCO may not participate in a § 403(b) Pre-approved Plan that is intended to be a Retirement Income Account.

.06 Section 21.02 of Rev. Proc. 2013-22 establishes an Initial Remedial Amendment Period, which permits an Eligible Employer to retroactively correct defects in the form of its written § 403(b) plan in order to satisfy the written plan requirement in the § 403(b) regulations by timely adopting a § 403(b) Pre-approved Plan or by otherwise timely amending its plan. Pursuant to section 21.02 of Rev. Proc. 2013-22 , a defect in the form of a plan is a provision, or the absence of a required provision, that causes the plan to fail to satisfy the § 403(b) Requirements. Under this Initial Remedial Amendment Period, an Eligible Employer must amend its plan to the extent necessary to correct any Form Defects retroactive to the first day of the plan's Initial Remedial Amendment Period. Section 21.02 of Rev. Proc. 2013-22 provides that the first day of the plan's Initial Remedial Amendment Period is the later of January 1, 2010, or the effective date of the plan.

.07 Section 21.03 of Rev. Proc. 2013-22 provides, in general, that the form of a plan will be treated as satisfying the requirements of the § 403(b) regulations as of the first day of the plan's Initial Remedial Amendment Period if (1) on or before that day, the Eligible Employer adopts a written plan that is intended to satisfy the § 403(b) Requirements, and (2) on or before the last day of the Initial Remedial Amendment Period, the employer amends the plan to the extent necessary to correct any Form Defects retroactive to the first day of the Initial Remedial Amendment Period.

.08 Section 21.05 of Rev. Proc. 2013-22 provides that the IRS will announce, in subsequent guidance, the expiration date of the Initial Remedial Amendment Period for all Eligible Employers.

.09 Rev. Proc. 2014-28 modifies Rev. Proc. 2013-22 to reduce the number of employers required to adopt a § 403(b) Pre-approved Plan, to permit an application for an advisory letter for a volume submitter specimen plan to be filed by a Mass Submitter on behalf of a minor modifier of the Mass Submitter's plan, and to extend the deadline for submitting a § 403(b) Pre-approved Plan to the IRS for an opinion or advisory letter.

.10 Rev. Proc. 2015-22 modifies Rev. Proc. 2013-22 to change the address to which applications for an opinion or advisory letter should be submitted and to insert a user fee that was previously omitted.

.11 Rev. Proc. 2017-18 provides that the last day of the Initial Remedial Amendment Period is March 31, 2020. Rev. Proc. 2017-18 further provides that a plan that does not satisfy the § 403(b) Requirements in form on any day during the Initial Remedial Amendment Period will be considered to have satisfied those requirements if, on or before March 31, 2020, all provisions of the plan that are necessary to satisfy § 403(b) have been adopted and made effective in form and operation from the beginning of the Initial Remedial Amendment Period.<sup>6</sup>

.12 Rev. Proc. 2019-39 , *2019-42 I.R.B. 945* , as modified by Notice 2020-35 , *202025 I.R.B. 948* , and Rev. Proc. 2020-40 , *202038 I.R.B. 575* ,<sup>7</sup> establishes a system of § 403(b) Pre-approved Plan cycles during which a Provider may submit a § 403(b) Pre-approved Plan for review and approval by the IRS. Further, it sets forth a system of recurring Remedial Amendment Periods for correcting Form Defects in § 403(b) Pre-approved Plans first occurring after the Initial Remedial Amendment Period (that is, after June 30, 2020), and provides a limited extension of the Initial Remedial Amendment Period for certain Form Defects.

.13 Section 5 of Rev. Proc. 2019-39 establishes a system of recurring Remedial Amendment Periods for § 403(b) individually designed plan Form Defects first occurring after the Initial Remedial Amendment Period expires (that is, after June 30, 2020).

(1) *Beginning of Remedial Amendment Period* — Under this system, unless otherwise specified in guidance published in the Internal Revenue Bulletin, a Remedial Amendment Period for a Form Defect in a § 403(b) individually designed plan first occurring after the Initial Remedial Amendment Period, begins:

- (a) in the case of a provision of, or absence of a provision from, a new plan, the date the plan is put into effect;
- (b) in the case of an amendment to an existing plan (other than a Form Defect that is related to a change in § 403(b) Requirements, or that is integral to such a change), the date the plan amendment is adopted or put into effect, whichever is earlier;
- (c) in the case of a provision that fails to satisfy the § 403(b) Requirements by reason of a change in those requirements, the date on which the change becomes effective with respect to the plan; or
- (d) in the case of a provision that is integral to a § 403(b) Requirement that has been changed, the date the plan is first operated in accordance with the provision, as amended.

(2) *Expiration of Remedial Amendment Period* — Unless otherwise specified in guidance published in the Internal Revenue Bulletin, the expiration date for a Remedial Amendment Period for a Form Defect first occurring after the Initial Remedial Amendment Period is described in this section 2.13(2).

(a) *New plan* — In the case of a new plan, on the later of (i) the last day of the second calendar year following the calendar year in which the plan is put into effect, or (ii) in the case of a Governmental Plan, 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after the end of the plan's initial plan year.

(b) *Amendment to existing plan* — In the case of an amendment to an existing plan not relating to, or integral to, a change in § 403(b) Requirements, on the later of (i) the last day of the second calendar year following the calendar year in which the amendment is adopted or effective, whichever is later, or (ii) in the case of a Governmental Plan, 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins following the calendar year in which the amendment is adopted or effective, whichever is later.

(c) *Change in § 403(b) Requirements* — In the case of a provision that is related to, or integral to, a change in § 403(b) Requirements, on the later of (i) the last day of the second calendar year that begins after the issuance of the Required Amendments List (described in section 8 of Rev. Proc. 2019-39 ) in which the change in § 403(b) Requirements appears, or (ii) in the case of a Governmental Plan, 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date of issuance of the Required Amendments List in which the change in § 403(b) Requirements appears.

.14 Sections 10 and 11 of Rev. Proc. 2019-39 establish a system of cyclical § 403(b) Pre-approved Plan Remedial Amendment Periods following the expiration of the Initial Remedial Amendment Period (that is, after June 30, 2020). Section 10.02 and 10.03 of Rev. Proc. 201939 provide that the period covered by the Initial Remedial Amendment Period is referred to as Cycle 1 and that Cycle 2 begins after the Initial Remedial Amendment Period expires.

.15 Section 11.02 of Rev. Proc. 2019-39 provides that the beginning date of the Remedial Amendment Period with respect to a Form Defect first occurring in a § 403(b) Pre-approved Plan after the Initial Remedial Amendment Period is the same date that would be applicable if that Form Defect had occurred in an individually designed plan (see section 2.13(1) of this revenue procedure for a description of the date a Remedial Amendment Period begins).

.16 Section 11.03 of Rev. Proc. 2019-39 provides that, except as otherwise provided by statute, or in

regulations or other guidance published in the Internal Revenue Bulletin, and provided that an interim amendment (if applicable) is made timely and in good faith with the intent of complying with the § 403(b) Requirements, the Remedial Amendment Period with respect to a § 403(b) Pre-approved Plan Form Defect first occurring after the Initial Remedial Amendment Period will end no earlier than the end of Cycle 2 and that the IRS intends to issue guidance providing additional rules for determining the end of the Remedial Amendment Period.

.17 Section 11.04 of Rev. Proc. 2019-39 provides that an Eligible Employer adopting a § 403(b) Pre-approved Plan generally must adopt an interim amendment with respect to a change in § 403(b) Requirements.

.18 Section 12 of Rev. Proc. 2019-39 sets forth plan amendment deadlines for interim amendments made to a § 403(b) Pre-approved Plan. In relevant part, section 12 of Rev. Proc. 2019-39 provides that a Provider (or Eligible Employer) is considered to have adopted an interim amendment timely if the amendment is adopted by the later of (1) the end of the calendar year following the calendar year in which the change in § 403(b) Requirements is effective with respect to the plan, or (2) in the case of a Governmental Plan, the later of (a) the end of the calendar year following the calendar year in which the change in § 403(b) Requirements is effective with respect to the plan, or (b) 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date the plan amendment becomes effective.

.19 Section 13 of Rev. Proc. 2019-39 provides a limited extension of the Initial Remedial Amendment Period with respect to certain § 403(b) Pre-approved Plan Form Defects first occurring during Cycle 1, so that the Initial Remedial Amendment Period will end no earlier than the end of Cycle 2. Section 13 of Rev. Proc. 2019-39 also provides that, prior to the end of Cycle 2, the IRS will issue guidance providing rules for determining when the limited extension of the Initial Remedial Amendment Period expires with respect to a § 403(b) Pre-approved Plan Form Defect first occurring during Cycle 1. See section 4.11 of this revenue procedure for more details regarding the limited extension of the Initial Remedial Amendment Period.

.20 Notice 2020-35 , in relevant part, modifies Rev. Proc. 2017-18 and Rev. Proc. 2019-39 to change the expiration date of the Initial Remedial Amendment Period, and all dates that are based on the expiration of the Initial Remedial Amendment Period, from March 31, 2020 to June 30, 2020.

.21 Rev. Proc. 2020-40 modifies Rev. Proc. 2019-39 to expand the situations in which the plan amendment deadline for discretionary amendments made to a § 403(b) Pre-approved Plan may be extended.

.22 Section 111 of Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94 , 133 Stat. 2534 (2019), known as the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), provides that a Retirement Income Account may provide benefits for an employee described in § 414(e)(3)(B) (which includes employees of a tax-exempt organization that is controlled by or associated with a church or convention or association of churches, such as employees of a QCCO or a Non-QCCO).

.23 Rev. Proc. 2016-37 , 2016-29 I.R.B. 136 , as modified by Rev. Proc. 2017-41 , 2017-29 I.R.B. 92 , and Rev. Proc. 2020-40 , sets forth rules for a regular six-year remedial amendment cycle for § 401(a) pre-approved plans and an extension of the remedial amendment period and adoption deadline for plan amendments for § 401(a) pre-approved plans.

.24 Rev. Proc. 2017-41 , as modified by Rev. Proc. 2018-21 , 2018-14 I.R.B. 467 , Rev. Proc. 2018-42 , 2018-36 I.R.B. 424 , Rev. Proc. 2020-10 , 2020-2 I.R.B. 295 , and Notice 2020-35 , sets forth the procedures of the IRS for issuing opinion letters regarding the qualification in form of § 401(a) pre-approved plans.

.25 Rev. Proc. 2021-4 , 2021-1 I.R.B. 157 (as updated annually), sets forth the general procedures of the IRS

regarding the issuance of Employee Plans determination letters, including determination letters for § 401(a) pre-approved plans.

### **SECTION 3. SIGNIFICANT PROVISIONS**

.1 This revenue procedure significantly modifies the procedures set forth in Rev. Proc. 2013-22 for issuing an Opinion Letter regarding the satisfaction of the form of a § 403(b) Pre-approved Plan with respect to the § 403(b) Requirements. These modifications generally make the § 403(b) Pre-approved Plan program more similar to the § 401(a) pre-approved plan program.

.2 The prototype and volume submitter programs are combined and replaced by a single Opinion Letter program that provides for two types of plans: Standardized Plans and Nonstandardized Plans. See section 4.27.

.3 A § 403(b) Pre-approved Plan may utilize either of two formats: a single plan document or a basic plan document with an adoption agreement. See section 4.27.

.4 An Adopting Employer of a Nonstandardized Plan that makes amendments to the plan that are not extensive will lose reliance on the Nonstandardized Plan's Opinion Letter, but may obtain reliance that the form of the plan, as amended, satisfies the § 403(b) Requirements by requesting a determination letter using Form 5307 (as updated), under procedures similar to the procedures applicable to § 401(a) pre-approved plans. See section 8.04. In addition, an Adopting Employer of any § 403(b) Pre-approved Plan (whether a Standardized Plan or a Nonstandardized Plan) that adds language to satisfy the requirements of § 415 due to the required aggregation of plans may obtain reliance with regard to § 415 by applying for a determination letter using Form 5307 (as updated), under procedures similar to the procedures applicable to § 401(a) pre-approved plans. See section 8.04.

.5 The On-Cycle Submission Period for Cycle 2 will begin on May 2, 2022, and end on May 1, 2023. See section 10.02.

.6 Prior to the On-Cycle Submission Period for Cycle 2, the IRS will issue a Cumulative List that identifies changes in the § 403(b) Requirements that will be taken into account with respect to a plan document submitted to the IRS for Cycle 2 and that were not taken into account by the IRS in its review during Cycle 1. See section 13.02.

.7 Applications for a minor modifier adopter of a Mass Submitter's § 403(b) Pre-approved Plan with respect to a Cycle will no longer be accepted after that Cycle's Employer Adoption Window begins. See section 12.02.

.8 All § 403(b) Pre-approved Plans are required to provide a definition of Employee. See section 5.13.

.9 Any Nonstandardized Plan may provide for either safe harbor or non-safe harbor hardship distributions. See section 6.03.

.10 An employee described in § 414(e)(3)(B) is permitted to participate in a § 403(b) Pre-approved Plan that is intended to be a Retirement Income Account. See section 4.26. Additionally, a Cycle 1 § 403(b) Pre-approved Plan that is intended to be a Retirement Income Account may be amended to permit the participation of employees of certain church-related organizations, as described in § 414(e)(3)(B), retroactive to the beginning of Cycle 2. See section 25.

.11 The expiration date of the Remedial Amendment Period for Form Defects first occurring after June 30, 2020, in a § 403(b) Pre-approved Plan is provided. See section 21.

.12 The amendment deadline for an interim amendment to a § 403(b) Pre-approved Plan that is not a Governmental Plan is the end of the second calendar year following the calendar year in which the change in §



403(b) Requirements is effective. Similarly, a later deadline is provided for a § 403(b) Pre-approved Plan that is a Governmental Plan. See section 22.

.13 The expiration date of the limited extension of the Initial Remedial Amendment Period for certain Form Defects is provided. See section 23.01. In addition, the deadline for the initial amendment related to that extension for certain Form Defects is delayed until the later of June 30, 2020, or the end of the second calendar year following the calendar year in which the change in § 403(b) Requirements is effective with respect to a plan. See section 23.02.

.14 The Department of the Treasury (Treasury Department) and the IRS expect to continue to update this Opinion Letter program revenue procedure, in whole or in part, from time to time, including providing further improvements based on comments received. Accordingly, the Treasury Department and the IRS continue to invite further comments on how to improve the Opinion Letter program. For information on how to submit comments, see section 28.

## SECTION 4. DEFINITIONS

.1 *Adopting Employer* — An "Adopting Employer" is an Eligible Employer that adopts a § 403(b) Pre-approved Plan offered by a Provider, including a plan that is word-for-word identical to, or a Minor Modification of, a plan of a Mass Submitter.

.2 *Adoption Agreement Plan* — See section 4.27(2).

.3 *Church* — A "Church" is a church within the meaning of § 3121(w)(3)(A) .

.4 *Cycle* — A "Cycle" is a Remedial Amendment Cycle, as defined in section 4.24.

.5 *Eligible Employer* — An "Eligible Employer" is an employer described in § 403(b)(1)(A) .

.6 *Employer Adoption Window* — See section 4.24.

.7 *Existing § 403(b) Pre-approved Plan* — See section 4.27(3)(c).

.8 *Flexible Plan* — See section 4.14.

.9 *Form Defect* — A "Form Defect" is:

- (1) a provision that causes a plan to fail to satisfy the § 403(b) Requirements;
- (2) the absence of a provision that causes a plan to fail to satisfy the § 403(b) Requirements;
- (3) a provision of a plan that is integral to a § 403(b) Requirement that has been changed (either by statute, or in regulations or other guidance published in the Internal Revenue Bulletin); or
- (4) the absence from a plan of a provision required by a change to the § 403(b) Requirements (either by statute, or in regulations or other guidance published in the Internal Revenue Bulletin) or integral to the change.

.10 *Governmental Plan* — A "Governmental Plan" is a governmental plan within the meaning of § 414(d) .

.11 *Initial Remedial Amendment Period*

(1) A plan's "Initial Remedial Amendment Period" is the Remedial Amendment Period provided under Rev. Proc. 2013-22 that began on the later of January 1, 2010, or the effective date of the plan, and that, pursuant to Rev. Proc. 2017-18 , as modified by Notice 2020-35 , expired on June 30, 2020.

(2) Section 13 of Rev. Proc. 2019-39 provides a "limited extension of the Initial Remedial Amendment Period," so that the Initial Remedial Amendment Period will end no earlier than the end of Cycle 2. See section 23.01 of this revenue procedure for more details on the expiration of the limited extension of the Initial Remedial Amendment Period. The limited extension of the Initial Remedial Amendment Period applies to a Form Defect

that: (a) either (i) results in the failure of the plan to satisfy the § 403(b) Requirements by reason of a change in those requirements, or (ii) is integral to the § 403(b) Requirement that has been changed, and (b) first occurs on or after January 1, 2018.

(3) Section 13.03 of Rev. Proc. 2019-39 provides that an "initial amendment" that is intended in good faith to correct a Form Defect must be timely adopted by the Provider (or the Adopting Employer, if applicable) for the limited extension of the Initial Remedial Amendment Period to apply. To be considered timely, section 13.03 of Rev. Proc. 2019-39 provides that the initial amendment must be adopted by the later of (a) the expiration of the Initial Remedial Amendment Period (that is, June 30, 2020), or (b) the end of the calendar year following the calendar year in which the change in § 403(b) Requirements is effective with respect to the plan. However, section 23.02 of this revenue procedure extends the deadline for the initial amendment.

.12 *Interim § 403(b) Pre-approved Plan* — See section 4.27(3)(a).

.13 *Investment Arrangement* — An "Investment Arrangement" is a funding arrangement under a § 403(b) plan. An Investment Arrangement may be an annuity contract under § 1.403(b)-2(b)(2) , a custodial account under § 403(b)(7) , or a Retirement Income Account.

.14 *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 15 unaffiliated Providers, each of which is offering, on a word-for-word identical basis, the same plan. A Flexible Plan, as defined in section 11.03(1), that is offered by a Provider is considered a word-for-word identical plan. For purposes of determining whether 15 unaffiliated Providers offer, on a word-for-word basis, the same § 403(b) Pre-approved Plan, a Mass Submitter that is also a Provider is treated as an unaffiliated Provider. For purposes of this definition, affiliation is determined under § 414(b) and (c) . Any law firm, accounting firm, consulting firm, or similar organization, will be considered to be affiliated with its partners, members, associates, or similar affiliated persons. A Mass Submitter is treated as a Mass Submitter with respect to all of its plans, provided the 15 unaffiliated Provider requirement is met with respect to at least one plan. See section 11 for rules relating to Mass Submitter plans.

.15 *Minor Modification* — See section 11.03(2).

.16 *Newly Approved § 403(b) Pre-approved Plan* — See section 4.27(3)(b).

.17 *Non-qualified Church-Controlled Organization or Non-QCCO* — A "Non-qualified Church-Controlled Organization" or "Non-QCCO" is a church-controlled tax-exempt organization described in § 501(c)(3) that is not a QCCO.

.18 *Nonstandardized Plan* — A "Nonstandardized Plan" is a § 403(b) Pre-approved Plan that is not a Standardized Plan.

.19 *On-Cycle Submission Period* — See section 4.24.

.20 *Opinion Letter* — An "Opinion Letter" is a written statement issued by the IRS to a Provider or Mass Submitter that the form of a § 403(b) Pre-approved Plan satisfies the § 403(b) Requirements. For purposes of this revenue procedure, an opinion letter for a prototype plan or an advisory letter for a volume submitter plan issued pursuant to Rev. Proc. 2013-22 is considered a Cycle 1 Opinion Letter. An Opinion Letter issued under this revenue procedure is referred to as a Cycle 2 Opinion Letter.

.21 *Provider*

(1) A "Provider" is any person (including, if applicable, a Mass Submitter) that: (a) has an established place of business in the United States where it is accessible during every business day, and (b) represents to the IRS in its application for an Opinion Letter that it reasonably expects at least 15 Eligible Employers to adopt one of the

§ 403(b) Pre-approved Plans of the Provider. Notwithstanding the preceding sentence, a person that is otherwise eligible to be a Provider generally may apply for an Opinion Letter for a plan that is intended to be a Retirement Income Account without satisfying the 15-Eligible-Employer requirement with respect to that plan. However, if that person also applies for an Opinion Letter with respect to a § 403(b) Pre-approved Plan that is not a Retirement Income Account, the person would need to meet the 15-Eligible-Employer requirement for the plan that is not a Retirement Income Account. A Provider may apply for Opinion Letters for any number of § 403(b) Pre-approved Plans.

(2) The IRS reserves the right at any time to request from a Provider a list of the Eligible Employers that have adopted or are expected to adopt the Provider's plans, including the employers' business addresses and employer identification numbers.

(3) Notwithstanding the preceding provisions of this section 4.21, any person that has an established place of business in the United States where it is accessible during every business day may be a Provider that offers a plan that is word-for-word identical to a plan of a Mass Submitter (as an identical adopter) or a plan that includes Minor Modifications to a plan of a Mass Submitter (as a minor modifier adopter) regardless of the number of Eligible Employers that are expected to adopt the plan. See section 11 for rules relating to Mass Submitter plans, including procedures for identical adopters and minor modifier adopters of Mass Submitter plans.

(4) By submitting an application for an Opinion Letter for a § 403(b) Pre-approved 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 Provider, and that it agrees to comply with any requirements imposed on Providers by this revenue procedure. Failure to comply with these requirements may result in the loss of eligibility to offer § 403(b) Pre-approved Plans and the revocation of Opinion Letters that have been issued to the Provider.

*.22 Qualified Church-Controlled Organization or QCCO* — A "Qualified Church-Controlled Organization" or "QCCO" is a church-controlled tax-exempt organization described in § 501(c)(3) that is a qualified church-controlled organization within the meaning of § 3121(w)(3)(B) .

*.23 Related Employers* — For a plan that is not a Governmental Plan, "Related Employers" means all employers that are aggregated with the Adopting Employer under § 414(b) and (c) (each as modified by § 415(h) ), (m) , and (o) and the regulations thereunder. For a Governmental Plan, "Related Employers" means all employers that are aggregated with the Adopting Employer in a manner consistent with Notice 89-23, 1989-1 C.B. 654.

*.24 Remedial Amendment Cycle* — A "Remedial Amendment Cycle" or "Cycle" means one of a series of recurring Remedial Amendment Periods applicable to § 403(b) Pre-approved Plans, during which a Provider submits a proposed § 403(b) Pre-approved Plan for review and approval by the IRS, and during which the plan, once approved, is adopted by Eligible Employers. Providers and Mass Submitters must submit applications for an Opinion Letter during the one-year submission period (referred to as the On-Cycle Submission Period) that relates to an applicable Cycle. When the review of § 403(b) Pre-approved Plan documents for a specific Cycle is close to being completed, the IRS will announce the date by which Adopting Employers must adopt Newly Approved § 403(b) Pre-approved Plans. Depending upon the length of the IRS review process, Eligible Employers will have approximately a two-year period to adopt the updated plan (Employer Adoption Window). A Cycle ends at the end of the last day of the Employer Adoption Window for that Cycle. The next Cycle begins on the following day. The On-Cycle Submission Period for a Cycle may begin after the start of that Cycle.

*.25 Remedial Amendment Period* — The "Remedial Amendment Period" is the period during which a § 403(b)

plan may be amended to comply retroactively with the § 403(b) Requirements. As provided in section 11.01 of Rev. Proc. 2019-39 , as part of the correction of a Form Defect within the Remedial Amendment Period for the Form Defect, an Adopting Employer must conform the operation of the § 403(b) Pre-approved Plan to match the correction of the Form Defect retroactive to the beginning of the Remedial Amendment Period for the Form Defect. See section 2.13(1) of this revenue procedure for a description of when the Remedial Amendment Period for a Form Defect in a § 403(b) Pre-approved Plan begins. See section 21 of this revenue procedure for a description of when the Remedial Amendment Period for a Form Defect in a § 403(b) Pre-approved Plan expires.

*.26 Retirement Income Account* — A "Retirement Income Account" is a defined contribution program established or maintained by a Church, including an organization described in § 414(e)(3)(A) , to provide benefits under § 403(b) for an employee described in § 403(b)(1) (including an employee described in § 414(e)(3)(B) ) or his or her beneficiaries, as described in § 403(b)(9) .

*.27 § 403(b) Pre-approved Plan*

(1) A "§ 403(b) Pre-approved Plan" is a § 403(b) plan (including a plan covering self-employed individuals) that is made available by a Provider for adoption by Eligible Employers. The two types of § 403(b) Pre-approved Plans are Standardized Plans and Nonstandardized Plans. A § 403(b) Pre-approved Plan includes an Interim § 403(b) Pre-approved Plan, a Newly Approved § 403(b) Pre-approved Plan, and an Existing § 403(b) Pre-approved Plan, as described in this section 4.27.

(2) A § 403(b) Pre-approved Plan may be structured as an "Adoption Agreement Plan" or as a "Single Document Plan." An Adoption Agreement Plan consists of a basic plan document and an adoption agreement. The basic plan document includes all of the nonelective provisions applicable to all Adopting Employers, and the adoption agreement includes the options that may be selected by each 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 11.03(1) regarding Flexible Plans). A Single Document Plan consists of a single plan document offered by a Provider without an adoption agreement. A Single Document Plan may include alternate paragraphs and options (including blanks to be completed by the Adopting Employer in accordance with specified parameters) that may be selected by an Adopting Employer.

(3) *Categories of § 403(b) Pre-approved Plans.* The following categories of § 403(b) Pre-approved Plans apply with respect to a Cycle.

(a) *Interim § 403(b) Pre-approved Plan* — An "Interim § 403(b) Pre-approved Plan," which is a plan (other than a Newly Approved § 403(b) Pre-approved Plan) that was not in existence in the immediately preceding Cycle and that has been or will be submitted for an Opinion Letter for the Cycle.

(b) *Newly Approved § 403(b) Pre-approved Plan* — A "Newly Approved § 403(b) Pre-approved Plan," which is a plan for which an Opinion Letter has been issued for the Cycle.

(c) *Existing § 403(b) Pre-approved Plan* — An "Existing § 403(b) Pre-approved Plan," which is a plan (other than a Newly Approved § 403(b) Pre-approved Plan) that has received an Opinion Letter for the immediately preceding Cycle.

*.28 § 403(b) Requirements* — The "§ 403(b) Requirements" are the requirements of § 403(b) , including requirements provided in the Code, regulations, and other guidance published in the Internal Revenue Bulletin.

*.29 Single Document Plan* — See section 4.27(2).

*.30 Standardized Plan* — A "Standardized Plan" is a § 403(b) Pre-approved Plan that meets the requirements set forth in section 5.18.

## **PART II — PROCEDURES FOR APPLICATIONS FOR § 403(b) PRE-APPROVED PLANS**

### **SECTION 5. PROVISIONS REQUIRED IN § 403(b) PRE-APPROVED PLANS**

- .1 Provisions required in all § 403(b) Pre-approved Plans* — Each § 403(b) Pre-approved Plan must comply with the requirements set forth in sections 5.03 through 5.17.
- .2 Additional provisions* — Section 5.18 sets forth additional provisions required for all Standardized Plans. If a § 403(b) Pre-approved Plan is intended to be a Retirement Income Account, the plan also must include the provisions set forth in section 5.19.
- .3 Inclusion of Investment Arrangements in the § 403(b) Pre-approved Plan* — A § 403(b) Pre-approved Plan includes the Investment Arrangements under the plan in addition to the single plan document or the basic plan document and adoption agreement. Every § 403(b) Pre-approved Plan must therefore incorporate by reference the terms of the Investment Arrangements under the plan. While the IRS's review of an application for an Opinion Letter is limited to the terms of the single plan document or the basic plan document and adoption agreement, as applicable, the terms of Investment Arrangements and other documents that are incorporated by reference in the plan must satisfy applicable law and may not have any provisions that are inconsistent with § 403(b) . For example, if the forms of annuity benefit available under a plan are described in Investment Arrangements under the plan, the terms of the Investment Arrangements must satisfy, if applicable to the plan, the joint and survivor annuity requirements of ERISA § 205 and any applicable related rules, such as rules relating to transfers of benefits that are subject to the joint and survivor annuity requirement, and may not have any provisions that are inconsistent with § 403(b) .
- .4 Provision regarding conflicting provisions in Investment Arrangement or other documents* — Each § 403(b) Pre-approved Plan must provide that, in the event of any conflict between the terms of the single plan document or the basic plan document and adoption agreement, as applicable, and the terms of Investment Arrangements under the plan (or of any other documents incorporated by reference into the plan), the terms of the single plan document or the basic plan document and adoption agreement, as applicable, shall govern. See section 8.03(4) for the effect on reliance in the event of a conflict. An Eligible Employer that adopts a § 403(b) Pre-approved Plan should take this requirement into account in considering Investment Arrangements to be offered under the plan as well as other documents that may be incorporated by reference. Since the terms of Investment Arrangements under a § 403(b) Pre-approved Plan must be incorporated by reference into the plan and those arrangements may not have any provisions that are inconsistent with § 403(b) , plan terms that are required in a single plan document or the basic plan document and adoption agreement, as applicable, under this section 5 should not create a conflict with the terms of the Investment Arrangements under a properly drafted § 403(b) Pre-approved Plan. If there nevertheless is a conflict, the terms of the single plan document or the basic plan document and adoption agreement, as applicable, must control. The IRS anticipates providing updated sample plan language (Listing of Required Modifications or LRMs) before the On-Cycle Submission Period with respect to a Cycle begins.
- .5 Plan must satisfy § 403(b) Requirements independent of Investment Arrangements* — The IRS's review of a § 403(b) Pre-approved Plan will consider only the terms of the single plan document or the basic plan document and adoption agreement, as applicable. Accordingly, the provisions described in sections 5.03 through 5.17 (and sections 5.18 and 5.19, if applicable) must be included in the single plan document or the basic plan document or adoption agreement, as appropriate, of every § 403(b) Pre-approved Plan, regardless of the terms of any Investment Arrangements under the plan or any other documents that may be incorporated

by reference. This does not preclude the adoption of a § 403(b) Pre-approved Plan (including a Standardized Plan) if different Investment Arrangements under a plan have different features or prevent the inclusion of additional provisions in the terms of the Investment Arrangements under the plan or other documents incorporated by reference. Nor does it prevent a § 403(b) Pre-approved Plan from using Investment Arrangements that are more restrictive than required by § 403(b) or the single plan document or the basic plan document and adoption agreement. However, the terms of the single plan document or the basic plan document and adoption agreement, as applicable, must satisfy the requirements of applicable law and sections 5.03 through 5.17 (and sections 5.18 and 5.19, if applicable) independent of any Investment Arrangements under the plan or any other documents incorporated by reference. For example, an Adopting Employer's Adoption Agreement Plan may offer both Investment Arrangements that permit loans and Investment Arrangements that do not permit loans. In this case, (1) the basic plan document must include provisions reflecting the § 403(b) Requirements, including § 1.403(b)-6 , and § 1.72(p)-1 , and (2) the basic plan document and adoption agreement, as completed by the Adopting Employer, must provide that, to the extent permitted by the terms governing the applicable Investment Arrangement, participant loans are available. Similarly, for example, if an Adopting Employer's Single Document Plan offers both Investment Arrangements that permit loans and Investment Arrangements that do not permit loans, then the single plan document must include provisions reflecting the § 403(b) Requirements, including § 1.403(b)-6 , and § 1.72(p)-1 , and must provide that, to the extent permitted by the terms governing the applicable Investment Arrangement, participant loans are available. The IRS anticipates providing updated LRMs before the On-Cycle Submission Period with respect to a Cycle begins.

.6 *Vesting* — A § 403(b) Pre-approved Plan may provide a vesting schedule for contributions other than elective deferrals, rather than provide for full and immediate vesting of the contributions. Except in the case of certain Nonstandardized Plans described in this section 5.06, contributions other than elective deferrals (and earnings thereon) under a § 403(b) Pre-approved Plan must vest at least as rapidly as would be required to satisfy the minimum vesting requirements of § 411(a)(2)(B) applicable to a qualified plan under § 401(a) , even if the plan is not subject to the parallel minimum vesting requirements under ERISA § 203 . A Nonstandardized Plan that is designed to be used for a plan that is not subject to the minimum vesting requirements of ERISA § 203 (for example, a Governmental Plan) is not required to provide that contributions other than elective deferrals will vest at least as rapidly as would be required to satisfy § 411(a)(2)(B) . Every § 403(b) Pre-approved Plan that provides a vesting schedule for contributions other than elective deferrals must also satisfy the following requirements: (1) the portion of a participant's interest in the plan that is not vested must be maintained in a separate account for the participant that is treated as a separate contract to which § 403(c) (or, in case of a Custodial Account, § 401(a) ) applies, (2) as amounts in the participant's separate account become nonforfeitable, they must be removed from the separate account and treated as amounts held under a § 403(b) plan, to the extent permitted under § 1.403(b)-3(d)(2)(ii) , and (3) all nonvested amounts remaining in the participant's separate account must become nonforfeitable upon termination of the plan.

.7 *Appendix of administrative responsibilities* — Every § 403(b) Pre-approved Plan must provide that an appendix to the plan will identify the parties responsible for the various administrative functions under the plan that are necessary to comply with the § 403(b) Requirements and other tax requirements, including the requirements that apply on the basis of the aggregated Investment Arrangements issued to a participant under the plan, and will list all the vendors of Investment Arrangements approved for use under the plan. Changes to the information in the required appendix will not affect the Adopting Employer's ability to rely on an Opinion Letter.

.8 *Provider amendments* — Each § 403(b) Pre-approved Plan must include a procedure for amendments by the Provider, so that changes in the Code, regulations, or other guidance published in the Internal Revenue Bulletin, and any correction of the plan, may be applied to all Adopting Employers. The procedure for amendments by the Provider also must state that, for purposes of reliance on the Opinion Letter, the Provider will no longer have the authority to amend the plan on behalf of the Adopting Employer as of the date the plan is treated as an individually designed plan pursuant to section 9.05.

.9 *Adopting Employer modification to satisfy § 415* — Each § 403(b) Pre-approved Plan must provide that plan provisions may be amended by the Adopting Employer to the extent necessary to satisfy § 415 because of the required aggregation of multiple plans under that section. Generally, a space should be provided in the plan with instructions for the Adopting Employer to add language as necessary to satisfy § 415 . These provisions must be included in the adoption agreement of an Adoption Agreement Plan.

.10 *Provisions regarding reliance* — Each § 403(b) Pre-approved Plan must include, in close proximity to the signature line, a statement that describes the limitations on employer reliance on an Opinion Letter. See section 8.

.11 *Requirements regarding dated signatures and adoption agreement provisions* — Each § 403(b) Pre-approved Plan must include an Adopting Employer signature and date line. The plan also must include a statement that the Provider will inform the Adopting Employer of any amendments made to the plan or of the discontinuance of the plan. The Adopting Employer must sign and date the adoption agreement or signature page of the plan when it first adopts the plan and must complete, sign, and date a new adoption agreement or signature page if the plan has been restated. In addition, the Adopting Employer must complete a new dated adoption agreement or signature page 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 single plan document, or the restatement, amendment, or modification thereof, by the Adopting Employer. In the case of an Adoption Agreement Plan, the adoption agreement must state that it is to be used with only one basic plan document and must identify that document. In addition, the adoption agreement must include a cautionary statement to the effect that the failure to properly complete the adoption agreement may result in failure of the form of the plan to meet the § 403(b) Requirements.

.12 *Provider telephone numbers* — Each § 403(b) Pre-approved Plan must include the Provider's name, address, and telephone number (or a space for the address and telephone number of the Provider'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.

.13 *Definition of employee* — Each § 403(b) Pre-approved Plan that is not a Governmental Plan must define an employee as any employee of the Adopting Employer maintaining the plan or any other Eligible Employer aggregated with that Adopting Employer under § 414(b) , (c) , (m) , or (o) and the regulations thereunder. Each § 403(b) Pre-approved Plan that is a Governmental Plan must define an employee as any employee of the Adopting Employer maintaining the plan or any other Eligible Employer aggregated with that Adopting Employer in a manner consistent with Notice 89-23 .

.14 *Crediting of service taking into account § 414(b) , (c) , (m) , and (o)* — Each § 403(b) Pre-approved Plan that is not a Governmental Plan must credit all service with any employer aggregated with the Adopting Employer under § 414(b) , (c) , (m) , or (o) and the regulations thereunder, as service with the Adopting Employer maintaining the plan. Each § 403(b) Pre-approved Plan that is a Governmental Plan must credit all service with any employer aggregated with the Adopting Employer in a manner consistent with Notice 89-23 , as service with the Adopting Employer maintaining the plan.

.15 *Uniformed Services Employment and Reemployment Rights Act and § 414(u)* — Each § 403(b) Pre-approved Plan must include a provision reflecting the requirements of § 414(u) . See Rev. Proc. 96-49 , 1996-2 C.B. 369.

.16 *Separate § 403(b) Pre-approved Plan for Retirement Income Account* — A single § 403(b) Pre-approved Plan may not be used for both a § 403(b) Pre-approved Plan that is a Retirement Income Account and a § 403(b) Pre-approved Plan that is not a Retirement Income Account. Thus, a separate § 403(b) Pre-approved Plan is required for a plan that is intended to constitute a Retirement Income Account.

.17 *Identifying category of Eligible Employer and plan* — The adoption agreement or single plan document of every § 403(b) Pre-approved Plan must satisfy the following requirements:

(1) Although a single adoption agreement may be made available to different categories of Eligible Employers, the adoption agreement must require the Adopting Employer to show its status as an Eligible Employer by indicating whether the Adopting Employer is:

- (a) a government-sponsored educational organization described in § 170(b)(1)(A)(ii) (a public school);
- (b) a tax-exempt organization described in § 501(c)(3) that is exempt from tax under § 501(a) ;
- (c) an employer of a minister described in § 414(e)(5)(A) ; or
- (d) a minister described in § 414(e)(5)(A) .

(2) The adoption agreement or single plan document must require the Adopting Employer to show its status with respect to the nondiscrimination requirements in § 1.403(b)-5 by indicating whether the plan is:

- (a) a Governmental Plan;
- (b) a plan of an Adopting Employer that is a Church or QCCO for employees of the Church or QCCO; or
- (c) any plan not described in (a) or (b).

.18 *Provisions applicable to Standardized Plans* — In addition to the requirements set forth in sections 5.03 through 5.17, each Standardized Plan must either provide that the only contributions that an Adopting Employer may elect to provide under the plan are elective deferrals or meet the following requirements:

(1) Under § 1.415(f)-1(a)(3) , all § 403(b) annuity contracts purchased by an employer for a participant are treated as one § 403(b) annuity contract for purposes of § 415 . Section 1.415(f)-1(f)(2) includes a special rule providing that, if a participant on whose behalf a § 403(b) annuity contract is purchased is in control of any employer for a limitation year, the § 403(b) annuity contract is aggregated with all other defined contribution plans maintained by that employer. For these purposes, a custodial account and a Retirement Income Account are treated as a § 403(b) annuity contract. Every Standardized Plan must include plan language reflecting these rules. In particular, the plan language must coordinate the application of the § 415 limits to all the Standardized Plans of the Adopting Employer and its Related Employers so that, if the only § 403(b) plans maintained by the Adopting Employer and its Related Employers are Standardized Plans, the plans will satisfy § 415(c) and § 1.415(f)-1(a)(3) without requiring the addition of overriding plan language.

(2) Under the provisions governing eligibility and participation, the plan by its terms benefits all employees except those who may be excluded under § 1.410(b)-6 . The plan may provide options as to whether some or all of the employees described in § 1.410(b)-6 are excluded, provided that the criteria for excluding employees described in § 1.410(b)-6 apply uniformly to all employees. A Standardized Plan generally may not deny an 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 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 section 5.18(2) with respect to contributions other than elective deferrals 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 5.13, as a result of a transaction described in § 410(b)(6)(C) are 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 earlier of the last day of the first plan year beginning after the date of the transaction or the date of a significant change in the plan or in the coverage of the plan. A transaction described in § 410(b)(6)(C) 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.

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

(4) Under the plan, allocations are determined on the basis of total compensation. The plan must provide that, for purposes of allocations, the definition of total compensation is all compensation within the meaning of § 415(c)(3) , excluding all other compensation, or compensation that otherwise satisfies § 414(s) and § 1.414(s)1(c) .

(5) If the plan provides for contributions other than elective deferrals and matching contributions, the plan must satisfy one of the design-based safe harbors described in § 1.401(a)(4)-2(b)(2) with respect to the contributions.

(6) 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. (For information regarding benefits, rights, and features, and the determination of current availability, see § 1.401(a)(4)-4 .)

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

#### *.19 Provisions applicable to a § 403(b) Pre-approved Plan intended to be a Retirement Income Account*

(1) Every § 403(b) Pre-approved Plan that is intended to be a Retirement Income Account must state the intent to be a Retirement Income Account in accordance with § 1.403(b)-9(a)(2)(ii) .

(2) The terms of the plan must satisfy the separate accounting, investment performance, and exclusive benefit requirements of § 1.403(b)-9(a)(2)(i) .

(3) If the plan provides for benefits in the form of a life annuity, the plan must satisfy the present value and benefit guarantee requirements of § 1.403(b)-9(a)(5) , and the present value must be based on reasonable actuarial assumptions that are either set forth in the plan or incorporated by reference into the plan.

(4) The terms of the plan must set forth the nondiscrimination requirements of § 403(b)(12) . The plan also must state that the nondiscrimination requirements will be applied to any employee other than an employee of a QCCO or Church.

(5) In the case of multiple employers that are not part of the same controlled group (as determined under § 414(b) , (c) , (m) , or (o) ) participating in the plan, each Adopting Employer must identify whether it is a Church, QCCO, non-QCCO, or minister.

## **SECTION 6. OPINION LETTERS — SCOPE**

*.1 General limits on Opinion Letters* — An Opinion Letter will be issued only to a Provider or Mass Submitter. An Opinion Letter constitutes a determination that the form of a § 403(b) Pre-approved Plan satisfies the § 403(b) Requirements, subject to the requirements and limitations of this revenue procedure. The IRS's review of a Provider's or Mass Submitter's application for an Opinion Letter for a § 403(b) Pre-approved Plan will

consider only the terms of the single plan document or the basic plan document and adoption agreement, as applicable. The IRS's review will not consider, and an Opinion Letter will not express an opinion with respect to, the terms of any Investment Arrangements under the plan of any Adopting Employer or any other documents that may be incorporated by reference into an Adopting Employer's plan.

*.2 Nonapplicability of this revenue procedure to §§ 401 , 403(a) , or 4975(e)(7) plans and to IRAs (including traditional IRAs, Roth IRAs, SEPs, and SIMPLE IRAs) —* An Opinion Letter will not be issued under this revenue procedure for § 401 , 403(a) , or 4975(e)(7) plans (see Rev. Proc. 2017-41 for administrative procedures for seeking an opinion letter for § 401 , 403(a) , or 4975(e)(7) plans). In addition, an Opinion Letter will not be issued under this revenue procedure for prototype plans intended to meet the requirements for individual retirement arrangements under § 408 . (See the Form 5305 series, which provides model IRA documents that have been pre-approved by the IRS and for which an opinion letter is not needed. See also Rev. Proc. 87-50 , 19872 C.B. 647, as modified by Rev. Proc. 97-29 , 1997-1 C.B. 698; Rev. Proc. 98-59 , 1998-2 C.B. 727; and Rev. Proc. 2010-48 , *2010-50 I.R.B. 828* , for administrative procedures for seeking an opinion letter for individual retirement arrangements under § 408 .)

*.3 Plans for which an Opinion Letter will not be issued —* An Opinion Letter will not be issued for:

- (1) a plan under which the § 415 limitations are incorporated by reference;
- (2) a plan under which the actual contribution percentage (ACP) test under § 401(m)(2) is incorporated by reference;
- (3) a Nonstandardized Plan that provides for hardship distributions under circumstances not described in the safe harbor standards in the regulations under § 401(k) , unless the availability of these distributions is subject to nondiscriminatory and objective criteria included in the plan;
- (4) a plan that include blanks or fill-in provisions for the Adopting Employer to complete, unless the provisions have parameters that preclude the Adopting Employer from completing the provisions in a manner that could violate the § 403(b) Requirements;
- (5) a TEFRA church defined benefit plan (see § 1.403(b)-10(f)(2) ); or
- (6) a plan grandfathered under Rev. Rul. 82-102 , 1982-1 C.B. 62.

*.4 An Opinion Letter does not consider Title I issues —* An Opinion Letter does not express an opinion, and may not be relied upon, with respect to whether any plan is subject to the requirements of Title I of ERISA or whether a plan satisfies any of those requirements.

*.5 An Opinion Letter does not consider issues related to a plan's coverage of multiple employers that are not in a single controlled group —* For a § 403(b) Pre-approved Plan that is not a Governmental Plan, an Opinion Letter does not express an opinion, and may not be relied upon, with respect to whether the plan meets any requirements that apply due to a plan's coverage of multiple employers that are not in a single controlled group for purposes of § 414(b) , (c) , (m) , or (o) and the regulations thereunder. For a § 403(b) Pre-approved Plan that is a Governmental Plan, an Opinion Letter does not express an opinion, and may not be relied upon, with respect to whether the plan meets any requirements that apply due to a plan's coverage of multiple employers that are not aggregated in a single controlled group in a manner consistent with Notice 89-23 .

*.6 IRS discretion —* The IRS may, in its discretion, decline to issue an Opinion Letter for other types of plans or issues not described in this section.

## **SECTION 7. ELIGIBILITY FOR THE CYCLE SYSTEM**

An Eligible Employer may adopt a § 403(b) Pre-approved Plan (including an Interim § 403(b) Pre-approved Plan or an Existing § 403(b) Pre-approved Plan) at any time during a Cycle. Unless otherwise provided by this revenue procedure, upon an Eligible Employer's adoption of a § 403(b) Pre-approved Plan, the plan becomes eligible for the Cycle system. The preceding sentence applies to an Eligible Employer that adopts a § 403(b) Pre-approved Plan that amends or restates a plan maintained by the Eligible Employer, as long as the form of the plan that is being amended or restated satisfies the § 403(b) Requirements at the time of the adoption of the § 403(b) Pre-approved Plan. In order for a plan to remain a § 403(b) Pre-approved Plan, an Adopting Employer of the plan must adopt, by the end of the Employer Adoption Window for each Cycle, either the newly approved version of the same plan or a newly approved version of a different § 403(b) Pre-approved Plan. An Adopting Employer that fails to adopt a newly approved version of a § 403(b) Pre-approved Plan by the end of any Employer Adoption Window will no longer be treated as maintaining a § 403(b) Pre-approved Plan. See section 9 for the effect of certain plan amendments on a plan's eligibility for the Cycle system.

## **SECTION 8. EMPLOYER RELIANCE ON OPINION LETTER**

### *.1 Standardized Plans*

(1) An Adopting Employer of a Standardized Plan may rely on the Standardized Plan's Opinion Letter that the form of the Adopting Employer's plan satisfies the § 403(b) Requirements, including, if applicable, the requirements of §§ 401(a)(4) and 410(b) , if:

(a) the Standardized Plan has a currently valid Opinion Letter;

(b) the Adopting Employer has not amended the Standardized Plan other than to choose options provided under the Standardized Plan or to make amendments that are described in section 9.03 relating to employer amendments that will not affect reliance (see also section 9.05 for when a § 403(b) Pre-approved Plan is treated as individually designed); and

(c) either (i) the only contributions under the plan are elective deferrals, or (ii) the plan provides for contributions other than elective deferrals and all of the employers in the Adopting Employer's controlled group are Eligible Employers. For this purpose, for a § 403(b) Pre-approved Plan that is not a Governmental Plan, the Adopting Employer's controlled group is determined under § 414(b) , (c) , (m) , or (o) and the regulations thereunder; for a § 403(b) Pre-approved Plan that is a Governmental Plan, the Adopting Employer's controlled group is determined in a manner consistent with Notice 89-23. If the plan provides for contributions other than elective deferrals and the Adopting Employer's controlled group includes any employer that is not an Eligible Employer, the Adopting Employer may rely on the Opinion Letter, except with respect to whether contributions other than elective deferrals under the plan satisfy the requirements of §§ 401(a)(4) and 410(b) .

(2) Notwithstanding the other provisions of this section 8, an Opinion Letter issued for a Standardized Plan may not be relied upon with respect to the requirements of § 415 if the Adopting Employer or any of its Related Employers maintains another § 403(b) plan covering any of the same participants as the Standardized Plan, unless the other plan is also a Standardized Plan. (Also see §§ 1.415(c)-1(d) and 1.415(f)-1(f) for special rules applicable to § 403(b) plans.) However, an Adopting Employer of a Standardized Plan that adds language to satisfy the requirements of § 415 due to the required aggregation of plans may obtain reliance with regard to § 415 by applying for a determination letter using Form 5307 (as updated). See section 8.04.

(3) Additionally, the Adopting Employer of a Standardized Plan may not rely on the Opinion Letter for the Standardized Plan with respect to: (a) whether the timing of any amendment to the Adopting Employer's 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 Adopting Employer's plan satisfies the effective availability requirement of § 1.401(a)(4)-4(c) with respect to any benefit, right, or feature. An Eligible Employer that adopts a Standardized Plan as an amendment to a plan other than a Standardized Plan may not rely on the Opinion Letter for the Standardized Plan with respect to whether a benefit, right, or feature that is prospectively eliminated satisfies the current availability requirements of § 1.401(a)(4)-4 , if applicable.

.2 *Nonstandardized Plans* — An Adopting Employer of a Nonstandardized Plan may rely on the plan's Opinion Letter that the form of the Adopting Employer's plan satisfies the § 403(b) Requirements, provided that the Nonstandardized Plan has a currently valid Opinion Letter, the Adopting Employer's plan is identical to the Nonstandardized Plan, and the Adopting Employer has not amended the plan other than by choosing options provided under the plan or by making amendments that are described in section 9.03 relating to employer amendments that will not affect reliance.

(1) Except as otherwise provided in this section 8.02, an Adopting Employer of a Nonstandardized Plan may not rely on the plan's Opinion Letter with respect to the requirements, if applicable, of:

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

(b) § 415 , if the Adopting Employer or any of its Related Employers maintain another § 403(b) plan covering any of the same participants as the Nonstandardized Plan. (See also §§ 1.415(c)-1(d) and 1.415(f)-1(f) for special rules applicable to § 403(b) plans.) However, an Adopting Employer of a Nonstandardized Plan that adds language to satisfy the requirements of § 415 due to the required aggregation of plans may obtain reliance with regard to § 415 by applying for a determination letter using Form 5307 (as updated). See section 8.04.

(2) An Adopting Employer of a Nonstandardized Plan may rely on the plan's Opinion Letter with respect to the requirements of § 410(b) , if applicable, if all nonexcludable employees benefit under the Adopting Employer's plan.

(3) Nonstandardized Plans may permit an Adopting Employer to select an allocation formula for contributions other than elective deferrals that satisfies one of the design-based safe harbors in § 1.401(a)(4)-2(b)(2) , and to select a safe harbor compensation definition for the formula that satisfies § 1.414(s)1(c) . If the Adopting Employer selects an allocation formula for contributions other than elective deferrals that satisfies one of the design-based safe harbors in § 1.401(a)(4)-2(b)(2) , and, if the allocation formula is based on compensation, selects a safe harbor compensation 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) , if applicable. An Adopting Employer of a Nonstandardized Plan that includes § 401(m) matching contributions may rely on the plan's Opinion Letter with respect to whether the form of the plan satisfies the ACP test of § 401(m)(2) if the Adopting Employer elects to use a safe harbor definition of compensation in the test. An Adopting Employer of a Nonstandardized Plan that meets the safe harbor requirements described in § 401(m)(11) or 401(m)(12) may rely on the plan's Opinion Letter with respect to whether the form of the Adopting Employer's plan satisfies the requirements of § 401(m) , unless the Adopting Employer's plan provides for the safe harbor contributions under § 401(m)(11) or 401(m)(12) to be made under another plan.

.3 *Other limitations and conditions on reliance* — Notwithstanding any provision in this section 8 to the contrary, the following conditions and limitations regarding reliance by an Adopting Employer on an Opinion Letter apply with respect to all § 403(b) Pre-approved Plans:

- (1) An Adopting Employer may rely on an Opinion Letter for a § 403(b) Pre-approved Plan that amends or restates a plan of the Adopting Employer only if the form of the plan that is being amended or restated satisfied the § 403(b) Requirements. Accordingly, prior to being amended or restated, the plan must either have timely corrected any Form Defects for which the Remedial Amendment Period is closed or have corrected any plan document failures under the Employee Plans Compliance Resolution System (EPCRS). See Rev. Proc. 2021-30, 2021-31 I.R.B. 172 (or its successor).
- (2) An Adopting Employer may not rely on an Opinion Letter if the Adopting Employer's adoption of a § 403(b) Pre-approved Plan precedes the issuance of an Opinion Letter for the plan. In this case, in order to have reliance, the Adopting Employer would need to re-adopt the § 403(b) Pre-approved Plan after the issuance of the Opinion Letter for the plan.
- (3) An Adopting Employer may not rely on an Opinion Letter if the adoption agreement or other elective provisions in the plan are not completed correctly by the Adopting Employer.
- (4) An Adopting Employer may not rely on an Opinion Letter if any Investment Arrangement under the plan or any other document that may be incorporated by reference provides that the terms of the Investment Arrangement or other document shall govern in the event of any conflict between the terms of the Investment Arrangement or other document and the terms of the plan.
- (5) The issuance of an Opinion Letter does not constitute a determination by the IRS that an Adopting Employer's plan is a Governmental Plan or that an Adopting Employer is a Church or QCCO.
- (6) Pursuant to section 10.10, a Provider's failure to disclose a material fact, misrepresentation of a material fact, or failure to accurately provide any of the information called for on any form required by this revenue procedure (or in Appendix A, if used) may result in the inability of Adopting Employers to rely on an Opinion Letter (for example, if there is a failure to disclose a material fact, the IRS may revoke the Opinion Letter due to the failure).
- (7) Pursuant to section 11.03(2)(c), if a Mass Submitter fails to identify a significant modification, the failure will be considered a material misrepresentation, and an Adopting Employer may not rely on an Opinion Letter issued with respect to the plan for the modification or any other provision of the plan that may be affected by the modification.

*.4 Obtaining a determination letter* — An Adopting Employer of a Nonstandardized Plan that makes amendments to the plan that are not extensive may obtain reliance that the form of the plan, as amended, satisfies the § 403(b) Requirements by requesting a determination letter using Form 5307 (as updated) under procedures similar to the procedures applicable to § 401(a) pre-approved plans, and may do so regardless of whether a prior determination letter has been issued with respect to the plan. In addition, if an employer adds language to a § 403(b) Pre-approved Plan to satisfy the requirements of § 415 due to the required aggregation of plans, the employer may obtain reliance with regard to § 415 by applying for a determination letter on Form 5307 (as updated). The determination letter application must be filed during the applicable Employer Adoption Window (for example, a determination letter application for a Cycle 2 plan must be filed during the Cycle 2 Employer Adoption Window). The plan submitted for a Form 5307 determination letter will be reviewed based on the Cumulative List applicable to the underlying § 403(b) Pre-approved Plan. Specific eligibility requirements and submission procedures applicable to filing a Form 5307 determination letter application will be provided in a future update of Rev. Proc. 2021-4 (updated annually).

## **SECTION 9. PLAN AMENDMENTS**

.1 *Provider plan amendments generally* — Providers are required to amend their § 403(b) Pre-approved Plans to ensure that the form of their plans continues to satisfy the § 403(b) Requirements. Providers must make reasonable and diligent efforts, as soon as practicable following the adoption of plan amendments, to ensure that Adopting Employers of the Provider's plan have actually received and are aware of the plan amendments. The date on which each amendment is adopted by the Provider must be included with the amendment provided to Adopting Employers. Failure to comply with these requirements may result in the loss of eligibility to offer § 403(b) Pre-approved Plans and the revocation of an Opinion Letter that has been issued to the Provider.

.2 *Interim amendment requirement* — A § 403(b) Pre-approved Plan must be operated in accordance with its written plan document. When there are changes to § 403(b) Requirements that affect the provisions of the written plan document, the adoption of interim amendments generally will be required in accordance with the rules set forth in section 11.04 of Rev. Proc. 2019-39 . See section 22 of this revenue procedure regarding the deadline by which interim amendments must be adopted. Failure to make the interim amendments may result in the form of the plan failing to satisfy the § 403(b) Requirements. The Provider must have a procedure to notify an Adopting Employer of amendments and restatements of the plan and to inform the Adopting Employer, when applicable, of the need to timely adopt or amend the plan, including in the case of both initial adoption and restatement of the plan. The Provider must also notify an Adopting Employer that failure to timely adopt the plan or restatement, when required, or failure to take into account plan amendments in the operation of the plan, could result in adverse tax consequences. See section 10.04 of this revenue procedure for additional application submission requirements for interim amendments.

.3 *Employer amendments that will not affect reliance* — As provided in section 8, an Adopting Employer may continue to rely on an Opinion Letter for a § 403(b) Pre-approved Plan if it makes amendments to the plan that are described in paragraphs (1) through (8) of this section 9.03. See sections 8.01 and 8.02 for the effect of any other amendments on reliance on an Opinion Letter by the Adopting Employer. The following types of amendments will not cause an Adopting Employer to lose reliance on an Opinion Letter:

- (1) amendments to the plan to add or change a provision (including choosing among options in the plan) or to specify or change the effective date of a provision, provided the Adopting Employer is permitted to make the modification or amendment under the terms of the § 403(b) Pre-approved Plan, as well as under § 403(b) , and, in the case of a Standardized Plan, the provision is identical to a provision in the § 403(b) Pre-approved Plan, except for the effective date;
- (2) sample or model amendments published by the IRS that specifically provide that their adoption will not cause a plan to fail to be identical to the § 403(b) Pre-approved Plan;
- (3) amendments that adjust the limitations under §§ 415 , 402(g) , 401(a)(17) , and 414(q)(1)(B) to reflect annual cost-of-living increases;
- (4) plan language completed by the Adopting Employer if the overriding language is necessary to satisfy § 415 because of the required aggregation of multiple plans under that section, in accordance with section 5.09;
- (5) interim amendments or discretionary amendments, as described in sections 11 and 12 of Rev. Proc. 2019-39 , that are related to a change in the § 403(b) Requirements for the form of a plan;
- (6) amendments that reflect a change of a Provider's name, in which case the Provider must notify the IRS, in writing, of the change in name and certify that it still meets the conditions to be a Provider described in section 4.21 (see also section 15 regarding changes in employer identification numbers);
- (7) amendments to the administrative provisions in the plan (such as provisions relating to investments, plan

claims procedures, or the Adopting Employer's contact information), provided the amended provisions are not in conflict with any other provision of the plan, still meet the requirements of this revenue procedure, and do not cause the plan to fail to satisfy the § 403(b) Requirements (see section 11.03(1)(b)(ii) for additional examples of administrative provisions); and

(8) amendments with respect to which a closing agreement under the Audit Closing Agreement Program or a compliance statement under the Voluntary Correction Program of EPCRS has been issued (see section 6.05(2)(b) of Rev. Proc. 2021-30 regarding the ability of the Adopting Employer to rely on the Opinion Letter).

*.4 Effect of employer amendments on a plan's eligibility for the Cycle system*—Except as provided in section 9.05, employer amendments made to the § 403(b) Pre-approved Plan will not affect the plan's eligibility for the Cycle system. See section 8.04 for situations in which an Adopting Employer may obtain a determination letter using Form 5307 (as updated).

*.5 Section 403(b) Pre-approved Plans treated as individually designed*—An Adopting Employer's § 403(b) Pre-approved Plan will be treated as individually designed (and the Adopting Employer may not rely on the plan's Opinion Letter and will lose eligibility for the Cycle system) under the following circumstances:

(1) An Adopting Employer makes any amendment to a Standardized Plan other than an amendment listed in section 9.03 or as otherwise described in this section 9.05. In this case, the Adopting Employer will lose reliance on the Opinion Letter as of the effective date of the amendment but the plan will remain eligible for the Cycle system (provided that the Adopting Employer adopts timely interim amendments) until the end of the Cycle that includes the effective date.

(2) An Adopting Employer amends a § 403(b) Pre-approved Plan (including its adoption agreement, if applicable) within one year of the date the Adopting Employer initially adopted the § 403(b) Pre-approved Plan to incorporate a type of plan not permitted in the Opinion Letter program, as described in section 6.03. In this case, the Adopting Employer will be treated as never having had any reliance on the Opinion Letter and will be treated as never having been eligible for the Cycle system.

(3) An Adopting Employer amends a § 403(b) Pre-approved Plan (including its adoption agreement, if applicable) more than one year after the date the Adopting Employer initially adopted the § 403(b) Pre-approved Plan to incorporate a type of plan not permitted in the Opinion Letter program, as described in section 6.03. In this case, the Adopting Employer will lose reliance on the Opinion Letter as of the effective date of the amendment but the plan will remain eligible for the Cycle system (provided that the Adopting Employer adopts timely interim amendments) until the end of the Cycle that includes the effective date.

(4) The IRS, in its sole discretion, determines that a Nonstandardized Plan is an individually designed plan due to amendments to the plan that are extensive (that is, the plan of the Adopting Employer as amended is no longer substantially similar to the Nonstandardized Plan of the Provider). In this case, the Adopting Employer generally will lose reliance on the Opinion Letter as of the effective date of the amendments but the plan will remain eligible for the Cycle system (provided that the Adopting Employer adopts timely interim amendments) until the end of the Cycle that includes the effective date.

(5) An Adopting Employer chooses to discontinue participation in a § 403(b) Pre-approved Plan that has been amended by the Provider, without substituting another § 403(b) Pre-approved Plan. In this case, the Adopting Employer will lose reliance on the Opinion Letter as of the date participation in the § 403(b) Pre-approved Plan ends but the plan will remain eligible for the Cycle system (provided that the Adopting Employer adopts timely interim amendments) until the end of the Cycle that includes the date on which participation in the § 403(b) Pre-approved Plan ends.

(6) An Adopting Employer makes an amendment to a § 403(b) Pre-approved Plan that removes any of the required provisions of section 5. In this case, the Adopting Employer will lose reliance on the Opinion Letter as of the effective date of the amendment but the plan will remain eligible for the Cycle system (provided that the Adopting Employer adopts timely interim amendments) until the end of the Cycle that includes the effective date.

.6 *Example* — Employer X adopts a newly approved Standardized Plan during the Cycle 2 Employer Adoption Window. During the first year of Cycle 3, Employer X makes an amendment described in section 9.05(1), effective as of the first day of the plan year that begins during the first year of Cycle 3. Pursuant to section 9.05(1), beginning on the first day of that plan year, Employer X's plan is treated as an individually designed plan. Pursuant to section 5.08, the Provider will no longer have the authority to amend the plan on behalf of the Adopting Employer. Provided that Employer X adopts timely interim amendments, Employer X's plan will remain eligible for the Cycle through the end of Cycle 3. Employer X decides to no longer be an individually designed plan and adopts a Newly Approved § 403(b) Pre-approved Plan during the Cycle 3 Employer Adoption Window. As a result, it will have a § 403(b) Pre-approved Plan and be eligible for the Cycle system. However, if, instead, Employer X decides to continue to be an individually designed plan, then, by the end of Cycle 3, Employer X's plan must be amended to reflect all changes in § 403(b) Requirements for which the Remedial Amendment Period applicable to individually designed plans will have expired;<sup>8</sup> moreover, after Cycle 3, Employer X's plan is subject to the Remedial Amendment Period rules for individually designed plans. See EPCRS, Rev. Proc. 2021-30 (or its successor), for correcting a Form Defect after the expiration of the Remedial Amendment Period for the Form Defect.

.7 *No Form 5307 Determination Letter for Pre-approved Plans Treated as Individually Designed* — If a plan is treated as individually designed as provided in section 9.05 of this revenue procedure, the employer may not file for a determination letter using a Form 5307 (as updated). The IRS anticipates establishing a program that would permit Adopting Employers to apply for a determination letter on Form 5300 , *Application for Determination for Employee Benefit Plan*, under rules and procedures similar to the rules and procedures applicable to § 401(a) pre-approved plans (see section 20.03 of Rev. Proc. 201637 and Rev. Proc. 2021-4 (updated annually)).

## **SECTION 10. OPINION LETTER APPLICATIONS — INSTRUCTIONS TO PROVIDERS AND OTHER RULES FOR APPLICATIONS AND OPINION LETTERS**

.1 *Issuance of an Opinion Letter* — The IRS will, upon the application of a Provider, issue an Opinion Letter as to satisfaction of the form of the Provider's plan with the § 403(b) Requirements.

.2 *Submission of Opinion Letter applications* — Rev. Proc. 2019-39 provides that every § 403(b) Pre-approved Plan will have a recurring Cycle. Rev. Proc. 2019-39 also states that a Provider must submit an application for an Opinion Letter during the On-Cycle Submission Period that relates to an applicable Cycle. Cycle 2 began on July 1, 2020. Pursuant to this revenue procedure, the On-Cycle Submission Period for Providers to submit applications for an Opinion Letter for Cycle 2 begins on May 2, 2022, and ends on May 1, 2023. Providers may apply for an Opinion Letter for Cycle 2 after this On-Cycle Submission Period, but these filings generally will be considered "off-cycle." See section 12 regarding IRS review of off-cycle filings.

.3 *Procedure for applying for an Opinion Letter* — The Provider must submit the application for an Opinion Letter with respect to its plan. The IRS is developing the application form to be used and will announce when the form becomes available. If the application form is available when the application is being submitted, the Provider should use the application form. If the form is not available when the application is being submitted,



the Provider may use Appendix A of this revenue procedure in lieu of the application form. The application must be accompanied by: (1) the applicable required user fee that will be provided for in the successors to Rev. Proc. 2021-4 (updated annually), (2) if an Opinion Letter had been issued for the § 403(b) Pre-approved Plan for the preceding Cycle, a signed certification that all necessary amendments required by the IRS for the form of the Provider's plan to continue to satisfy the § 403(b) Requirements have been made and communicated to all Adopting Employers, and (3) any attachment or other document that the application form (or Appendix A, if used) indicates is required. All information on the application form (or Appendix A) must be typed. The application must be sent to the address provided in section 20. The application must include a copy of the plan document and any adoption agreement, if applicable. Copies of Investment Arrangements should not be submitted. The IRS will not review for, and the Opinion Letter will not cover, any provisions included in Investment Arrangements. Additionally, the IRS requests that applications be submitted by thumb or flash drive instead of being submitted as paper files, and that the documents be saved in Microsoft Word or Adobe Acrobat PDF format. The IRS strongly encourages Providers to take advantage of this electronic submission format. To pay a fee, a Provider must continue to submit a paper check and a paper Form 8717-A, *User Fee for Employee Plan Opinion or Advisory Letter Request*.

*.4 Additional submission requirements for interim amendments* — If the § 403(b) Pre-approved Plan has received an Opinion Letter for the preceding Cycle, in addition to the application described in section 10.03, the Provider must submit a certification that all interim amendments (and initial amendments, as described in section 4.11, if applicable) on the applicable Cumulative List have been made, and a cover letter summarizing how the provisions of the plan are affected by each amendment. The IRS retains the right to request and secure from the Provider in appropriate circumstances copies of all interim amendments (and initial amendments, if applicable) reflected on the applicable Cumulative List that the Provider has adopted on behalf of its Adopting Employers.

*.5 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 12 regarding off-cycle filing. To expedite the review of substantially identical plans that are not Mass Submitter plans, the IRS encourages plan drafters and Providers 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 Provider);
- (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) of this section 10.05 for each plan);
- (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 difference; and
- (4) a certification made under penalties of perjury by the plan drafter that the information described in paragraph (3) of this section 10.05 is true and complete.

If the Provider 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 also should 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 paragraphs (3) and (4) of this section 10.05 as a representation of a material fact for purposes of issuing an Opinion Letter.

*.6 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 adoption agreements may be associated with the same basic plan document. Thus, for example, a Governmental Plan, a plan of a Church or QCCO, and a plan of a non-QCCO that use separate adoption agreements may be associated with the same basic plan document. In addition, a single adoption agreement may be drafted to cover multiple types of Eligible Employers.

(2) Section 403(b) Pre-approved Plans that are intended to be Retirement Income Accounts and plans that are not Retirement Income Accounts may not be set forth in the same basic plan document.

(3) Standardized and Nonstandardized Plans may not be set forth in a single adoption agreement.

(4) A separate application form (or Appendix A) must be submitted with respect to each adoption agreement for which an Opinion Letter is applied. A basic plan document and all associated adoption agreements should be submitted simultaneously. Only one copy of the basic plan document should be provided. However, if additional adoption agreements are later submitted with respect to a basic plan document, the Provider must submit a copy of the basic plan document with each submission and include a cover letter identifying the original submission (including the date submitted). In that case, the plan number given to the basic plan document must remain the same as in the prior submission.

*.7 Separate applications required for Single Document Plans* — A separate plan and application is required for a Single Document Plan. A Single Document Plan may accommodate usage by more than one type of Eligible Employer; however, a Retirement Income Account plan must always be filed as a separate Single Document Plan. Standardized and Nonstandardized Plans may not be combined in one Single Document Plan.

*.8 Sample language* — The IRS anticipates providing updated LRMs before the On-Cycle Submission Period with respect to a Cycle begins. Although sample language is designed for use in plans that use an adoption agreement format, in order to expedite processing, Providers are encouraged to refer to the sample language as a guide in drafting Single Document Plans. Specifically, to expedite the review of their plans, Providers are encouraged to use LRM language if appropriate and to identify the location of the LRM language in their § 403(b) Pre-approved Plan. The updated LRMs, when available, may be downloaded from the Internet at <http://www.irs.gov/Retirement-Plans/Listing-of-Required-Modifications-LRMs>.

*.9 Material furnished to Adopting Employers* — A Provider must furnish each Adopting Employer with a copy of the approved § 403(b) Pre-approved Plan, copies of any subsequent amendments, and the most recently issued Opinion Letter for the plan from the IRS.

*.10 Effect of failure to disclose material fact or to accurately provide information* — A failure to disclose to the IRS a material fact, a misrepresentation of a material fact in the application, or the failure to accurately provide any of the information called for on any form or Appendix A required by this revenue procedure may result in the inability of Adopting Employers to rely on the Opinion Letter (for example, if there is a failure to disclose a material fact, the IRS may revoke the Opinion Letter due to the failure). See section 8.03(6) regarding limitations on reliance. The Provider may be required by the IRS to immediately notify all Adopting Employers of any of its § 403(b) Pre-approved Plans affected by the failure if the Adopting Employer's reliance on the Opinion Letter is affected or if the failure could result in adverse tax consequences for the Adopting Employer.

*.11 Additional information may be requested* — When reviewing the application for an Opinion Letter, 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 § 403(b) Pre-approved Plan interrelate to satisfy the § 403(b)

Requirements. If a letter requesting changes to the § 403(b) Pre-approved Plan is sent to the Provider or an authorized representative, changes responsive to the letter 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 numerous, 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 be granted only for good cause.

*.12 Inadequate submissions* — The IRS will return, without further action or refunding the user fee, plans that are not in substantial compliance with the § 403(b) Requirements, or plans that are so deficient that they cannot be reviewed in a reasonable period of time. A plan may be considered not to be in substantial compliance if, for example, it omits language needed to comply with a § 403(b) Requirement or merely incorporates requirements by reference to the applicable Code section. The IRS will not consider a plan with such an omission or cross-reference until after the plan has been revised and resubmitted, and the modified plan will be treated as a new application for approval as of the date it is resubmitted, and therefore will be treated as off-cycle, as set forth in section 10.02, if resubmitted after the On-Cycle Submission Period. 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 Provider is notified of the inadequacy.

*.13 Nonidentification of questionable issues may cause delay* — If the § 403(b) Pre-approved Plan submitted as part of an Opinion Letter application includes a provision that gives rise to an issue for which contrary published authorities exist, failure to disclose to the IRS and address any significant contrary authorities may result in requests for additional information, which will delay action on the application. See section 10.11.

*.14 No Opinion Letter for later plan amendments* — The IRS will not issue an Opinion Letter with respect to amendments made between applicable On-Cycle Submission Periods, and the Provider should not submit an application for an Opinion Letter with respect to plan amendments. Instead, the Provider should submit a restated plan, including the amendments, during the next On-Cycle Submission Period.

## **SECTION 11. ADDITIONAL REQUIREMENTS FOR MASS SUBMITTERS**

### *.1 Opinion Letter issued to Mass Submitters*

(1.1) The IRS will, upon the application by a Mass Submitter, issue an Opinion Letter as to the satisfaction of the form of the Mass Submitter's plan with the § 403(b) Requirements. See section 10 for the instructions for Opinion Letter applications. In the case of an initial submission of a § 403(b) Pre-approved Plan under this revenue procedure, the Mass Submitter's application also must be accompanied by applications for an Opinion Letter filed on behalf of the requisite number of Providers that are offering the same plan on a word-for-word basis as provided in section 11.02, unless the Mass Submitter has already satisfied this requirement in connection with a previous application under this revenue procedure involving another § 403(b) Pre-approved Plan. Any plan submitted by a Mass Submitter must include language designating the Mass Submitter as agent for the Provider for purposes of making plan amendments.

(1.2) After satisfying the requirement as to the number of adopting Providers, the Mass Submitter may submit additional applications on behalf of other Providers that wish to adopt a word-for-word identical plan to the Mass Submitter plan (as an identical adopter) or a plan that includes Minor Modifications to the Mass Submitter plan (as a minor modifier adopter). In addition, the Mass Submitter may then submit applications for an Opinion Letter under this section 11.01 for its other plans, regardless of the number of identical adopters of the other plans.

*.2 Reduced procedural requirements for Providers that use Mass Submitter plans* — A Provider of a plan of a

Mass Submitter must obtain an Opinion Letter. The Mass Submitter must submit on behalf of each Provider a completed application form (or Appendix A) that includes a declaration by the Mass Submitter under penalties of perjury that the Provider will offer 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 application must be typed. If the Provider is offering 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 11.03(2). The application must be accompanied by the required user fee that will be provided in the successors to Rev. Proc. 2021-4 (updated annually) and a signed certification that all necessary amendments required by the IRS for the form of the Provider's plan to continue to satisfy the § 403(b) Requirements have been made and communicated to all Adopting Employers. Upon receipt of the application for an Opinion Letter, the IRS will, as soon as administratively feasible, issue an Opinion Letter with respect to the Provider's plan (provided that an Opinion Letter has been issued with respect to the Mass Submitter's plan).

### *.3 Definitions for Mass Submitter plans(3.1) Flexible Plan*

(3.1.a) *In general* — A "Flexible Plan" is a plan submitted by a Mass Submitter that includes optional provisions, as described in the immediately subsequent paragraph (b) of this section 11.03. Providers that adopt the Flexible Plan may include or delete any optional provision that is designated as an optional provision 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 Providers and the coordination of optional provisions. A Mass Submitter must bracket and identify the optional provisions when submitting the plan to the IRS, and also must provide the IRS a written representation describing the choices available to Providers and the coordination of optional provisions. Thus, the representation must indicate whether a Provider's plan may include only one of a certain group of optional provisions, may include 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 Provider'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 include only optional provisions that meet the requirements of section 11.03(1)(b), and must be drafted so that the satisfaction of the § 403(b) Requirements of the form of any Provider's plan will not be affected by the inclusion or deletion of optional provisions. For example, a Flexible Plan could include as an optional provision a provision permitting participant loans, provided that the provision satisfies the § 403(b) Requirements and the plan is drafted so that the exclusion of the provision does not cause the plan to fail to satisfy the § 403(b) Requirements. A Flexible Plan adopted by a Provider that differs from the Mass Submitter plan only because the Provider 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 section 11.03(1)(b)(i) and (ii) that they provide under a Flexible Plan to six investment provisions and six administrative provisions.

(3.1.b) *Optional provisions* — A Flexible Plan may include optional provisions that comply with the requirements set forth in this paragraph. The optional provisions may be arranged as separate optional articles or sections within a § 403(b) Pre-approved Plan or as separate optional provisions within a single article or section. A Flexible Plan also may include related optional provisions in the adoption agreement. For example, if a plan document for a Mass Submitter Flexible Plan includes an optional provision that would permit loans under a Provider's plan, the adoption agreement may 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 Provider does not

wish to enable Adopting Employers to make loans available under their plans, the Provider would delete from the Provider's plan the optional provisions in both the plan document and the adoption agreement. A Provider may include or delete optional provisions of a Mass Submitter plan, but once the Provider 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 11.03(1)(b) must be changed to a non-optional provision or deleted from the Mass Submitter's plan. The following is an exclusive list of the permissible optional provisions that a Flexible Plan may include:

(3.1.b.i) *Investment provisions* — A Mass Submitter may offer a variety of investment provisions in its plan for Providers to include or delete from their version of the plan. However, the plan as adopted by a Provider must provide a method for investing assets. Investment provisions are those provisions that describe the plan's methods of investing assets, including provisions such as the availability of loans and self-directed investments.

(3.1.b.ii) *Administrative provisions* — A Mass Submitter may offer a variety of administrative provisions in its plan for Providers to include or delete from their version of the plan. However, the plan as adopted by a Provider 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, administrator, Adopting Employer, and other fiduciaries. Pursuant to section 5.07, every § 403(b) Pre-approved Plan must provide for an appendix to identify the parties responsible for the various administrative functions under the plan. Optional administrative provisions that a Provider may include in or delete from its version of the plan include the resignation or replacement of fiduciaries, the claims procedures under the plan, and the record-keeping requirements. However, procedural provisions that are required for the form of a plan to meet the § 403(b) Requirements are not administrative provisions under this section. For example, an administrative provision does not include a provision regarding the annual notice to participants explaining the aggregation rules for the limitation on annual additions to a plan (if a participant is in control of any employer).

### (3.2) *Minor Modifications*

(3.2.a) A "Minor Modification" is a minor change to an otherwise word-for-word identical § 403(b) Pre-approved Plan of the Mass Submitter that the IRS determines does not require an in-depth IRS technical review. For example, a change that limits the number of participant loans or a change that adds a new choice of plan entry date would be considered a Minor Modification. By contrast, a change by a Provider of a plan meant to be adopted by a public school, as defined in section 5.17(1) (a), to remove any nondiscrimination provisions that do not apply to a public school from a Mass Submitter's § 403(b) Pre-approved Plan that was designed for a tax-exempt organization would not be considered a Minor Modification. A Minor Modification must be submitted by the Mass Submitter on behalf of the Provider that will adopt the modified plan. Subject to sections 11.05 and 12 and the provisions of this section 11.03, submissions with respect to Minor Modifications will be reviewed on an expedited basis, and an Opinion Letter will be issued to the Provider as soon as possible, which might be after the issuance of Opinion Letters to other Providers (see section 13).

(3.2.b) The IRS reserves the right to determine if the changes described in paragraph (a) of this section 11.03(2) are minor (for example, if the changes are not numerous and do not require an in-depth technical review). If it is determined that the changes are not minor, the plan submitted under section 11.03(2)(c) 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 the notification is provided, either the Mass Submitter may revise the plan so that the modifications are minor and resubmit the revised plan, or the Provider may submit

the application form (or Appendix A) 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 adopter application user fee. If, after the 30-day period, neither action has been taken, the IRS may treat the application as having been withdrawn.

(3.2.c) The Mass Submitter must initially submit the first page of the application form (or the entire Appendix A) as a placeholder with respect to each Provider that will offer a plan that is a Minor Modification of the Mass Submitter's plan during the On-Cycle Submission Period. The application form (or Appendix A) must be typed. When the IRS sends a notification to the applicable Mass Submitter with respect to the Mass Submitter's plan indicating that the IRS has determined that the plan appears to be in full compliance with the applicable § 403(b) Requirements, 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 penalties of perjury that the plan of the Provider, except for the delineated changes, is word-for-word identical to the plan for which the Mass Submitter will be receiving or has received an Opinion Letter. If a Mass Submitter fails to identify a significant modification, the failure will be considered a material misrepresentation, and an Adopting Employer may not rely on the Opinion Letter that may be issued with respect to the plan for the modification or any other provision of the plan that may be affected by the modification. See section 8.03(7) regarding limitations on reliance. The Mass Submitter must also immediately notify any affected minor modifier adopter, and the minor modifier adopter must notify all Adopting Employers of any of its § 403(b) Pre-approved Plans affected by the failure and the notification must explain the effect on the reliance by Adopting Employers on the Opinion Letter. If a Mass Submitter repeatedly fails to identify the modifications, the IRS may deny permission to that Mass Submitter to submit additional modifications.

*.4 Amendments of Mass Submitter plans* — If a Mass Submitter amends one of its § 403(b) Pre-approved Plans, the Mass Submitter must provide copies of the amendment to Providers that have adopted the plan. Any Provider 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 § 403(b) Pre-approved Plans. The IRS will not issue an Opinion Letter with respect to amendments made between applicable On-Cycle Submission Periods, and a Mass Submitter should not submit an application for an Opinion Letter with respect to plan amendments. Instead, the Mass Submitter should submit a restated plan, including the amendments, during the next Cycle.

*.5 Expeditious processing accorded Mass Submitter plans* — Subject to section 12, all Mass Submitter plans, including approved Mass Submitter plans adopted by Providers, will be accorded more expeditious processing than plans submitted by non-Mass Submitters, to the extent administratively feasible.

## **SECTION 12. OFF-CYCLE FILINGS**

*.01 Identical adopter* — An application for an Opinion Letter for a § 403(b) Pre-approved Plan that is word-for-word identical to a Mass Submitter § 403(b) Pre-approved Plan will not be treated as off-cycle, as defined in section 10.02, merely because it is submitted after the end of the applicable On-Cycle Submission Period for the Cycle. Applications for a plan that is word-for-word identical to a Mass Submitter's § 403(b) Pre-approved Plan for a Cycle may be submitted until the IRS informs the Mass Submitter that word-for-word identical applications will no longer be accepted, which is expected to be shortly before the issuance of Opinion Letters for the next Cycle.

*.02 Other applications* — Any other application for an Opinion Letter (including that of a minor modifier adopter of a Mass Submitter plan) that is submitted after the applicable On-Cycle Submission Period for a Cycle is treated as off-cycle, as defined in section 10.02. If an off-cycle application for a Cycle is submitted before the

beginning of the Employer Adoption Window for that Cycle, the IRS generally will not review the application until it has reviewed and processed all applications submitted during that Cycle's On-Cycle Submission Period. However, the IRS may, in its discretion, determine whether the processing of off-cycle filings may be prioritized and accelerated. Off-cycle applications for a Cycle that are submitted during or after that Cycle's Employer Adoption Window will not be accepted.

## **SECTION 13. REVIEW OF OPINION LETTER APPLICATIONS; ISSUANCE OF OPINION LETTERS; EMPLOYER ADOPTION WINDOW**

.1 *Scope of review* — The IRS will review the plans that have been submitted during the On-Cycle Submission Period for a Cycle (as well as later identical adopter applications and applications that are off-cycle that the IRS will review in accordance with section 12) taking into account the applicable Cumulative List for the Cycle. The IRS will also consider in its review of any Opinion Letter application all § 403(b) Requirements that are not described in section 13.02(3), and not solely those on the applicable Cumulative List.<sup>9</sup> For example, if a Provider submits an application for a Cycle 2 Opinion Letter for a new plan that did not receive a Cycle 1 Opinion Letter, the IRS will review the plan taking into account the Cumulative List for Cycle 2, as well as the § 403(b) Requirements that were reviewed during Cycle 1.

### *.2 Cumulative List*

(1) For each Cycle, the IRS intends to publish a Cumulative List for § 403(b) Pre-approved Plans shortly before the start of the Cycle's On-Cycle Submission Period.

(2) The Cumulative List for a Cycle will identify changes in the § 403(b) Requirements that will be taken into account with respect to the plan document submitted to the IRS for the Cycle and that were not taken into account by the IRS in its review during any prior Cycle.

(3) Except as provided in the applicable Cumulative List, the IRS generally will not consider in its review of any Opinion Letter application any:

(a) guidance issued after approximately 90 days (the exact date being stated in the Cumulative List) prior to the date the applicable Cumulative List is issued;

(b) statutes enacted after approximately 90 days (the exact date being stated in the Cumulative List) prior to the date the applicable Cumulative List is issued;

(c) statutes that are first effective in the year in which the On-Cycle Submission Period begins for which there is no guidance identified on the applicable Cumulative List (regardless of when they are enacted); or

(d) § 403(b) Requirements (either statutory or regulatory) that become effective for the plan in a calendar year following the calendar year in which the On-Cycle Submission Period begins, regardless of when the § 403(b) Requirements are enacted or issued (for example, § 403(b) Requirements first effective in 2023, for applications submitted during the On-Cycle Submission Period beginning in 2022).

.3 *Timing of issuance of Opinion Letters* — The IRS intends to issue Opinion Letters for a Cycle to Mass Submitters and Providers at approximately the same time within the Cycle for all applications submitted during the Cycle's On-Cycle Submission Period (other than an application for a plan that is a Minor Modification of a Mass Submitter plan). Prior to issuing Opinion Letters for a Cycle, the IRS will send a notification to the applicable Mass Submitter or Provider, if the IRS determines that the plan appears to be in full compliance with the applicable § 403(b) Requirements, based on the submissions and the review as of the date of notification. However, this notification will only indicate that the plan appears to meet the applicable § 403(b) Requirements

under review as of the date of the notification. This notification is for the convenience of the applicable Mass Submitter or Provider concerning the status of its application and does not constitute an official Opinion Letter on which the Mass Submitter or Provider may rely. Also see section 8.03(2), which provides that an Adopting Employer will not have reliance if the Adopting Employer's adoption of a § 403(b) Pre-approved Plan precedes the issuance of an Opinion Letter for the plan. In addition, the IRS reserves the right to require changes after the notification is sent.

*.4 Employer Adoption Window* — When the review of § 403(b) Pre-approved Plan documents for a specific Cycle is close to being completed, the IRS will announce the Employer Adoption Window with respect to that Cycle, which will be an approximately two-year period during which Adopting Employers may adopt Newly Approved § 403(b) Pre-approved Plans.

## **SECTION 14. WITHDRAWAL OF APPLICATIONS**

*.1 Notification and effect* — A Provider may withdraw its application for an Opinion Letter at any time prior to the issuance of the letter by notifying the IRS in writing of the withdrawal at the address provided in section 20. The Provider also must notify each Adopting Employer of the withdrawal of the application and the consequences of the withdrawal to the Adopting Employer. As provided in section 7, the plan of such an employer will become an individually designed plan unless the employer adopts a Newly Approved § 403(b) Pre-approved Plan during the Employer Adoption Window for the Cycle for which the application was submitted.

*.2 IRS retains information* — Even though an application is withdrawn, the IRS will retain all correspondence and documents associated with that application and will not return them to the Provider. If an application is withdrawn, the case may be referred to IRS Employee Plans Examinations.

## **SECTION 15. NONTRANSFERABILITY OF OPINION LETTER**

An Opinion Letter issued to a Provider is not transferable. In the case of a change in entity with respect to a Provider, an Opinion Letter issued to the Provider may not be utilized by the changed entity. In addition, if a different entity assumes sponsorship of a § 403(b) Pre-approved Plan, it must submit an application for a new Opinion Letter under the name of the different entity and meet all the applicable requirements to be a Provider. Such an application may be filed at the time of the assumption of plan sponsorship by the new Provider, 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 Appendix A of Rev. Proc. 2021-4 (as updated annually). The new Opinion Letter will recognize the change in sponsorship and will not modify the scope of or change the reliance on the original Opinion Letter. The IRS may, in appropriate circumstances, request documentation of the assumption of sponsorship prior to issuing an Opinion Letter to the new entity. Examples of a change in entity include, but are not limited to, the acquisition of a Provider by another entity, the sale or transfer of the stock or assets of the Provider to another entity, and any other circumstance that results in a change in a Provider's employer identification number.

## **SECTION 16. NOTIFICATION OF ADOPTING EMPLOYER REGARDING FAILURE OF THE FORM OF THE PLAN TO SATISFY § 403(b) REQUIREMENTS**



If a Provider has knowledge that an Adopting Employer's plan may no longer satisfy the § 403(b) Requirements and the Provider does not submit a request to correct the failure to satisfy the § 403(b) Requirements under EPCRS, the Provider must notify the Adopting Employer that the plan may no longer satisfy the § 403(b) Requirements, advise the Adopting Employer that adverse tax consequences may result from the plan's failure to satisfy § 403(b) , and inform the Adopting Employer about the availability of EPCRS. See Rev. Proc. 2021-30 (or its successor). This section 16 does not impose a requirement on a Provider to monitor compliance of an Adopting Employer's plan with the § 403(b) Requirements, but it provides that the Provider has a duty to inform the Adopting Employer if the Provider has knowledge that the Adopting Employer's plan may no longer satisfy those requirements.

## **SECTION 17. DISCONTINUED PLANS**

*.1 Notification to the IRS* — A Provider must notify the IRS in writing if a § 403(b) Pre-approved Plan is no longer in use by any Adopting Employer or the Provider intends to discontinue the plan. The written notification must be sent to the address provided in section 20 and must refer to the file folder number appearing on the latest Opinion Letter issued.

*.2 Notification to employers* — A Provider that intends to discontinue sponsorship of a § 403(b) Pre-approved Plan that has one or more Adopting Employers must inform each Adopting Employer of the date on which the Provider will discontinue sponsorship, and that the Adopting Employer's plan will cease to be a § 403(b) Pre-approved Plan and convert to an individually designed plan on that date. The Provider must also inform each Adopting Employer that, notwithstanding the Provider's discontinuance of its sponsorship, if the Adopting Employer adopts another § 403(b) Pre-approved Plan, retroactive to the date of the discontinued sponsorship, by the end of the calendar year following the calendar year in which the Provider discontinues sponsorship of the plan, then the Adopting Employer's plan will be treated as though it had continued to be a § 403(b) Pre-approved Plan, and not converted to an individually designed plan (and the Adopting Employer will not be treated as having adopted the new § 403(b) Pre-approved Plan after the end of an Employer Adoption Window, if applicable).

## **SECTION 18. REVOCATION OF OPINION LETTER BY THE IRS**

An Opinion Letter found to be in error or not in accord with the current procedures of the IRS or the IRS's current interpretation of applicable law may be revoked. See also sections 4.21, 8.03(6), 9.01, 10.10 and 19.01 of this revenue procedure for other circumstances under which an Opinion Letter may be revoked. Revocation of an Opinion Letter may be applied retroactively. For this purpose, an Opinion Letter will be given the same effect as a determination letter. See section 23 of Rev. Proc. 2021-4 (as updated annually), disregarding references therein to § 7476 . Revocation may be effected by a notice to the Provider to which the Opinion Letter was originally issued. The Provider must then notify each Adopting Employer of the revocation as soon as possible. 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 19. RECORD KEEPING REQUIREMENTS**

*.1 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 Provider agrees, as provided in section 4.21, to comply with the requirements imposed on the Provider by this revenue procedure, including the record keeping requirements of this section. Failure to comply with the requirements imposed on the Provider by this revenue procedure may result in the loss of eligibility to be a Provider and the revocation of Opinion Letters that have been issued to the Provider.

*.2 Maintenance and availability of records of adopting employers* — A Provider 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 Adopting Employers. However, a Provider need not maintain records with respect to employers that, to the best of the Provider's knowledge, ceased to maintain its Pre-approved Plan more than three years earlier. Upon written request, a Provider must provide to the IRS a list of Adopting Employers that indicates, to the best of the Provider's knowledge, which of those employers continue to maintain the plan as a Pre-approved Plan and which of those employers have ceased to maintain its § 403(b) Pre-approved Plan within the preceding three years.

## **SECTION 20. WHERE TO FILE**

*.1 Opinion Letters* — Applications for an Opinion Letter, including applications filed by Mass Submitters, should be sent to:

Internal Revenue Service  
Attn: Pre-Approved Plans Coordinator Room 6-403, Group 7521  
P.O. Box 2508  
Cincinnati, OH 45201-2508

*.02 Delivery service* — An application 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 6-403, Group 7521  
Cincinnati, OH 45202

## **PART III — REMEDIAL AMENDMENT PERIOD FOR A FORM DEFECT IN A § 403(b) PRE-APPROVED PLAN**

### **SECTION 21. EXPIRATION OF REMEDIAL AMENDMENT PERIOD**

Pursuant to section 11.03 of Rev. Proc. 2019-39, this section provides rules for determining the expiration date of the Remedial Amendment Period for a Form Defect first occurring after the expiration of the Initial Remedial Amendment Period (that is, after June 30, 2020) in a § 403(b) Pre-approved Plan. Provided an interim amendment (as described in section 9.02 of this revenue procedure) is made timely, except as otherwise provided by statute, regulations, or other guidance published in the Internal Revenue Bulletin, the

Remedial Amendment Period for a Form Defect first occurring after the Initial Remedial Amendment Period, expires at the later of (1) the end of the Cycle that includes the date on which the Remedial Amendment Period would have ended if the plan were an individually designed plan, or (2) the end of the first Cycle in which an application for an Opinion Letter that considers the Form Defect may be submitted. This Remedial Amendment Period applies regardless of whether the Form Defect relates to a new plan or is due to an amendment (without regard to whether that amendment was required to be adopted) provided that the plan or amendment was adopted timely and in good faith with the intent of complying with the § 403(b) Requirements. The IRS will make the final determination in all cases as to whether a new plan or an amendment to an existing plan was adopted with the good faith intention of complying with the § 403(b) Requirements.

## **SECTION 22. INTERIM AMENDMENT DEADLINE**

*.1 Section 403(b) plan that is not a Governmental Plan* — For a § 403(b) Pre-approved Plan that is not a Governmental Plan, a Provider (or the Adopting Employer, if applicable) is considered to have adopted an interim amendment described in section 9.02 timely if the amendment is adopted by the end of the second calendar year following the calendar year in which the change in § 403(b) Requirements is effective with respect to the plan.

*.2 Section 403(b) plan that is a Governmental Plan* — For a Governmental Plan, a Provider (or the Adopting Employer, if applicable) is considered to have adopted an interim amendment described in section 9.02 timely if the plan amendment is adopted by the later of (1) the end of the second calendar year following the calendar year in which the change in § 403(b) Requirements is effective with respect to the plan, or (2) ninety days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date the plan amendment becomes effective.

## **SECTION 23. EXPIRATION OF LIMITED EXTENSION OF INITIAL REMEDIAL AMENDMENT PERIOD FOR CYCLE 1 § 403(b) PRE-APPROVED PLANS; EXTENSION OF DEADLINE FOR INITIAL AMENDMENT**

*.01 Expiration of the limited extension of the Initial Remedial Amendment Period* — Provided that an initial amendment is timely made in accordance with section 13.03 of Rev. Proc. 2019-39 , the limited extension of the Initial Remedial Amendment Period, as defined under Rev. Proc. 2019-39 , with respect to certain Form Defects first occurring during Cycle 1 will end on the last day of the Cycle in which an application for an Opinion Letter that considers the Form Defect may be submitted.

*.02 Extension of deadline for initial amendment* — To be considered timely, the date by which the initial amendment described in section 4.11 must be adopted is extended to the later of (1) June 30, 2020, or (2) the end of the second calendar year following the calendar year in which the change in § 403(b) Requirements is effective with respect to the plan.

## **SECTION 24. OPERATIONAL COMPLIANCE LIST**

The Remedial Amendment Period permits a plan to be amended retroactively to comply with a change in § 403(b) Requirements; however, a plan must be operated in compliance with a change in § 403(b) Requirements beginning on the effective date of the change. To assist Eligible Employers in achieving operational compliance, updates to the Operational Compliance List currently maintained on the IRS website

include changes in § 403(b) Requirements that are effective during a calendar year. To comply with the § 403(b) Requirements, however, a plan must comply operationally with each relevant § 403(b) Requirement, even if the requirement is not included on an Operational Compliance List.

## **PART IV — SPECIAL RULE FOR RETIREMENT INCOME ACCOUNT § 403(b) PRE-APPROVED PLANS**

### **SECTION 25. INCLUSION OF § 414(e)(3)(B) EMPLOYEES**

.1 *In general* — A Cycle 1 § 403(b) Pre-approved Plan that is intended to be a Retirement Income Account may be amended by a Provider, a Mass Submitter, or an Adopting Employer to permit the participation of an employee described in § 414(e)(3)(B) , retroactive to the beginning of Cycle 2, July 1, 2020.

.2 *Requirements* — As part of the amendment described in section 25.01, the nondiscrimination requirements of § 403(b)(12) must be set forth in the plan. The plan also must state that the nondiscrimination requirements will be applied to any employee other than an employee of a QCCO or Church. The amendment must be made in good faith with the intent of complying with the § 403(b) Requirements. The Adopting Employer will have until the end of the Cycle 2 Employer Adoption Window to adopt a Cycle 2 Newly Approved § 403(b) Pre-approved Plan that permits the participation of an employee described in § 414(e)(3)(B) and that includes the nondiscrimination requirements that apply to any employee other than an employee of a QCCO or Church. In the case of multiple employers that are not part of the same controlled group (as determined under § 414(b) , (c) , (m) , or (o) ) participating in the plan, each Adopting Employer must identify whether it is a Church, QCCO, or any other employer (such as a non-QCCO or minister). For example, the adoption agreement, if applicable, should be amended to require that an Adopting Employer identify whether it is a non-QCCO (in which case, its employees participating in the plan would be subject to the nondiscrimination requirements of § 403(b)(12) ).

.3 *Reliance* — The amendment described in section 25.01 will not affect the plan's status as a § 403(b) Pre-approved Plan or an Adopting Employer's reliance on the Cycle 1 Opinion Letter for the § 403(b) Pre-approved Plan (except that the Adopting Employer may not rely on the Cycle 1 Opinion Letter with respect to the amendment permitting participation of those employees).

## **PART V — MISCELLANEOUS**

### **SECTION 26. EFFECT ON OTHER DOCUMENTS**

Rev. Proc. 2013-22 is modified and superseded regarding Opinion Letter applications submitted with respect to a § 403(b) Pre-approved Plan's second (and subsequent) Cycles. The provisions of Rev. Proc. 2013-22 continue to apply to opinion and advisory letter applications for § 403(b) Pre-approved Plans submitted for Cycle 1. Rev. Proc. 2019-39 is modified.

### **SECTION 27. EFFECTIVE DATE**

.01 *In general* — This revenue procedure is effective on July 1, 2020, the day Cycle 2 began, and, except as otherwise stated, applies to applications for an Opinion Letter submitted solely with respect to Cycle 2 and subsequent Cycles.

.02 *Extended deadline for interim and initial amendments* — Sections 22 and 23.02, relating to deadlines for

interim and initial amendments, are effective for Form Defects first occurring on or after July 1, 2020, the day Cycle 2 began.

## **SECTION 28. PUBLIC COMMENTS**

The Treasury Department and the IRS invite comments on this revenue procedure. Comments should be submitted in writing and should include a reference to Rev. Proc. 2021-37 . Comments may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (type "IRS-2021-0011" in the search field on the regulations.gov homepage to find this revenue procedure and submit comments).

(2) Alternatively, by mail to: Internal Revenue Service, Attn: CC:PA:LPD:PR (Rev. Proc. 2021-37 ), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.

All commenters are strongly encouraged to submit comments electronically, as access to mail may be limited. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Treasury Department and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket.

## **SECTION 29. PAPERWORK REDUCTION ACT**

The collection of information included 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 1545-0047.

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 collections of information in this revenue procedure are in sections 5.11, 9.01, 9.02, 10.03, 11, and 19. 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 compliance with the § 403(b) Requirements. 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 Eligible Employers.

The estimated total annual reporting and/or recordkeeping burden is 29,149 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 3.56 hours. The estimated number of respondents and/or recordkeepers is 8,188.

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 .

## **SECTION 30. DRAFTING INFORMATION**

The principal author of this revenue procedure is Patrick Gutierrez of the Office of Associate Chief Counsel

(Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this revenue procedure, contact Employee Plans at (513) 975-6319 (not a toll-free number).

## APPENDIX A

### Application for Approval of § 403(b) Pre-approved Plan

1. Enter amount of user fee submitted: \$

2. Name of applicant:

a. EIN:

b. Address:

c. Phone:

3. Person to contact:

a. Phone:

b. Email address:

c. Power of attorney attached?

4. Type of applicant (check one):

\_\_\_\_\_ a. Provider

\_\_\_\_\_ b. Mass Submitter

\_\_\_\_\_ c. Identical adopter of Mass Submitter plan

\_\_\_\_\_ d. Minor modifier adopter of Mass Submitter plan

5. Form of plan (check one):

a. Single Document Plan

b. Adoption Agreement Plan

6. Indicate whether the plan is a (check one):

a. Standardized plan

b. Nonstandardized plan

7.a. Section 403(b) Pre-approved Plan basic plan document number or Single Document Plan number (Each of the Provider's or Mass Submitter's basic plan documents or Single Document Plans must be assigned a 2-digit number, starting with 01. Enter the number you have assigned to the basic plan document associated with the adoption agreement, or for the Single Document Plan if applicable, for which this application is filed.):

7.b. Section 403(b) Pre-approved Plan adoption agreement number (Each different adoption agreement associated with a single basic plan document must be assigned a 3-digit number, beginning with 001. Enter the number you have assigned to the adoption agreement for which this application is filed.):

8. If 4.c. or 4.d. is checked, complete the following information for the Mass Submitter's plan on which this application is based, to the extent the information is available when this application is filed:

a. Name of Mass Submitter:

b. File folder number:

c. Letter serial number:

d. Date of letter:

e. Basic plan document number or Single Document Plan number (if b, c, and d not available):

f. Adoption agreement number, if applicable (if b, c, and d not available)

9. Investment arrangement(s) permitted under the Provider's plan:

\_\_\_\_\_ a. Annuity contracts issued by an insurance company

\_\_\_\_\_ b. Custodial accounts

\_\_\_\_\_ c. Retirement income accounts (Note that Retirement Income Account plans must have a separate plan document)

10. If 9.c. is selected, check all of the following types of employers that may utilize the Retirement Income Account plan:

\_\_\_\_\_ a. Church

\_\_\_\_\_ b. Qualified Church-Controlled Organization

\_\_\_\_\_ c. Non-qualified Church-Controlled Organization

\_\_\_\_\_ d. Minister

11. Type(s) of contributions permitted under the Provider's plan:

\_\_\_\_\_ a. Elective deferrals (other than Roth)

\_\_\_\_\_ b. Roth elective deferrals

\_\_\_\_\_ c. After-tax employee contributions

\_\_\_\_\_ d. Matching contributions

\_\_\_\_\_ e. Other nonelective employer contributions

12. Are the following documents included with the application:

a. Basic plan document or Single Document Plan?



b. Adoption agreement (if the application is for a § 403(b) Pre-approved Plan that uses an adoption agreement)?

13. If 4.a. is checked, do you expect at least 15 Eligible Employers to adopt one of your § 403(b) plans?

14. If 4.b. is checked, are applications on behalf of at least 15 unaffiliated Providers who are sponsoring the identical basic plan document or Single Document Plan included with this application?

15. If the answer to 14 is "no," enter the number of the basic plan document or Single Document Plan for which the requirement described in 14 is met:

16. Applicant's signature under penalties of perjury (required if 4.a. or 4.b., checked):

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

Signature:

Title:

Date:

17. Provider's and Mass Submitter's signatures under penalties of perjury (required if 4.c. or 4.d. checked):

Under penalties of perjury, I declare that the Provider identified in line 2 of this application has adopted a Pre-approved Plan that is identical to the Mass Submitter plan identified in line 8, or is a minor modifier adopter of the Mass Submitter plan identified in line 8.

Provider's signature:

Title:

Date:

Mass Submitter's signature:

Title:

Date:

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1 In general, capitalized terms are defined in section 4 of this revenue procedure.

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2 The Department of the Treasury and the IRS also anticipate, subject to available resources, establishing a determination letter program for § 403(b) individually designed plans that will be similar to the determination letter program for § 401(a) individually designed plans. See Rev. Proc. 2016-37 , *201629 I.R.B. 136* (as modified by Rev. Proc. 2017-41 , *2017-29 I.R.B. 92* , and Rev. Proc. 2020-40 , *202038 I.R.B. 575* ), and Rev. Proc. 2021-4 , *2021-1 I.R.B. 157* (as updated annually).

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3 Unless otherwise specified, references to revenue procedure section numbers refer to sections of this revenue procedure.

fn  
4 The written plan document requirement applies to a § 403(b) plan maintained by a Church or a Qualified Church-Controlled Organization only if the plan is a Retirement Income Account plan under § 403(b)(9) . Section 1.403(b)-3(b)(3)(iii) .

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5 For purposes of this revenue procedure, references to Rev. Proc. 2013-22 are to Rev. Proc. 2013-22 , as modified by Rev. Proc. 2014-28 and Rev. Proc. 2015-22 , and clarified by Rev. Proc. 2017-18 .

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6 See section 2.20 of this revenue procedure for the extension of the expiration date of March 31, 2020, to June 30, 2020, by Notice 2020-35 , *2020-25 I.R.B. 948* .

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7 For purposes of this revenue procedure, references to Rev. Proc. 2019-39 are to Rev. Proc. 2019-39 , as modified by Rev. Proc. 2020-40 and Notice 2020-35 .

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8 For an individually designed plan, the Remedial Amendment Period for a Form Defect related to a change in § 403(b) Requirements generally ends on the last day of the second calendar year that begins after the issuance of the Required Amendments List in which the change in § 403(b) Requirements appears. Section 2.13. For example, if a change in § 403(b) Requirements occurs in the 1<sup>st</sup> year of Cycle 3, and is placed on the Required Amendments List in the 2<sup>nd</sup> year of Cycle 3, then the Remedial Amendment Period for a Form Defect related to that change would expire at the end of the 4<sup>th</sup> year of Cycle 3.

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9 In order to satisfy the § 403(b) Requirements, a plan must comply with all relevant § 403(b) Requirements, not solely those on the applicable Cumulative List, which generally reflects only the most recent changes to the § 403(b) Requirements.