

**Rev. Proc. 2015-36**

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**SECTION 1. PURPOSE**

.01 This revenue procedure sets forth the procedures of the Internal Revenue Service (IRS) for issuing opinion and advisory letters regarding the acceptability under §§ 401, 403(a), and 4975(e)(7) of the Internal Revenue Code (Code) of the form of pre-approved plans (that is, mas-

ter and prototype (M&P) and volume submitter (VS) plans). This revenue procedure modifies and supersedes Rev. Proc. 2011-49, 2011-44 I.R.B. 608. Section 3 describes the changes to Rev. Proc. 2011-49.

.02 This revenue procedure also extends to October 30, 2015, the deadline for submitting on-cycle applications for opinion and advisory letters for pre-

approved defined benefit plans for the plans' second six-year remedial amendment cycle. The extension to October 30, 2015, applies to pre-approved defined benefit mass submitter lead and specimen plans, word-for-word identical plans, M&P minor modifier placeholder applications, and defined benefit non-mass submitter plans.

## SECTION 2. BACKGROUND

.01 Prior to being superseded by this revenue procedure, procedures for the issuance of opinion and advisory letters by the IRS regarding the acceptability of the form of pre-approved plans were set forth in Rev. Proc. 2011-49 (as modified by Ann. 2012-3, 2012-4 I.R.B. 335; Ann. 2013-37, 2013-34 I.R.B. 155; Ann. 2014-4, 2014-7 I.R.B. 523; Ann. 2014-41, 2014-52 I.R.B. 979; and Rev. Proc. 2015-6, 2015-1 I.R.B. 194). Sections 6.03(4) and 16.03(4) of Rev. Proc. 2011-49 provided that opinion and advisory letters would not be issued for employee stock ownership plans (ESOPs). Sections 6.03(6) and 16.03(6) provided that opinion and advisory letters would not be issued for applicable defined benefit plans within the meaning of § 411(a)(13)(C) (Hybrid Plans).

.02 Rev. Proc. 2015-6 sets forth the general procedures of the IRS on the issuance of employee plans determination letters, including determination letters for M&P and VS plans.

.03 Rev. Proc. 2007-44, 2007-2 C.B. 54, (as modified by Rev. Proc. 2008-56, 2008-2 C.B. 826; Rev. Proc. 2009-36, 2009-2 C.B. 304; Notice 2009-97, 2009-2 C.B. 972; Notice 2010-48, 2010-27 I.R.B. 9; Notice 2010-77, 2010-51 I.R.B. 851; Notice 2011-85, 2011-44 I.R.B. 605; Ann. 2012-3; Rev. Proc. 2012-50, 2012-50 I.R.B. 708; Ann. 2013-37; Ann. 2014-4; Ann. 2014-41; and Rev. Proc. 2015-6) describes a system of cyclical remedial amendment periods under the Code. Under this system, every individually designed plan qualified under § 401(a) or 403(a) has a regular five-year remedial amendment cycle. These remedial amendment cycles are staggered and spread over five-year periods, so that different categories of plans have different cycles. The effect of this system is that plan sponsors may apply for new determination letters generally only once every five years in order to continue to have a letter on which to rely. In addition, under this system every pre-approved plan generally has a regular, six-year remedial amendment cycle. Every

pre-approved plan must be submitted to the IRS for a new opinion or advisory letter every six years, during the applicable on-cycle submission period at the beginning of the plan's six-year cycle. Pre-approved defined contribution plans have a different six-year cycle than pre-approved defined benefit plans.

.04 Sponsors and VS practitioners maintaining pre-approved defined benefit plans who sought opinion and advisory letters for the first six-year cycle submitted their applications to the IRS between February 1, 2007, and January 31, 2008. The IRS's review took into account the requirements of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. 107-16, and other items identified in Notice 2007-3, 2007-1 C.B. 255 (2006 Cumulative List). Adopting employers of these pre-approved plans generally had until April 30, 2012, to adopt the plans and to apply for a determination letter.

.05 Sponsors and VS practitioners maintaining pre-approved defined contribution plans submitted their applications to the IRS from February 1, 2011, to April 2, 2012. The IRS's review took into account the requirements of the Pension Protection Act of 2006 (PPA '06), Pub. L. 109-280, and other items identified in Notice 2010-90, 2010-52 I.R.B. 909 (2010 Cumulative List).<sup>1</sup> The 2010 Cumulative List consists of statutory, regulatory, and guidance changes to plan qualification requirements that were considered by the IRS in its review of the pre-approved defined contribution plans submitted during the applicable on-cycle submission period for the second six-year cycle as well as its review of single employer individually designed Cycle A plans. Adopting employers have until April 30, 2016, to adopt these plans and to apply for a determination letter, if eligible.

.06 The second six-year remedial amendment cycle for pre-approved defined benefit plans began on February 1, 2013, and ends on January 31, 2019. Section 18.02(2) of Rev. Proc. 2007-44 provides that the 9-month applicable on-cycle submission period for sponsors and VS

practitioners maintaining defined benefit mass submitter plans ended on October 31, 2013, and for sponsors and VS practitioners maintaining non-mass submitter plans ended on January 31, 2014. Ann. 2013-37 extended the submission period for defined benefit mass submitter plans to January 31, 2014. Ann. 2014-4 provided an extension to February 2, 2015, for submissions of pre-approved defined benefit plans by sponsors and VS practitioners seeking opinion and advisory letters for the second six-year remedial amendment cycle. Ann. 2014-41 further extended the end of this period to June 30, 2015. Therefore, the 12-month on-cycle submission period for both mass and non-mass submitter sponsors and VS practitioners, word-for-word identical adopters, and M&P minor modifier placeholder applications was scheduled to end on June 30, 2015. Section 23 of this revenue procedure further extends this submission deadline to October 30, 2015. The 2012 Cumulative List of Changes in Plan Qualification Requirements, Notice 2012-76, 2012-52 I.R.B. 775 (2012 Cumulative List), is to be used by plan sponsors and VS practitioners submitting opinion or advisory letter applications for defined benefit plans during the second remedial amendment cycle.

.07 The third six-year remedial amendment cycle for pre-approved defined contribution plans begins on February 1, 2017, and ends on January 31, 2023. The IRS will begin accepting opinion and advisory letter applications for pre-approved defined contribution plans for the third six-year remedial amendment cycle on February 1, 2017. The 12-month applicable on-cycle submission period for non-mass submitter sponsors and VS practitioners, word-for-word identical adopters, and M&P minor modifier placeholder applications will end on January 31, 2018. As provided in section 18.02(1) of Rev. Proc. 2007-44, the 9-month applicable on-cycle submission period for sponsors and VS practitioners maintaining defined contribution mass submitter plans will end on October 31, 2017. The 2016 Cumulative List of Changes in Plan Qualification

<sup>1</sup>This included requirements related to the following statutes: PPA '06, the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. 110-28; the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), Pub. L. 110-245; the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), Pub. L. 110-458; and the Small Business Jobs Act of 2010 (SBJA), Pub. L. 111-240.

Requirements, when issued, will be used by plan sponsors and VS practitioners submitting opinion or advisory letter applications for plans during these periods. The IRS will announce the deadline for timely adoption by employers when the review of the pre-approved documents is close to being completed.

.08 Ann. 2011–82, 2011–52 I.R.B. 1052, describes changes to the Employee Plans determination letter program. These changes, which eliminated features of the determination letter program that were of limited utility, were first added by Rev. Proc. 2012–6, 2012–1 I.R.B. 197, and are currently reflected in Rev. Proc. 2015–6. Under these procedures, many pre-approved plan adopters may no longer apply for determination letters.

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

### **SECTION 3. CHANGES TO REVENUE PROCEDURE 2011–49**

.01 Section 4 is modified to include definitions for ESOPs and cash balance plans.

.02 Section 4.07 is modified to reduce the required number of adopting employers necessary to qualify as a sponsor from 30 to 15 and to provide that if a sponsor requests an opinion letter for more than one basic plan document it must represent to the IRS that it has at least 30 employer-clients in the aggregate, each of which is expected to adopt at least one of the sponsor’s basic plan documents. The 30 unaffiliated sponsor requirement included in the definition of M&P Mass Submitter in section 4.08 has been retained.

.03 Section 5 is modified to set forth additional provisions required by M&P ESOPs and cash balance plans, as provided in section 5.15 and 5.16, respectively.<sup>2</sup> In addition, section 5.13 is modified with regard to the eligibility of employees to participate in an ESOP.

.04 Section 6.03(4) is deleted and replaced with section 6.03(4) and (5) in order to allow sponsors to request opinion letters for ESOPs and to set forth the specific areas for which opinion letters

will not be issued for ESOPs. The remaining paragraphs in section 6.03 have been renumbered to reflect these changes.

.05 Section 6.03(6) is deleted and replaced with section 6.03(7) in order to allow sponsors to submit cash balance plans to the IRS and request opinion letters for plans containing these features and to set forth specific areas for which opinion letters will not be issued for cash balance plans.

.06 Section 7.04 is modified to eliminate the requirement that requests for opinion letters for defined benefit plans containing integrated and nonintegrated features must be submitted as separate filings.

.07 Section 13 is modified to make the qualification requirements for a VS Mass Submitter consistent with those of a M&P Mass Submitter.

.08 Section 13 is modified to include definitions for ESOPs and cash balance plans.

.09 Section 13.04 is modified to allow the submission for a VS plan to contain up to ten related trusts for approval for each basic plan document, without an additional user fee.

.10 Section 13.05 is modified to reduce the required number of adopting employers necessary to qualify as a VS practitioner from 30 to 15 and to provide that if a VS practitioner requests an advisory letter for more than one specimen plan document it must represent to the IRS that it has at least 30 employer-clients in the aggregate, each of which is expected to adopt at least one of the practitioner’s basic plan documents. The 30 unaffiliated sponsor requirement included in the definition of VS Mass Submitter in section 13.06 has been retained.

.11 Section 14 is modified to set forth additional provisions required for VS ESOPs and cash balance plans, as provided in section 14.07 and 14.08, respectively. In addition section 14.02 is modified with regard to the eligibility of employees to participate in an ESOP.

.12 Section 16.03(4) is deleted and replaced with section 16.03(4) and (5) in order to allow VS practitioners to request

advisory letters for ESOPs and to set forth specific areas for which advisory letters will not be issued for ESOPs. The remaining paragraphs in section 16.03 have been renumbered to reflect these changes.

.13 Section 16.03(6) is deleted and replaced with section 16.03(7) in order to allow VS practitioners to submit cash balance plans to the IRS and request advisory letters for plans containing these features and to set forth specific areas for which advisory letters will not be issued for cash balance plans.

.14 Section 19 is revised to delineate the scope of an employer’s reliance on an opinion/advisory letter, pursuant to the changes to the determination letter program described in Ann. 2011–82.

.15 Section 23 is revised to extend the deadline for submitting on-cycle applications for opinion and advisory letters for pre-approved defined benefit plans for the plans’ second six-year remedial amendment cycle to October 30, 2015.

## **PART I – M&P PLANS**

### **SECTION 4. DEFINITIONS**

.01 Master Plan - A “master plan” is a plan (including a plan covering self-employed individuals) that is made available by a sponsor for adoption by employers and for which a single funding medium (for example, a trust or custodial account) is established, as part of the plan, for the joint use of all adopting employers. A master plan consists of a basic plan document, an adoption agreement, and, unless included in the basic plan document, a trust or custodial account document.

.02 Prototype Plan - A “prototype plan” is a plan (including a plan covering self-employed individuals) that is made available by a sponsor for adoption by employers and under which a separate funding medium is established for each adopting employer. A prototype plan consists of a basic plan document, an adoption agreement, and, unless the basic plan document incorporates a trust or custodial account agreement the provisions of which are applicable to all adopting em-

<sup>2</sup>Employers currently using individually designed plans who wish to use the six-year remedial amendment cycle, as described in Part IV of Rev. Proc. 2007–44, as an adopter of a pre-approved plan, should complete Form 8905 *Certification of Intent to Adopt Pre-Approved Plan*, no later than the end of their applicable remedial amendment cycle. For further information, see <http://www.irs.gov/Retirement-Plans>.

employers, a trust or custodial account document.

.03 Basic Plan Document - A “basic plan document” is the portion of a plan containing all of the non-elective provisions applicable to all adopting employers. No options (including blanks to be completed) may be provided in the basic plan document, except as provided in section 12.03(1) of this revenue procedure regarding flexible plans.

.04 Adoption Agreement - An “adoption agreement” is the portion of the plan containing the options that may be selected by an adopting employer.

.05 Trust or Custodial Account Document (Note: This definition does not apply if the basic plan document includes a trust or custodial account agreement the provisions of which apply to all adopting employers.)

(1) A “trust or custodial account document” is the portion of a M&P plan that contains the trust agreement or custodial account agreement and includes provisions covering such matters as the powers and duties of trustees, investment authority, and the kinds of investments that may be made.

(2) Except as provided in section 5.09 and this section 4.05, all provisions of the trust or custodial account document must be applicable to all adopting employers of that trust, and no options (including blanks to be completed) may be provided in the trust or custodial account document.

(3) With respect to prototype plans, a sponsor or mass submitter may provide up to 10 separate trust or custodial account documents that are intended for use with any single basic plan document. Notwithstanding the preceding sentence, a sponsor or mass submitter may submit more than 10 separate trust or custodial account documents intended for use with any single basic plan document, provided that an additional user fee is submitted for each trust document in excess of 10. See section 6 of Rev. Proc. 2015–8.

(4) As provided in section 5.09, a sponsor or M&P mass submitter may provide a trust or custodial account document designated for use only by adopters of non-standardized plans that provides for blanks to be completed with respect to administrative provisions of the trust or custodial account agreement.

(5) Any trust or custodial account document (including one to be used by adopters of standardized plans) may provide for blanks to be completed that merely enable the adopting employer to specify the names of the plan, employer, trustee or custodian, plan administrator and other fiduciaries, the trust year, and the name of any pooled trust in which the plan’s trust will participate.

.06 Opinion Letter - An “opinion letter” is a written statement issued by the IRS to a sponsor or M&P mass submitter as to the acceptability of the form of a M&P plan under § 401(a), 403(a), or both §§ 401(a) and 4975(e)(7) and, in the case of a master plan, the acceptability of the master trust under § 501(a).

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

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

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

By submitting an application for an opinion letter for a M&P plan under this revenue procedure (or by having an application filed on its behalf by a M&P mass submitter), a person represents to the IRS that it is a sponsor, as defined in this section 4.07, and agrees to comply with any requirements imposed on sponsors by

this revenue procedure. Failure to comply with these requirements may result in the loss of eligibility to sponsor M&P plans and the revocation of opinion letters that have been issued to the sponsor.

.08 M&P Mass Submitter - A “M&P mass submitter” is any person that (1) has an established place of business in the United States where it is accessible during every business day and (2) submits opinion letter applications on behalf of at least 30 unaffiliated sponsors each of which is sponsoring, on a word-for-word identical basis, the same basic plan document. A flexible plan (as defined in section 12.03(1)) that is adopted by a sponsor will be considered a word-for-word identical plan. For purposes of determining whether 30 unaffiliated sponsors sponsor, on a word-for-word basis, the same basic plan document, the mass submitter is treated as an unaffiliated sponsor. For purposes of this definition, affiliation is determined under § 414(b) and (c). Additionally, the following will be considered to be affiliated: any law firm, accounting firm, consulting firm, etc., with its partners, members, associates, etc. A M&P mass submitter will be treated as a M&P mass submitter with respect to all of its M&P plans provided the 30 unaffiliated sponsor requirement is met with respect to at least one basic plan document.

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

.09 Standardized Plan - A “standardized plan” is a M&P plan (other than an ESOP or Hybrid Plan) that meets the following requirements:

(1) Under the provisions governing eligibility and participation, the plan by its terms benefits all employees described in

section 5.13 (regardless of whether any employer is treated as operating separate lines of business under § 414(r)) except those that may be excluded under § 410(a)(1) or (b)(3). The adoption agreement may provide options as to whether some or all of the employees described in § 410(a)(1) or (b)(3) are to be excluded, provided that the criteria for excluding employees described in § 410(a)(1) or (b)(3) apply uniformly to all employees. A standardized plan generally may not deny an accrual or allocation to an employee eligible to participate merely because the employee is not an active employee on the last day of the plan year or has failed to complete a specified number of hours of service during the year. However, the plan may deny an allocation or accrual to an employee who is eligible to participate if the employee terminates service during the plan year with not more than 500 hours of service and is not an active employee on the last day of the plan year.

A plan will not fail to satisfy the requirements of this paragraph (1) merely because the plan provides, either as the result of an elective provision or by default in the absence of an election to the contrary, that individuals who become employees, within the meaning of section 5.13, as the result of a “§ 410(b)(6)(C) transaction” will be excluded from eligibility to participate in the plan during the period beginning on the date of the transaction and ending on a date that is not later than the last day of the first plan year beginning after the date of the transaction. A “§ 410(b)(6)(C) transaction” is an asset or stock acquisition, merger, or other similar transaction involving a change in the employer of the employees of a trade or business.

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

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

ensation, or that otherwise satisfies § 414(s) and § 1.414(s)-1(c).

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

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

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

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

.10 Nonstandardized Plan - A “non-standardized plan” is a M&P plan (including an ESOP or Hybrid Plan that meets the requirements of this revenue procedure) that is not a standardized plan.

#### .11 ESOP Definitions

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

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

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

#### .12 Hybrid Plan Definitions

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

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

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

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

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

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

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

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

## SECTION 5. PROVISIONS REQUIRED IN M&P PLANS

.01 Sponsor Amendments - M&P plans must provide a procedure for sponsor amendment, so that changes in the Code, regulations, revenue rulings, other statements published by the IRS, or corrections of prior approved plans may be applied to all employers who have adopted the plan. Sponsors must make reasonable and diligent efforts to ensure that adopting employers of the sponsor’s M&P plan have actually received and are aware of all plan

amendments and that such employers complete and sign new adoption agreements if necessary. See section 5.11. The provision for sponsor amendment must provide that, for purposes of reliance on the opinion letter, the sponsor will no longer have the authority to amend the plan on behalf of the adopting employer as of the date of the adoption of an employer amendment to the plan to incorporate a type of plan not allowable in the M&P program described in section 6.03 (e.g. the addition of enabling language for multiemployer plan features) or as of the date the IRS notifies the sponsor that the plan is being treated as an individually designed plan pursuant to section 24.03. Failure to comply with this requirement may result in the loss of eligibility to sponsor M&P plans and the revocation of opinion letters that have been issued to the sponsor.

.02 Employer Amendments - An employer that amends any provision of an approved M&P plan including its adoption agreement (other than to change the choice of options selected, if the plan permits or contemplates such a change) or an employer that chooses to discontinue participation in a plan as amended by its sponsor without substituting another approved M&P plan is considered to have adopted an individually designed plan. However, this rule does not apply in the case of amendments permitted under sections 5.06 and 5.09 and sample or model amendments published by the IRS that specifically provide that their adoption by an adopter of a M&P plan will not cause such plan to be treated as individually designed. Additionally, a plan will not be treated as individually designed if a closing agreement under the Audit Closing Agreement Program or a compliance statement under the Voluntary Correction Program of the Employee Plans Compliance Resolution System (EPCRS) has been issued with respect to the employer's plan with regard to the amendment.<sup>3</sup> Also see section 19.03 regarding the effect of employer amendments on an employer's ability to rely on an opinion letter, and section 24 with respect to applicable remedial amendment periods. An employer that amends a M&P plan because of a

waiver of the minimum funding requirement under § 412(d) will also be considered to have an individually designed plan. The procedures set forth in Rev. Proc. 2015-6, as amended annually and as related to the issuance of determination letters for individually designed plans, will then apply to the plan as adopted by the employer. See also section 19 of Rev. Proc. 2007-44 regarding the effect employer amendments have on eligibility for the six-year remedial amendment cycle applicable to pre-approved plan adopters.

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

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

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

the plan ceases to be top-heavy. See §§ 411(d)(6)(C) and 1.411(d)-4(d) for certain exceptions applicable to ESOPs.

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

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

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

.09 Adopting Employer Modification of Trust or Custodial Account Document - An employer that adopts a nonstandardized M&P plan will not be considered to have an individually designed plan merely because the employer amends administrative provisions of the trust or custodial account document (such as provisions relating to investments and the duties of trustees), provided the amended provisions are not in conflict with any other provision of the plan and do not cause the plan to fail to qualify under § 401(a). For this purpose, an amendment includes

<sup>3</sup>See Section 6.05(5)(b) of Rev. Proc. 2013-12, 2013-4 I.R.B. 313.

modification of the language of the trust or custodial account document and the addition of overriding language.

An employer that adopts a standardized M&P plan may amend the trust or custodial account document, provided such amendment merely involves the specification of the names of the plan, employer, trustee or custodian, plan administrator and other fiduciaries, the trust year, or the name of any pooled trust in which the plan's trust will participate.

.10 Provisions Required in Adoption Agreements Regarding Reliance - The adoption agreement of every standardized and nonstandardized M&P plan must include, in close proximity to the signature blank, a statement that describes the limitations on employer reliance on an opinion letter. See section 19.

.11 Other Provisions Required in Adoption Agreements - Each M&P plan must contain a dated employer signature line. The employer must sign the adoption agreement when it first adopts the plan and must complete and sign a new adoption agreement if the plan has been restated. In addition, the employer must complete a new signature page if it modifies any prior elections or makes new elections in its adoption agreement. The signature requirement may be satisfied by an electronic signature that reliably authenticates and verifies the adoption of the adoption agreement, or restatement, amendment or modification thereof, by the employer. The adoption agreement must state that it is to be used with one and only one specific basic plan document. In addition, the adoption agreement must contain a cautionary statement to the effect that the failure to properly fill out the adoption agreement may result in failure of the plan to qualify under § 401(a), 403(a), or 4975(e)(7), as applicable. The adoption agreement must also contain a statement that provides that the sponsor will inform the adopting employer of any amendments made to the plan or of the discontinuance or abandonment of the plan.

.12 Sponsor Telephone Numbers - M&P plan adoption agreements must include the sponsor's name, address, and telephone number (or a space for the address and telephone number of the sponsor's authorized representative) for inquir-

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

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

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

.15 Additional Provisions Required for ESOPs - ESOPs will not receive favorable opinion letters under this revenue procedure unless, in addition to complying with the requirements of subsections 5.01 through 5.14 of this revenue procedure, the plan documents include the following:

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

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

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

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

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

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

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

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

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

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

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

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

(13) Provisions (in the adoption agreement) that identify the plan sponsor as being either a C corporation or an S corporation.

.16 Additional Provisions Required for Cash Balance Plans - Plans containing cash balance features will not receive favorable opinion letters unless, in addition to complying with the requirements of subsections 5.01 through 5.14 of this revenue procedure, they meet the following requirements:

(1) Prior benefit structures protected - All cash balance plans must ensure compliance with the anti-cutback provisions of § 411(d)(6). To receive a favorable opinion letter under this revenue procedure, a cash balance plan must provide

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

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

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

.01 General Limits on Opinion Letters - Opinion letters will be issued only to sponsors or M&P mass submitters. Opinion letters constitute determinations as to the qualification of the plans as adopted by particular employers only under the circumstances, and to the extent, described in section 19. In the case of prototype plans, opinion letters do not constitute rulings or determinations as to the exempt status of related trusts or custodial accounts.

.02 Nonapplicability of this Revenue Procedure to IRAs (including traditional IRAs, Roth IRAs, SEPS, and Simple IRAs) and section 403(b) Plans - Opinion letters will not be issued under this revenue procedure for prototype plans intended to meet the requirements for individual retirement arrangements under § 408 or for § 403(b) plans (see Rev. Proc. 87-50, 1987-2 C.B. 647; Rev. Proc. 97-

29, 1997-1 C.B. 698; Rev. Proc. 98-59, 1998-2 C.B. 727; Rev. Proc. 2010-48, 2010-50 I.R.B. 828; Rev. Proc. 2013-22, 2013-18 I.R.B. 985; Rev. Proc. 2014-28, 2014-16 I.R.B. 944; and Rev. Proc. 2015-22, 2015-11 I.R.B. 754).

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

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

(3) Stock bonus plans other than ESOPs;

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

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

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

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

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

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

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

(d) A conversion amendment, except for plans providing that, after the effective date of the conversion amendment, a par-

ticipant's accrued benefit is equal to the sum of accruals under the prior formula plus the benefit based on the cash balance formula ("A+B Conversion");

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Defined benefit plans that provide for employee contributions (other than statutory hybrid plans that accepted employee contributions prior to the first plan year after the effective date of this revenue procedure);

(11) Plans that would not satisfy the qualification requirements except as governmental plans as described in § 414(d);

(12) Church plans described in § 414(e) that have not made the election provided by § 410(d);

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

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

(15) Section 401(k) plans (standardized and nonstandardized) that provide for hardship distributions under circumstances other than those described in the safe harbor standards in the regulations under § 401(k);

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

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

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

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

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

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

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

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

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

## **SECTION 7. OPINION LETTER APPLICATIONS - INSTRUCTIONS TO SPONSORS**

.01 The IRS Issues Opinion Letters -The IRS will, upon the request of a sponsor, issue an opinion letter as to the acceptability of the form of the sponsor's M&P plan and any related trust or custodial account documents under §§ 401(a), 403(a), 501(a), and 4975(e)(7).

.02 Procedure for Requesting Opinion Letters - A request for an opinion letter relating to a M&P plan must be submitted on the current version of Form 4461, *Application for Approval of Master or Prototype or Volume Submitter Defined Contribution Plans*, Form 4461-A, *Application for Approval of Master or Prototype or Volume Submitter Defined Benefit Plan*, or Form 4461-B, *Application for Approval of Master or Prototype or Volume Submitter Plans (Mass Submitter Adopting Sponsor or Practitioner)*, as appropriate. Additionally, the M&P request must be accompanied by the required user fee submitted with Form 8717-A, *User Fee for Employee Plan Opinion or Advisory Letter Request*, a signed certification that all necessary amendments required by the IRS to retain the qualified status of the sponsor's plan have been made and communicated to all adopting employers, and Attachment I to Form 4461, or Attachment I-A to Form 4461-A, as applicable. These forms may be downloaded from the Internet at the following address: <http://www.irs.gov/>

*Retirement-Plans/Preapproved-Plan-Submission-Procedures*. All information on the first page of the application must be typed. The request must be sent to the address in section 20 of this revenue procedure.

.03 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 21.03. To expedite the review of substantially identical plans that are not mass submitter plans, the IRS encourages plan drafters and sponsors to include with each opinion letter application, if appropriate, a cover letter setting forth the following information:

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

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

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

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

.04 Separate Applications Required for Different Categories of M&P Plans/Use of Same Basic Plan Document by Multiple Plans - A M&P adoption agreement may not contain any combination of profit-sharing, money purchase (other than target benefit), ESOP, target benefit,

or defined benefit plan features. Thus for example, a single adoption agreement may not contain features of both a money purchase plan and a target benefit plan. In addition, one basic plan document may not be used for both defined benefit and defined contribution plans. Provided that the provisions of the basic plan document are identical for all plans using that document (that is, the basic plan document contains no elective or optional features), separate defined contribution plans may use the same basic plan document and separate defined benefit plans may use the same basic plan document. Accordingly, separate defined contribution adoption agreements may be associated with the same defined contribution basic plan document. For example, a sponsor may submit one defined contribution basic plan document with adoption agreements for a money purchase plan, a target benefit plan, and a profit-sharing plan. The adoption agreement submitted for a defined benefit plan may contain any combination of plan provisions providing integrated (that is, that provide for permitted disparity) and non-integrated traditional formulas, and a cash balance formula. A separate adoption agreement and completed application form must be submitted with respect to each defined benefit plan and each defined contribution plan. In the case of a simultaneous submission of plans using the same basic plan document, only one copy of the basic plan document should be provided. If the requests are not simultaneous, the sponsor must submit a copy of the basic plan document with each submission and include a cover letter identifying the original submission. The number of such basic plan document must remain the same as in the prior submission.

.05 Sample Language - A Listing of Required Modifications (LRM) containing sample language to be used in drafting M&P plans is available from the IRS. Such language is not automatically required in M&P plans but should be used as a guide in drafting such plans. To expedite the review of their plans, sponsors are encouraged to use LRM language and to identify the location of such language in their plan documents. LRMs may be downloaded from the Internet at the fol-

lowing address: <http://www.irs.gov/Retirement-Plans/Listing-of-Required-Modifications-LRMs>

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

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

## **SECTION 8. APPROVED PLANS - MAINTENANCE OF APPROVED STATUS**

.01 Cumulative List in Six-Year Cycle - Rev. Proc. 2007-44 provides that sponsors of pre-approved M&P plans must submit requests for opinion letters during the applicable on-cycle submission period for a six-year cycle in order to continue to rely on their opinion letters. Sponsors may apply for opinion letters at other times, but these filings will be "off-cycle" filings as described in section 21.03 of this revenue procedure. The IRS will review the plans that have been submitted during the applicable on-cycle submission period for a six-year cycle taking into account the applicable Cumulative List that identifies changes in the qualification requirements

of the Code as well as items of published guidance relating to the plan qualification requirements, such as regulations and revenue rulings. However, in order to be qualified, a plan must comply in operation with all relevant qualification requirements, not just those on the applicable Cumulative List.

.02 Subsequent Required Interim Amendments - Except as otherwise provided in future guidance, in the event of changes in qualification requirements resulting from future guidance, or other regulatory or statutory changes that were not taken into account in issuing the opinion letter, an approved M&P plan must be amended by the sponsor and, if necessary, the employer, to retain its approved status if any provisions therein fail to meet the requirements of law, regulations, or other issuances and guidelines affecting qualification. See section 5.01 of Rev. Proc. 2007-44 regarding the time by which such amendments must be adopted. Failure to so amend could result in the loss of a plan's qualified status. However, this does not change the applicable on-cycle submission period for the six-year cycle when sponsors must request opinion letters, which will still occur only once every six years. Sponsors are required to make reasonable and diligent efforts to ensure that each employer that, to the best of the sponsor's knowledge, continues to maintain the plan as a M&P plan amends its plan when necessary.

The plan must operationally comply with any changes in qualification requirements and the terms of the plan as ultimately amended to reflect the changes.

.03 Loss of Qualified Status - If a sponsor reasonably concludes that an employer's M&P plan may no longer be a qualified plan and the sponsor does not or cannot submit a request to correct the qualification failure under EPCRS, it is incumbent on the sponsor to notify the employer that the plan may no longer be qualified, advise the employer that adverse tax consequences may result from loss of the plan's qualified status, and inform the employer about the availability of EPCRS. See Rev. Proc. 2013-12.

## **SECTION 9. WITHDRAWAL OF REQUESTS**

.01 Notification and Effect - A sponsor may withdraw its request for an opinion letter at any time prior to the issuance of such letter by notifying the IRS in writing of such withdrawal, at the address provided in section 20.01. The sponsor must also notify each employer who adopted the plan that the request has been withdrawn. The plan of such an employer will become an individually designed plan unless the employer adopts another pre-approved plan. See Rev. Proc. 2007-44.

.02 IRS Retains Information - Even though a request is withdrawn, the IRS will retain all correspondence and documents associated with that request and will not return them to the sponsor. If a request is withdrawn, the case may be referred to IRS Employee Plans Examinations, which has audit jurisdiction over the returns of any employers that have adopted the plan.

## **SECTION 10. ABANDONED PLANS**

.01 Notification to the IRS - A sponsor must notify the IRS in writing if an approved M&P plan is no longer used by any employer and the sponsor no longer intends to offer the plan for adoption. Such written notification must be sent to the address in section 20 and must refer to the file folder number appearing on the latest opinion letter issued.

.02 Notification to Employers - A sponsor that intends to abandon an approved M&P plan that is in use by any adopting employer must inform each adopting employer that the form of the plan has been terminated, and that the employer's plan will become an individually designed plan (unless the employer adopts another pre-approved plan). After so informing all adopting employers, the sponsor should notify the IRS in accordance with subsection 10.01 above.

## **SECTION 11. RECORD KEEPING REQUIREMENTS**

.01 Filing of Opinion Letter Application Constitutes Agreement to Comply with Record Keeping Requirements - By submitting an application for an opinion letter under this revenue procedure (or by

having an application filed on its behalf by a M&P mass submitter), a M&P plan sponsor agrees, as provided in section 4.07, to comply with the requirements imposed on the sponsor by this revenue procedure, including the record keeping requirements of this section. Failure to comply with the requirements imposed on the sponsor by this revenue procedure may result in the loss of eligibility to sponsor M&P plans and the revocation of opinion letters that have been issued to the sponsor.

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

## **SECTION 12. M&P MASS SUBMITTERS**

.01 Opinion Letters Issued to M&P Mass Submitters

(1) The IRS will, upon request by a M&P mass submitter, issue an opinion letter as to the acceptability of the form of the mass submitter's M&P plan and any related trust or custodial account documents under §§ 401(a), 403(a), 4975(e)(7), and 501(a). With respect to its plan, the M&P mass submitter must submit a completed Form 4461 or 4461-A, and Attachment I to Form 4461 or Attachment I-A to Form 4461-A, as applicable, to the address in section 20. The first page of the Form 4461 or 4461-A must be typed. In the case of an initial submission of a basic plan document under this revenue procedure, the M&P mass submitter's application must also be accompanied by applications for opinion letters filed on behalf of the requisite number of identical

adopters (as determined under section 4.08), unless the M&P mass submitter has already satisfied this requirement in connection with a previous application under this revenue procedure involving another basic plan document. Any plan submitted by a M&P mass submitter must include language designating the M&P mass submitter as agent for the sponsor for purposes of making plan amendments. The M&P request must be accompanied by the required user fee submitted with Form 8717-A, and a signed certification that all necessary amendments required by the IRS to retain the qualified status of the M&P mass submitter's plan have been made and communicated to all adopting sponsors. These forms and attachments may be downloaded from the Internet at the following address: <http://www.irs.gov/Retirement-Plans/Preapproved-Plan-Submission-Procedures>.

(2) After satisfying the requirement as to the number of adopting sponsors, the M&P mass submitter may submit additional applications on behalf of other sponsors that wish to adopt a word-for-word identical plan or a plan that contains minor modifications from the mass submitter plan, as provided in section 12.03(2). In addition, the M&P mass submitter may then submit requests for opinion letters under this section 12.01 for its other plans, regardless of the number of identical adopters of such other plans.

(3) The IRS intends to issue opinion letters to M&P mass submitters and sponsors (as well as advisory letters to VS mass submitters and VS practitioners) at approximately the same time within the applicable six-year cycle. In the interim, the IRS will send a notification to the applicable M&P or VS mass submitter, sponsor, or VS practitioner, if the IRS determines that the plan appears to be in full compliance with the applicable qualification requirements based on the submissions and the completed review. Notwithstanding the preceding sentence, this notification only provides assurance that the IRS believes the plan appears to meet the applicable qualification requirements under review as of the date of the notification. This notification is for the convenience of the applicable sponsor, VS practitioner, or mass submitter, but does not constitute an official opinion or advisory

letter. Until issuance of the official opinion or advisory letter, no reliance exists. The IRS reserves the right to require changes after the notification is sent, in its sole discretion.

.02 Reduced Procedural Requirements for Sponsors That Use Mass Submitter Plans - A sponsor of a M&P plan of a mass submitter must obtain an opinion letter. For qualification, or if the sponsor's plan includes modifications, the M&P mass submitter must submit on behalf of the sponsor a completed Form 4461-B which contains a declaration by the M&P mass submitter under penalty of perjury that the sponsor has adopted a M&P plan that is word-for-word identical to a plan of the M&P mass submitter, or a M&P plan that is a minor modification of the mass submitter's plan. The Form 4461-B must be typed. If the sponsor is sponsoring a word-for-word identical plan (including a flexible plan), a copy of the plan need not be submitted. If the M&P mass submitter submits a plan with minor modifications, it must comply with the requirements of section 12.03(2). The request must be accompanied by the required user fee submitted with Form 8717-A and a signed certification that all necessary amendments required by the IRS to retain the qualified status of the sponsor's plan have been made and communicated to all adopting employers. Upon receipt of the request for an opinion letter, the IRS will, as soon as administratively feasible, issue an opinion letter with respect to the sponsor's plan (provided that an opinion letter has been issued with respect to the M&P mass submitter's plan).

.03 Definitions - (1) Flexible Plan

(a) In general - A "flexible plan" is a plan submitted by a M&P mass submitter that contains optional provisions (as defined in (b) below). Sponsors that adopt the flexible plan may include or delete any optional provision that is designated as such in the M&P mass submitter's plan, provided the inclusion or deletion of specific optional provisions conforms to the M&P mass submitter's written representation to the IRS concerning the choices available to sponsors and the coordination of optional provisions. A M&P mass submitter must bracket and identify the optional provisions when submitting such plan, and must also provide the IRS a

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

(b) Optional Provisions - A flexible plan may contain optional provisions that comply with the requirements set forth in this paragraph. The optional provisions may be arranged as separate optional articles or as separate optional provisions within a single article. A flexible plan may also contain optional provisions in the adoption agreement. For example, if a M&P mass submitter flexible plan basic plan document contains an optional provision that would allow for loans under a sponsor's M&P plan, the adoption agreement could also include an optional provision that would enable an adopting em-

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

(i) Investment Provisions - A M&P mass submitter may offer a variety of investment provisions in its plan for sponsors to include or delete from their version of the plan. However, the plan as adopted by the sponsor must provide some method for investing trust assets. Investment provisions are those provisions that describe the plan's methods of investing the trust or custodial funds, including provisions such as the availability of loans and investments in insurance contracts or other funding media, and self-directed investments. (Also see sections 4.05 and 5.09 regarding flexibility permitted in trust or custodial account documents.)

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

For example, provisions that provide for the notice to participants required by § 417 and record-keeping required by regulations under §§ 401(k) and (m) are not administrative provisions for purposes of this revenue procedure, and may not be optional provisions.

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

(c) Addition of Optional Provisions by the M&P Mass Submitter - A M&P mass submitter may add additional optional provisions to its plan after a favorable opinion letter is issued. Generally, the addition of such optional provisions will not be treated as a plan amendment for purposes of this revenue procedure, Rev. Proc. 2015-6, and Rev. Proc. 2015-8, 2015-1 I.R.B. 235. Accordingly, sponsors and adopting employers will not be required to obtain new opinion and determination letters in order to preserve reliance. However, the addition of a cash or deferred arrangement or any change to the language of the adoption agreement subsequent to the issuance of an opinion letter will be treated as a plan amendment to the M&P mass submitter's plan, and the requirements of subsection .04 of this section 12 will then apply. The M&P mass submitter must submit such additional optional provisions to the IRS, along with a completed Form 4461 or 4461-A, as applicable, and a check or money order in the amount specified in section 6.04(6) of Rev. Proc. 2015-8. No opinion letter will be issued to the M&P mass submitter or any adopting sponsor with respect to the addition of these optional provisions. Instead, a letter will be issued to the M&P mass submitter notifying it that the addition of such optional provisions will not affect the status of favorable opinion and determination letters issued to sponsors and adopting employers.

(d) Notification to Employer - If a M&P mass submitter adds optional provisions, as described in the preceding paragraph, all adopting sponsors who wish to include the additional optional provisions must furnish each adopting employer with a copy of the plan that includes such additional provisions. If a sponsor decides to

include or delete an optional provision after it initially adopted the plan, it must also furnish each adopting employer with a copy of the new plan. However, if such inclusion or deletion results in a change to the language of the adoption agreement, such change will be treated as a plan amendment and the sponsor and its adopting employers may not continue to rely on previously issued opinion letters.

(2) Minor Modifications

(a) A "minor modification" is a minor change to an otherwise word-for-word identical plan of the M&P mass submitter that does not require an in-depth technical review. For example, a change from five-year 100% vesting to three-year 100% vesting is a minor modification. On the other hand, a change in the method of accrual of benefits in a defined benefit plan would not be considered a minor modification. A minor modification must be submitted by the M&P mass submitter on behalf of the sponsor that will adopt the modified plan. Subject to sections 12.05 and 21.03 and the provisions of this section, submissions with respect to minor modifications will be reviewed on an expedited basis and opinion letters will be issued to the sponsor as soon as possible.

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

(c) The M&P mass submitter must initially submit the first page of the applicable Form 4461-B, as a placeholder. Such

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

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

.05 Expedious Processing Accorded M&P Mass Submitter Plans - Subject to section 21.03, all M&P mass submitter plans, including the adoption of approved M&P mass submitter plans by sponsors, will be accorded more expeditious processing than M&P plans submitted by non-mass submitters, to the extent administratively feasible.

## **PART II – VOLUME SUBMITTER PLANS**

### **SECTION 13. DEFINITIONS**

.01 Volume Submitter Plan - A “volume submitter plan” or “VS plan” refers to either a specimen plan of a VS practitioner or a plan of a client of the VS practitioner that is substantially similar to the VS practitioner’s approved specimen plan.

.02 Specimen Plan - A “specimen plan” is a sample plan of a VS practitioner (rather than the actual plan of an employer). A specimen plan may be a single document that does not use an adoption agreement, or it may consist of a basic plan document and an adoption agreement, within the meaning of section 4.03 and section 4.04, respectively.

.03 Advisory Letter - An “advisory letter” is a written statement issued by the IRS to a VS practitioner or VS mass submitter as to the acceptability of the form of a specimen plan and any related trust or custodial account documents under § 401(a), 403(a), or 4975(e)(7).

.04 Trust or Custodial Account Document - A “trust or custodial account document” is the portion of a VS plan that contains the trust agreement or custodial account agreement and includes provisions covering such matters as the powers and duties of trustees, investment authority, and the kinds of investments that may be made. Under this revenue procedure, each VS plan may be submitted with up to 10 separate trust or custodial account documents for approval, per specimen document, without an additional user fee. If more than 10 trust documents are submitted, a user fee is due for each trust in excess of 10.

.05 VS Practitioner - A VS practitioner is any person that (1) has an established place of business in the United States where it is accessible during every business day and (2) represents to the IRS that it has at least 15 employer-clients each of which is reasonably expected to adopt a plan that is substantially similar to the VS practitioner’s specimen plan.

A VS practitioner may submit more than one specimen plan for an advisory letter provided it represents to the IRS that it has at least 30 employer-clients in the aggregate, each of which is reasonably

expected to adopt at least one of the practitioner’s specimen plans on a substantially similar basis. The IRS reserves the right at any time to request from the VS practitioner a list of the employers that have adopted or are expected to adopt the VS practitioner’s specimen plans, including the employers’ business addresses and employer identification numbers. Notwithstanding the preceding two sentences, any person that has an established place of business in the United States where it is accessible during every business day may sponsor a specimen plan as a word-for-word identical adopter of a specimen plan of a VS mass submitter, regardless of the number of employers that are expected to adopt the plan.

By submitting an application for an advisory letter for a specimen plan under this revenue procedure (or by having an application filed on its behalf by a VS mass submitter), a person represents to the IRS that it is a VS practitioner, as defined in this section 13.05. If the VS practitioner’s specimen plan permits the VS practitioner to amend the VS plan on behalf of adopting employers, as permitted by section 15, the VS practitioner also agrees to comply with any requirements imposed on sponsors of M&P plans by this procedure. Failure to comply with these requirements may result in the loss of eligibility to sponsor specimen plans and the revocation of advisory letters that have been issued to the VS practitioner.

.06 VS Mass Submitter - A VS 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 advisory letter applications on behalf of at least 30 unaffiliated VS practitioners each of which is sponsoring on a word-for-word identical basis the same specimen plan. For purposes of determining whether 30 unaffiliated VS practitioners sponsor on a word-for-word basis the same specimen plan, the VS mass submitter is treated as one of the 30 unaffiliated VS practitioners. For purposes of this definition, affiliation is determined under § 414(b) and (c). Additionally, the following will be considered to be affiliated: any law firm, accounting firm, consulting firm, etc., with its partners, members, associates, etc. A VS mass submitter will be treated as a VS

mass submitter with respect to all of its specimen plans provided the 30 unaffiliated VS practitioner requirement is met with respect to at least one of its specimen plans.

#### **.07 ESOP Definitions**

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

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

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

#### **.08 Hybrid Plan Definitions**

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

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

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

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

hypothetical account balance as of the beginning of the period.

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

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

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

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

#### **SECTION 14. PROVISIONS REQUIRED IN EVERY VS PLAN**

.01 Anti-Cutback Provisions - VS plans must specifically provide for the protection provided under § 411(a)(10) and (d)(6), to the extent required, in the event that the employer amends the plan in any manner. If a VS plan authorizes the VS practitioner to amend the plan on behalf of employers, the VS practitioner may not amend the plan in a manner that could result in the elimination of a benefit to the extent the benefit is required to be protected under § 411(d)(6) with respect to the plan of any adopting employer, unless permitted to do so under §§ 1.401(a)–4 and 1.411(d)–4. In addition, a VS plan that is not exempt from the top-heavy requirements and that does not contain vesting rules for all years that are at least as favorable to participants as those provided in § 416(b), must specifically provide that any vesting that occurs while the plan is top-heavy will not be cut back if the plan ceases to be top-heavy. See § 411(d)(6)(C) and § 1.411(d)–4(d) for certain exceptions applicable to ESOPs.

.02 Definition of Employee under § 414(b), (c), (m), (n), and (o) - Each VS plan must include a definition of employee as any employee of the employer maintaining the plan or any other employer aggregated under § 414(b), (c), (m), or (o) and the regulations thereunder.

The definition of employee shall also include any individual treated under § 414(n) or under the regulations under § 414(o) as an employee of any employer described in the preceding sentence.

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

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

.04 Adopting Employer Modification of Trust or Custodial Account Document - An employer will not be considered to have an individually designed plan merely because the employer amends administrative provisions of the trust or custodial account document (such as provisions relating to investments and the duties of trustees), provided the amended provisions are not in conflict with any other provision of the plan and do not cause the plan to fail to qualify under § 401(a). For this purpose, an amendment includes modification of the language of the trust or custodial account document and the addition of overriding language.

.05 Other Provisions Required in Adoption Agreements - Each VS plan must contain a dated employer signature line. The employer must sign the adoption agreement when it first adopts the plan and must complete and sign a new adop-

tion agreement if the plan has been restated. In addition, the employer must complete a new signature page if it modifies any prior elections or makes new elections in its adoption agreement. The signature requirement may be satisfied by an electronic signature that reliably authenticates and verifies the adoption of the adoption agreement, or restatement, amendment or modification thereof, by the employer. The adoption agreement must state that it is to be used with one and only one specimen plan. In addition, the adoption agreement must contain a cautionary statement to the effect that the failure to properly fill out the adoption agreement may result in failure of the plan to qualify under § 401(a) or 403(a). If the VS practitioner has the authority to amend the plan on behalf of employers who have adopted the plan, as described under section 15.03 below, the adoption agreement must also contain a statement that provides that the VS practitioner will inform the adopting employer of any amendments made to the plan or of the discontinuance or abandonment of the plan.

.06 VS Practitioner Telephone Numbers - VS plan adoption agreements must include the VS practitioner’s name, address, and telephone number (or a space for the address and telephone number of the VS practitioner’s authorized representative) for inquiries by adopting employers regarding the adoption of the plan, the meaning of plan provisions, or the effect of the advisory letter.

.07 Additional Provisions Required for ESOPs - ESOPs will not receive favorable advisory letters under this revenue procedure unless, in addition to complying with the requirements of subsections 14.01 through 14.06 of this revenue procedure, they include the following:

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

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

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

(4) Provisions that meet the valuation, independent appraiser, and allocation of earnings requirements set forth in

§ 401(a)(28)(C), § 54.4975-11(d)(5), and Rev. Rul. 80-155, 1980-1 C.B. 84;

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

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

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

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

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

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

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

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

(13) Provisions that identify the plan sponsor as being either a C corporation or an S corporation.

.08 Additional Provisions Required for Cash Balance Plans - Plans containing cash balance features will not receive favorable advisory letters unless, in addition to complying with the requirements of subsections 14.01 through 14.06 of this revenue procedure, they meet the following requirements:

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

in § 1.411(b)(5)-1(c)(3) to meet the requirements of § 1.411(b)(5)-1(c).

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

## **SECTION 15. APPROVED PLANS - MAINTENANCE OF APPROVED STATUS**

.01 Cumulative List in Six-Year Cycle - Rev. Proc. 2007-44 provides that VS practitioners of pre-approved VS plans must submit requests for advisory letters during the applicable on-cycle submission period for a six-year cycle in order to continue to rely on their advisory letters. VS practitioners may apply for advisory letters at other times, but these filings will be "off-cycle" filings, as described in section 21.03 of this revenue procedure. The IRS will review the plans that have been submitted during the applicable on-cycle submission period for a six-year cycle taking into account the applicable Cumulative List that identifies changes in the qualification requirements of the Code as well as items of published guidance relating to the plan qualification requirements, such as regulations and revenue rulings. However, in order to be qualified, a plan must comply in operation with all relevant qualification requirements, not just those on the applicable Cumulative List.

.02 Subsequent Required Interim Amendments - Except as otherwise provided in future guidance, in the event of changes in qualification requirements resulting from future guidance, or other regulatory or statutory changes that were not taken into account in issuing the advisory letter, an approved VS plan must be

amended by the VS practitioner and, if necessary, the employer, to retain its approved status if any provisions therein fail to meet the requirements of law, regulations, or other issuances and guidelines affecting qualification. See section 5.01 of Rev. Proc. 2007-44 regarding the time by which such amendments must be adopted. Failure to so amend could result in the loss of a plan's qualified status. This does not change the applicable on-cycle submission period for the six-year cycle when VS practitioners must request advisory letters, which will still occur only once every six years. VS practitioners are required to make reasonable and diligent efforts to ensure that each employer that, to the best of the VS practitioner's knowledge, continues to maintain the plan as a VS plan amends its plan when necessary.

The plan must operationally comply with any changes in qualification requirements and the terms of the plan as ultimately amended to reflect the changes.

.03 Option to Permit VS Practitioner Amendment - A VS practitioner may amend its specimen plan. Ordinarily the amendments will apply only to the plans of employers who adopt the plan after it has been amended and will not apply to plans of employers who adopted the plan prior to the amendment. However, a VS plan may, but is not required to, include a provision that authorizes the VS practitioner to amend the plan on behalf of employers who have previously adopted the plan, so that changes in the Code, regulations, revenue rulings, other statements published by the IRS (including model and sample amendments that specifically provide that their adoption will not cause such plan to be individually designed), or corrections of prior approved plans may be applied to all employers who have adopted the plan. The provision for VS practitioner amendment must provide that, for purposes of reliance on the advisory letter, the VS practitioner will no longer have the authority to amend the plan on behalf of the adopting employer as of the date of the adoption of an employer amendment to the plan to incorporate a type of plan not allowable in the VS program described in section 16.03 (e.g., the addition enabling language for multiemployer plan features) or as of the date the IRS notifies the VS practitioner that the plan is being treated

as an individually designed plan pursuant to section 24.03.

.04 Responsibilities of VS Practitioner - A VS practitioner must comply with the requirements in this section 15 as well as sections 7.06 and 9 through 11 that apply to M&P sponsors. Thus, the VS practitioner must maintain, or have maintained on its behalf, a record of the employers that have adopted the plan, and the VS practitioner must make reasonable and diligent efforts to ensure that adopting employers have actually received and are aware of all plan amendments and that such employers adopt new documents when necessary.

.05 Loss of Qualified Status - If a VS practitioner reasonably concludes that an employer's VS plan may no longer be a qualified plan and the VS practitioner does not or cannot submit a request to correct the qualification failure under EPCRS, it is incumbent on the VS practitioner to notify the employer that the plan may no longer be qualified, advise the employer that adverse tax consequences may result from loss of the plan's qualified status, and inform the employer about the availability of EPCRS. See Rev. Proc. 2013-12.

## **SECTION 16. ADVISORY LETTERS - SCOPE**

.01 General Limits on Advisory Letters - Advisory letters will be issued only to VS practitioners or VS mass submitters. Advisory letters constitute determinations as to the qualification of the plans as adopted by particular employers only under the circumstances, and to the extent, described in section 19. Advisory letters do not constitute rulings or determinations as to the exempt status of related trusts or custodial accounts.

.02 Nonapplicability of this Revenue Procedure to section 403(b) Plans - Advisory letters will not be issued under this revenue procedure for plans intended to meet the requirements under § 403(b). See Rev. Proc. 2013-22, 2013-18 I.R.B. 985, as modified by Rev. Proc. 2014-28 and Rev. Proc. 2015-22) for administrative procedures for the purpose of seeking opinion/advisory letters for § 403(b) arrangements.

.03 Areas Not Covered by Advisory Letters - Advisory letters will not be issued for:

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

(3) Stock bonus plans other than ESOPs;

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

(5) ESOPs that provide for the holding of preferred employer stock, even if such stock is described in § 409(1)(3);

(6) Pooled fund arrangements contemplated by Rev. Rul. 81-100 (as modified by Rev. Rul. 2004-67, Rev. Rul. 2011-1, Notice 2012-6, and Rev. Rul. 2014-24);

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

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

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

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

(d) A conversion amendment, except for plans providing that, after the effective date of the conversion amendment, a participant's accrued benefit is equal to the sum of accruals under the prior formula plus the benefit based on the cash balance formula ("A+B Conversion");

(e) Provisions that use the 3-percent accrual rule or the fractional accrual rule under § 1.411(b)(1)(A) or (C) to satisfy the accrued benefit requirements under § 411(b)(1);

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

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

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

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

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

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

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

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

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

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

(8) Plans described in § 414(k) (relating to a defined benefit plan that provides

a benefit derived from employer contributions that is based partly on the balance of the separate account of a participant);

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

(10) Church plans described in § 414(e) that have not made the election provided by § 410(d);

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

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

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

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

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

(16) Plans that fail to contain a provision reflecting the requirements of § 414(u) (see Rev. Proc. 96–49);

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

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

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

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

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

(22) Variable annuity plans and plans that provide for accruals that are deter-

mined in whole or in part based on the value of or rate of return on identified assets, including plan assets.

The IRS may, in its discretion, decline to issue advisory letters for other types of plans not described in this section 16.03.

## **SECTION 17. ADVISORY LETTER APPLICATIONS - INSTRUCTIONS TO VS PRACTITIONERS**

.01 The IRS Issues Advisory Letters - The IRS will, upon the request of a VS practitioner, issue an advisory letter as to the acceptability of the form of the VS practitioner’s specimen plan under § 401(a), 403(a), or 4975(e)(7).

.02 Procedure for Requesting Advisory Letters - A request for an advisory letter relating to a specimen plan must be submitted on the current version of Form 4461, *Application for Approval of Master or Prototype or Volume Submitter Defined Contribution Plans*, Form 4461–A, *Application for Approval of Master or Prototype or Volume Submitter Defined Benefit Plan*, or Form 4461–B, *Application for Approval of Master or Prototype or Volume Submitter Plans Mass Submitter Adopting Sponsor or Practitioner*, as appropriate. Additionally, the request must be accompanied by the required user fee submitted with Form 8717–A, *User Fee for Employee Plan Opinion and Advisory Letter Request*, a signed certification that all necessary amendments required by the IRS to retain the qualified status of the VS practitioner’s specimen plan have been made and communicated to all adopting employers, and Attachment I to Form 4461 or Attachment I–A to Form 4461–A, as applicable. These forms and attachments may be downloaded from the Internet at the following address: <http://www.irs.gov/Retirement-Plans/Preapproved-Plan-Submission-Procedures>. All information on the first page of the application must be typed. The request must be sent to the address in section 20.

.03 Separate Specimen Plans and Applications Required for Different Categories of Plans -

(1) Specimen plans that consist of a basic plan document and adoption agreement. Except as provided in this section 17.03(1), the rules in section 7.04 (disregarding references therein to standardized and nonstandardized plans) apply

to a specimen plan that consists of a basic plan document and adoption agreement as if the specimen plan were a M&P plan.

In addition, the same basic plan document may not be used for both nongovernmental specimen plans (i.e., specimen plans that are not described in § 414(d)) and governmental specimen plans. However, separate governmental defined contribution specimen plans may have the same basic plan document and separate governmental defined benefit specimen plans may have the same basic plan document.

A separate application form is required to be submitted for each specimen plan, that is, for each basic plan document/adoption agreement combination (if the specimen plan consists of a basic plan document and adoption agreement). In the case of a simultaneous submission of plans using the same basic plan document, only one copy of the basic plan document should be provided. If the requests are not simultaneous, the sponsor must submit a copy of the basic plan document with each submission and include a cover letter identifying the original submission. The plan number of such basic plan document must remain the same as in the prior submission.

(2) Specimen plans that consist of a single document without an adoption agreement. A separate specimen plan and application is required for each of the following categories of specimen plans that consist of a single document without an adoption agreement: a profit-sharing plan (with or without a § 401(k) arrangement), a money purchase pension plan that is not a target benefit plan, a target benefit plan, an ESOP, and a defined benefit plan. In addition, a separate specimen plan and application is required for each of the categories of plans in the preceding sentence if the specimen plan is a governmental plan. Different categories may not be combined in a single specimen plan or application. Thus, for example, separate specimen plans and application forms must be submitted for a governmental defined benefit specimen plan that consists of a single document without an adoption agreement and a nongovernmental defined benefit specimen plan that consists of a

single document without an adoption agreement.

.04 Sample Language - A Listing of Required Modifications (LRM) containing sample plan language is available from the IRS. Although the sample language is designed for use in M&P plans, which use an adoption agreement format, VS practitioners should refer to the sample language as a guide in drafting VS plans. To expedite the review of their plans, VS practitioners are encouraged to use LRM language if appropriate and to identify the location of such language in their plan documents. LRMs may be downloaded from the Internet at <http://www.irs.gov/Retirement-Plans/Listing-of-Required-Modifications-LRMs>.

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

## **SECTION 18. VS MASS SUBMITTERS**

.01 Advisory Letters Issued to VS Mass Submitters - The IRS will, upon request by a VS mass submitter issue an advisory letter as to the acceptability of the form of the VS mass submitter's specimen plan under § 401(a), 403(a), or 4975(e)(7). See section 20 for the address to file the application. The provisions of

section 17.05 on the timing of the issuance of advisory letters and an interim notification by the IRS also apply under this section.

.02 As noted in section 17.02, a VS mass submitter's application must be submitted on the current version of Form 4461 or Form 4461-A and include a completed Attachment I for a defined contribution plan or Attachment I-A for a defined benefit plan. Form(s) 4461-B are completed for the requisite number of unaffiliated VS practitioners (as described in section 13.06) and submitted along with the mass submitter's application and must be signed by both the mass submitter and the unaffiliated VS practitioner. Additionally, the VS request must be accompanied by the required user fee submitted with Form 8717-A and a signed certification that all necessary amendments required by the IRS to retain the qualified status of the VS practitioner's specimen plan have been made and communicated to all adopting employers. These forms may be downloaded from the Internet at the following address: <http://www.irs.gov/Retirement-Plans/Preapproved-Plan-Submission-Procedures>. All information on the first page of the application must be typed. The request must be sent to the address in section 20.

## **PART III – ALL PRE-APPROVED PLANS**

### **SECTION 19. EMPLOYER RELIANCE**

.01 Standardized M&P Plans - An employer adopting a standardized M&P plan may rely on that plan's opinion letter, except as provided in (1) through (3) and section 19.03 below, if the sponsor of such plan or plans has a currently valid favorable opinion letter, the employer has followed the terms of the plan(s), and the coverage and contributions or benefits under the plan(s) are not more favorable for highly compensated employees (as defined in § 414(q)) than for other employees. Opinion letters will not be issued for standardized M&P Plans that include either an ESOP or a Hybrid Plan formula.

(1) An employer may not rely on an opinion letter for a standardized M&P plan with respect to the requirements of §§ 415 and 416, without obtaining a de-

termination letter, if the employer maintains at any time, or has maintained at any time, another plan, including a standardized plan, that was qualified or determined to be qualified covering some of the same participants. An employer that adopts a standardized defined contribution plan will not be considered to have maintained another plan merely because the employer has maintained another defined contribution plan(s), provided such other plan(s) has been terminated prior to the effective date of the standardized plan and no annual additions have been credited to the account of any participant under such other plan(s) as of any date within a limitation year of the standardized plan. For this purpose, a plan that has been properly replaced by the adoption of a standardized plan is not considered another plan. To be considered a replacement plan, and thus, for the employer to be able to rely on the standardized plan with respect to the requirements of §§ 415 and 416 without obtaining a determination letter, the plan that has been replaced and the standardized plan must be of the same type (for example, both defined benefit plans). An employer's addition of language to a standardized M&P plan to satisfy the requirements of §§ 415 and 416, given the required aggregation of plans, would require submission on Form 5300 in order to preserve reliance on the opinion/advisory letter, pursuant to section 8.02 of Rev. Proc. 2015-6.

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

(3) An employer that adopts a standardized plan may not rely on an opinion letter with respect to: (a) whether the timing of any amendment to the plan (or series of amendments) satisfies the non-discrimination 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 compen-

sated employees; or (b) whether the plan satisfies the effective availability requirement of § 1.401(a)(4)–4(c) with respect to any benefit, right, or feature. An employer that adopts a standardized plan as an amendment to a plan other than a standardized plan may not rely on an opinion letter with respect to whether a benefit, right, or feature that is prospectively eliminated satisfies the current availability requirements of § 1.401(a)(4)–4.

.02 Nonstandardized M&P Plans and Volume Submitter Plans - An employer adopting a nonstandardized M&P or VS plan may rely on that plan's opinion or advisory letter as described in this section 19 if the employer's plan is identical to an approved M&P or specimen plan with a currently valid favorable opinion or advisory letter, the employer has not amended the plan other than to choose options provided under the approved plan or to make amendments as described in section 19.03(3), and the employer has followed the terms of the plan.

(1) Except as provided in section 19.02(2), (3) and (4), adopting employers of nonstandardized M&P plans and VS plans may not rely on a favorable opinion or advisory letter with respect to the requirements of:

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

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

For this purpose, whether an employer maintains or has ever maintained another plan will be determined using principles consistent with section 19.01 above.

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

(3) Nonstandardized M&P plans must give adopting employers the option to elect a safe harbor allocation or benefit formula and a safe harbor compensation definition, unless the only formula under the plan is a cash balance formula. Adopting employers of nonstandardized M&P

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

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

(5) Except as provided in sections 5.16(2) and 14.08(2), adopting employers of M&P plans and VS plans that contain a cash balance formula with a structure of principal credits that increase with age, service, or other measure during a participant's employment may not rely on a favorable opinion or advisory letter with respect to the requirements of § 411(b)(1).

.03 Other Limitations and Conditions on Reliance - The following conditions and limitations apply with respect to both M&P and VS plans:

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

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

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

(4) An adopting employer may rely on an opinion or advisory letter only if the requirements of this section 19 are met, and the employer's plan is identical to an approved M&P or specimen plan with a currently valid favorable opinion or advisory letter; that is, the employer has not added any terms to the approved M&P or VS plan and has not modified or deleted any terms of the plan other than choosing options permitted under the plan or, in the case of a M&P plan, amended the document as permitted under section 5.06 or 5.09 or, in the case of a VS plan, modified the document as permitted under sections 14 and 15. Thus, for example, in the case of a VS plan, the employer's plan must be identical to the approved specimen plan except as the result of the employer's selection among options that are permitted under the terms of the approved specimen plan and modifications permitted under sections 14 and 15.

For purposes of this section 19.03(3), a plan will not fail to be identical to an approved M&P or specimen plan if:

(a) The employer modifies or amends the plan to add or change a provision and/or to specify or change the effective date of a provision, provided the employer is permitted to make the modification or amendment under the terms of the approved M&P or specimen plan as well as under § 401(a) or 403(a), and, except for the effective date, the provision is identical to a provision in the approved plan;

(b) The employer, sponsor or VS practitioner adopts an interim or discretionary amendment in accordance with section 21 or Rev. Proc. 2007–44; or

(c) The employer adopts a model or sample amendment that the IRS has indi-

cated will not cause the plan to be treated as an individually designed plan.

For example, an employer is not required to restate its M&P or VS plan in order to change options under the plan or to specify different effective dates. Also see section 5.02, which limits an employer's ability to amend a M&P plan without causing the plan to be treated as an individually designed plan, and section 5.11, which requires the employer to complete a new signature page when the employer changes options in a M&P adoption agreement. An adopting employer cannot rely on an opinion or advisory letter if the adopting employer has modified the terms of the plan's approved trust in a manner that would cause the plan to fail to be qualified under § 401(a).

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

**.04 Reliance Equivalent to Determination Letter** - If an employer can rely on a favorable opinion or advisory letter pursuant to this section, the opinion or advisory letter shall be equivalent to a favorable determination letter. For example, the favorable opinion or advisory letter shall be treated as a favorable determination letter for purposes of section 21 of Rev. Proc. 2015-6, regarding the effect of a determination letter, and section 4.03 of Rev. Proc. 2013-12, regarding the definition of "favorable letter" for purposes of EPCRS. Of course, the extent of the employer's reliance may be limited, as provided in this section.

## **SECTION 20. WHERE TO FILE AND OTHER RULES FOR APPLICATIONS AND LETTERS**

**.01 Opinion/advisory Letters** - Applications for opinion and advisory letters, including applications filed by M&P and VS mass submitters, should be sent to:

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

**.02** For purposes of .01 and .02 above, a request shipped by Express Mail or a delivery service should be sent to the attention of the Pre-Approved Plans Coordinator, to:

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

**.03 Effect of Failure to Disclose Material Fact or to Accurately Provide Information** - The IRS may determine, based on the application, the extent of review of the pre-approved plan. A failure to disclose a material fact or misrepresentation of a material fact in the application may adversely affect the reliance that would otherwise be obtained through issuance by the IRS of a favorable opinion or advisory letter. Similarly, failure to accurately provide any of the information called for on any form required by this revenue procedure may result in no reliance on the favorable opinion letter or advisory letter.

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

**.05 Inadequate Submissions** - The IRS will return, without further action, plans that are not in substantial compliance with the qualification requirements of § 401(a), 403(a), or 4975(e)(7), or plans that are so deficient that they cannot be reviewed in a reasonable amount of time. A plan may be considered not to be in substantial compliance if, for example, it omits or merely incorporates qualification requirements by reference to the applicable Code section. The IRS will not consider these plans until

after they are revised, and they will be treated as new requests as of the date they are resubmitted. No additional user fee will be charged if an inadequate submission is amended to be in substantial compliance and is resubmitted to the IRS within 30 days following the date the sponsor or VS practitioner is notified of such inadequacy.

**.06 Nonidentification of Questionable Issues May Cause Delay** - If the plan document submitted as part of an opinion or advisory letter request contains a provision that gives rise to an issue for which contrary published authorities exist, failure to disclose and address significant contrary authorities, as required in section 6.11 of Rev. Proc. 2015-6, may result in requests for additional information, which will delay action on the request.

**.07 DOL Participant Loan Regulations not Addressed by Opinion or Advisory Letter** - Pre-approved plans may adopt procedures to comply with the Department of Labor's (DOL) participant loan regulations under section 408(b)(1) of ERISA in the plan or in a separate document. The adoption of procedures outside of the plan document that are intended to comply with these regulations will not cause a pre-approved plan to be considered an individually designed plan. The IRS will not review loan program procedures (whether in the plan or in a separate written document) to determine whether they comply with the requirements of the DOL regulations. Also, any opinion or advisory letter issued for a pre-approved plan will not consider whether loan program procedures may, in the operation of the plan, have an adverse effect on the qualified status of the plan. However, the loan program procedures under the plan may not be inconsistent with the qualification requirements of § 401(a) of the Code.

**.08 Nontransferability of Opinion and Advisory Letters** - An opinion or advisory letter issued to a sponsor or VS practitioner is not transferable to any other entity. In the case of a change in entity, a letter issued to a sponsor or VS practitioner may not be relied upon by a different entity. If a different entity assumes sponsorship of the plan, it must submit an application for a new letter. Such an application may be filed at the time of the assumption of

sponsorship and the filing is not limited to the applicable on-cycle submission period. The application will be subject to a reduced user fee as provided in section 6.03(8) or 6.04(4) of Rev. Proc. 2015-8. The new letter will recognize the change in sponsorship and will not modify the scope of or change the reliance on the original letter. The IRS may in appropriate circumstances request documentation of the assumption of sponsorship prior to issuing a letter to the new entity. Examples of a change in entity include, but are not limited to, a change in the employer identification number, the acquisition of a sponsor by another entity or the sale or transfer of the stock or assets of the sponsor to another entity.

## **SECTION 21. AMENDMENTS**

.01 Opinion or Advisory Letters for Sponsor or VS Practitioner Amendments - A plan must be operated in accordance with the written plan document. When there are changes with respect to plan qualification requirements that will impact the provisions of the written plan document, the adoption of interim amendments will generally be required in accordance with the rules set forth in Rev. Proc. 2007-44. Interim amendments adopted by a pre-approved sponsor or VS practitioner on behalf of adopting employers must be provided to the adopting employers. The date on which each amendment is adopted by the sponsor or VS practitioner must be provided with the amendment. The requirement to provide the date for each amendment is effective for amendments adopted by the sponsor or VS practitioner on or after October 31, 2011. However, this does not change the applicable on-cycle submission period for the six-year cycle when sponsors or VS practitioners must request opinion or advisory letters, which will still only occur once every six years. The IRS will entertain a request for an opinion or advisory letter as to the acceptability, for purposes of § 401(a), 403(a), or 4975(e)(7), of the form of the plan as restated, during the applicable on-cycle submission period for the six-year cycle, as provided in section 8.01 and section 15.01. The sponsor or VS practitioner must, except as provided in section 12 or section 18, submit an application under the procedures in section 7 or

section 17, together with a copy of the plan's certification regarding interim amendments, a cover letter summarizing the changes to the plan that are affected by such amendment(s), and a copy of the plan that is being restated. The IRS retains the right to request and secure from the sponsor/VS practitioner in appropriate circumstances copies of all interim amendments reflected on the applicable Cumulative List that the sponsor / VS practitioner has adopted on behalf of its adopting employers.

.02 Loss of Qualified Status for Certain Amendments - A pre-approved plan will not lose its qualified status merely because amendments are made that cover any of the following:

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

(2) Amendments to conform a plan to the requirements of section 503 of ERISA, relating to claims procedures.

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

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

(5) Amendments that reflect a change of a sponsor's or VS practitioner's name. The sponsor or VS practitioner must notify the IRS, in writing, of the change in name and certify that it still meets the conditions for sponsorship described in section 4.07 or 13.05. (Also see section 20 regarding changes in employer identification numbers.)

.03 Off-Cycle Filing - An application for an opinion or advisory letter for a plan that is word-for-word identical to an approved mass submitter that has a current advisory or opinion letter will not be treated as off-cycle merely because it is submitted after the end of the applicable

on-cycle submission period for the six-year cycle.

Any other application for an opinion or advisory letter that is submitted after the applicable on-cycle submission period for the six-year cycle will be treated as an off-cycle filing. If such an off-cycle application is submitted before the beginning of the two year period for employer adoption announced by the IRS for an applicable six-year cycle, the application will not be reviewed until all on-cycle plans (including applications for determination letters for individually designed plans within their staggered five-year cycle) have been reviewed and processed. However, the IRS may, in its discretion, determine whether the processing of off-cycle filings may be prioritized and accelerated under certain circumstances. Off-cycle applications that are submitted during or after the two-year period will not be accepted.

## **SECTION 22. REVOCATION**

Revocation of Opinion or Advisory Letter by the IRS - An opinion or advisory letter found to be in error or not in accord with the current views of the IRS may be revoked. Also, see sections 4.07 and 13.05. Except in rare or unusual circumstances, such revocation will not be applied retroactively. See sections 13 and 14 of Rev. Proc. 2015-4. For this purpose, opinion and advisory letters will be given the same effect as rulings. Revocation may be effected by a notice to the sponsor or VS practitioner to which the letter was originally issued, or by publication in the Internal Revenue Bulletin. The sponsor or VS practitioner should then notify each adopting employer of the revocation as soon as possible. The content of the notification to each adopting employer must explain how the revocation affects any reliance an adopting employer has on the applicable advisory or opinion letter and on any determination letter issued.

## **SECTION 23. SECOND ON-CYCLE SUBMISSION PERIOD (POST-EGTRRA) FOR PRE-APPROVED DB PLANS**

The second on-cycle submission period (post-EGTRRA) began on February 1, 2013, and was scheduled to end on January 31, 2014, for applications for

opinion and advisory letters for defined benefit plans that take into account the changes identified on the 2012 Cumulative List. Anns. 2014–4 and 2014–41 extended the deadline to submit on-cycle applications for opinion and advisory letters for such defined benefit plans to June 30, 2015. Pursuant to this revenue procedure, the deadline to submit on-cycle applications for opinion and advisory letters for such defined benefit plans is extended to October 30, 2015. Plans submitted in accordance with this extension will continue to be reviewed based on the 2012 Cumulative List. However, a plan must comply in operation with all relevant qualification requirements, not just those on the 2012 Cumulative List. In addition, if a plan has not been previously reviewed for items on earlier cumulative lists, the plan must still take those items into account. For example, pre-approved defined benefit plans have not yet been reviewed for items on the 2007 Cumulative List, so those items have been retained on the 2012 Cumulative List. The IRS will announce the deadline for timely adoption by employers when the review of the pre-approved documents is close to being completed.

#### **SECTION 24. REMEDIAL AMENDMENT PERIOD**

.01 Rev. Proc. 2007–44 contains the IRS’s procedures for issuing letters for pre-approved plans under a regular, six-year remedial amendment cycle and individually designed plans under a staggered five-year remedial amendment cycle. It explains the conditions under which an adopting employer that timely adopts a pre-approved plan will be treated as having adopted the plan within the employer’s six-year remedial amendment cycle, and which Cumulative List will apply in

the case of plans that become individually designed under the circumstances described in section 24.02.

.02 An employer that has adopted a M&P plan or a VS specimen plan may have modified the plan in such a way that the plan, as adopted by the employer, would not be considered a M&P plan or a VS plan. The effect of employer amendments or the adoption of an individually designed plan on employers eligible for the six-year remedial amendment cycle is described in section 19 of Rev. Proc. 2007–44.

.03 In addition to the provisions described in section 19 of Rev. Proc. 2007–44, the IRS may in its discretion determine that a plan is an individually designed plan that will not receive an extended remedial amendment cycle, due to the nature and extent of the amendments.

#### **SECTION 25. EFFECT ON OTHER DOCUMENTS**

Rev. Proc. 2011–49 is modified and superseded.

#### **SECTION 26. EFFECTIVE DATE**

This revenue procedure is effective June 8, 2015.

#### **SECTION 27. PAPERWORK REDUCTION ACT**

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

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information un-

less the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in sections 5.11, 8.02, 11.02, 12, 14.05, 15.02, 18, and 24. This information is required to enable the Commissioner, Tax Exempt and Government Entities Division of the Internal Revenue IRS to make determinations in connection with plan qualification. This information will be used to determine whether a plan is entitled to favorable tax treatment. The likely respondents are banks, insurance companies, other financial institutions, law, actuarial, and consulting firms, employee benefit practitioners and employers.

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

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

The estimated frequency of responses is occasional.

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

#### **DRAFTING INFORMATION**

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