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## PART I. OVERVIEW

### SECTION 1. PURPOSE

.01 In general. This revenue procedure sets forth the rules regarding Qualified Pre-approved Plans and Section 403(b) Pre-approved Plans, and combines, conforms, clarifies, and updates rules for Qualified Pre-approved Plans and Section 403(b) Pre-approved Plans previously set forth in prior revenue procedures, as described in section 1.01(1) through (3).<sup>1</sup> Combining these prior revenue procedures allows for the rules for the different types of Pre-approved Plans to be more easily conformed to each other, to the extent practicable. These rules for Pre-approved Plans fall into three broad categories:

(1) Remedial Amendment Periods, the Remedial Amendment Cycle system, and plan amendment deadlines. This revenue procedure sets forth the rules regarding Remedial Amendment Periods, the Remedial Amendment Cycle system, and plan amendment deadlines for Qualified Pre-approved Plans and for Section 403(b) Pre-approved Plans, which were previously set forth in Rev. Proc. 2016-37, 2016-29 IRB 136, as modified by Rev. Proc. 2017-41, 2017-29 IRB 92, and Rev. Proc. 2020-40, 2020-38 IRB 575 (with respect to Qualified Pre-Approved Plans), and in Rev. Proc. 2019-39, 2019-42 IRB 945, as modified by Notice 2020-35, 2020-25 IRB 948, Rev. Proc. 2020-40, and Rev. Proc. 2021-37, 2021-38 IRB 385 (with respect to Section 403(b) Pre-approved Plans). The rules regarding Remedial Amendment Periods, the Remedial Amendment Cycle system, and plan amendment deadlines are effective on November 21, 2023.

(2) Provider application for an Opinion Letter. This revenue procedure also sets forth the procedures for a Provider to apply for an Opinion Letter confirming that the form of the Provider's plan satisfies the Qualification Requirements or Section 403(b) Requirements (procedures that were previously set forth in Rev. Proc. 2017-41, as modified by Rev. Proc. 2018-21, 2018-41 IRB 467 (with respect to Qualified Pre-Approved Plans), and in Rev. Proc. 2021-37 (with respect to Section 403(b) Pre-approved Plans)). The rules regarding the application procedures for an Opinion Letter are effective with respect to:

(a) A Cycle 4 (or later) defined contribution Qualified Pre-approved Plan (Cycle 4 for defined contribution Qualified Pre-approved Plans began on February 1, 2023 (see section 1.02 for the start of the Submission Period for Cycle 4));

(b) A Cycle 4 (or later) defined benefit Qualified Pre-approved Plan (Cycle 4

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<sup>1</sup> All references to "section" in this revenue procedure are to sections of this revenue procedure unless otherwise provided (such as with defined terms like Section 403(b) Pre-approved Plans and Section 403(b) Requirements). All references using "\$" in this revenue procedure are to sections of the Internal Revenue Code or to Treasury regulations.

for defined benefit Qualified Pre-approved Plans begins on April 1, 2025); and

(c) A Cycle 3 (or later) Section 403(b) Pre-approved Plan (the Cycle 2 Submission Period for Section 403(b) Pre-approved Plans ended on May 1, 2023, and Provider applications for Opinion Letters are currently being reviewed for these Pre-approved Plans).

(3) Adopting Employer application for a determination letter. This revenue procedure also sets forth the procedures for an Adopting Employer of a Qualified Pre-approved Plan or a Section 403(b) Pre-approved Plan to apply for a determination letter regarding the Adopting Employer's plan (procedures that were previously set forth in Rev. Proc. 2016-37 and Rev. Proc. 2017-41 (for an Adopting Employer of a Qualified Pre-approved Plan), and in Rev. Proc. 2021-37 (for an Adopting Employer of a Section 403(b) Pre-approved Plan)). The rules regarding the application procedures for a determination letter apply to:

(a) An application for a determination letter submitted by an Adopting Employer with respect to a Cycle 4 (or later) defined contribution Qualified Pre-approved Plan;

(b) An application for a determination letter submitted by an Adopting Employer with respect to a Cycle 4 (or later) defined benefit Qualified Pre-approved Plan; and

(c) An application for a determination letter submitted by an Adopting Employer with respect to a Cycle 2 (or later) Section 403(b) Pre-approved Plan.<sup>2</sup>

.02 Submission Period for Cycle 4 defined contribution Qualified Pre-approved Plans. Pursuant to this revenue procedure, the Submission Period for a Provider of a defined contribution Qualified Pre-approved Plan to submit an application for a Cycle 4 Opinion Letter begins on February 1, 2024, and ends on January 31, 2025. A Provider may apply for a Cycle 4 Opinion Letter at other times. See section 16 regarding filings made after the Submission Period.

## SECTION 2. BACKGROUND

.01 Rev. Proc. 2016-37. Rev. Proc. 2016-37 provides that every pre-approved plan has a recurring six-year remedial amendment cycle and that pre-approved plan providers may apply for new opinion letters during a remedial amendment cycle. Rev. Proc. 2016-37 also sets forth an extension of the remedial amendment period and

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<sup>2</sup> The rules regarding an Adopting Employer's application for a determination letter apply for Cycle 2 Section 403(b) Pre-approved Plans because, although Cycle 2 has begun, Cycle 2 Opinion Letters have not been issued and the Employer Adoption Window for Cycle 2 (during which an application for a determination letter would generally be submitted) has not begun.

adoption deadline for plan amendments for qualified pre-approved plans.<sup>3</sup>

.02 Rev. Proc. 2017-41. Rev. Proc. 2017-41 sets forth the procedures for issuing opinion letters regarding the qualification in form of qualified pre-approved plans.<sup>4</sup>

.03 Rev. Proc. 2019-39. Rev. Proc. 2019-39, as modified by Notice 2020-35, sets forth a system of recurring remedial amendment periods for correcting form defects in § 403(b) pre-approved plans first occurring after June 30, 2020. Rev. Proc. 2019-39 also establishes a system of § 403(b) pre-approved plan cycles during which a provider may submit a § 403(b) pre-approved plan for review and approval by the Internal Revenue Service (IRS). Rev. Proc. 2019-39 also sets forth plan amendment deadlines for amendments made to a § 403(b) pre-approved plan.

.04 Rev. Proc. 2021-37. Rev. Proc. 2021-37 sets forth the procedures for issuing opinion letters regarding the satisfaction in form of § 403(b) pre-approved plans with respect to the requirements of § 403(b) of the Internal Revenue Code (Code) for remedial amendment cycle 2. Rev. Proc. 2021-37 also sets forth the rules for determining when remedial amendment periods expire for § 403(b) pre-approved plans.

.05 Rev. Proc. 2022-40. Rev. Proc. 2022-40, 2022-47 IRB 487, sets forth the rules and procedures for an employer to submit a determination letter application for an individually designed qualified or § 403(b) plan for an initial plan determination, for a determination upon plan termination, and in certain other circumstances identified by the IRS in guidance published in the Internal Revenue Bulletin (IRB). Rev. Proc. 2022-40 also sets forth the remedial amendment period rules and plan amendment deadlines for individually designed qualified or § 403(b) plans.

.06 Rev. Proc. 2023-4. Rev. Proc. 2023-4, 2023-1 IRB 162, (as updated annually) sets forth the general procedures on the issuance of Employee Plans determination letters, including a determination letter for an adopting employer's pre-approved plan.

### SECTION 3. ORGANIZATION OF REVENUE PROCEDURE; SIGNIFICANT CHANGES

#### .01 Organization of this revenue procedure.

(1) Sections 1 through 4 set forth the purpose, background, organization, significant changes, and definitions for this revenue procedure.

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<sup>3</sup> The rules of Rev. Proc. 2016-37 still apply for Cycle 3 Qualified Pre-approved Plans. However, Cycle 4 Qualified Pre-approved Plans (whether defined contribution or defined benefit) will be governed by this revenue procedure and not Rev. Proc. 2016-37.

<sup>4</sup> The rules of Rev. Proc. 2017-41 still apply for Cycle 3 Qualified Pre-approved Plans. However, Cycle 4 Qualified Pre-approved Plans (whether defined contribution or defined benefit) will be governed by this revenue procedure and not Rev. Proc. 2017-41.

(2) Sections 5 through 8 set forth the rules regarding Remedial Amendment Periods, the Remedial Amendment Cycle system, and plan amendment deadlines for Qualified Pre-approved Plans and for Section 403(b) Pre-approved Plans.

(3) Sections 9 through 24 set forth the procedures for a Provider to apply for an Opinion Letter confirming that the form of the Provider's plan satisfies the Qualification Requirements or Section 403(b) Requirements.

(4) Section 25 sets forth the procedures for an Adopting Employer of a Qualified Pre-approved Plan or a Section 403(b) Pre-approved Plan to apply for a determination letter regarding the Adopting Employer's plan.

(5) Sections 26 through 29 set forth miscellaneous provisions, including provisions regarding the effect on other documents, the effective date, and public comments.

.02 Examples of significant changes from prior revenue procedures. In consolidating the prior revenue procedures (which set forth rules for qualified pre-approved plans and § 403(b) pre-approved plans) into this revenue procedure, numerous changes were made to conform, clarify, and update the rules. The following are some examples of those changes.

(1) For all Pre-approved Plans.

(a) The Remedial Amendment Period for Disqualifying Provisions or Form Defects is clarified to expire at the same time as the deadline for the adoption of Interim Amendments, as set forth in section 7. See section 6.03(1).

(b) The end of the Remedial Amendment Period for Discretionary Amendments made by an Adopting Employer (not by a Provider) is changed. See section 6.03(2).

(c) The Interim Amendment rules are updated to provide that, if an Adopting Employer does not correct a failure to timely adopt an Interim Amendment within two years after the time period set forth in section 7, then the Adopting Employer's plan will be treated as an individually designed plan at the end of that two-year period. See section 6.04.

(d) The Interim Amendment deadline is changed to match the individually designed plan Remedial Amendment Period deadline. See section 7.01(1)(a) and (2)(a).

(e) The plan amendment deadline for a Governmental Plan is changed to provide additional time beyond the deadline for a plan that is not a Governmental Plan only to the extent any action is required to be taken by the Adopting Employer in order

to adopt the amendment. See section 7.01(2).

(f) The eligibility of an employer to adopt a Pre-approved Plan for a Cycle is changed to require that, for a plan that was not in existence in the immediately preceding Cycle, the plan must have been submitted for an Opinion Letter for the Cycle before the employer adopts it. See section 11.01(1).

(g) For a starter 401(k) deferral-only plan described in § 401(k)(16) or a safe harbor deferral-only plan described in § 403(b)(16),<sup>5</sup> an Adopting Employer's reliance is updated to include those sections. See section 12.01(6) and 12.02(6).

(h) The circumstances under which a Pre-approved Plan will be treated as an individually designed plan, and the consequences of such treatment, are updated and clarified. See section 13.05.

(i) The rules for issuing an Opinion Letter are clarified to provide that an Opinion Letter will not be issued for amendments made between Submission Periods. Instead, a Provider must submit a restated plan that incorporates the amendments during the next Submission Period. See section 14.15.

(j) The scope of review for an Opinion Letter is clarified and updated. See section 17.01(1) and (2).

(k) The application filing address is updated. See section 24.

(l) The rules for an Adopting Employer applying for a determination letter are clarified and updated. See section 25.

(2) For Qualified Pre-approved Plans.

(a) The number of unaffiliated Providers required to be associated with a Mass Submitter is changed to better match the rules for a Mass Submitter with respect to a Section 403(b) Pre-approved Plan. See section 4.01(10).

(b) The number of employer-clients a Provider must have is changed to better match the rules for a Provider with respect to a Section 403(b) Pre-approved Plan. See section 4.01(15).

(c) The Qualification Requirements are clarified to include § 409 for ESOPs. See section 4.02(3).

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<sup>5</sup> Section 121 of Division T of the Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4459 (2022), known as the SECURE 2.0 Act of 2022, added §§ 401(k)(16) and 403(b)(16) to the Code, effective for plan years beginning after December 31, 2023.

(d) The rules relating to a Cycle for a Qualified Pre-approved Plan are changed to match the rules relating to a Cycle for a Section 403(b) Pre-approved Plan. Accordingly, each Cycle is no longer a fixed six years, and each Cycle now ends at the end of the Employer Adoption Window (with the result that the Submission Period may begin after the first day of a Cycle). See section 5.02.

(e) The required provisions for a Qualified Pre-approved Plan that is a pension plan and not a Governmental Plan are changed to require that the plan must have a normal retirement age that is not less than age 55. See section 9.02(13).

(f) The effect of an amendment with respect to which 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 is clarified to match the rules for a Section 403(b) Pre-approved Plan and provide that reliance on the Opinion Letter will not be lost. See section 13.02(8).

(g) The application procedures for an Opinion Letter are changed to no longer require attachments required in prior Cycles. See section 14.03, which no longer has the requirement.

(h) The consequences of a Provider failure to disclose a material fact are changed to match the rules for a Provider failure to disclose a material fact with respect to a Section 403(b) Pre-approved Plan. See section 14.11.

(i) The consequences of a Mass Submitter's failure to identify a modification are changed to match the rules for a Mass Submitter's failure to identify a modification with respect to a Section 403(b) Pre-approved Plan. See section 15.03(2)(c).

(j) The requirements for a Provider of a discontinued plan are changed to match the rules for a discontinued plan with respect to a Section 403(b) Pre-approved Plan. See section 21.02.

(3) For Section 403(b) Pre-approved Plans.

(a) The integral amendment portion of the definition of Form Defect is changed to better match the Qualified Pre-approved Plan rules for a Disqualified Provision. See section 4.03(2).

(b) The requirements for a Standardized Section 403(b) Pre-approved Plan that provides only for elective deferrals are updated to add requirements regarding hardship distributions and § 415 language. See section 9.07(1) and (2).

(c) The requirements for a Standardized Section 403(b) Pre-approved Plan that provides for contributions other than elective deferrals are changed so that the



requirements of section 9.07(3)(b) apply only to contributions other than elective deferrals. See section 9.07(3)(b).

(d) The rules for when an Opinion Letter will not be issued with respect to a Section 403(b) Pre-approved Plan are changed to better match the rules for when an Opinion Letter will not be issued with respect to a Qualified Pre-approved Plan and to provide that an Opinion Letter will not be issued for (i) a plan designed to satisfy the provisions of § 105, (ii) a plan that includes § 401(h) accounts, and (iii) a plan that includes purported fail-safe provisions for § 401(a)(4) or the average benefit test under § 410(b). See section 10.02(1).

(e) The rules for an Adopting Employer of a Section 403(b) Pre-approved Plan that applies for a determination letter are updated to better match the Qualified Pre-approved Plan rules for determination letter applications. See section 25.

#### SECTION 4. DEFINITIONS

.01 General definitions. For purposes of this revenue procedure, the following definitions apply to all Pre-approved Plans.

(1) Adopting Employer. The term “Adopting Employer” means an Employer that adopts a Pre-approved Plan offered by a Provider.

(2) Adoption Agreement Plan. The term “Adoption Agreement Plan” means a plan that consists of a basic plan document and an adoption agreement. The basic plan document includes all the non-elective provisions applicable to all Adopting Employers, and the adoption agreement includes the options that may be selected by each Adopting Employer. No options (including blanks to be completed) may be provided in the basic plan document portion of the Adoption Agreement Plan (except as set forth in section 15.03 regarding Flexible Plans).

(3) Cycle. The term “Cycle” means a Remedial Amendment Cycle, as defined in section 4.01(17).

(4) Discretionary Amendment. The term “Discretionary Amendment” means an amendment that is not an Interim Amendment.

(5) Employer. The term “Employer” means an employer that sponsors a Qualified Pre-approved Plan for its employees or an eligible employer, as described in § 403(b)(1)(A), that sponsors a Section 403(b) Pre-approved Plan for its employees.

(6) Employer Adoption Window. The term “Employer Adoption Window” means the period during which an Adopting Employer must adopt a newly approved Pre-approved Plan for a Cycle, and is also generally the period during which an Adopting Employer of a newly approved Pre-approved Plan may submit an application for a

determination letter (if otherwise permitted). See section 5.02 regarding the Employer Adoption Window and section 25 regarding determination letters.

(7) Flexible Plan. The term “Flexible Plan” means a plan submitted by a Mass Submitter that includes optional provisions (as described in section 15.03(1)(b)).

(8) Governmental Plan. The term “Governmental Plan” means a governmental plan within the meaning of § 414(d).

(9) Interim Amendment. The term “Interim Amendment” means an amendment to correct a Disqualifying Provision or a Form Defect that results in the failure of a Pre-approved Plan to satisfy a Qualification Requirement or Section 403(b) Requirement, as applicable, by reason of a change in that requirement, or an amendment that is integral to that Disqualifying Provision or Form Defect. See section 6.04.

(10) Mass Submitter. The term “Mass Submitter” means any person that (a) has an established place of business in the United States where it is accessible during every business day, and (b) submits Opinion Letter applications on behalf of 15 unaffiliated Providers, each of which is offering, on a word-for-word identical basis, the same plan. A Flexible Plan that is offered by a Provider is considered a plan that is word-for-word identical. For purposes of determining whether 15 unaffiliated Providers offer, on a word-for-word identical basis, the same Pre-approved Plan, a Mass Submitter that is also a Provider is treated as an unaffiliated Provider. For purposes of this definition, affiliation is determined under § 414(b) and (c). Additionally, any law firm, accounting firm, consulting firm, or similar organization is considered to be affiliated with its partners, members, associates, or similar affiliated persons. A Mass Submitter is treated as a Mass Submitter with respect to all of its plans, provided the 15-unaffiliated-Provider requirement is met with respect to at least one plan. See section 15 for rules relating to a Mass Submitter’s plans.

(11) Minor Modification. The term “Minor Modification” means a minor change to an otherwise word-for-word identical Pre-approved Plan of the Mass Submitter that the IRS determines does not require an in-depth IRS technical review. For example, a change from five-year 100% vesting to three-year 100% vesting is a minor modification for a defined benefit plan. 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.

(12) Nonstandardized Plan. The term “Nonstandardized Plan” means a Pre-approved Plan that is not a Standardized Plan.

(13) Opinion Letter. The term “Opinion Letter” means a written statement issued by the IRS to a Provider or Mass Submitter that the form of a Qualified Pre-approved Plan or a Section 403(b) Pre-approved Plan satisfies the Qualification Requirements or the Section 403(b) Requirements, respectively, that are being reviewed by the IRS for the Cycle for which the Opinion Letter is being issued.

(14) Pre-approved Plan. The term “Pre-approved Plan” means a plan (including a plan that is word-for-word identical to, or a Minor Modification of, a Mass Submitter’s plan) that has received an Opinion Letter under this revenue procedure (or a predecessor of this revenue procedure) and that is made available by a Provider for adoption by Employers. A Pre-approved Plan includes a plan covering self-employed individuals. A Pre-approved Plan may be either a Qualified Pre-approved Plan or a Section 403(b) Pre-approved Plan. A Qualified Pre-approved Plan or a Section 403(b) Pre-approved Plan may be either a Standardized Plan or a Nonstandardized Plan. A Qualified Pre-approved Plan or a Section 403(b) Pre-approved Plan may be structured as either an Adoption Agreement Plan or a Single Document Plan.

(15) Provider.

(a) The term “Provider” means any person (including, if applicable, a Mass Submitter) that:

(i) Has an established place of business in the United States where it is accessible during every business day, and

(ii) Represents to the IRS in its application for an Opinion Letter that it has at least 15 Employer-clients (except as set forth in section 4.01(15)(a)(ii)(A) regarding a Retirement Income Account), each of which is reasonably expected to adopt one of the Provider’s Pre-approved Plans.

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

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

(b) Notwithstanding the preceding provisions of this section 4.01(15), any person that has an established place of business in the United States where it is accessible during every business day may offer a plan that is word-for-word identical to a Mass Submitter’s plan as an identical adopter or a plan that includes Minor Modifications to a Mass Submitter’s plan as a minor modifier adopter regardless of the number of Employers that are expected to adopt the plan. See section 15 for rules relating to a Mass Submitter’s plans, including procedures for identical adopters and minor modifier adopters of a Mass Submitter’s plans.

(c) By submitting an application for an Opinion Letter for a Pre-approved Plan under this revenue procedure (or by having an application filed on its behalf by a Mass Submitter as an identical adopter or a minor modifier adopter), a person represents to the IRS that it is a Provider, and that it agrees to comply with any requirements imposed on Providers by this revenue procedure. Failure to comply with these requirements may result in the loss of eligibility to offer Pre-approved Plans and the revocation of Opinion Letters that have been issued to the Provider.

(16) Related Employers. For a Pre-approved Plan other than a Section 403(b) Pre-approved Plan that is a Governmental Plan, the term “Related Employer” means an employer that is aggregated with the Adopting Employer under § 414(b), (c), (m), and (o) and the regulations thereunder. For a Section 403(b) Pre-approved Plan that is a Governmental Plan, the term “Related Employer” means an employer that is aggregated with the Adopting Employer in a manner consistent with Notice 89-23, 1989-1 CB 654.

(17) Remedial Amendment Cycle. The term “Remedial Amendment Cycle” means the time period designated by the IRS during which (1) a Provider submits a proposed Pre-approved Plan for review and approval by the IRS, (2) the plan, once approved, is adopted by Employers, and (3) an Adopting Employer of a newly approved Pre-approved Plan generally may submit an application for a determination letter (if otherwise permitted). See section 5.

(18) Remedial Amendment Period. The term “Remedial Amendment Period” means the period during which an employer maintaining a plan may correct Disqualifying Provisions or Form Defects, as applicable, in its plan retroactive to the beginning of that period. As part of the correction of a Disqualifying Provision or a Form Defect within the applicable Remedial Amendment Period, an Adopting Employer is considered to have satisfied the Qualification Requirements or Section 403(b) Requirements, as applicable, if all provisions of the plan that are necessary to satisfy those requirements have been adopted and made effective in form and operation from the beginning of the Remedial Amendment Period. See section 6.

(19) Single Document Plan. The term “Single Document Plan” means a plan offered by a Provider that consists of a single plan document without an adoption agreement. A Single Document Plan may include alternate paragraphs and options that may be selected by an Adopting Employer (including blanks to be completed by the Adopting Employer in accordance with specified parameters).

(20) Standardized Plan. The term “Standardized Plan” means a Pre-approved Plan that satisfies the requirements set forth in section 9.03 or 9.07, as applicable. A Qualified Pre-approved Plan that includes an ESOP or that is a Statutory Hybrid Plan may not be a Standardized Plan.

(21) Submission Period. The term “Submission Period” means the period during which a Provider (including a Mass Submitter) may apply for an Opinion Letter for a particular Cycle. See section 5.02; also see section 16 regarding filings made after the Submission Period.

.02 Definitions applicable solely to Qualified Pre-approved Plans. For purposes of this revenue procedure, the following definitions apply to Qualified Pre-approved Plans and do not apply to Section 403(b) Pre-approved Plans.

(1) Disqualifying Provision.

(a) In general. For a Qualified Pre-approved Plan, the term “Disqualifying Provision” means:

(i) A provision of a new plan, the absence of a provision from a new plan, or an amendment to an existing plan that causes the plan to fail to satisfy the requirements of the Code applicable to the qualification of the plan as of the date the plan or amendment is first made effective;

(ii) A plan provision that, pursuant to § 1.401(b)-1(b)(3), has been designated by the Commissioner, in guidance published in the IRB, as a disqualifying provision by reason of a change in those requirements; or

(iii) The absence from a plan of a provision required by (or, if applicable, integral to) a change in the qualification requirements of the Code.

(b) Designation of Disqualifying Provisions. Pursuant to § 1.401(b)-1(b)(3), the IRS designates a plan provision as a Disqualifying Provision if it:

(i) Results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements that is effective after December 31, 2001; or

(ii) Is integral to a Disqualifying Provision described in section 4.02(1)(b)(i).

(2) Qualified Pre-approved Plan. The term “Qualified Pre-approved Plan” means a Pre-approved Plan that is intended to meet the Qualification Requirements.

(3) Qualification Requirements. The term “Qualification Requirements” means the requirements of §§ 401(a), 403(a), 409, and 4975(e)(7), including requirements provided by statute, or in regulations or other guidance published in the IRB.<sup>6</sup>

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<sup>6</sup> Under this definition, a change in Qualification Requirements includes a change provided by statute, or in regulations or other guidance published in the IRB, that affects a requirement of § 401(a), 403(a), 409,

(4) Trust or Custodial Account Document. The term “Trust or Custodial Account Document” means the separate portion of a Qualified Pre-approved Plan that includes the trust agreement or custodial account agreement and includes provisions covering such matters as the powers and duties of trustees, investment authority, and the kinds of investments that may be made. All provisions of the Trust or Custodial Account Document must be applicable to all Adopting Employers of that trust or custodial account. The trust agreement or custodial account agreement must be in a document separate from the plan document that is submitted for an Opinion Letter.

(5) Definitions related to ESOPs.

(a) ESOP. The term “ESOP” means an employee stock ownership plan within the meaning of § 4975(e)(7).

(b) Exempt Loan. The term “Exempt Loan” means a loan described in § 4975(d)(3) that satisfies the requirements for exemption from the excise tax imposed under § 4975(a) and (b) described in § 54.4975-7(b).

(c) Readily Tradable Employer Securities. The term “Readily Tradable Employer Securities” means publicly traded securities as defined in § 1.401(a)(35)-1(f)(5).

(6) Definitions related to Hybrid Plans.

(a) Cash Balance Formula. The term “Cash Balance Formula” means a statutory hybrid benefit formula, as defined in § 1.411(a)(13)-1(d)(4), that is used to determine all or any part of a participant’s accumulated benefit, and 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 Interest Credits.

(b) Cash Balance Plan. The term “Cash Balance Plan” means a defined benefit plan that includes a Cash Balance Formula.

(c) Conversion Amendment. The term “Conversion Amendment” means an amendment defined in § 1.411(b)(5)-1(c)(4). Under this regulation, a conversion amendment is an amendment (i) 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 within the meaning of § 1.411(a)(13)-1(d)(4), 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

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or 4975(e)(7), without regard to whether the change results in a Disqualifying Provision or merely permits the adoption of a Discretionary Amendment.

determined under a statutory hybrid benefit formula.

(d) Interest Credit. The term “Interest Credit” means an interest credit as defined in § 1.411(b)(5)-1(d)(1)(ii)(A). Under this regulation, an interest credit is 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.

(e) Offset. The term “Offset” means 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.

(f) Principal Credit. The term “Principal Credit” means a principal credit as defined in § 1.411(b)(5)-1(d)(1)(ii)(D), which includes any increase in a participant’s hypothetical account balance that is not an Interest Credit.

(g) Statutory Hybrid Plan. The term “Statutory Hybrid Plan” means a defined benefit plan that includes a statutory hybrid benefit formula as defined in § 1.411(a)(13)-1(d)(4).

(h) Variable Annuity Plan. The term “Variable Annuity Plan” means any defined benefit plan that includes a variable annuity benefit formula as defined in § 1.411(a)(13)-1(d)(6).

.03 Definitions applicable solely to Section 403(b) Pre-approved Plans. For purposes of this revenue procedure, the following definitions apply to Section 403(b) Pre-approved Plans, and do not apply to Qualified Pre-approved Plans:

(1) Church. The term “Church” means a church within the meaning of § 3121(w)(3)(A).

(2) Form Defect. The term “Form Defect” means:

(a) A provision of a new plan, the absence of a provision from a new plan, or an amendment to an existing plan that causes the form of the § 403(b) plan to fail to satisfy the Section 403(b) Requirements applicable as of the date the plan or amendment is first made effective;

(b) A plan provision that:

(i) Results in the failure of the form of the § 403(b) plan to satisfy the Section 403(b) Requirements by reason of a change in those requirements; or

(ii) Is integral to a Form Defect described in section 4.03(2)(b)(i); or

(c) The absence from a plan of a provision required by (or, if applicable, integral to) a change in the Section 403(b) Requirements.

(3) Investment Arrangement. The term “Investment Arrangement” means a funding arrangement under a Section 403(b) Pre-approved Plan. An Investment Arrangement may be an annuity contract under § 1.403(b)-2(b)(2), a custodial account under § 403(b)(7), or a Retirement Income Account.

(4) Non-qualified Church-Controlled Organization or Non-QCCO. The term “Non-qualified Church-Controlled Organization” or “Non-QCCO” means a church-controlled tax-exempt organization described in § 501(c)(3) that is not a QCCO.

(5) Qualified Church-Controlled Organization or QCCO. The term “Qualified Church-Controlled Organization” or “QCCO” means a church-controlled tax-exempt organization described in § 501(c)(3) that is a qualified church-controlled organization within the meaning of § 3121(w)(3)(B).

(6) Retirement Income Account. The term “Retirement Income Account” means a defined contribution program established or maintained by a Church, including an organization described in § 414(e)(3)(A), to provide benefits under § 403(b) for an employee described in § 403(b)(1) (including an employee described in § 414(e)(3)(B)) or his or her beneficiaries, as described in § 403(b)(9).

(7) Section 403(b) Pre-approved Plan. The term “Section 403(b) Pre-approved Plan” means a Pre-approved Plan that is intended to meet the Section 403(b) Requirements.

(8) Section 403(b) Requirements. The term “Section 403(b) Requirements” means the requirements of § 403(b), including requirements provided in the Code, or in regulations or other guidance published in the IRB.<sup>7</sup>

## PART II. REMEDIAL AMENDMENT CYCLES AND REMEDIAL AMENDMENT PERIODS

### SECTION 5. REMEDIAL AMENDMENT CYCLE SYSTEM

.01 Remedial Amendment Cycles. Under this revenue procedure, every Pre-approved Plan has a recurring Remedial Amendment Cycle. Providers may apply for new Opinion Letters for each Cycle. Adopting Employers of Pre-approved Plans, if otherwise eligible under section 25, may apply for determination letters once each

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<sup>7</sup> Under this definition, a change in Section 403(b) Requirements includes a statutory, regulatory, or other guidance change that affects a requirement of § 403(b), without regard to whether the change results in a Form Defect or merely permits the adoption of a Discretionary Amendment.



Cycle. Defined contribution Qualified Pre-approved Plans, defined benefit Qualified Pre-approved Plans, and Section 403(b) Pre-approved Plans each have different Cycles. While the same Cycle applies with respect to all defined contribution Qualified Pre-approved Plans, separate Cycles apply with respect to all defined benefit Qualified Pre-approved Plans and with respect to all Section 403(b) Pre-approved Plans.

.02 Stages of Remedial Amendment Cycle. For each Cycle, a Provider may apply for an Opinion Letter during the Submission Period, which generally begins at or shortly after the beginning of each Cycle. When the IRS's review of the Pre-approved Plans that are submitted during a Cycle is near completion, the IRS will announce the Employer Adoption Window for that Cycle, during which an Adopting Employer must adopt a newly approved Pre-approved Plan for that Cycle in order to continue to have a Pre-approved Plan. The Employer Adoption Window is also generally the period during which an Adopting Employer of a newly approved Pre-approved Plan may submit for a determination letter, if applicable, pursuant to section 25.<sup>8</sup> The deadline to adopt a newly approved Pre-approved Plan is expected to be a uniform date that will apply to all Adopting Employers. It is expected that the Employer Adoption Window will provide virtually all Employers approximately two years to adopt a newly approved Pre-approved Plan and file for a determination letter, if applicable. A Cycle ends at the end of the last day of the Employer Adoption Window for that Cycle. The next Cycle begins on the following day.

.03 Cycle 4 Submission Period for defined contribution Qualified Pre-approved Plans. Pursuant to this revenue procedure, the Submission Period for a Provider of a defined contribution Qualified Pre-approved Plan to apply for a Cycle 4 Opinion Letter begins on February 1, 2024, and ends on January 31, 2025. A Provider of a defined contribution Qualified Pre-approved Plan may still apply for a Cycle 4 Opinion Letter after the Submission Period. See section 16 regarding filings made after the Submission Period.

## SECTION 6. REMEDIAL AMENDMENT PERIODS

.01 In general. The provisions of this section 6 set forth the Remedial Amendment Periods for Disqualifying Provisions and Form Defects for Pre-approved Plans. A Qualified Pre-approved Plan that does not satisfy a Qualification Requirement or a Section 403(b) Pre-approved Plan that does not satisfy a Section 403(b) Requirement on any day solely as a result of a Disqualifying Provision or Form Defect, as applicable, is considered to have satisfied the Qualification Requirement or Section 403(b) Requirement on that date if, on or before the last day of the Remedial Amendment Period with respect to the Disqualifying Provision or Form Defect, all provisions of the plan that are necessary to satisfy the Qualification Requirement or Section 403(b) Requirement, as applicable, have been adopted and made effective in form and

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<sup>8</sup> But see, section 25 for when an Adopting Employer may apply for a determination letter outside of the Employer Adoption Window.

operation for the whole of the period. A Pre-approved Plan for which an Adopting Employer does not correct a Disqualifying Provision or Form Defect within the applicable Remedial Amendment Period is not considered to satisfy the Qualification Requirements or Section 403(b) Requirements, as applicable.

.02 Beginning dates of the Remedial Amendment Period.

(1) Disqualifying Provisions. Pursuant to § 1.401(b)-1(d)(1), unless another time is specified by the Commissioner in guidance published in the IRB, the Remedial Amendment Period for a Disqualifying Provision begins:

(a) In the case of a Disqualifying Provision with respect to a provision of, or absence of a provision from, a new plan, on the date the plan is put into effect;

(b) In the case of a Disqualifying Provision with respect to an amendment to an existing plan (other than a Disqualifying Provision that is related to a change in Qualification Requirements, or that is integral to such a change, as described in section 4.02(1)(b)), on the date the plan amendment is adopted or put into effect, whichever is earlier;

(c) In the case of a Disqualifying Provision with respect to a provision that fails to satisfy the Qualification Requirements by reason of a change in those requirements, on the date on which the change effected by an amendment to the Code or a change in requirements provided in regulations or other guidance published in the IRB became effective with respect to the plan; or

(d) In the case of a Disqualifying Provision with respect to a provision that is integral to a Qualification Requirement that has been changed, on the first day on which the plan was operated in accordance with such provision, as amended.

(2) Form Defects. Unless another time is specified by the Commissioner in guidance published in the IRB, the Remedial Amendment Period for a Form Defect begins:

(a) In the case of a Form Defect with respect to a provision of, or absence of a provision from, a new plan, on the date the plan is put into effect;

(b) In the case of a Form Defect with respect to an amendment to an existing plan (other than a Form Defect that is related to a change in Section 403(b) Requirements, or that is integral to such a change, as described in section 4.03(2)(b)), on the date the plan amendment is adopted or put into effect, whichever is earlier;

(c) In the case of a Form Defect with respect to a provision that fails to satisfy the Section 403(b) Requirements by reason of a change in those requirements, on the date on which the change effected by an amendment to the Code or a change in

requirements provided in regulations or other guidance published in the IRB became effective with respect to the plan; or

(d) In the case of a Form Defect with respect to a provision that is integral to a Section 403(b) Requirement that has been changed, on the first day on which the plan was operated in accordance with such provision, as amended.

.03 Expiration of the Remedial Amendment Period.

(1) In general. Provided an Interim Amendment, if applicable, is made timely, and except as otherwise provided in section 6.03(2), by statute, or in regulations or other guidance published in the IRB, the Remedial Amendment Period for a Disqualifying Provision or a Form Defect, as applicable, expires at the later of (a) the end of the Cycle that includes the date on which the Remedial Amendment Period would have ended if the plan were an individually designed plan,<sup>9</sup> or (b) the end of the first Cycle in which an application for an Opinion Letter that considers the Disqualifying Provision or Form Defect may be submitted. This Remedial Amendment Period applies regardless of whether the Disqualifying Provision or Form Defect relates to a new plan or is due to an amendment to an existing plan (without regard to whether the amendment was required to be adopted), provided that the plan or amendment was adopted timely and in good faith with the intent of complying with the Qualification Requirements or Section 403(b) Requirements, as applicable. The IRS will make the final determination in all cases as to whether a new plan or an amendment to an existing plan was adopted with the good faith intention of complying with the Qualification Requirements or Section 403(b) Requirements, as applicable. If an Interim Amendment is not made timely, then the Remedial Amendment Period for the Disqualifying Provision or the Form Defect, as applicable, expires at the time of the Interim Amendment deadline set forth in section 7.

(2) Discretionary Amendments made by an Adopting Employer. For a Discretionary Amendment made by an Adopting Employer (not by the Provider), the Remedial Amendment Period for a Disqualifying Provision or a Form Defect, as applicable, arising from that Discretionary Amendment expires at the end of the Cycle that includes the date on which the Remedial Amendment Period would have ended if the plan were an individually designed plan.

.04 Interim Amendment requirement. To promote compliance during a Cycle with a change in Qualification Requirements or Section 403(b) Requirements that affects provisions of a written plan document, a Provider (or Adopting Employer, if applicable) of a Pre-approved Plan must adopt an Interim Amendment with respect to the change within the time period set forth in section 7, unless the Provider (or Adopting Employer,

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<sup>9</sup> For the Remedial Amendment Period rules for individually designed qualified and § 403(b) plans, see Rev. Proc. 2022-40.

if applicable) reasonably and in good faith determines that no amendment is required.<sup>10</sup> The IRS will make the final determination in all cases as to whether the determination that no Interim Amendment was required is reasonable and in good faith. If an Interim Amendment is not adopted by the end of the time period set forth in section 7, the Provider (or Adopting Employer, if applicable) must correct this failure to timely adopt the Interim Amendment within two years after the end of the time period set forth in section 7; otherwise the Adopting Employer's plan will be treated as an individually designed plan at the end of that two-year period. See section 13.05 for a Pre-approved Plan treated as individually designed.<sup>11</sup>

.05 Terminating plan. Notwithstanding any other provision of this section 6, the termination of a Pre-approved Plan ends the Remedial Amendment Period for each Disqualifying Provision or Form Defect of the plan and, thus, generally will shorten the Remedial Amendment Period. Accordingly, any retroactive remedial plan amendments or other required plan amendments for a terminating plan (that is, plan amendments required to be adopted to reflect Qualification Requirements or Section 403(b) Requirements that apply as of the date of termination) must be adopted in connection with the plan termination regardless of whether such requirements are included on a Cumulative List described in section 17, Operational Compliance List described in section 14.09, or Required Amendments List described in Rev. Proc. 2022-40.<sup>12</sup>

.06 Circumstances in which a Disqualifying Provision or Form Defect may not be corrected retroactively during a Remedial Amendment Period. If it is not possible to amend a plan retroactively during a Remedial Amendment Period so that all provisions of the plan that are necessary to satisfy Qualification Requirements or Section 403(b) Requirements related to the Disqualifying Provision or Form Defect, as applicable, are made effective in operation for the whole Remedial Amendment Period, then the Disqualifying Provision or Form Defect may not be corrected retroactively in order for the form of the plan to satisfy the Qualification Requirements or Section 403(b) Requirements, as applicable, even if the Adopting Employer adopts a retroactive plan amendment that, in form, appears to satisfy those requirements. An Adopting Employer maintaining a Pre-approved Plan that cannot be corrected by an amendment during the applicable Remedial Amendment Period may be able to correct the Disqualifying

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<sup>10</sup> See section 14.09 regarding the Operational Compliance List, which identifies changes to Qualification Requirements or Section 403(b) Requirements that are effective during a calendar year.

<sup>11</sup> During the two-year period, the plan will not cease to be a Pre-approved Plan solely because it has failed to adopt the Interim Amendment. Once a plan is treated as an individually designed plan, the plan will be subject to the remedial amendment period rules applicable to individually designed plans and therefore will have a failure to satisfy the Qualification Requirements or Section 403(b) Requirements for failing to have adopted the Interim Amendment (and must use EPCRS to correct that failure in order to adopt a Pre-approved Plan again).

<sup>12</sup> The Required Amendments List establishes the end of the Remedial Amendment Period and the plan amendment deadline for changes in qualification requirements and § 403(b) requirements set forth on the list for qualified individually designed plans and § 403(b) individually designed plans, respectively. The Required Amendments Lists can be found at <https://www.irs.gov/retirement-plans/required-amendments-list>.

Provision or Form Defect under EPCRS. See Rev. Proc. 2021-30, 2021-31 IRB 172 (or its successor).

## SECTION 7. PLAN AMENDMENT DEADLINES

.01 Plan amendment deadline. Except as otherwise provided in section 7.02, the deadline for the timely adoption of an amendment for a Pre-approved Plan is determined as follows.

### (1) Pre-approved Plan that is not a Governmental Plan.

(a) Interim Amendments. For a Pre-approved Plan that is not a Governmental Plan, a Provider (or the Adopting Employer, if applicable) adopts an Interim Amendment timely if the plan amendment is adopted by the last day of the second calendar year that begins after the issuance of the Required Amendments List (described in Rev. Proc. 2022-40) in which the change in Qualification Requirements or Section 403(b) Requirements appears.

(b) Discretionary Amendments. For a Pre-approved Plan that is not a Governmental Plan, in the case of a Discretionary Amendment, an Adopting Employer adopts the amendment timely if the Adopting Employer (or a Provider, if applicable) adopts the plan amendment by the end of the plan year in which the plan amendment is operationally put into effect. An amendment is operationally put into effect when the plan is administered in a manner consistent with the intended plan amendment (rather than existing plan terms). For example, the deadline for adopting a Discretionary Amendment with respect to a calendar year plan that increases participants' accrued benefits and is operationally put into effect during 2023 is December 31, 2023.

### (2) Pre-approved plan that is a Governmental Plan.

(a) Interim Amendments. For a Governmental Plan, in the case of an Interim Amendment, a Provider (or the Adopting Employer, if applicable) adopts the amendment timely if the plan amendment is adopted by the later of:

(i) The last day of the second calendar year that begins after the issuance of the Required Amendments List (described in Rev. Proc. 2022-40) in which the change in Qualification Requirements or Section 403(b) Requirements appears; or

(ii) To the extent any action is required to be taken by the Adopting Employer in order to adopt the Interim Amendment, 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date the plan amendment becomes effective.

(b) Discretionary Amendments. For a Governmental Plan, in the case of a Discretionary Amendment, an Adopting Employer (or a Provider, if applicable) adopts

the plan amendment timely if the Adopting Employer adopts the plan amendment by the later of:

(i) The end of the plan year in which the plan amendment is operationally put into effect; or

(ii) To the extent any action is required to be taken by the Adopting Employer in order to adopt the Discretionary Amendment, 90 days after the close of the second regular legislative session of the legislative body with authority to amend the plan that begins on or after the date the amendment becomes effective.

.02 Exceptions to section 7.01 plan amendment deadlines. Section 7.01 applies unless (1) a statutory provision, or regulations or other guidance published in the IRB, sets forth a deadline to timely adopt a Discretionary Amendment with respect to a plan year that is different from the deadlines under section 7.01, or (2) a statutory provision, or regulations or other guidance published in the IRB, sets forth a deadline to timely adopt a particular type of Interim Amendment that is different from the deadlines under section 7.01.

## SECTION 8. SCHEDULES FOR REMEDIAL AMENDMENT CYCLES

The schedules for Pre-approved Plan Cycles are available at <https://www.irs.gov/retirement-plans/determination-opinion-and-advisory-letters-6-year-cycle-for-pre-approved-plans-plans>. The IRS may revise the schedules to respond to changing circumstances and the needs of Adopting Employers, as necessary. The IRS will announce any such revisions and the timing of the Submission Period for each Cycle, which will be reflected in guidance published in the IRB (either in a revenue procedure, an announcement, or in the applicable Cumulative List (which will be issued prior to a Submission Period)).

### PART III. PROCEDURES FOR A PROVIDER APPLYING FOR AN OPINION LETTER

## SECTION 9. PROVISIONS REQUIRED IN PRE-APPROVED PLANS

### .01 Provisions required in Pre-approved Plans.

(1) Provisions required in Qualified Pre-approved Plans. Each Qualified Pre-approved Plan must comply with the requirements set forth in section 9.02. Section 9.03 sets forth additional provisions required for a Qualified Pre-approved Plan that is a Standardized Plan. Section 9.04 sets forth additional provisions required for a Qualified Pre-approved Plan that includes an ESOP. Section 9.05 sets forth additional provisions required in a Qualified Pre-approved Plan that includes a Cash Balance Formula.

(2) Provisions required in Section 403(b) Pre-approved Plans. Each

Section 403(b) Pre-approved Plan must comply with the requirements set forth in section 9.06. Section 9.07 sets forth additional provisions required for a Section 403(b) Pre-approved Plan that is a Standardized Plan. Section 9.08 sets forth additional provisions for a Section 403(b) Pre-approved Plan that is a Retirement Income Account.

.02 Provisions required in a Qualified Pre-approved Plan.

(1) Provider amendments. Each Qualified Pre-approved Plan must include a procedure for amendments by the Provider, so that a Provider may modify the plan to reflect changes provided by statute, or in regulations or other guidance published in the IRB, and so that any correction of the plan may be applied to all Adopting Employers. The procedure for amendments by the Provider also must state that, for purposes of the Pre-approved Plan program, the Provider will no longer have the authority to amend the plan on behalf of the Adopting Employer as of the date the plan is treated as an individually designed plan pursuant to section 13.05.

(2) Anti-cutback and vesting schedule change provision. Each Qualified Pre-approved Plan must specifically provide for the protection required under § 411(a)(10) and (d)(6) in the event that the Adopting Employer amends the plan (including by revising the options selected in the adoption agreement or adopting a new plan). A plan may not be amended 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 the amendment is permitted under § 1.401(a)-4 and either § 1.411(d)-3 or 1.411(d)-4. See section 9.02(5) for anti-cutback plan provisions that are required in situations in which a plan becomes top-heavy. See § 411(d)(6)(C) and § 1.411(d)-4, Q&A-2(d), for certain exceptions applicable to ESOPs.

(3) Adopting Employer modification to satisfy §§ 415 and 416. Each Qualified Pre-approved Plan must provide that plan provisions may be amended by the Adopting Employer to the extent necessary to satisfy § 415 or 416 because of the required aggregation of multiple plans under these sections. Generally, a space should be reserved in the plan with instructions for the Adopting Employer to add such language as necessary to satisfy §§ 415 and 416, if applicable. In addition, a space must be provided in the plan for the Adopting 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, if applicable. Such a space must be included in both defined contribution plans and defined benefit plans. These provisions must be included in the adoption agreement of an Adoption Agreement Plan.

(4) Aggregation for § 415 compliance. Each Qualified Pre-approved Plan must provide for aggregation of all of an Adopting Employer's defined contribution plans and all of an Adopting Employer's defined benefit plans as necessary to satisfy § 415(b) and (c) (each as modified by § 415(h)), and § 415(f).

(5) Top-heavy requirements. Each Qualified Pre-approved Plan must either

provide that all of the additional requirements applicable to top-heavy plans (described in § 416) apply at all times, or provide that such requirements apply automatically if the plan is top-heavy, regardless of how the options in the plan are completed. In the 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.) In addition, a plan that is subject to the top-heavy requirements and that does not include vesting rules for all years that are at least as favorable to participants as those set forth in § 416(b) must specifically provide that any vesting that occurs while the plan is top-heavy will not be reduced if the plan ceases to be top-heavy.

(6) Provision regarding reliance. Each Qualified Pre-approved Plan must include, in close proximity to the signature line, a statement that describes the limitations on Adopting Employer reliance on an Opinion Letter. See section 12.

(7) Provision regarding conflicting trust provisions. Each Qualified Pre-approved Plan must include a statement that the provisions of the single plan document or basic plan document override any conflicting provision included in Trust or Custodial Account Documents used with the plan.<sup>13</sup>

(8) Dated signatures and adoption agreement provisions. Each Qualified Pre-approved Plan must include an Adopting Employer signature and date line. The plan also must include a statement that the Provider will inform the Adopting Employer of any amendments made to the plan or of the discontinuance of the plan. The Adopting Employer must sign and date the adoption agreement or signature page of the plan when it first adopts the plan and must complete, sign, and date a new adoption agreement or signature page if the plan has been restated. In addition, the Adopting Employer must complete a new dated adoption agreement or signature page if the Adopting Employer modifies any prior elections or makes new elections. The signature requirement may be satisfied by an electronic signature that reliably authenticates and verifies the adoption of the adoption agreement or single plan document, or the restatement, amendment, or modification thereof, by the Adopting Employer. In the case of an Adoption Agreement Plan, the adoption agreement must state that it is to be used with only one basic plan document and must identify that document. In addition, the adoption agreement must include a cautionary statement to the effect that the failure to properly complete the adoption agreement may result in failure of the form of the plan to meet the Qualification Requirements.

(9) Provider contact information. Each Qualified Pre-approved Plan must include the Provider's name, address, and telephone number (or a space for the address and telephone number of the Provider's authorized representative) for inquiries by Adopting

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<sup>13</sup> Accordingly, if a plan is operated in a manner that is inconsistent with a provision of the single plan document or basic plan document, the plan will incur an operational failure even if the plan is operated in a manner consistent with a provision of a Trust or Custodial Account Document that conflicts with the provision of the single plan document or basic plan document.



Employers regarding the adoption of the plan, the meaning of plan provisions, or the effect of the Opinion Letter. Each Qualified Pre-approved Plan may provide additional contact information (such as an email address).

(10) Definition of employee

(a) In general. Each Qualified Pre-approved Plan must define an employee as any employee of the Adopting Employer maintaining the plan or of any Related Employer. The definition of employee also must include any individual treated under § 414(n) or (o) as an employee of any Employer described in the preceding sentence.

(b) ESOPs. With respect to a Qualified Pre-approved Plan that includes an ESOP, employees who meet the definition of employee in section 9.02(10)(a) may not participate in the ESOP unless they are employed by the corporation that issues the stock held by the ESOP or by any corporation that is a member of the same controlled group of corporations (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 (e)(3)(C)). For all other purposes under the ESOP, including nondiscrimination and coverage, employees who meet the definition of employee in section 9.02(10)(a) are treated as employees.

(11) Crediting of service taking into account § 414(b), (c), (m), (n), and (o). Each Qualified Pre-approved Plan must credit all service with any Related Employer as service with the Adopting Employer maintaining the plan. In addition, in the case of an individual treated under § 414(n) or (o) as an employee of any Employer described in the previous sentence, service with that Employer must be credited to such individual.

(12) Uniformed Services Employment and Reemployment Rights Act and § 414(u). Each Qualified Pre-approved Plan must include a provision reflecting the requirements of § 414(u). See Rev. Proc. 96-49, 1996-2 CB 369.

(13) Normal retirement age. Each Qualified Pre-approved Plan that is a pension plan and that is not a Governmental Plan must have a normal retirement age that is not less than age 55.

.03 Additional provisions required in a Qualified Pre-approved Plan that is intended to be a Standardized Plan. Each Qualified Pre-approved Plan that is intended to be a Standardized Plan must meet the following requirements:

(1) Plan benefits all employees. Under the provisions governing eligibility and participation, the plan by its terms must benefit all employees (regardless of whether any Employer is treated as operating separate lines of business under § 414(r)) except those employees that may be excluded under § 410(a)(1) or (b)(3). The plan may provide options as to whether some or all of the employees described in § 410(a)(1) or (b)(3) are 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 Qualified Pre-approved Plan will not fail to satisfy the requirements of this section 9.03(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 9.02(10)(a), as the result of a transaction described in § 410(b)(6)(C) are excluded from eligibility to participate in the plan during the period beginning on the date of the transaction and ending on a date that is not later than the earlier of the last day of the first plan year beginning after the date of the transaction or the date of a significant change in the plan or in the coverage of the plan. A transaction described in § 410(b)(6)(C) is an asset or stock acquisition, merger, or other similar transaction involving a change in the employer of the employees of a trade or business.

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

(3) Allocations and benefits are based on total compensation. Under the plan, allocations, in the case of a defined contribution plan (other than any cash or deferred arrangement portion), or benefits, in the case of a defined benefit plan, are determined on the basis of total compensation. The plan must provide that, for purposes of allocation, the definition of total compensation is “participant’s compensation” within the meaning of § 415(c)(3), or compensation that otherwise satisfies § 414(s) and § 1.414(s)-1(c).

(4) Section 401(a)(4) safe harbors. Unless the plan is a target benefit plan or a § 401(k) and/or 401(m) plan, the plan must satisfy, by its terms, 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) Benefits, rights and features are available to all employees. All benefits, rights, and features under the plan (other than those, if any, that have been prospectively eliminated) are currently available to all employees benefiting under the plan. (For information regarding benefits, rights, and features and the determination of current availability, see § 1.401(a)(4)-4.)

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

(7) Hardship distribution satisfies safe-harbor standards. Any hardship

distribution satisfies the safe harbor standards in § 1.401(k)-1(d)(3).

.04 Additional provisions required in a Qualified Pre-approved Plan that includes an ESOP. Each Qualified Pre-approved Plan that includes an ESOP feature must include the following provisions:

(1) Identification as an ESOP. 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) Definition of employer stock. A provision that defines employer stock in accordance with § 409(l)(1) or (2);

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

(4) Valuation, independent appraiser, and allocation of earnings. 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 CB 84;

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

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

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

(8) Exempt loans. 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) Annual addition. 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 (as defined in § 1361(a)(2)), the requirements described in § 415(c)(6);

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

(11) S corporation employer securities. If an ESOP holds employer securities consisting of stock in an S corporation (as defined in § 1361(a)(1)), provisions that meet the requirements of § 409(p) and § 1.409(p)-1;

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

(13) Identification as C or S corporation. Provisions (in the plan document or adoption agreement) that identify the Adopting Employer as either a C corporation or an S corporation.

(14) Definition of employee. See section 9.02(10)(b).

.05 Additional provisions required in a Qualified Pre-approved Plan that includes a Cash Balance Plan

(1) Prior benefit structures protected. All Cash Balance Plans must ensure compliance with the anti-cutback provisions of § 411(d)(6). To receive an Opinion Letter under this revenue procedure, a Cash Balance Plan must provide that, at all times, any benefits accrued prior to the Adopting Employer's adoption of the Pre-approved Plan (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 § 1.411(b)(5)-1(c). However, an 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 include any structure of Principal Credits that increase with age, service, or any other measure during a participant's employment must be definitely determinable, operationally nondiscriminatory, and at all times in compliance with the "133 1/3 percent rule" of § 411(b)(1)(B) and the regulations thereunder. Employers may not rely on the Opinion Letter with respect to the requirements of § 411(b)(1) for increasing Principal Credit schedules that are created by Adopting Employers by completing blanks in the plan formula, but may rely on the Opinion Letter with respect to the requirements of § 411(b)(1) for increasing Principal Credit schedules specified in the Pre-approved Plan document.

.06 Provisions required in a Section 403(b) Pre-approved Plan.

(1) Provider amendments. Each Section 403(b) Pre-approved Plan must include a procedure for amendments by the Provider, so that changes in the Code, or in regulations or other guidance published in the IRB, and any correction of the plan may be applied to all Adopting Employers. The procedure for amendments by the Provider also must state that, for purposes of the Pre-approved Plan program, the Provider will no longer have the authority to amend the plan on behalf of the Adopting Employer as of the date the plan is treated as an individually designed plan pursuant to section 13.05.

(2) Adopting Employer modification to satisfy § 415. Each Section 403(b) Pre-approved Plan must provide that plan provisions may be amended by the Adopting Employer to the extent necessary to satisfy § 415 because of the required aggregation of multiple plans under these sections. Generally, a space should be reserved in the

plan with instructions for the Adopting Employer to add such language as necessary to satisfy § 415. These provisions must be included in the adoption agreement of an Adoption Agreement Plan.

(3) Aggregation for § 415 compliance. Each Section 403(b) Pre-approved Plan must provide for aggregation of all of an Adopting Employer's defined contribution plans as necessary to satisfy § 415(c) (as modified by § 415(h)), (f), and (k)(4).

(4) Provision regarding reliance. Each Section 403(b) Pre-approved Plan must include, in close proximity to the signature line, a statement that describes the limitations on Adopting Employer reliance on an Opinion Letter. See section 12.

(5) Provision regarding conflicting provisions in Investment Arrangements or other documents. Each Section 403(b) Pre-approved Plan must provide that, in the event of any conflict between the terms of the single plan document or the basic plan document and adoption agreement, as applicable, and the terms of Investment Arrangements under the plan (or of any other documents incorporated by reference into the plan), the terms of the single plan document or the basic plan document and adoption agreement, as applicable, will govern. See section 12.03(5) for the effect on reliance in the event of a conflict. An Employer that adopts a Section 403(b) Pre-approved Plan should take this requirement into account in considering Investment Arrangements to be offered under the plan, as well as other documents that may be incorporated by reference. Since the terms of Investment Arrangements under a Section 403(b) Pre-approved Plan must be incorporated by reference into the plan and those arrangements may not have any provisions that are inconsistent with § 403(b), plan terms that are required in a single plan document or the basic plan document and adoption agreement, as applicable, under this section 9 should not create a conflict with the terms of the Investment Arrangements under a properly drafted Section 403(b) Pre-approved Plan. If there nevertheless is a conflict, the terms of the single plan document or the basic plan document and adoption agreement, as applicable, must control.<sup>14</sup>

(6) Dated signatures and adoption agreement provisions. Each Section 403(b) Pre-approved Plan must include an Adopting Employer signature and date line. The plan also must include a statement that the Provider will inform the Adopting Employer of any amendments made to the plan or of the discontinuance of the plan. The Adopting Employer must sign and date the adoption agreement or signature page of the plan when it first adopts the plan and must complete, sign, and date a new adoption agreement or signature page if the plan has been restated. In addition, the Adopting Employer must complete a new dated adoption agreement or signature page if it modifies any prior elections or makes new elections. The signature requirement may be

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<sup>14</sup> Accordingly, if a plan is operated in a manner that is inconsistent with a provision of the single plan document or basic plan document, the plan will incur an operational failure even if the plan is operated in a manner consistent with a provision of a Trust or Custodial Account Document that conflicts with the provision of the single plan document or basic plan document.

satisfied by an electronic signature that reliably authenticates and verifies the adoption of the adoption agreement or single plan document, or the restatement, amendment, or modification thereof, by the Adopting Employer. In the case of an Adoption Agreement Plan, the adoption agreement must state that it is to be used with only one basic plan document and must identify that document. In addition, the adoption agreement must include a cautionary statement to the effect that the failure to properly complete the adoption agreement may result in failure of the form of the plan to meet the Section 403(b) Requirements.

(7) Provider contact information. Each Section 403(b) Pre-approved Plan must include the Provider's name, address, and telephone number (or a space for the address and telephone number of the Provider's authorized representative) for inquiries by Adopting Employers regarding the adoption of the plan, the meaning of plan provisions, or the effect of the Opinion Letter. Each Section 403(b) Pre-approved Plan may provide additional contact information (such as an email address).

(8) Definition of employee. Each Section 403(b) Pre-approved Plan must define an employee as any employee of the Adopting Employer maintaining the plan or any other Related Employer.

(9) Crediting of service taking into account § 414(b), (c), (m), and (o). Each Section 403(b) Pre-approved Plan must credit all service with any Related Employer as service with the Adopting Employer maintaining the plan.

(10) Uniformed Services Employment and Reemployment Rights Act and § 414(u). Each Section 403(b) Pre-approved Plan must include a provision reflecting the requirements of § 414(u). See Rev. Proc. 96-49.

(11) Inclusion of Investment Arrangements. A Section 403(b) Pre-approved Plan includes the Investment Arrangements under the plan in addition to the single plan document or the basic plan document and adoption agreement. Every Section 403(b) Pre-approved Plan must therefore incorporate by reference the terms of the Investment Arrangements under the plan. While the IRS's review of an application for an Opinion Letter is limited to the terms of the single plan document or the basic plan document and adoption agreement, as applicable, the terms of Investment Arrangements and other documents that are incorporated by reference in the plan must satisfy applicable law and may not have any provisions that are inconsistent with the Section 403(b) Requirements. For example, if the forms of annuity benefit available under a plan are described in the Investment Arrangements under the plan, the terms of the Investment Arrangements must satisfy, if applicable to the plan, the joint and survivor annuity requirements of section 205 of the Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. 93-406, 88 Stat. 82954, and any applicable related rules, such as rules relating to transfers of benefits that are subject to the joint and survivor annuity requirement, and may not have any provisions that are inconsistent with the Section 403(b) Requirements.

(12) Plan must satisfy Section 403(b) Requirements independent of Investment Arrangements. The IRS's review of a Section 403(b) Pre-approved Plan will consider only the terms of the single plan document or the basic plan document and adoption agreement, as applicable. Accordingly, the provisions described in this section 9.06 (and sections 9.07 and 9.08, if applicable) must be included in the single plan document or the basic plan document or adoption agreement, as appropriate, of every Section 403(b) Pre-approved Plan, regardless of the terms of any Investment Arrangements under the plan or any other documents that may be incorporated by reference. This does not preclude the adoption of a Section 403(b) Pre-approved Plan (including a Standardized Plan) if different Investment Arrangements under a plan have different features or prevent the inclusion of additional provisions in the terms of the Investment Arrangements under the plan or other documents incorporated by reference. It also does not prevent a Section 403(b) Pre-approved Plan from using Investment Arrangements that are more restrictive than required by § 403(b) or the single plan document or the basic plan document and adoption agreement. However, the terms of the single plan document or the basic plan document and adoption agreement, as applicable, must satisfy the requirements of applicable law and this section 9.06 (and sections 9.07 and 9.08, if applicable) independent of any Investment Arrangements under the plan or any other documents incorporated by reference. For example, an Adopting Employer's Adoption Agreement Plan may offer both Investment Arrangements that permit loans and Investment Arrangements that do not permit loans. In this case, (1) the basic plan document must include provisions reflecting the Section 403(b) Requirements, including §§ 1.403(b)-6 and 1.72(p)-1, and (2) the basic plan document and adoption agreement, as completed by the Adopting Employer, must provide that, to the extent permitted by the terms governing the applicable Investment Arrangement, participant loans are available. Similarly, for example, if an Adopting Employer's Single Document Plan offers both Investment Arrangements that permit loans and Investment Arrangements that do not permit loans, then the single plan document must include provisions reflecting the Section 403(b) Requirements, including §§ 1.403(b)-6 and 1.72(p)-1, and must provide that, to the extent permitted by the terms governing the applicable Investment Arrangement, participant loans are available.

(13) Vesting. A Section 403(b) Pre-approved Plan may provide a vesting schedule for contributions other than elective deferrals, rather than provide for full and immediate vesting of the contributions. Except in the case of certain Nonstandardized Plans described in this section 9.06(13), contributions other than elective deferrals (and earnings thereon) under a Section 403(b) Pre-approved Plan must vest at least as rapidly as would be required to satisfy the minimum vesting requirements of § 411(a)(2)(B) applicable to a qualified plan under § 401(a), even if the plan is not subject to the parallel minimum vesting requirements under section 203 of ERISA. A Nonstandardized Plan that is designed to be used for a plan that is not subject to the minimum vesting requirements of section 203 of ERISA (for example, a Governmental Plan) is not required to provide that contributions other than elective deferrals will vest at least as rapidly as would be required to satisfy § 411(a)(2)(B). Every Section 403(b)

Pre-approved Plan that provides a vesting schedule for contributions other than elective deferrals must also satisfy the following requirements: (1) the portion of a participant's interest in the plan that is not vested must be maintained in a separate account for the participant that is treated as a separate contract to which § 403(c) (or, in case of a custodial account, § 401(a)) applies, (2) as amounts in the participant's separate account become nonforfeitable, they must be removed from the separate account and treated as amounts held under a § 403(b) plan, to the extent permitted under § 1.403(b)-3(d)(2)(ii), and (3) all nonvested amounts remaining in the participant's separate account must become nonforfeitable upon termination of the plan.

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

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

(a) Although a single adoption agreement may be made available to different categories of Employers, the adoption agreement must require the Adopting Employer to show its status as an Employer eligible to maintain a § 403(b) plan by indicating whether the Adopting Employer is:

(i) A government-sponsored educational organization described in § 170(b)(1)(A)(ii) (a public school);

(ii) A tax-exempt organization described in § 501(c)(3) that is exempt from tax under § 501(a);

(iii) An employer of a minister described in § 414(e)(5)(A); or

(iv) A minister described in § 414(e)(5)(A).

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

(i) A Governmental Plan;



(ii) A plan of an Adopting Employer that is a Church or QCCO for employees of the Church or QCCO; or

(iii) A plan not described in (i) or (ii) of this section 9.06(15)(b).

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

.07 Additional provisions required in a Section 403(b) Pre-approved Plan that is intended to be a Standardized Plan. Each Section 403(b) Pre-approved Plan that is intended to be a Standardized Plan must meet the following requirements:

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

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

(3) Elective deferrals only or additional requirements for contributions that are not elective deferrals. A Section 403(b) Pre-approved Plan that is intended to be a Standardized Plan must provide either:—

(a) That the only contributions that an Adopting Employer may elect to provide under the plan are elective deferrals, or

(b) With respect to any contributions other than elective deferrals, the plan must satisfy all of the following requirements:

(i) Plan benefits all employees. Under the provisions governing eligibility and participation, the plan by its terms must benefit all employees except those employees that may be excluded under § 1.410(b)-6 and employees listed in § 1.403(b)-5(b)(4)(ii)(D) or (E). The plan may provide options as to whether some or all of the employees described in § 1.410(b)-6 are excluded, provided that the criteria for excluding employees described in § 1.410(b)-6 apply uniformly to all employees. A Standardized Plan generally may not deny an allocation to an employee eligible to participate merely because the employee is not an active employee on the last day of the plan year or has failed to complete a specified number of hours of service during the year. However, the plan may deny an allocation to an employee who is eligible to participate if the employee terminates service during the plan year with not more than 500 hours of service and is not an active employee on the last day of the plan year. A plan will not fail to satisfy the requirements of this section 9.07(3) with respect to contributions other than elective deferrals merely because the plan provides, either as the result of an elective provision or by default in the absence of an election to the contrary, that individuals who become employees, within the meaning of section 9.06(8), as the result of a transaction described in § 410(b)(6)(C) are excluded from eligibility to participate in the plan during the period beginning on the date of the transaction and ending on a date that is not later than the earlier of the last day of the first plan year beginning after the date of the transaction or the date of a significant change in the plan or in the coverage of the plan. A transaction described in § 410(b)(6)(C) is an asset or stock acquisition, merger, or other similar transaction involving a change in the employer of the employees of a trade or business.

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

(iii) Allocations are based on total compensation. Under the plan, allocations (other than any elective deferral portion) are determined on the basis of total compensation. The plan must provide that, for purposes of allocations, the definition of total compensation is “participant’s compensation” within the meaning of § 415(c)(3), or compensation that otherwise satisfies § 414(s) and § 1.414(s)-1(c).

(iv) Section 401(a)(4) safe harbors. If the plan provides for contributions other than elective deferrals and matching contributions, the plan must satisfy one of the design-based safe harbors described in § 1.401(a)(4)-2(b)(2) with respect to the contributions.

(v) Benefits, rights and features are available to all employees. All benefits, rights, and features under the plan (other than those, if any, that have been prospectively eliminated) are currently available to all employees benefiting under the plan. (For information regarding benefits, rights, and features and the determination of current availability, see § 1.401(a)(4)-4.)

.08 Additional provisions required in a Section 403(b) Pre-approved Plan intended to be a Retirement Income Account. Each Section 403(b) Pre-approved Plan that is intended to be a Retirement Income Account must meet the following requirements:

(1) Identification as Retirement Income Account. The plan must state the intent to be a Retirement Income Account in accordance with § 1.403(b)-9(a)(2)(ii).

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

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

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

(5) Multiple Employers that are not Related Employers. In the case of multiple Employers that are not Related Employers participating in the plan, each Adopting Employer must identify whether it is a Church, QCCO, non-QCCO, or minister.

## SECTION 10. OPINION LETTERS - SCOPE

.01 General limits on Opinion Letters. An Opinion Letter constitutes a determination that the form of a Pre-approved Plan satisfies the Qualification Requirements or the Section 403(b) Requirements, as applicable, subject to the requirements and limitations of this revenue procedure. An Opinion Letter is issued only to a Provider or Mass Submitter. The IRS's review of a Provider's or Mass Submitter's application for an Opinion Letter for a Pre-approved Plan will consider only the terms of the single plan document or the basic plan document and adoption agreement, as applicable. The IRS's review will not consider, and an Opinion Letter will not express an opinion with respect to, the terms of any Trust or Custodial Account Document for (or Investment Arrangement under) the plan of any Adopting Employer or any other documents that may be incorporated by reference into an Adopting Employer's plan. An Opinion Letter for a Qualified Pre-approved Plan does not constitute a ruling or a determination as to the exempt status of related trusts or custodial accounts under § 501(a).

.02 Plans for which an Opinion Letter will not be issued.

(1) For a Pre-approved Plan, an Opinion Letter will not be issued for:

- (a) A plan under which the § 415 limitations are incorporated by reference;
- (b) A plan under which the actual contribution percentage (ACP) test under § 401(m)(2) is incorporated by reference;
- (c) A Nonstandardized Plan that provides 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 included in the plan;
- (d) A plan that includes blanks or fill-in provisions for the Adopting Employer to complete, unless the provisions have parameters that preclude the Adopting Employer from completing the provisions in a manner that could violate the Qualification Requirements or Section 403(b) Requirements, as applicable;
- (e) A plan designed to satisfy the provisions of § 105;
- (f) A plan that includes § 401(h) accounts; or
- (g) A plan that includes purported fail-safe provisions for § 401(a)(4) or the average benefit test under § 410(b).

(2) For a Qualified Pre-approved Plan, in addition to the circumstances described in section 10.02(1), an Opinion Letter will not be issued for:

- (a) A multiemployer plan;
- (b) A single-employer collectively bargained plan (however, this rule does not preclude an employer from covering employees of the employer that are included in a unit covered by a collective bargaining agreement if it is adopting a Pre-approved Plan for its non-bargaining employees or from adopting a Pre-approved Plan pursuant to such agreement as a single-employer plan that covers only bargaining employees of the employer);
- (c) A stock bonus plan other than an ESOP;
- (d) An ESOP that is a combination of a stock bonus plan and a money purchase plan;
- (e) An ESOP that provides for the holding of preferred employer stock, including an ESOP that holds stock described in § 409(l)(3);
- (f) A Statutory Hybrid Plan with any of the following features:

(i) A 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);

(ii) A provision under which Interest Credits are 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);

(iii) A provision under which a rate used to determine Interest Credits is based on the actual rate of return on aggregate assets of the plan described in § 1.411(b)(5)-1(d)(5)(ii)(A) or the rate of return on certain regulated investment companies (RICs) described in § 1.411(b)(5)-1(d)(5)(iv) (unless the plan provides that the rate used to determine Interest Credits is equal to the actual rate of return on the aggregate assets of the plan), or is based on or equal to the actual rate of return on a subset of plan assets (as described in § 1.411(b)(5)-1(d)(5)(ii)(B));

(iv) 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");

(v) A provision that uses 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);

(vi) A provision for funding exclusively through insurance contracts as described in § 412(e)(3); or

(vii) A provision for Offsets of benefits accrued under another plan (the "offsetting plan"), unless:

(A) 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;

(B) If plan provisions are consistent with treatment of the Cash Balance Formula as a lump sum-based benefit formula under § 1.411(a)(13)-1(d)(3), then 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;

(C) The Offset satisfies 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 may not be a § 401(k) plan or a § 401(m) plan;

(D) 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;

(E) The Offset is applied on a uniform basis for all participants;

(F) 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;

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

(H) 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;

(g) A plan 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);

(h) A target benefit plan, other than a plan that, by its terms, satisfies 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);

(i) A governmental defined benefit plan that includes a "deferred retirement option plan" (DROP) feature, 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;

(j) A plan under which the actual deferral percentage (ADP) test under § 401(k)(3) is incorporated by reference;

(k) A fully insured § 412(e)(3) plan, other than a non-statutory hybrid plan that by its terms satisfy the safe harbor in § 1.401(a)(4)-3(b)(5);

(l) An eligible combined plan within the meaning of § 414(x)(2); or

(m) A Variable Annuity Plan.

(3) For Section 403(b) Pre-approved Plans, in addition to the circumstances described in section 10.02(1), an Opinion Letter will also not be issued for:

- (a) A TEFRA church defined benefit plan (see § 1.403(b)-10(f)(2)); or
- (b) A plan grandfathered under Rev. Rul. 82-102, 1982-1 CB 62.

.03 Issues an Opinion Letter will not consider.

(1) Title I issues. Except as otherwise provided in guidance, an Opinion Letter does not express an opinion, and may not be relied upon, with respect to whether any plan is subject to the requirements of Title I of ERISA or whether a plan satisfies any of those requirements.

(2) Issues related to a Section 403(b) Pre-approved Plan's coverage of multiple employers that are not Related Employers. An Opinion Letter does not express an opinion, and may not be relied upon, with respect to whether the plan satisfies § 403(b)(15) or any other requirements that apply related to a plan's coverage of multiple employers that are not Related Employers.

.04 IRS discretion to decline to issue an Opinion Letter. The IRS may, in its discretion, decline to issue an Opinion Letter for other types of plans or issues not described in this section 10.

.05 Nonapplicability of this revenue procedure to IRAs (including traditional IRAs, Roth IRAs, SEPs, and Simple IRAs). An Opinion Letter will not be issued under this revenue procedure for prototype plans intended to meet the requirements for individual retirement arrangements under § 408.<sup>15</sup>

## SECTION 11. ELIGIBILITY FOR THE CYCLE SYSTEM

.01 Initial eligibility for the Cycle system.

(1) In general. An Employer that initially adopts a Pre-approved Plan<sup>16</sup> may adopt the plan at any time during a Cycle. Subject to section 11.01(2), upon an Employer's

<sup>15</sup> See the Form 5305 series, which provides model IRA documents that have been pre-approved by the IRS and for which an opinion letter is not needed. See also Rev. Proc. 87-50, 1987-2 CB 647, as modified by Rev. Proc. 97-29, 1997-1 CB 698; Rev. Proc. 98-59, 1998-2 CB 727; and Rev. Proc. 2010-48, 2010-50 IRB 828, for administrative procedures for seeking opinion letters for individual retirement arrangements under § 408.

<sup>16</sup> For purposes of this section 11, the term Pre-approved Plan includes a plan that was not in existence in the immediately preceding Cycle and that has been submitted for (but has not yet received) an Opinion Letter for the Cycle.

adoption of a Pre-approved Plan, the plan becomes subject to the rules applicable to the Cycle system and the procedures set forth in this revenue procedure. In particular, while a plan is subject to the Cycle system, the plan's Disqualifying Provisions or Form Defects, as applicable, will have the Remedial Amendment Periods described in section 6. After a plan is no longer subject to the Cycle system, the plan's Disqualifying Provisions or Form Defects will be subject to the Remedial Amendment Period rules for an individually designed plan. See Rev. Proc. 2022-40. Accordingly, as of the date that a plan is no longer subject to the Cycle system, if the Remedial Amendment Period for a Disqualifying Provision or Form Defect would be expired under the rules for individually designed plans, then the Remedial Amendment Period will be expired, notwithstanding that the Remedial Amendment Period would not be expired for a Pre-approved Plan. To continue to be eligible for the Cycle system, the Employer must follow the rules in this revenue procedure for continued eligibility. See, in particular, sections 11.02 and 13.

(2) Prior plan must be a valid plan. If an Employer that maintains an individually designed plan amends the plan by adopting a Pre-approved Plan, the form of the individually designed plan must satisfy the Qualification Requirements or Section 403(b) Requirements, as applicable, at the time the Pre-approved Plan is adopted. Accordingly, prior to adopting the Pre-approved Plan, the Employer must have either timely corrected any Disqualifying Provisions or Form Defects in the individually designed plan before the expiration of the applicable Remedial Amendment Period for such Disqualifying Provision or Form Defect, or have corrected any plan document failure under EPCRS.

.02 Continuing eligibility for the Cycle system - requirement to adopt newly approved Pre-approved Plan. For a Pre-approved Plan adopted pursuant to section 11.01 to continue to be eligible for the Cycle system, by the end of the Employer Adoption Window for each Cycle, the Adopting Employer must adopt a newly approved Pre-approved Plan (a newly approved version of the same plan or a newly approved version of a different Pre-approved Plan). If, during the Employer Adoption Window for a Cycle, instead of adopting a newly approved Pre-approved Plan, an Adopting Employer amends its Pre-approved Plan by adopting an individually designed plan, the plan will continue to be subject to the Remedial Amendment Period rules applicable to Pre-approved plans until the end of the Employer Adoption Window for that Cycle; however, for all other purposes, upon adoption of the individually designed plan, the plan will be treated as an individually designed plan. This means, for example, that if the plan is submitted for a determination letter during the Employer Adoption Window, the eligibility conditions applicable to submission of a determination letter set forth in section 9 of Rev. Proc. 2022-40 will apply, and the scope of plan review will be based on the applicable Required Amendments List, as described in section 10 of that revenue procedure. In contrast, if, by the end of any Employer Adoption Window, an Adopting Employer does not amend its Pre-approved Plan by adopting a newly approved Pre-approved Plan or any other plan, the plan will be treated as an individually designed plan at the end of that Employer Adoption Window. Accordingly, the plan will become subject to the rules relating to the Remedial Amendment Period, plan amendment



deadlines, and the eligibility requirements applicable to individually designed plan determination letter applications set forth in Rev. Proc. 2022-40 at that time. Once a plan is treated as an individually designed plan, the Adopting Employer is no longer able to rely on an Opinion Letter for that Cycle.

## SECTION 12. EMPLOYER RELIANCE ON OPINION LETTER

### .01 Standardized Plans.

(1) Except as set forth in section 12.01(2), (3) and (4), an Adopting Employer of a Standardized Plan may rely on the plan's Opinion Letter that the form of the Adopting Employer's plan satisfies, in the case of a Section 403(b) Pre-approved Plan, the Section 403(b) Requirements (including, if applicable, the requirements of §§ 401(a)(4) and 410(b)) or, in the case of a Qualified Pre-approved Plan, the Qualification Requirements, if:

(a) The Standardized Plan has a currently valid Opinion Letter,

(b) The coverage and contributions or benefits under the Adopting Employer's plan are not more favorable for highly compensated employees (as defined in § 414(q)) than for other employees,

(c) The Adopting Employer has not amended the Standardized Plan other than to choose options provided under the Standardized Plan or to make amendments as described in section 13.02 relating to employer amendments that will not affect reliance, and

(d) In the case of a Section 403(b) Pre-approved Plan, either (i) the only contributions under the plan are elective deferrals, or (ii) the plan provides for contributions other than elective deferrals and all of the Adopting Employer's Related Employers are employers described in § 403(b)(1)(A). If the plan provides for contributions other than elective deferrals and the Adopting Employer's controlled group includes any employer that is not an employer described in § 403(b)(1)(A), the Adopting Employer may rely on the plan's Opinion Letter, except with respect to whether contributions other than elective deferrals under the plan satisfy the requirements of §§ 401(a)(4) and 410(b).

(2) An Adopting Employer may not rely on an Opinion Letter for a Standardized Plan with respect to the requirements of § 415 (and § 416, in the case of a Qualified Pre-approved Plan) without obtaining a determination letter (see section 25) if the Adopting Employer, or, in the case of a Section 403(b) Pre-approved Plan, any of its Related Employers, maintains or maintained at any time, another plan, including a Standardized Plan, that was qualified or determined to be qualified or a 403(b) plan and that covers or covered some of the same participants. An Employer that adopts a Standardized Plan that is a defined contribution plan is not considered to have

maintained another plan merely because the Employer has maintained another defined contribution plan, provided such other plan 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 as of any date within a limitation year of the Standardized Plan. For this purpose, a plan that has been amended from an individually designed plan to a Standardized Plan is not considered another plan. To be a plan that has been amended from an individually designed plan to a Standardized 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 individually designed plan that has been amended into the Standardized Plan must be of the same type (for example, both defined benefit plans).

(3) An Adopting Employer of a Standardized Plan may not rely on an Opinion Letter for the Standardized Plan with respect to:

(a) Whether the timing of any amendment to the Adopting Employer's plan (or series of amendments) satisfies the nondiscrimination requirements of § 1.401(a)(4)-5(a), except with respect to plan amendments granting past service that meet the safe harbor described in § 1.401(a)(4)-5(a)(3) and are not part of a pattern of amendments that significantly discriminates in favor of highly compensated employees; or

(b) Whether the Adopting Employer's plan satisfies the effective availability requirement of § 1.401(a)(4)-4(c) with respect to any benefit, right, or feature.

An Employer that adopts a Standardized Plan as an amendment to a plan other than a Standardized Plan may not rely on the 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, if applicable.

(4) In the case of a Qualified Pre-approved Plan, an Adopting Employer of a Standardized Plan that is a defined benefit plan may rely on the plan's 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 (within the meaning of § 1.401(a)(26)-3) or is deemed to satisfy § 401(a)(26) pursuant to regulations thereunder.

(5) For SIMPLE plans described in § 401(k)(11) and (m)(10), an Adopting Employer may also rely on the plan's Opinion Letter regarding whether the form of the Adopting Employer's plan satisfies the requirements of those sections.

(6) For a starter 401(k) deferral-only plan described in § 401(k)(16) or a safe harbor deferral-only plan described in § 403(b)(16), an Adopting Employer may also rely on the plan's Opinion Letter regarding whether the form of the Adopting Employer's plan satisfies the requirements of those sections.

.02 Nonstandardized Plans.

(1) An Adopting Employer of a Nonstandardized Plan may rely on the plan's Opinion Letter that the form of the Adopting Employer's plan satisfies the Qualification Requirements or Section 403(b) Requirements, as applicable, if:

(a) The Nonstandardized Plan has a currently valid Opinion Letter, and

(b) The Adopting Employer has not amended the plan other than to choose options provided under the plan or to make amendments as described in section 13.02 relating to employer amendments that will not affect reliance.

(2) Except as otherwise provided in this section 12.02, an Adopting Employer of a Nonstandardized Plan may not rely on the plan's Opinion Letter with respect to the requirements of:

(a) In the case of a Qualified Pre-approved Plan, §§ 401(a)(4), 401(a)(26), 401(l), 410(b), or 414(s) (or, in the case of a Section 403(b) Pre-approved Plan, §§ 401(a)(4), 410(b), or 414(s)); or

(b) Section 415 (or § 416, in the case of a Qualified Pre-approved Plan) if the Adopting Employer, or any of its Related Employers, maintains or has ever maintained another plan covering some of the same participants. For this purpose, whether an employer maintains or has ever maintained another plan is determined using principles consistent with section 12.01(1).

(3) An Adopting Employer of a Nonstandardized Plan may rely on the plan's Opinion Letter with respect to the requirements of § 410(b), if applicable (and, in the case of a Qualified Pre-approved Plan, § 401(a)(26) (other than the § 401(a)(26) requirements that apply to a prior benefit structure)), if all nonexcludable employees benefit under the Adopting Employer's plan.

(4) Nonstandardized Plans may permit an Adopting Employer to select an allocation formula for contributions other than elective deferrals that satisfies one of the design-based safe harbors in § 1.401(a)(4)-2(b)(2) (or, in the case of a Qualified Pre-approved Plan that is a defined benefit plan, a benefit formula that satisfies one of the design-based safe harbors under § 1.401(a)(4)-3(b)(3), (4), or (5)), and to select a safe harbor compensation definition for the formula that satisfies § 1.414(s)-1(c). If the Adopting Employer selects an allocation formula for contributions other than elective deferrals that satisfies one of the design-based safe harbors in § 1.401(a)(4)-2(b)(2) (or, in the case of a Qualified Pre-approved Plan that is a defined benefit plan, § 1.401(a)(4)-3(b)(3), (4), or (5)), and, if the allocation or benefit formula is based on compensation, selects a safe harbor compensation definition that satisfies § 1.414(s)-1(c), then the Adopting Employer of a Nonstandardized Plan may rely on the

plan's Opinion Letter with respect to the nondiscriminatory amounts requirement under § 401(a)(4), if applicable. An Adopting Employer of a Nonstandardized Plan that includes § 401(m) matching contributions (and/or, in the case of a Qualified Pre-approved Plan, § 401(k) contributions) may rely on the plan's Opinion Letter with respect to whether the form of the plan satisfies the actual contribution percentage (ACP) test of § 401(m)(2) (or, in the case of a Qualified Pre-approved Plan, the actual deferral percentage (ADP) test of § 401(k)(3)) if the Adopting Employer elects to use a safe harbor definition of compensation in the test. An Adopting Employer of a Nonstandardized Plan that satisfies the safe harbor requirement described in § 401(m)(11) or 401(m)(12) (or, in the case of a Qualified Pre-approved Plan, that satisfies the safe harbor requirement described in § 401(k)(12) or 401(k)(13)) may rely on the plan's Opinion Letter with respect to whether the form of the Adopting Employer's plan satisfies the requirements of § 401(m) (or § 401(k), if applicable), unless the plan provides for the safe harbor contribution under § 401(m)(11) or 401(m)(12) (or § 401(k)(12) or 401(k)(13), if applicable) to be made under another plan.

(5) For SIMPLE plans described in § 401(k)(11) and (m)(10), an Adopting Employer may also rely on the plan's Opinion Letter regarding whether the form of the Adopting Employer's plan satisfies the requirements of those sections.

(6) For starter 401(k) deferral-only plans described in § 401(k)(16) or a safe harbor deferral-only plan described in § 403(b)(16), an Adopting Employer may also rely on the plan's Opinion Letter regarding whether the form of the Adopting Employer's plan satisfies the requirements of those sections.

(7) Except as set forth in section 9.05(2), an Adopting Employer of a Nonstandardized Plan that is a Qualified Pre-approved Plan that includes a Cash Balance Formula with a structure of Principal Credits that increase with age, service, or any other measure during a participant's employment may not rely on the plan's Opinion Letter with respect to the requirements of § 411(b)(1).

.03 Other limitations and conditions on reliance. Notwithstanding any provision in this section 12 to the contrary, the following conditions and limitations regarding reliance by an Adopting Employer on an Opinion Letter apply with respect to all Pre-approved Plans:

(1) An Adopting Employer may rely on an Opinion Letter for a plan that amends a plan of the Employer only if the form of the plan that is being amended satisfied the Qualification Requirements or Section 403(b) Requirements, as applicable. Accordingly, prior to being amended, the plan must either have timely corrected any Disqualifying Provisions or Form Defects for which the Remedial Amendment Period is closed or have corrected any plan document failures under the EPCRS. If this requirement is not met, then the employer (a) is considered to have adopted an individually designed plan, (b) may not rely on the Opinion Letter for the plan, and (c) is not considered be on the

Cycle system.<sup>17</sup>

(2) An Adopting Employer may not rely on an Opinion Letter if the Adopting Employer's adoption of a Pre-approved Plan precedes the issuance of an Opinion Letter for the plan.<sup>18</sup>

(3) An Adopting Employer may not rely on an Opinion Letter if the adoption agreement or other elective provisions in the plan are not completed correctly by the Adopting Employer.

(4) An Adopting Employer of any Qualified Pre-approved Plan that is not a Governmental Plan and that is a pension plan in which the normal retirement age selected by the Adopting Employer is less than age 62 may not rely on the Opinion Letter that such age is reasonably representative of the typical retirement age for the employer's industry, as required by § 1.401(a)-1(b)(2). For an Adopting Employer of any Qualified Pre-approved Plan that is a Governmental Plan and that is a pension plan in which the normal retirement age selected by the Adopting Employer does not satisfy any of the safe harbors described in § 1.401(a)-1(b)(2)(v) of the proposed regulations may not rely on the Opinion Letter that such age is reasonably representative of the typical retirement age for the employer's industry, as required by § 1.401(a)-1(b)(2).

(5) An Adopting Employer may not rely on an Opinion Letter with respect to any provision of a Trust or Custodial Account Document or Investment Arrangement, as applicable, that conflicts with language in the basic plan document, adoption agreement, or single plan document, as applicable, even if the Trust or Custodial Account Document or Investment Arrangement includes language that states that the provisions of the Trust or Custodial Account Document or Investment Arrangement override the basic plan document, adoption agreement, or single plan document.<sup>19</sup>

(6) For a Qualified Pre-approved Plan, the issuance of an Opinion Letter is not a determination by the IRS that an Adopting Employer's plan is a Governmental Plan or a church plan (as described in § 414(e)). For a Section 403(b) Pre-approved Plan, the issuance of an Opinion Letter is not a determination by the IRS that an Adopting Employer's plan is a Governmental Plan, or that an Adopting Employer is a Church or QCCO.

(7) Pursuant to section 14.11, a Provider's failure to disclose to the IRS a

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<sup>17</sup> The plan may still use EPCRS to correct any failures, and, after correction, then be eligible to adopt a Pre-approved Plan.

<sup>18</sup> In this case, in order to have reliance, the Adopting Employer would need to re-adopt the Pre-approved Plan after the issuance of the Opinion Letter for the plan.

<sup>19</sup> Accordingly, if a Pre-approved Plan is operated in a manner that is inconsistent with a provision of the basic plan document or single plan document, the plan will incur an operational failure even if the plan is operated in a manner consistent with a provision of a Trust or Custodial Account Document or Investment Arrangement that conflicts with the provision of the basic plan document or single plan document.

material fact, misrepresentation of a material fact, or failure to accurately provide any of the information called for on any form required by this revenue procedure may result in the inability of Adopting Employers to rely on an Opinion Letter (for example, if there is a failure to disclose to the IRS a material fact, the IRS may revoke the Opinion Letter due to the failure).

(8) Pursuant to section 15.03(2)(c), if a Mass Submitter fails to identify a material modification, the failure is considered a material misrepresentation, and an Adopting Employer may not rely on an Opinion Letter issued with respect to the plan for the modification or any other provision of the plan that may be affected by the modification.

.04 Reliance equivalent to determination letter. If an Adopting Employer may rely on an Opinion Letter pursuant to this section 12, the Opinion Letter is equivalent to a determination letter. For example, the Opinion Letter is treated as a determination letter for purposes of section 23 of Rev. Proc. 2023-4 (as updated annually), regarding the effect of a determination letter. As provided in this section 12, the extent of the Adopting Employer's reliance may be limited.

.05 Obtaining a determination letter. If an Adopting Employer may not rely on a Pre-approved Plan's Opinion Letter, the Adopting Employer, if eligible as set forth in section 25, may submit an application for a determination letter to obtain reliance that the form of the plan satisfies the Qualification Requirements or Section 403(b) Requirements, as applicable.

## SECTION 13. PLAN AMENDMENTS

.01 Provider plan amendments generally. Providers are required to amend their Pre-approved Plans to ensure that the form of their plans continues to satisfy the Qualification Requirements or Section 403(b) Requirements, as applicable.<sup>20</sup> Providers must make reasonable and diligent efforts, as soon as practicable following the adoption of plan amendments, to ensure that Adopting Employers of the Provider's plan have actually received and are aware of such plan amendments. Providers must include the date on which each amendment is adopted by the Provider with the amendment provided to Adopting Employers. The Provider must have a procedure to notify an Adopting Employer of amendments and restatements of the plan and to inform the Adopting Employer, when applicable, of the need to timely adopt or amend the plan, including in the case of both initial adoption and restatement of the plan. The Provider must also notify an Adopting Employer that failure to timely adopt the plan or restatement, when required, or failure to take into account plan amendments in the operation of the plan, could result in adverse tax consequences. A Provider's failure to comply with these requirements may result in the loss of eligibility to offer Pre-approved Plans and the revocation of an Opinion Letter that has been issued to the Provider.

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<sup>20</sup> See section 6.04 regarding the requirement to make Interim Amendments.

.02 Amendments that will not affect reliance. An Adopting Employer may continue to rely on an Opinion Letter for a Pre-approved Plan if amendments to the plan are made that are described in paragraphs (1) through (8) of this section 13.02. See section 12.01 and 12.02 for the effect of amendments on reliance on an Opinion Letter by the Adopting Employer. The following types of amendments will not cause an Adopting Employer to lose reliance on an Opinion Letter:

(1) Amendments to the plan to add or change a provision (including choosing among options in the plan) or to specify or change the effective date of a provision, provided the Adopting Employer is permitted to make the modification or amendment under the terms of the Pre-approved Plan as well as under the Qualification Requirements or Section 403(b) Requirements, as applicable, and the provision is identical to a provision in the Pre-approved Plan, except for the effective date;

(2) Sample or model amendments (or an amendment that is substantially similar to a sample or model amendment in all material respects) that are adopted by the Adopting Employer, that are published by the IRS, and that specifically provide that their adoption will not cause a plan to fail to be identical to the Pre-approved Plan;

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

(4) Plan language completed by the Adopting Employer if such overriding language is necessary to satisfy § 415 (or 416, in the case of a Qualified Pre-approved Plan) because of the required aggregation of multiple plans under that section, in accordance with section 9.02(3) or 9.06(2);

(5) Interim Amendments or Discretionary Amendments that are adopted as a result of a change in Qualification Requirements or Section 403(b) Requirements, as applicable, for the form of the plan;

(6) Amendments that reflect a change of a Provider's name, in which case the Provider must notify the IRS, in writing, of the change in name and certify that it still satisfies the conditions to be a Provider described in section 4.01(15) (see also section 19 regarding changes in employer identification numbers);

(7) Amendments to the administrative provisions in the plan (such as provisions relating to investments, plan claims procedures, and Adopting Employer's contact information), provided the amended provisions are not in conflict with any other provision of the plan, still meet the requirements of this revenue procedure, and do not cause the plan to fail to satisfy the Qualification Requirements or Section 403(b) Requirements, as applicable, (see section 15.03(1)(b)(ii) for additional examples of administrative provisions); and

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

.03 Obtaining reliance after employer amendment. If an Adopting Employer may not rely on a Pre-approved Plan's Opinion Letter, the Adopting Employer, if eligible in accordance with section 25, may submit an application for a determination letter to obtain reliance that the form of the plan satisfies the Qualification Requirements or Section 403(b) Requirements, as applicable.

.04 Effect of employer amendments on a plan's eligibility for the Cycle system. Except as set forth in section 13.05, employer amendments made to a Pre-approved Plan will not affect the plan's eligibility for the Cycle system.

.05 Pre-approved plans treated as individually designed. An Adopting Employer's Pre-approved Plan is treated as individually designed (and, as a result of the plan being treated as individually designed, the Adopting Employer may not rely on the plan's Opinion Letter (see section 12 regarding reliance), will lose eligibility for the Cycle system as described in this section 13.05 (see section 11 regarding eligibility for the Cycle system), and will be subject to different rules for applying for a determination letter (see section 25 regarding determination letters)) under the following circumstances:

(1) An Adopting Employer makes any amendment to a Standardized Plan other than an amendment listed in section 13.02 or as otherwise described in this section 13.05. In this case, the Adopting Employer will lose reliance on the Opinion Letter as of the effective date of the amendment but the plan will remain eligible for the Cycle system (provided that the Adopting Employer adopts timely Interim Amendments) until the end of the Cycle that includes the effective date.<sup>21</sup>

(2) An Adopting Employer amends a Pre-approved Plan (including its adoption agreement, if applicable) within one year of the date the Adopting Employer initially adopted the Pre-approved Plan to incorporate a type of plan not permitted in the Opinion Letter program, as described in section 10.02. In this case, the Adopting Employer is treated as never having had any reliance on the Opinion Letter and is treated as never having been eligible for the Cycle system.

(3) An Adopting Employer amends a Pre-approved Plan (including its adoption agreement, if applicable) more than one year after the date the Adopting Employer

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<sup>21</sup> Adopting Employers who are considering making an amendment that is not extensive to a Standardized Plan might consider adopting a Nonstandardized Plan instead, in order to be able to apply for determination letter using Form 5307, *Application for Determination for Adopters of Modified Nonstandardized Pre-approved Plans*, as a Pre-approved Plan. See section 25.



initially adopted the Pre-approved Plan to incorporate a type of plan not permitted in the Opinion Letter program, as described in section 10.02. In this case, the Adopting Employer will lose reliance on the Opinion Letter as of the effective date of the amendment but the plan will remain eligible for the Cycle system (provided that the Adopting Employer adopts timely Interim Amendments) until the end of the Cycle that includes the effective date.

(4) An Adopting Employer of a Nonstandardized Plan makes amendments that, due to the nature and extent of the amendments, result in the IRS, in its sole discretion, determining that the plan should be treated as individually designed. In this case, the Adopting Employer generally will lose reliance on the Opinion Letter as of the effective date of the amendments but the plan will remain eligible for the Cycle system (provided that the Adopting Employer adopts timely Interim Amendments) until the end of the Cycle that includes the effective date.

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

(6) An Adopting Employer makes an amendment to a Pre-approved Plan that removes any of the required provisions of section 9. In this case, the Adopting Employer will lose reliance on the Opinion Letter as of the effective date of the amendment, but the plan will remain eligible for the Cycle system (provided that the Adopting Employer adopts timely Interim Amendments) until the end of the Cycle that includes the effective date.

(7) As set forth in section 11.02, if, during the Employer Adoption Window for a Cycle, an Adopting Employer adopts a plan other than either a newly approved version of the same plan or a newly approved version of a different Pre-approved Plan, the plan will continue to be subject to the Remedial Amendment Period rules applicable to Pre-approved plans until the end of the Employer Adoption Window for that Cycle; however, for purposes other than the Remedial Amendment Period, at the time the plan that is not a newly approved Pre-approved Plan is adopted, the plan will be treated as an individually designed plan. In contrast, if, by the end of any Employer Adoption Window, an Adopting Employer fails to adopt a newly approved version of the same plan or a newly approved version of a different Pre-approved Plan, and does not adopt another plan to replace its Pre-approved plan, the plan will be treated as an individually designed plan at the end of that Employer Adoption Window.

(8) As set forth in section 6.04, if an Interim Amendment is not adopted by the time period set forth in section 7 and the Adopting Employer does not correct this failure

to timely adopt the Interim Amendment within two years after the time period set forth in section 7, then the Adopting Employer's plan will be treated as an individually designed plan at the end of that two-year period.

#### SECTION 14. OPINION LETTER APPLICATIONS - INSTRUCTIONS TO PROVIDERS AND OTHER RULES FOR APPLICATIONS AND LETTERS

.01 Issuance of an Opinion Letter. The IRS will, upon an application of a Provider, issue an Opinion Letter confirming that the form of the Provider's plan satisfies the Qualification Requirements or Section 403(b) Requirements, as applicable.

.02 Cycle 4 Submission Period for defined contribution Qualified Pre-approved Plans. Pursuant to this revenue procedure, the Submission Period for a Provider of a defined contribution Qualified Pre-approved Plan to submit an application for a Cycle 4 Opinion Letter begins on February 1, 2024, and ends on January 31, 2025. A Provider may still apply for a Cycle 4 Opinion Letter after the Submission Period. See section 16 regarding filing after the Submission Period.

.03 Procedure for applying for an Opinion Letter. The Provider must submit an application for an Opinion Letter with respect to its plan on the version of Form 4461, *Application for Approval of Standardized or Nonstandardized Pre-approved Defined Contribution Plans*, Form 4461-A, *Application for Approval of Standardized or Nonstandardized Pre-approved Defined Benefit Plan*, Form 4461-B, *Application for Approval of Standardized or Nonstandardized Pre-approved Plans (Mass Submitter Adopting Provider)*, or Form 4461-C, *Application for Approval of Standardized or Nonstandardized 403(b) Pre-approved Plans*, as appropriate, that is applicable at the time of the request. The request must be accompanied by (1) the applicable required user fee that will be provided for in the successors to Rev. Proc. 2023-4 (as updated annually), and (2) if an Opinion Letter had been issued for the plan for the preceding Cycle, a signed certification that all necessary amendments required by the IRS in order for the form of the plan to satisfy the Qualification Requirements or Section 403(b) Requirements, as applicable, have been made and communicated to all Adopting Employers. All information on the application form must be typed. The application form must be sent to the address listed in section 24. The application must include a copy of the plan document and any adoption agreement, if applicable. If an Opinion Letter had been issued for the plan for the preceding Cycle, the Provider must submit a restated plan that incorporates any amendments. Copies of Trust or Custodial Account Documents, Investment Arrangements, or other funding media should not be submitted, as the IRS will not review for (and the Opinion Letter will not cover) any provisions included in Trust or Custodial Account Documents, Investment Arrangements, or other funding media. Additionally, the IRS requests that applications be submitted by thumb or flash drive instead of being submitted as paper files, and that the documents be saved in Microsoft Word or Adobe Acrobat PDF format. The IRS strongly encourages Providers to take advantage of this electronic submission format. If a plan received an Opinion Letter for the preceding Cycle, the IRS strongly encourages Providers to submit

a redline of the plan highlighting the changes made. To pay a user fee, a Provider must continue to submit a paper check and a paper Form 8717-A, *User Fee for Employee Plan Opinion Letter Request*.

.04 Additional submission requirements for Interim Amendments. If the plan has received an Opinion Letter for the preceding Cycle, in addition to the application described in section 14.03, the Provider must submit a certification that all Interim Amendments related to changes in law listed on the applicable Cumulative List have been made and a cover letter summarizing how the provisions of the plan are affected by each amendment. The IRS retains the right to request and secure from the Provider in appropriate circumstances copies of all Interim Amendments related to changes in law listed on the applicable Cumulative List that the Provider has adopted on behalf of its Adopting Employers.

.05 Expediting review of substantially identical plans. The IRS reserves the right to review applications in any order that will expedite the processing of Opinion Letter applications, subject to section 16 regarding filings made after the Submission Period. To expedite the review of substantially identical plans that are not a Mass Submitter's plans, the IRS encourages plan drafters and Providers to include with each Opinion Letter application, if appropriate, a cover letter setting forth the following information:

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

(2) A list of all plans written by the plan drafter that are substantially identical to the lead plan (including the information described in paragraph (1) of this section 14.05 for each plan);

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

(4) A certification made under penalties of perjury by the plan drafter that the information described in paragraph (3) of this section 14.05 is true and complete.

If the Provider or plan drafter is aware that a lead plan or any substantially identical plan has been assigned for review to a specialist, the cover letter also should indicate the name of the specialist, if possible. To the extent feasible, lead plans and substantially identical plans should be submitted together. The IRS will regard the information and certification described in paragraphs (3) and (4) of this section 14.05 as a representation of a material fact for purposes of issuing an Opinion Letter.

.06 Adoption Agreement Plans - number of basic plan documents, adoption agreements, and applications required.

(1) Qualified Pre-approved Plans: use of basic plan document by multiple Adoption Agreement Plans.

(a) In general, provided that the provisions of a basic plan document are identical for all plans using that document, separate defined contribution Qualified Pre-approved Plan adoption agreements may be associated with the same defined contribution Qualified Pre-approved Plan basic plan document, and separate defined benefit Qualified Pre-approved Plan adoption agreements may be associated with the same defined benefit Qualified Pre-approved Plan basic plan document. Thus, for example, a profit-sharing plan, a money purchase pension plan other than a target benefit plan, a target benefit plan, and an ESOP may all use the same defined contribution basic plan document. Adoption agreements of defined benefit plans, defined contribution plans, and § 403(b) plans may not be associated with the same basic plan document.

(b) Basic plan documents and associated adoption agreements used for Governmental Plans must be separate from the basic plan documents and associated adoption agreements used for plans that are not Governmental Plans. In addition, the basic plan document and the adoption agreements associated with a church plan, as described in § 414(e), that has not made an election set forth in § 410(d) may not be combined with the basic plan document and the adoption agreements of any other type of plan. Thus, for example, a Provider that wishes to obtain Opinion Letters for a Governmental Plan and a non-electing church plan must submit a separate basic plan document and associated adoption agreement for the Governmental Plan and a separate basic plan document and associated adoption agreement for the non-electing church plan.

(2) Section 403(b) Pre-approved Plans: use of basic plan documents by multiple Adoption Agreement Plans.

(a) Separate Section 403(b) Pre-approved Plan adoption agreements may be associated with the same Section 403(b) Pre-approved Plan basic plan document. Adoption agreements of defined benefit plans, defined contribution plans, and § 403(b) plans may not be associated with the same basic plan document.

(b) A plan that is intended to be a Retirement Income Account and a plan that is not intended to be a Retirement Income Account may not be combined in the same basic plan document.

(3) Number of adoption agreements required.

(a) A Standardized Plan and a Nonstandardized Plan may not be combined in a single adoption agreement.

(b) The following rules apply for a Qualified Pre-approved Plan:

(i) A profit-sharing plan (with or without a § 401(k) arrangement) that does not include an ESOP feature and a money purchase pension plan that is not a target benefit plan may use the same adoption agreement; however, separate adoption agreements are required for ESOPs and target benefit plans.

(ii) An ESOP is permitted to include both profit-sharing and § 401(k) features in the same adoption agreement; however, an employer that adopts the plan may not adopt the profit-sharing or § 401(k) features without also adopting the ESOP portion of the plan.

(iii) An adoption agreement submitted for a defined benefit plan may include any combination of integrated formulas (that is, formulas that provide for permitted disparity), non-integrated formulas, and cash balance formulas.

(c) For a Section 403(b) Pre-approved Plan, a single adoption agreement may be drafted to cover multiple types of Employers (for example, a single adoption agreement may be drafted to cover a church, a § 501(c)(3) organization, or a public school).

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

#### .07 Separate applications required for Single Document Plans

(1) With respect to a Standardized Plan and a Nonstandardized Plan, a separate plan and application must be submitted for each plan if it is a Single Document Plan.

(2) For a Qualified Pre-approved Plan, a separate plan and application must be submitted for each of the following types of Single Document Plans: a target benefit plan, an ESOP, and a defined benefit plan. A profit-sharing plan (with or without a § 401(k) arrangement) that does not include an ESOP and a money purchase pension plan that is not a target benefit plan may be combined in a single plan and application. In addition, although an ESOP is permitted to include both profit-sharing and § 401(k) features in the same plan, an Employer that adopts the plan may not select the profit-sharing or § 401(k) features without also selecting the ESOP provisions in the plan.

(3) For a Qualified Pre-approved Plan, with respect to a Governmental Plan or a non-electing church plan, a separate plan and application must be submitted for each plan. Thus, for example, separate plans and application forms must be submitted for a Governmental Plan, a plan that is not a Governmental Plan, and a non-electing church plan.

(4) For a Section 403(b) Pre-approved Plan, a separate plan and application is required for each Single Document Plan. A Single Document Plan may accommodate usage by more than one type of Employer; however, a Retirement Income Account plan must always be filed as a separate Single Document Plan.

.08 Sample Language. Before the Submission Period with respect to a Cycle begins, the IRS anticipates providing updated Listings of Required Modifications (LRMs) including sample plan language. Although the sample language is designed for use in plans that use an adoption agreement format, in order to expedite processing, Providers should refer to the sample language as a guide in drafting Single Document Plans. Specifically, to expedite the review of their plans, Providers are encouraged to use LRM language if appropriate. The updated LRMs, when available, may be downloaded at <https://www.irs.gov/Retirement-Plans/Listing-of-Required-Modifications-LRMs>.

.09 Operational Compliance List. The Remedial Amendment Period permits a plan to be amended retroactively to comply with a change in Qualification Requirements or Section 403(b) Requirements, as applicable; however, a plan must be operated in compliance with those requirements beginning on the effective date of the change. To assist Adopting Employers in achieving operational compliance, the IRS provides annually an Operational Compliance List at <https://www.irs.gov/retirement-plans/operational-compliance-list> to identify changes in those requirements that are effective during a calendar year. To comply with the Qualification Requirements or Section 403(b) Requirements, as applicable, however, a plan must comply operationally with each relevant requirement, even if the requirement is not included on an Operational Compliance List. Providers may wish to consult the Operational Compliance List when drafting Interim Amendments.

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

.11 Effect of failure to disclose a material fact, misrepresentation of a material fact, or to accurately provide information. A Provider's (1) failure to disclose to the IRS a material fact, (2) misrepresentation of a material fact in the application, or (3) failure to accurately provide any of the information called for on any form required by this revenue procedure may result in the inability of Adopting Employers to rely on the Opinion Letter (for example, if the IRS revokes an Opinion Letter due to the Provider's failure to disclose to the IRS a material fact, the Adopting Employer would lose reliance on the

Opinion Letter). See section 12.03(7) regarding limitations on reliance. The Provider may be required by the IRS to immediately notify each Adopting Employer of any of its Pre-approved Plans affected by the failure if the Adopting Employer's reliance on the Opinion Letter is affected or if the failure could result in adverse tax consequences for the Adopting Employer.

.12 Additional information may be requested. When reviewing the application for an Opinion Letter, the IRS may, in its discretion, require any additional information that it deems necessary, including a demonstration and/or explanation of how the variables (options or alternatives) in the Pre-approved Plan interrelate to satisfy the Qualification Requirements or Section 403(b) Requirements, as applicable. If a letter requesting changes to the Pre-approved Plan is sent to the Provider or an authorized representative, changes responsive to the letter must be received no later than 30 days from the date of the letter, and the response must include either a copy of the plan with the changes highlighted or, if the changes are not 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.

.13 Inadequate submissions. The IRS will return, without further action or refunding of the user fee, plans that are not in substantial compliance with the Qualification Requirements or Section 403(b) Requirements, as applicable, or plans that are so deficient that they cannot be reviewed in a reasonable period of time. A plan may be considered not to be in substantial compliance if, for example, it omits language needed to comply with a Qualification Requirement or Section 403(b) Requirement, as applicable, or merely incorporates those requirements by reference to the applicable Code section. The IRS will not consider a plan with such an omission or cross-reference until after the plan has been revised and resubmitted, and the modified plan will be treated as a new application for approval as of the date it is resubmitted, and therefore will be treated as filed after the Submission Period, as set forth in section 16, if resubmitted after the Submission Period. No additional user fee will be charged if an inadequate submission is amended to be in substantial compliance and is resubmitted to the IRS within 30 days following the date the Provider is notified of the inadequacy.

.14 Nonidentification of questionable issues may cause delay. If a plan submitted as part of an Opinion Letter application includes a provision that gives rise to an issue for which contrary published authorities exist, failure to disclose to the IRS and address any significant contrary authorities may result in requests for additional information, which will delay action on the application. See section 14.12.

.15 No Opinion Letter for later plan amendments. The IRS will not issue an Opinion Letter with respect to amendments made between applicable Submission Periods, and the Provider should not submit an application between applicable Submission Periods for an Opinion Letter with respect to plan amendments. Instead, the Provider must submit a restated plan that incorporates the amendments during the next Submission Period.

## SECTION 15. ADDITIONAL REQUIREMENTS FOR MASS SUBMITTERS

### .01 Opinion Letters issued to Mass Submitters.

(1) The IRS will, upon request by a Mass Submitter, issue an Opinion Letter confirming that the form of the Mass Submitter's plan satisfies the Qualification Requirements or Section 403(b) Requirements, as applicable. See section 14 for the instructions for Opinion Letter applications. In the case of a submission of a Pre-approved Plan under this revenue procedure, the Mass Submitter's application also must be accompanied by applications for an Opinion Letter filed on behalf of 15 unaffiliated Providers, as described in section 4.01(10), that are offering the same plan for that Cycle on a word-for-word identical basis as set forth in section 15.02, unless the Mass Submitter has already satisfied this requirement in connection with a previous application under this revenue procedure involving another Pre-approved Plan pursuant to section 15.01(2). Any plan submitted by a Mass Submitter must include language designating the Mass Submitter as agent for the Provider of the plan for purposes of making plan amendments.

(2) After satisfying the 15-unaffiliated-Providers requirement as to the number of adopting Providers, the Mass Submitter may submit additional applications on behalf of other Providers that wish to adopt a plan that is word-for-word identical to the Mass Submitter's plan (as an identical adopter) or a plan that includes Minor Modifications to the Mass Submitter's plan (as a minor modifier adopter). In addition, after satisfying the 15-unaffiliated-Provider requirement for one plan of the Mass Submitter, the Mass Submitter may submit applications for an Opinion Letter under this section 15.01 for its other plans, regardless of the number of identical adopters of the other plans.

.02 Reduced procedural requirements for Providers that use Mass Submitter plans. A Provider that uses a Mass Submitter's plan must obtain an Opinion Letter. In addition to the applicable requirements in section 14, the Mass Submitter must submit on behalf of each Provider a completed application form that includes a declaration by the Mass Submitter under penalty of perjury that the Provider will offer a plan that is word-for-word identical to a plan of the Mass Submitter or a plan that includes Minor Modifications to the Mass Submitter's plan. If the Provider is offering a plan that is word-for-word identical (including a Flexible Plan), a copy of the plan need not be submitted. If the Mass Submitter submits a plan with Minor Modifications, it must comply with the requirements of section 15.03(2). The application must be accompanied by the required user fee as provided in the successors to Rev. Proc. 2023-4 (as updated annually) and a signed certification that all necessary amendments required by the IRS in order for the form of the Provider's plan to satisfy the Qualification Requirements or Section 403(b) Requirements, as applicable, have been made and communicated to all Adopting Employers. Upon receipt of the application for an Opinion Letter, the IRS will, as soon as administratively feasible, issue an Opinion Letter with respect to the Provider's plan (provided that an Opinion Letter has been issued with respect to the Mass Submitter's



plan).

.03 Flexible Plans and Minor Modifications.

(1) Flexible Plan.

(a) In general. A Provider that adopts a Mass Submitter's Flexible Plan may include or delete any optional provision that is designated as an optional provision in the Mass Submitter's plan, provided the inclusion or deletion of specific optional provisions conforms to the Mass Submitter's written representation to the IRS concerning the choices available to a Provider and the coordination of optional provisions. A Mass Submitter must bracket and identify the optional provisions when submitting the plan to the IRS and provide the IRS a written representation describing the choices available to Providers and the coordination of optional provisions. Thus, the representation must indicate whether a Provider's plan may include only one of a certain group of optional provisions, may include only a specific combination of provisions, or may exclude the provisions entirely. Similarly, if the inclusion (or deletion) of a specific optional provision in a Provider's plan will automatically result in the inclusion (or deletion) of any other optional provision, this relationship must be set forth in the Mass Submitter's representation. A Flexible Plan may include only optional provisions that meet the requirements of section 15.03(1)(b), and must be drafted so that the form of any Provider's plan satisfies the Qualification Requirements or Section 403(b) Requirements, as applicable, notwithstanding the inclusion or deletion of optional provisions. For example, if a Provider's defined contribution Qualified Pre-approved Plan includes an optional provision that permits a portion of a participant's account to be invested in life insurance, then, under the terms of the Provider's plan, the application of the proceeds of the life insurance must meet the requirements of §§ 401(a)(11) and 417. A Flexible Plan adopted by a Provider that differs from the Mass Submitter's plan only because the Provider has deleted certain optional provisions from its plan in conformance with the Mass Submitter's representation described in this section 15.03(1)(a) is treated as a plan that is word-for-word identical to the Mass Submitter's plan. The IRS encourages Mass Submitters to limit the number of optional provisions described in section 15.03(1)(b)(i) and (ii) that Mass Submitters provide under a Flexible Plan to six investment provisions and six administrative provisions.

(b) Optional provisions. A Flexible Plan may include optional provisions that comply with the requirements set forth in this section 15.03(1)(b). The optional provisions may be arranged as separate optional articles or sections within a Pre-approved Plan or as separate optional provisions within a single article or section. A Flexible Plan also may include related optional provisions in the adoption agreement. For example, if a plan document for a Mass Submitter's Flexible Plan includes an optional provision that would permit loans under a Provider's plan, the adoption agreement may also include an optional provision that would enable an Adopting Employer to elect whether loans are available under the plan it adopts. If the Provider does not wish to enable Adopting Employers to make loans available under their plans,

the Provider would need to delete from the Provider's plan the optional provision in both the plan document and the adoption agreement. A Provider may include or delete optional provisions of a Mass Submitter's plan, but once the Provider has decided to include an optional provision, it must offer that provision to all Adopting Employers. Any optional provision that the IRS determines does not meet the requirements of this section 15.03(1)(b) must be changed to a non-optional provision or deleted from the Mass Submitter's plan. The following is an exclusive list of the permissible optional provisions that a Flexible Plan may include:

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

(ii) Administrative provisions. A Mass Submitter may offer a variety of administrative provisions in its plan for a Provider to include or delete from the Provider's version of the plan. However, the plan adopted by the Provider must describe how the plan is 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, Adopting Employer, and other fiduciaries, as applicable. Pursuant to section 9.06(14), every Section 403(b) Pre-approved Plan must provide for an appendix to identify the parties responsible for the various administrative functions under the plan. Optional administrative provisions that a Provider may include in or delete from the plan include the allocation of responsibilities among fiduciaries (if applicable), the resignation or replacement of fiduciaries, the claims procedures under the plan, and the record-keeping requirements under the plan. However, procedural provisions that are required for the form of the plan to satisfy the Qualification Requirements or Section 403(b) Requirements, as applicable, are not administrative provisions under this section 15. For example, an administrative provision does not include a provision regarding the notice to participants required by § 417 and record-keeping required by regulations under § 401(k) and/or 401(m).

(iii) Cash or Deferred Arrangement. A Mass Submitter of a defined contribution qualified plan may include a self-contained cash or deferred arrangement (as defined in § 401(k)) for Providers to include or delete.

(2) Minor Modifications.

(a) A plan that includes Minor Modifications to the Mass Submitter's plan must be submitted by the Mass Submitter on behalf of the Provider that will adopt the modified plan. Subject to sections 15.05 and 16 and the provisions of this section 15.03(2)(a), submissions with respect to Minor Modifications will be reviewed on an

expedited basis, and Opinion Letters will be issued to the Provider as soon as possible (which might be after the issuance of an Opinion Letter to other Providers (see section 17)).

(b) The IRS reserves the right to determine if the plan's changes are Minor Modifications (that is, if the changes are not numerous and do not require an in-depth technical review). If the IRS determines that the changes are not minor, the plan submitted under section 15.03(2)(c) is not entitled to expedited review and will otherwise be treated as a non-Mass Submitter plan. In the event the plan is treated as a non-Mass Submitter plan, the IRS will notify the Mass Submitter in writing of its determination. Within 30 calendar days following the date that the notification is provided, either the Mass Submitter may revise the plan so that the modifications are minor and resubmit the revised plan, or the Provider may submit Form 4461, 4461-A, or 4461-C, 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 adopter plan application user fee. If, after the 30-day period, neither action has been taken, the IRS may treat the application as having been withdrawn.

(c) During the Submission Period, the Mass Submitter must initially submit the first page of the application as a placeholder with respect to each Provider that will offer a plan that includes Minor Modifications to the Mass Submitter's plan. After the IRS sends a notification to the applicable Mass Submitter with respect to the lead plan indicating that the IRS has determined that the form of the plan appears to be in full compliance with the applicable Qualification Requirements or Section 403(b) Requirements, as applicable, the Mass Submitter will have 21 days to submit a copy of the Mass Submitter's plan with the Provider's modifications highlighted, as well as a statement indicating the location and effect of each change. The Mass Submitter must certify under penalties of perjury that the plan of the Provider, except for the delineated changes, is word-for-word identical to the plan for which the Mass Submitter will be receiving or has received an Opinion Letter. If a Mass Submitter fails to identify a material modification, the failure is considered a material misrepresentation, and an Adopting Employer may not rely on the Opinion Letter that may be issued with respect to the plan for the modification or any other provision of the plan that may be affected by the modification. See section 12.03(8) regarding limitations on reliance. The Mass Submitter must also immediately notify any affected minor modifier adopter of the failure, and the minor modifier adopter must notify all Adopting Employers of any of its Pre-approved Plans affected by the failure, including an explanation of the effect of the failure on the reliance by Adopting Employers on the Opinion Letter. If a Mass Submitter repeatedly fails to identify the modifications, the IRS may deny permission to that Mass Submitter to submit additional modifications.

.04 Amendments of Mass Submitter plans. If a Mass Submitter amends any of its plans, the Mass Submitter must provide copies of the amendment to Providers that have adopted the plan. Any Provider that does not wish to make the amendments made by a Mass Submitter may switch to another Mass Submitter or may submit an

application for an Opinion Letter on its own behalf during the next applicable Submission Period. The IRS will not issue an Opinion Letter with respect to amendments made between applicable Submission Periods, and a Mass Submitter should not submit an application between applicable Submission Periods for an Opinion Letter with respect to plan amendments. Instead, the Mass Submitter must submit a restated plan, including the amendments, during the next Cycle.

.05 Expeditious processing accorded Mass Submitter plans. Subject to section 16, all Mass Submitters' plans, including approved plans of a Mass Submitter adopted by Providers, will be accorded more expeditious processing than plans submitted by non-Mass Submitters, to the extent administratively feasible.

## SECTION 16. FILINGS MADE AFTER THE SUBMISSION PERIOD

.01 In general. Except as set forth in section 16.02, for an application for an Opinion Letter (including that of a minor modifier adopter of a Mass's Submitter plan) that is submitted after the applicable Submission Period for a Cycle but before the beginning of the Employer Adoption Window for that Cycle, the IRS generally will not review the application until it has reviewed and processed all applications submitted during that Cycle's Submission Period. However, the IRS may, in its discretion, determine whether the processing of filings made after the Submission Period may be prioritized and accelerated. The IRS will not accept applications for a Cycle that are submitted during or after that Cycle's Employer Adoption Window.

.02 Exception for identical adopter. An application for an Opinion Letter for a plan that is word-for-word identical to a Mass Submitter Pre-approved Plan is not treated as made after the Submission Period merely because it is submitted after the end of the applicable Submission Period for a Cycle. Applications for a plan that is word-for-word identical to a Mass Submitter's Pre-approved Plan for a Cycle may be submitted until the IRS informs the Mass Submitter that word-for-word identical applications will no longer be accepted, which is expected to be shortly before the issuance of Opinion Letters for the next Cycle.

## SECTION 17. SCOPE OF REVIEW; TIMING OF ISSUANCE OF OPINION LETTERS

### .01 Scope of review.

(1) In general. The IRS will review plans submitted during the Submission Period for a Cycle (as well as later identical adopter applications and applications that are filed after the Submission Period that the IRS will review in accordance with section 16) taking into account the applicable Cumulative List for the Cycle, as described in section 17.01(2). Generally, the IRS will consider only the items on the applicable Cumulative List for the Cycle in determining whether to issue an Opinion Letter for that Cycle. However, if a plan that has not been previously reviewed is submitted for a Cycle or a plan has been amended with respect to previously approved language, the IRS will

also review the plan for items on earlier Cumulative Lists, as well as for any other relevant Qualification Requirements or Section 403(b) Requirements, as applicable, that were considered by the IRS in issuing Opinion Letters prior to the implementation of Cumulative Lists.

(2) Cumulative List. For each Cycle, the IRS intends to publish a Cumulative List in the IRB shortly before the start of the Cycle's Submission Period. The Cumulative List for a Cycle sets forth specific items the IRS has identified for review in determining whether the form of a Pre-approved Plan that has been submitted to the IRS for an Opinion Letter has been properly updated after the plan was submitted for an Opinion Letter for the preceding Cycle.

.02 Timing of issuance of Opinion Letters. The IRS intends to issue Opinion Letters for a Cycle to Mass Submitters and Providers at approximately the same time within the Cycle for applications submitted during the Cycle's Submission Period (other than an application for a plan that includes Minor Modifications to a Mass Submitter plan). Prior to issuing Opinion Letters for a Cycle, the IRS will send a notification to the applicable Mass Submitter or Provider if the IRS determines that the plan appears to be in full compliance with the applicable Qualification Requirements or Section 403(b) Requirements, as applicable, based on the submission and the review as of the date of notification. However, this notification will only indicate that the plan appears to meet the applicable requirements under review as of the date of the notification. This notification is for the convenience of the applicable Mass Submitter or Provider concerning the status of its application and does not constitute an official Opinion Letter on which the Mass Submitter or Provider may rely. In addition, the IRS reserves the right to require changes after the notification is sent.

## SECTION 18. WITHDRAWAL OF APPLICATIONS

.01 Notification and effect. A Provider may withdraw its application for an Opinion Letter at any time prior to the issuance of an Opinion Letter by notifying the IRS in writing of the withdrawal at the address set forth in section 24. The Provider also must notify each Adopting Employer of the withdrawal of the application and the consequences of the withdrawal to the Adopting Employer. As set forth in section 11, the plan of such an Employer will become an individually designed plan unless the Employer adopts a newly approved Pre-approved Plan during the Employer Adoption Window for the Cycle for which the application was submitted.

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

## SECTION 19. NONTRANSFERABILITY OF OPINION LETTER

An Opinion Letter issued to a Provider is not transferable. In the case of a change in entity with respect to a Provider, an Opinion Letter issued to the Provider may not be utilized by the changed entity. In addition, if a different entity assumes sponsorship of a Pre-approved Plan, it must submit an application for a new Opinion Letter under the name of the different entity and meet all the applicable requirements to be a Provider. The application may be filed at the time of the assumption of plan sponsorship by the new Provider, and the filing is not limited to the applicable Submission Period. The application is subject to a reduced user fee as provided in the successors to Rev. Proc. 2023-4 (as updated annually). The new Opinion Letter will recognize the change in sponsorship and will not modify the scope of or change the reliance on the original Opinion Letter. The IRS may, in appropriate circumstances, request documentation of the assumption of sponsorship prior to issuing an Opinion Letter to the new entity. Examples of a change in entity include, but are not limited to, the acquisition of a Provider by another entity, the sale or transfer of the stock or assets of the Provider to another entity, and any other circumstance that results in a change in a Provider's employer identification number.

#### SECTION 20. NOTIFICATION OF ADOPTING EMPLOYER REGARDING FAILURE OF THE FORM OF THE PLAN TO SATISFY QUALIFICATION REQUIREMENTS OR SECTION 403(b) REQUIREMENTS

If a Provider has knowledge that the form of an Adopting Employer's plan may no longer satisfy the Qualification Requirements or Section 403(b) Requirements, as applicable, and the Provider does not submit a request to correct the failure to satisfy those requirements under EPCRS, the Provider must notify the Adopting Employer that the plan may no longer satisfy those requirements, advise the Adopting Employer that adverse tax consequences may result from the failure of the form of the plan to satisfy those requirements, and inform the Adopting Employer about the availability of EPCRS. This section 20 does not impose a requirement on a Provider to monitor compliance of an Adopting Employer's plan with the Qualification Requirements or Section 403(b) Requirements, as applicable, but it provides that the Provider has a duty to inform the Adopting Employer if the Provider has knowledge that the Adopting Employer's plan may no longer satisfy those requirements.

#### SECTION 21. DISCONTINUED PLANS

.01 Notification to the IRS. A Provider must notify the IRS in writing if a Pre-approved Plan is no longer in use by any Adopting Employer or the Provider intends to discontinue the plan. The written notification must be sent to the address set forth in section 24 and must refer to the file folder number appearing on the latest Opinion Letter issued.

.02 Notification to Adopting Employers. A Provider that intends to discontinue sponsorship of a Pre-approved Plan that has one or more Adopting Employers must inform each Adopting Employer of the date on which the Provider will discontinue

sponsorship and that the Adopting Employer's plan will cease to be a Pre-approved Plan and will convert to an individually designed plan on that date. The Provider must also inform each Adopting Employer that, notwithstanding the Provider's discontinuance of its sponsorship, if, by the end of the calendar year following the calendar year in which the Provider discontinues sponsorship of the plan, the Adopting Employer adopts another Pre-approved Plan and the effective date of the adoption is made retroactive to the date of the discontinued sponsorship, then the Adopting Employer's plan will be treated as though it had not ceased to be a Pre-approved Plan.

## SECTION 22. REVOCATION OF OPINION LETTER BY THE IRS

An Opinion Letter found to be in error or not in accord with the current procedures of the IRS or the IRS's current interpretation of applicable law may be revoked. See also sections 4.01(15), 13.01, and 23.01 for other circumstances under which an Opinion Letter may be revoked. Revocation may be applied retroactively. For this purpose, an Opinion Letter is given the same effect as a determination letter. See generally section 23 of Rev. Proc. 2023-4 (as updated annually). Revocation may be effected by a notice to the Provider to which the Opinion Letter was originally issued. The Provider must then notify each Adopting Employer of the revocation as soon as possible. The notification to each Adopting Employer must explain how the revocation affects any reliance an Adopting Employer has on the applicable Opinion Letter and on any determination letter issued.

## SECTION 23. RECORD KEEPING REQUIREMENTS

.01 Filing of Opinion Letter application constitutes agreement to comply with record keeping requirements. By submitting an application for an Opinion Letter under this revenue procedure (or by having an application filed on its behalf by a Mass Submitter), a Provider agrees, as set forth in section 4.01(15), to comply with the requirements imposed on the Provider by this revenue procedure, including the record keeping requirements of this section 23. Failure to comply with the requirements imposed on the Provider by this revenue procedure may result in the loss of eligibility to be a Provider and the revocation of Opinion Letters that have been issued to the Provider.

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

## SECTION 24. WHERE TO FILE

.01 Opinion Letters. Applications for Opinion Letters, including applications filed by Mass Submitters, should be sent to:

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

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

Internal Revenue Service  
 550 Main Street  
 Room 6-403, Group 7521  
 Cincinnati, OH 45202

## PART IV. PROCEDURES FOR AN ADOPTING EMPLOYER APPLYING FOR A DETERMINATION LETTER

## SECTION 25. ADOPTING EMPLOYER APPLYING FOR A DETERMINATION LETTER

.01 In general. To the extent permitted in this section 25, an Adopting Employer may obtain reliance that the form of the plan satisfies the Qualification Requirements or Section 403(b) Requirements, as applicable, by applying for a determination letter. Section 25.02 provides the rules for applying for a determination letter submitted on Form 5307, *Application for Determination for Adopters of Modified Nonstandardized Pre-Approved Plans*, for review of a Pre-approved Plan using the applicable Cumulative List. Section 25.03 provides the rules for applying for a determination letter submitted on Form 5300, *Application for Determination for Employee Benefit Plan*, for review of a Pre-approved Plan using the applicable Cumulative List. Section 25.04 provides the rules for applying for a determination letter submitted on Form 5300 for review of a plan treated as an individually designed plan using the Required Amendments List. Section 25.05 provides the rules for applying for a determination letter for a partial termination.

.02 Form 5307 application: eligibility to file, timing, and scope of review.

(1) Eligibility to file.

(a) In general. Except as set forth in section 25.02(1)(b), the following Adopting Employers may use a Form 5307 to apply for a determination letter:



(i) An Adopting Employer of a Nonstandardized Plan that makes modifications to the terms of the plan that are not extensive (amendments are considered extensive if the IRS determines, in its sole discretion, that the plan of the Adopting Employer is no longer substantially similar to the Nonstandardized Plan of the Provider (see section 25.03(1)(a)(vi) for treatment of changes that are extensive and section 25.04(1)(a) for treatment of changes that cause a plan to be treated as individually designed)); or

(ii) An Adopting Employer of any Pre-approved Plan that amends its plan solely to add language to satisfy the requirements of § 415 (and § 416, in the case of a Qualified Pre-approved Plan) due to the required aggregation of plans.

(b) Exceptions. Notwithstanding the provisions of section 25.02(1)(a), determination letter applications for the following plans must be filed on Form 5300 (if otherwise permitted):

(i) Any determination letter application with respect to a multiple employer Qualified Pre-approved Plan (instead, see section 25.03 and .04);

(ii) A determination letter application for a Nonstandardized Plan that is a Qualified Pre-approved Plan, a pension plan, and not a Governmental Plan in which the normal retirement age is lower than the age 62 safe harbor in § 1.401(a)-1(b)(2), that requests reliance on whether the plan satisfies § 1.401(a)-1(b)(2) (instead, see section 25.03(1)(a)(ii) or (iv));

(iii) A determination letter application for a Nonstandardized Plan that is a Qualified Pre-approved Plan, a pension plan, and a Governmental Plan in which the normal retirement age does not satisfy any of the safe harbors described in § 1.401(a)-1(b)(2)(v) of the proposed regulations, that requests reliance on whether the plan satisfies § 1.401(a)-1(b)(2) of the proposed regulations (instead, see section 25.03(1)(a)(iii) or (v)); or

(iv) A determination letter application for a Nonstandardized Plan regarding a partial termination (instead, see section 25.05).

(c) Prior favorable determination letter. An Adopting Employer eligible to file for a determination letter submitted on Form 5307 may file on a Form 5307 regardless of whether a prior favorable determination letter has been issued with respect to the plan.

(d) Copy of Opinion Letter. An Adopting Employer must include a copy of the Opinion Letter for the Pre-approved Plan. See section 13 of Rev. Proc. 2023-4 (as updated annually).

(2) Timing. An Adopting Employer of a Pre-approved Plan for a Cycle that is eligible to file for a determination letter submitted on Form 5307 generally must file during the Employer Adoption Window for the Cycle. However, if the Adopting Employer had not previously adopted a Pre-approved Plan that had received an Opinion Letter for the preceding Cycle, the Adopting Employer has until the start of the Employer Adoption Window for the next Cycle to apply for a determination letter submitted on Form 5307. For example, if an Employer did not previously adopt a Cycle 2 Pre-approved Plan, adopts a Cycle 3 Nonstandardized Plan, and makes amendments that are not extensive, the Adopting Employer will not be limited to the Cycle 3 Adoption Window to file for a Form 5307 determination letter (for example, the Adopting Employer may have adopted the Cycle 3 Nonstandardized Plan for the first time after the Cycle 3 Adoption Window). Instead, the Adopting Employer has until the start of the Cycle 4 Employer Adoption Window to file for a Form 5307 determination letter for the Cycle 3 plan. If the Adopting Employer then adopts a newly approved Cycle 4 Nonstandardized Plan during the Cycle 4 Employer Adoption Window and makes amendments that are not extensive, the Employer only has until the end of the Cycle 4 Employer Adoption Window to file for a Form 5307 determination letter for the Cycle 4 plan.

(3) Scope of Review. For a determination letter submitted on a Form 5307, the Adopting Employer's plan is reviewed using the Cumulative List that was used to review the underlying Pre-approved Plan.

.03 Form 5300 application filed by an Adopting Employer for a plan treated as a Pre-approved Plan: eligibility to file, timing, and scope of review using Cumulative List.

(1) Eligibility to file.

(a) In general. The following Adopting Employers must use a Form 5300 to apply for a determination letter under this section 25.03:

(i) An Adopting Employer that is the controlling member of a multiple employer Nonstandardized Plan that is a Qualified Pre-approved Plan and that has made modifications to the terms of the plan that are not extensive (see section 13.05(4));

(ii) For a Qualified Pre-approved Plan that is a pension plan and not a Governmental Plan with a normal retirement age that is lower than the age 62 safe harbor in § 1.401(a)-1(b)(2), an Adopting Employer (or, if the plan is a multiple employer qualified plan, the controlling member) that files a determination letter request that is limited to a determination as to whether a plan's normal retirement age satisfies the requirements of § 1.401(a)-1(b)(2);

(iii) For a Qualified Pre-approved Plan that is a pension plan and a Governmental Plan with a normal retirement age that does not satisfy any of the safe harbors described in § 1.401(a)-1(b)(2)(v) of the proposed regulations, an Adopting

Employer (or, if the plan is a multiple employer qualified plan, the controlling member) that files a determination letter request that is limited to a determination as to whether a plan's normal retirement age satisfies the requirements of § 1.401(a)-1(b)(2) of the proposed regulations;

(iv) For a Nonstandardized Plan that is a Qualified Pre-approved Plan, a pension plan, and not a Governmental Plan in which the normal retirement age under the plan is lower than the age 62 safe harbor, an Adopting Employer (or, if the plan is a multiple employer qualified plan, the controlling member) that files a determination letter request that includes, but is not limited to, whether the plan satisfies § 1.401(a)-1(b)(2), and that has made additional modifications to the terms of the plan that are not extensive; or

(v) For a Nonstandardized Plan that is a Qualified Pre-approved Plan, a pension plan, and a Governmental Plan in which the normal retirement age does not satisfy any of the safe harbors described in § 1.401(a)-1(b)(2)(v) of the proposed regulations, an Adopting Employer (or, if the plan is a multiple employer qualified plan, the controlling member) that files a determination letter request that includes, but is not limited to, whether the plan satisfies § 1.401(a)-1(b)(2) of the proposed regulations, and that has made additional modifications to the terms of the plan that are not extensive.

(vi) An Adopting Employer of a Nonstandardized Plan that makes modifications to the terms of the plan that are extensive (see section 25.02(1)(a)(i) for what changes will be determined to be extensive and section 13.05(4) for changes that cause a plan to be treated as individually designed and thus subject to section 25.04(1)(a)).

(b) Prior favorable determination letter. An Adopting Employer eligible to file for a determination letter submitted on Form 5300 under this section 25.03 may file on a Form 5300 under this section 25.03 regardless of whether a prior favorable determination letter has been issued with respect to the plan.

(c) An Adopting Employer that applies for a determination letter for a Pre-approved Plan for one or more of the reasons described in section 25.03(1)(a) must identify the applicable reason(s) in a cover letter to the application and include a copy of the Opinion Letter for the Pre-approved Plan.

(2) Timing. For each Cycle, an Adopting Employer that is eligible to file for a determination letter submitted on Form 5300 under this section 25.03 generally must file the determination letter application during the Employer Adoption Window for the Cycle. However, if the Adopting Employer had not previously adopted a Pre-approved Plan that had received an Opinion Letter for the preceding Cycle, the Adopting Employer has until the start of the Employer Adoption Window for the next Cycle to apply for a determination letter submitted on Form 5300 under this section 25.03. For example, if a controlling member of a multiple employer plan did not previously adopt a Cycle 2 Pre-

approved Plan, adopts a Cycle 3 Nonstandardized Plan, and makes amendments that are not extensive, the Adopting Employer will not be limited to the Cycle 3 Adoption Window to file for a Form 5300 determination letter (for example, the Employer may have adopted the Cycle 3 Nonstandardized Plan for the first time after the Cycle 3 Adoption Window). Instead, the Adopting Employer has until the start of the Cycle 4 Employer Adoption Window to file for a Form 5300 determination letter under this section 25.03 for the Cycle 3 plan. If the Adopting Employer then adopts a newly approved Cycle 4 Nonstandardized Plan during the Cycle 4 Employer Adoption Window and makes amendments that are not extensive, the Employer only has until the end of the Cycle 4 Employer Adoption Window to file for a Form 5300 determination letter under this section 25.03 for the Cycle 4 plan.

(3) Scope of Review. For a determination letter submitted on Form 5300 under this section 25.03, the Adopting Employer's plan is reviewed using the Cumulative List that was used to review the underlying Pre-approved Plan.

.04 Form 5300 application filed by an Adopting Employer for a plan treated as individually designed: eligibility to file, timing, and scope of review using the Required Amendments List.

(1) Eligibility to file.

(a) In general. An Adopting Employer whose plan is treated as individually designed pursuant to section 13.05 (for example, if the Adopting Employer makes amendments that, due to the nature and extent of the amendments, result in the IRS determining that the plan should be treated as individually designed, as described in section 13.05(4)) must use a Form 5300 to apply for a determination letter under this section 25.04:

(b) If eligible under Rev. Proc. 2022-40, including the criteria that the plan previously had not been filed for a determination letter submitted on a Form 5300 and had not been issued a determination letter as an individually designed plan.

(2) Timing. At any time, to the extent permitted under Rev. Proc. 2022-40.

(3) Scope of Review. In accordance with Rev. Proc. 2022-40, the plan is reviewed based on the Required Amendments List that was issued during the second calendar year preceding the submission of the determination letter application.

.05 Form 5300 application for a partial termination. An Adopting Employer of a Qualified Pre-approved Plan (or, if the plan is a multiple employer plan, the controlling member) that requests a determination regarding partial termination must file using Form 5300. Applicants may not request a determination letter with respect to the entire plan unless the plan is otherwise eligible to be submitted for a determination letter. If the request is limited to whether a partial termination has occurred, the Employer may file

on Form 5300 at any time, regardless of whether the Employer is otherwise eligible to submit a determination letter application. If the request is not limited to whether a partial termination has occurred, the Employer must be otherwise eligible to submit a determination letter application pursuant to Rev. Proc. 2022-40.

.06 Procedures provided in annual revenue procedure. Determination letter filing procedures are set forth in Rev. Proc. 2023-4, which is updated annually.

## PART V. MISCELLANEOUS

### SECTION 26. EFFECT ON OTHER DOCUMENTS

.01 Part I and III of Rev. Proc. 2016-37 are clarified, modified, and superseded with respect to a Cycle 4 (or later) Qualified Pre-approved Plan.

.02 Rev. Proc. 2017-41 is clarified, modified, and superseded with respect to a Cycle 4 (or later) Qualified Pre-approved Plan.

.03 Sections 4, and 10 through 12 of Rev. Proc. 2019-39 are clarified, modified, and superseded with respect to a Cycle 3 (or later) Section 403(b) Pre-approved Plan.

.04 Sections 4 through 22 and 25 of Rev. Proc. 2021-37 are clarified, modified, and superseded with respect to a Cycle 3 (or later) Section 403(b) Pre-approved Plan.

### SECTION 27. EFFECTIVE DATE

.01 In general. Except as provided in section 27.02 through .03, this revenue procedure is effective on November 21, 2023.

.02 Sections 9 through 24 (regarding procedures for applications for Opinion Letters) are effective with respect to:

- (1) A Cycle 4 (or later) defined contribution Qualified Pre-approved Plan;
- (2) A Cycle 4 (or later) defined benefit Qualified Pre-approved Plan; and
- (3) A Cycle 3 (or later) Section 403(b) Pre-approved Plan.

.03 Section 25 (regarding procedures for applications for a determination letter) is effective with respect to:

- (1) An application for a determination letter submitted by an Adopting Employer with respect to a Cycle 4 (or later) defined contribution Qualified Pre-approved Plan;
- (2) An application for a determination letter submitted by an Adopting Employer

with respect to a Cycle 4 (or later) defined benefit Qualified Pre-approved Plan; and

(3) An application for a determination letter submitted by an Adopting Employer with respect to a Cycle 2 (or later) Section 403(b) Pre-approved Plan.<sup>22</sup>

## SECTION 28. PUBLIC COMMENTS

The Department of the Treasury (Treasury Department) and the IRS invite comments on this revenue procedure. Comments may be submitted electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (type “Revenue Procedure 2023-37” in the search field on the Regulations.gov home page to find this revenue procedure and submit comments). Alternatively, comments may be submitted by mail to:

Internal Revenue Service  
 Attn: CC:PA:LPD:PR (Revenue Procedure 2023-37), Room 5203  
 P.O. Box 7604  
 Ben Franklin Station  
 Washington, D.C. 20044.

The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket.

## SECTION 29. PAPERWORK REDUCTION ACT

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are third-party disclosures, recordkeeping, and reporting requirements listed in sections 6.04, 9.02(8), 9.06(6), 13.01, 14.03, 14.04, 14.05, 15, 23.01 and 23.02. This information is required to enable the Commissioner, Tax Exempt and Government Entities Division of the IRS, to make determinations in connection with compliance with the Qualification Requirements or Section 403(b) Requirements. This information will be used to determine whether a plan is entitled to favorable tax treatment. The likely respondents are banks, insurance companies, other financial institutions, law, actuarial, and consulting firms, employee benefit practitioners and employers. Any collection burden associated with this revenue

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<sup>22</sup> The rules regarding an Adopting Employer’s application for a determination letter apply for Cycle 2 Section 403(b) Pre-approved Plans because, although Cycle 2 has begun, Cycle 2 Opinion Letters have not been issued and the Employer Adoption Window for Cycle 2 (during which an application for a determination letter would generally be submitted) has not begun.

procedure is accounted for and approved by OMB under OMB control numbers 1545-1674 and 1545-0169.

The reporting requirements mentioned within this revenue procedure are related to the application process for an opinion letter as detailed in section 14.03. Additional application information is needed related to: Interim Amendments as detailed in section 14.04; substantially identical plans as detailed in section 14.05; and Mass Submitter applications as detailed in section 15. These collection requirements are included within the OMB approval for 1545-0169. This revenue procedure does not alter these previously approved information collection requirements and does not create new collection requirements not already approved by OMB.

The third-party disclosure requirements mentioned within this revenue procedure are related to the notification requirements for Providers to inform the Adopting Employers of plan amendments (including Interim Amendments) or the discontinuance of the plan as detailed in sections 9.02(8), 9.06(6), and 13.01 (and section 6.04 regarding Interim Amendments). These collection requirements are included within the OMB approval for 1545-1674. This revenue procedure does not alter these previously approved information collection requirements and does not create new collection requirements not already approved by OMB.

The recordkeeping requirements mentioned within this revenue procedure are related to keeping records of the of the Opinion Letter application as detailed in section 23.01; and amendment notifications as detailed in sections 9.02(8), 9.06(6), and 13.01. Additionally, Providers must keep records of the Adopting Employers as detailed in section 23.02. These collection requirements are included within the OMB approval for 1545-1674. This revenue procedure does not alter these previously approved information collection requirements and does not create new collection requirements not already approved by OMB.

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 § 6103.

#### DRAFTING INFORMATION

The principal author of this revenue procedure is Patrick Gutierrez of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this revenue procedure, contact Employee Plans at (513) 975-6319 (not a toll-free number).