

1. [2017 IRB LEXIS 328](#)

Rev. Proc. 2017-41; 2017 IRB LEXIS 328; 2017-29 I.R.B. 92

US Internal Revenue Service

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Reporter

2017 IRB LEXIS 328 *; Rev. Proc. 2017-41; 2017-29 I.R.B. 92

Revenue Procedure 2017-41

Applicable Sections

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

[*1]

Core Terms

opinion letter, submitter, formula, cycle, modify, determination letter, cash balance, eligible, defined benefit plan, offset, word-for-word, safe harbor, qualification, qualification requirement, pre-approved, annually, update, minor modification, signature, flexible, on-cycle, delete, hybrid, notification, stock, modify, entity, profit-sharing, aggregate, accrual

Text

SECTION 1. PURPOSE

.01 This revenue procedure sets forth the procedures of the Internal Revenue Service (IRS) for issuing Opinion Letters regarding the qualification in form of Pre-approved Plans under §§ 401, 403 (a), and [4975 \(e\) \(7\) of the Internal Revenue Code](#) (Code). In addition, this revenue procedure modifies the IRS pre-approved letter program by combining the master and prototype (M&P) and volume submitter (VS) programs into a new Opinion Letter program. This revenue procedure modifies and supersedes, in part, [Rev. Proc. 2015-36, 2015-27 I.R.B. 20](#), and modifies [Rev. Proc. 2017-4, 2017-1 I.R.B. 146](#), and [Rev. Proc. 2016-37, 2016-29 I.R.B. 136](#).

.02 This revenue procedure also modifies the on-cycle submission period for the third six-year remedial amendment cycle for Providers of pre-approved defined contribution plans so that it begins on October 2, 2017 and ends on October 1, 2018.

.03 This revenue procedure modifies the IRS's historic approach to Pre-approved Plans in order to expand the Provider market and encourage employers that currently maintain [*2] individually designed plans to convert to the pre-approved format.

- The program is simplified by eliminating the distinction between M&P and VS plans.
- The program is liberalized by increasing the types of plans eligible for pre-approved status.
- The program is revised to afford greater flexibility in the design of Pre-approved Plans.

SECTION 2. BACKGROUND

.01 The procedures for the issuance of opinion and advisory letters by the IRS regarding the qualification in form of Pre-approved Plans are set forth in [Rev. Proc. 2015-36](#) (as modified by [Rev. Proc. 2016-37](#)).

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

.03 [Rev. Proc. 2016-37](#) modified the IRS determination letter program for qualified plans to eliminate the five-year remedial amendment cycle for individually designed plans. It also described and made modifying changes to the remedial amendment cycle system for pre-approved [*3] qualified plans and modified the six-year cycle, as applicable, to reflect changes that had been made to the determination letter program.

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

.05 From February 1, 2011, to April 2, 2012, M&P sponsors and VS practitioners maintaining pre-approved defined contribution plans submitted their applications to the IRS for the second six-year remedial amendment cycle. For employers that had adopted a pre-approved defined contribution plan prior to January 1, 2016, the deadline to adopt a modification or restatement of the Pre-approved Plan and apply for a determination letter, if eligible, was April 30, 2016. Pursuant to section 18 of [Rev. Proc. 2016-37](#), the [*4] deadline for an employer to adopt a newly approved pre-approved defined contribution plan and apply for a determination letter, if eligible, was extended by [Notice 2016-3, 2016-3 IRB 278](#), from April 30, 2016, to April 30, 2017,¹ for any newly approved pre-approved defined contribution plan adopted on or after January 1, 2016.

.06 Under [Rev. Proc. 2016-37](#), the third six-year remedial amendment cycle for pre-approved defined contribution plans began on February 1, 2017, and ends on January 31, 2023. Also, under [Rev. Proc. 2016-37](#), the 12-month applicable on-cycle submission period for Pre-approved Plan sponsors begins on August 1, 2017, and ends on July 31, 2018. The Cumulative List of Changes in Plan Qualification Requirements for Pre-approved Defined Contribution Plans for 2017, [Notice 2017-37, 2017-29 I.R.B. \(July 17, 2017\)](#), will apply to plans submitted for review during the on-cycle submission period. Once the review of a cycle for Pre-approved Plans has neared completion (after approximately a two-year review process), the IRS will announce the date by which Adopting Employers must adopt the newly approved plans.

.07 [Rev. Proc. 2016-37](#) provided that the second six-year remedial [*5] amendment cycle for pre-approved defined benefit plans began on February 1, 2013, and ends on January 31, 2019. The third six-year remedial amendment cycle for pre-approved defined benefit plans is scheduled to begin on February 1, 2019, and end on January 31, 2025.

.08 [Rev. Proc. 2017-4](#) (as updated annually) sets forth the general procedures of the IRS on the issuance of Employee Plans determination letters, including determination letters for Pre-approved Plans.

SECTION 3. SIGNIFICANT CHANGES TO [REVENUE PROCEDURE 2015-36](#); FUTURE ENHANCEMENTS

.01 This revenue procedure significantly restructures the current approach for issuing Opinion Letters regarding the qualification in form of Pre-approved Plans described in [Rev. Proc. 2015-36](#). Section 3.02 through 3.12² describe the significant changes made by this revenue procedure to [Rev. Proc. 2015-36](#).

¹ The deadline to apply for a determination letter was later extended to May 1, 2017.

² All section references in this revenue procedure are to sections of this revenue procedure unless otherwise specified.

.02 The M&P and VS Programs are combined and replaced by a single Opinion Letter program involving two types of plans: Standardized Plans and Nonstandardized Plans. See section 4.07.

.03 A Pre-approved Plan may utilize either of two formats: a basic plan document with an adoption agreement or a single plan document. See section 4.07.

.04 An Adopting **[*6]** Employer of any Nonstandardized Plan may adopt minor modifications. See section 8.04.

.05 The prohibition against combining a money purchase plan with a § 401 (k) or profit-sharing plan in the same Pre-approved Plan document is eliminated. See sections 9.06 and 9.07.

.06 A Nonstandardized Plan that contains an ESOP may include a § 401 (k) feature. See sections 9.06 and 9.07. (A Pre-Approved Plan that contains an ESOP cannot be a Standardized Plan. See section 4.09.)

.07 A Nonstandardized Plan that contains a Cash Balance Formula may now permit the rate used to determine an Interest Credit to be based on the actual return on plan assets. However, the rate used to determine an Interest Credit cannot be based on a subset of plan assets. See section 6.03 (7) (c). (A Pre-Approved Plan that contains a Cash Balance Formula cannot be a Standardized Plan. See section 4.09.) For limitations on the eligibility of certain types of Statutory Hybrid Plans under the Pre-approved Plan program, see section 6.03 (7).

.08 The prohibition against submitting an application for an Opinion Letter for a non-electing church plan is eliminated. See section 6.03.

.09 Any Nonstandardized Plan may provide for either **[*7]** safe harbor or non-safe harbor hardship distributions. See section 6.03.

.10 The beginning and ending dates for the defined contribution on-cycle submission period for the third six-year remedial amendment cycle are modified to begin on October 2, 2017, and end on October 1, 2018. See section 9.02.

.11 The IRS will no longer rule on the exempt status of a Pre-approved Plan's related trust or custodial account under § 501 (a). See section 9.03.

.12 References to specific requirements under [Title I of the Employee Retirement Income Security Act of 1974 \(ERISA\), Pub. L. 93-406](#), 1974-3 C.B. 1, have been removed and replaced with a statement that Opinion Letters will not consider Title I issues. This is intended to clarify the scope of reliance on Opinion Letters and is not a substantive change in IRS position. See section 6.04.

.13 The procedures for a determination letter application by an Adopting Employer to obtain reliance under [§§ 415 and 416](#) have been modified to permit an application to be made on Form 5307, *Application for Determination for Adopters of Modified Volume Submitter Plans*. See section 7.05.

.14 Future enhancements -

- (1) Future updates - The IRS and the Department of the Treasury **[*8]** (Treasury Department) expect to continue to update this Opinion Letter program revenue procedure, in whole or in part, from time to time, including providing further improvements based on comments received. Accordingly, the IRS and Treasury Department continue to invite further comments on how to improve the Opinion Letter program. For information on how to submit comments, see section 22.
- (2) Comments relating to the retention of legacy benefits - The Treasury Department and the IRS have received comments relating to ways in which conversion from an individually designed plan to a Pre-approved Plan could be facilitated. One area addressed in these comments relates to enabling Adopting Employers to continue to maintain certain legacy benefit formulas, which often arise in the context of mergers and acquisitions (either as frozen or as continuing benefit formulas for a certain number of participants), when adopting a Pre-approved Plan. The Treasury Department and IRS request comments on this issue,

specifically with respect to the effect that appending legacy benefit formulas to the plan document would have on reliance on a plan's Opinion Letter.

SECTION 4. DEFINITIONS

.01 Adopting Employer **[*9]** - An "Adopting Employer" is an employer that adopts a plan that is offered by a Provider, including a plan that is word-for-word identical to, or a minor modification of, a plan of a Mass Submitter.

.02 ESOP Definitions

- (1) ESOP - An "ESOP" is an employee stock ownership plan within the meaning of [§ 4975 \(e\) \(7\)](#).
- (2) Exempt Loan - An "Exempt Loan" is a loan described in [§ 4975 \(d\) \(3\)](#) that meets the requirements for exemption from the excise tax imposed under [§ 4975 \(a\)](#) and [\(b\)](#) described in [§ 54.4975-7 \(b\)](#).
- (3) Readily Tradable Employer Securities - "Readily Tradable Employer Securities" are publicly traded securities as defined in [§ 1.401 \(a\) \(35\)-1 \(f\) \(5\)](#).

.03 Hybrid Plan Definitions

- (1) Cash Balance Formula - A "Cash Balance Formula" is a statutory hybrid benefit formula, as defined in [§ 1.411 \(a\) \(13\)-1 \(d\) \(4\)](#), 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.
- (2) Cash Balance Plan - A "Cash Balance Plan" **[*10]** is a defined benefit plan that includes a Cash Balance Formula.
- (3) Conversion Amendment - A "Conversion Amendment" is 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 determined under a statutory hybrid benefit formula.
- (4) Interest Credit - An "Interest Credit" is 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.
- (5) Offset - An "Offset" is the reduction of benefits under an employer's defined **[*11]** benefit plan by an amount attributable to the benefits payable under another plan of the employer.
- (6) Principal Credit - A "Principal Credit" is 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.
- (7) Statutory Hybrid Plan - A "Statutory Hybrid Plan" is a defined benefit plan that contains a statutory hybrid benefit formula as defined in [§ 1.411 \(a\) \(13\)-1 \(d\) \(4\)](#).
- (8) Variable Annuity Plan - A "Variable Annuity Plan" is any defined benefit plan that includes a variable annuity benefit formula as defined in [§ 1.411 \(a\) \(13\)-1 \(d\) \(6\)](#).

.04 Mass Submitter - A "Mass Submitter" is any person that (1) has an established place of business in the United States where it is accessible during every business day and (2) submits Opinion Letter applications on behalf of at least 30 unaffiliated Providers, each of which is offering, on a word-for-word identical basis, the same plan. A flexible plan (as defined in section 10) that is offered by a Provider will be considered a word-for-word identical plan. For purposes of determining whether 30 unaffiliated Providers offer, on a word-for-word **[*12]** 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, etc., will be considered to be affiliated with its partners, members, associates, etc. A Mass Submitter is treated as a Mass Submitter with respect to all of its plans, provided the 30 unaffiliated Provider requirement is met with respect to at least one plan. See section 10 for rules relating to Mass Submitter plans.

.05 Nonstandardized Plan - A "Nonstandardized Plan" is a Pre-approved Plan that is not a Standardized Plan and that satisfies section 5.15.

.06 Opinion Letter - An "Opinion Letter" is a written statement issued by the IRS to a Provider or Mass Submitter as to the qualification in form of a plan under § 401, § 403 (a), or both §§ 401 and [4975 \(e\) \(7\)](#).

.07 Pre-approved Plan -

- (1) A "Pre-approved Plan" is a plan (including a plan covering self-employed individuals) that is made available by a Provider for adoption by employers. The term Pre-approved Plan includes both Standardized Plans and Nonstandardized Plans, as defined in **[*13]** sections 4.09 and 4.05, respectively.
- (2) A Pre-approved Plan may use a single funding medium (for example, a Trust or Custodial Account Document) for the joint use of all Adopting Employers or separate funding mediums established for each Adopting Employer.
- (3) A Pre-approved Plan may be an "Adoption Agreement Plan" or a "Single Document Plan." An Adoption Agreement Plan consists of a basic plan document and an adoption agreement. The basic plan document contains all of the non-elective provisions applicable to all Adopting Employers, and the adoption agreement contains the options that may be selected by each Adopting Employer. No options (including blanks to be completed) may be provided in the basic plan document portion of the Adoption Agreement Plan (except as provided in section 10 regarding flexible plans). A Single Document Plan consists of a single plan document offered by a Provider without an adoption agreement. A Single Document Plan may contain alternate paragraphs and options (including blanks to be completed by the Adopting Employer in accordance with specified parameters) that may be selected by an Adopting Employer.

.08 Provider - A "Provider" is any person **[*14]** (including, if applicable, a Mass Submitter) that (1) has an established place of business in the United States where it is accessible during every business day, and (2) represents to the IRS in its application for an Opinion Letter that it has at least 15 employer-clients, each of which is reasonably expected to adopt the same Pre-approved Plan of the Provider.

A Provider (as described in the previous paragraph) may request an Opinion Letter for more than one plan provided it represents to the IRS that it has at least 30 employer-clients in the aggregate, each of which is reasonably expected to adopt at least one of the Provider's plans.

The IRS reserves the right at any time to request from the Provider 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.

Notwithstanding the preceding provisions of this section 4.08, 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 as a word-for-word identical adopter or minor modifier adopter of a plan of a Mass Submitter regardless of the number **[*15]** of employers that are expected to adopt the plan. See section 10 for rules relating to Mass Submitter plans, including procedures for word-for-word identical adopters and minor modifier adopters of Mass Submitter plans.

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), 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.

.09 Standardized Plan - A "Standardized Plan" is a Pre-approved Plan (other than an ESOP or Statutory Hybrid Plan) that meets the requirements set forth in section 5.16.

.10 Trust or Custodial Account Document - A "Trust or Custodial Account Document" is the separate portion of a plan that contains the trust agreement or custodial account agreement and includes provisions covering such matters as the powers and duties of trustees, investment authority, and the kinds [*16] 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 rest of the plan.

SECTION 5. PROVISIONS REQUIRED IN PRE-APPROVED PLANS

.01 Provisions required in all Pre-approved Plan - Each Pre-approved Plan must comply with the requirements set forth in sections 5.03 through 5.14.

.02 Additional Provisions - Section 5.15 provides additional provisions that apply to Nonstandardized Plans and section 5.16 contains additional provisions required for all Standardized Plans. If a Pre-approved Plan contains an ESOP or a Cash Balance Formula, the plan also must include the provisions set forth in section 5.17 or 5.18, as applicable.

.03 Provider Amendments - Each Pre-approved Plan must include a procedure for Provider amendments, so that corrections of prior approved plans and changes in the Code, regulations, or other guidance published in the Internal Revenue Bulletin may be applied to all employers who have adopted the plan. The procedure for Provider amendments also must state that, for purposes [*17] of reliance on the Opinion Letter, the Provider will no longer have the authority to amend the plan on behalf of the Adopting Employer as of the date the plan is treated as an individually designed plan pursuant to section 8.06.

.04 Anti-Cutback Provisions - Each 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 [1.411 \(d\)-4](#). See section 5.07 for anti-cutback 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.

.05 Adopting Employer Modification to Satisfy [§§ 415](#) and [416](#) - Each Pre-approved Plan must provide that plan provisions may be amended by the Adopting Employer to the extent necessary to satisfy [*18] [§ 415](#) or [416](#) because of the required aggregation of multiple plans under these sections. Generally, a space should be provided in the plan with instructions for the Adopting Employer to add such language as necessary to satisfy [§§ 415](#) and [416](#). 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](#). Such a space must be included in both defined contribution plans and defined benefit plans. These provisions must be included in the adoption agreement of an Adoption Agreement Plan.

.06 Aggregation for [§ 415](#) compliance - Each Pre-approved Plan must provide for aggregation of all of an employer's defined contribution plans and all of an employer's defined benefit plans as necessary to satisfy [§ 415 \(b\)](#), [\(c\)](#), and [\(f\)](#).

.07 Top-heavy Requirements - Each Pre-approved Plan must either provide that all of the additional requirements applicable to top-heavy plans (described in [§ 416](#)) apply at all times, or provide that such requirements apply automatically if the plan is top-heavy, regardless of how the options [*19] 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 contain vesting rules for all years that are at least as favorable to participants as those provided in [§ 416](#)

[\(b\)](#) must specifically provide that any vesting that occurs while the plan is top-heavy will not be reduced if the plan ceases to be top-heavy.

.08 Provisions Regarding Reliance - Each Pre-approved Plan must include, in close proximity to the signature line, a statement that describes the limitations on employer reliance on an Opinion Letter. See section 7.

.09 Provisions Regarding Conflicting Trust Provisions - Each Pre-approved Plan must contain a statement that the provisions of the plan override any conflicting provision contained in Trust or Custodial Account Documents used with the plan.

.10 Requirements Regarding Dated Signatures and Adoption Agreement Provisions - Each Pre-approved Plan must contain an Adopting Employer signature and date line. The plan also must contain a statement that the Provider **[*20]** will inform the Adopting Employer of any amendments made to the plan or of the discontinuance of the plan. The 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 employer must complete a new dated adoption agreement or signature page if it modifies any prior elections or makes new elections. The signature requirement may be satisfied by an electronic signature that reliably authenticates and verifies the adoption of the adoption agreement, or restatement, amendment, or modification thereof, by the employer. In the case of an Adoption Agreement Plan, the adoption agreement must state that it is to be used with only one plan. In addition, the adoption agreement must contain a cautionary statement to the effect that the failure to properly complete the adoption agreement may result in failure of the plan to qualify under § 401, 403 (a), or [4975 \(e\) \(7\)](#), as applicable.

.11 Provider Telephone Numbers - Each Pre-approved Plan must include the Provider's name, address, and telephone number (or a space for the **[*21]** 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.

.12 Definition of Employee - (1) In general. Each Pre-approved Plan must define an employee as any employee of the employer maintaining the plan or any other employer aggregated with that employer under [§ 414 \(b\)](#), [\(c\)](#), [\(m\)](#), or [\(o\)](#) and the regulations thereunder. 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.

(2) ESOPs. With respect to an ESOP, employees who meet the definition in section 5.12 (1) 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 5.12 (1) **[*22]** are treated as employees.

.13 Crediting of Service taking into account [§ 414 \(b\)](#), [\(c\)](#), [\(m\)](#), [\(n\)](#), and [\(o\)](#) - Each Pre-approved Plan must credit all service with any employer aggregated under [§ 414 \(b\)](#), [\(c\)](#), [\(m\)](#), or [\(o\)](#) and the regulations thereunder as service with the employer maintaining the plan. In addition, in the case of an individual treated under [§ 414 \(n\)](#) or [\(o\)](#) as an employee of any employer described in the previous sentence, service with such employer must be credited to such individual.

.14 Uniformed Services Employment and Reemployment Rights Act and [§ 414 \(u\)](#) - Each Pre-approved Plan must contain a provision reflecting the requirements of [§ 414 \(u\)](#). (See [Rev. Proc. 96-49, 1996-2 C.B. 369.](#))

.15 Provisions Applicable to Nonstandardized Plans - In addition to the provisions set forth in sections 5.03 through 5.14, the following provisions apply to Nonstandardized Plans:

- (1) Compensation Provisions in Nonstandardized Plans - Each Nonstandardized Plan may provide the Adopting Employer the option to select total compensation as the compensation to be used in determining allocations or benefits. For this purpose, total compensation means a definition that includes all

compensation **[*23]** within the meaning of [§ 415 \(c\) \(3\)](#) and excludes all other compensation, or a definition that otherwise satisfies [§ 414 \(s\)](#) under [§ 1.414 \(s\)-1 \(c\)](#).

- (2) Automatic or Optional Safe Harbor Provisions in Nonstandardized Plans - Each Nonstandardized Plan, other than a Statutory Hybrid Plan as described in section 4.03 (7), may automatically or by option allow the Adopting Employer to satisfy the requirements of one of the design-based safe harbors described in [§ 1.401 \(a\) \(4\)-2 \(b\) \(2\)](#) or [§ 1.401 \(a\) \(4\)-3 \(b\) \(3\), \(4\), and \(5\)](#).

.16 Provisions Applicable to Standardized Plans - In addition to the requirements set forth in sections 5.03 through 5.14, each Standardized Plan must meet the following requirements:

- (1) Under the provisions governing eligibility and participation, the plan by its terms must benefit all employees described in section 5.12 (1) (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 **[*24]** employees described in [§ 410 \(a\) \(1\)](#) or [\(b\) \(3\)](#) apply uniformly to all employees. A Standardized Plan generally may not deny an accrual or allocation to an employee eligible to participate merely because the employee is not an active employee on the last day of the plan year or has failed to complete a specified number of hours of service during the year. However, the plan may deny an allocation or accrual to an employee who is eligible to participate if the employee terminates service during the plan year with not more than 500 hours of service and is not an active employee on the last day of the plan year.

A plan will not fail to satisfy the requirements of this paragraph (1) merely because the plan provides, either as the result of an elective provision or by default in the absence of an election to the contrary, that individuals who become employees, within the meaning of section 5.12 (1), as the result of a transaction described in [§ 410 \(b\) \(6\) \(C\)](#) will be excluded from eligibility to participate in the plan during the period beginning on the date of the transaction and ending on a date that is not later than the last day of the first plan year beginning after the date of the **[*25]** transaction. 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) The eligibility requirements under the plan are not more favorable for highly compensated employees (as defined in [§ 414 \(q\)](#)) than for other employees.
- (3) Under the plan, allocations, in the case of a defined contribution plan (other than any cash or deferred arrangement portion of the plan), or benefits, in the case of a defined benefit plan, are determined on the basis of total compensation. For this purpose, total compensation means a definition of compensation that includes all compensation within the meaning of [§ 415 \(c\) \(3\)](#) and excludes all other compensation, or a definition that otherwise satisfies [§ 414 \(s\)](#) and [§ 1.414 \(s\)-1 \(c\)](#).
- (4) Unless the plan is a target benefit plan or a [§ 401 \(k\)](#) and/or [401 \(m\)](#) plan, the plan satisfies, 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) All benefits, rights, **[*26]** and features under the plan (other than those, if any, that have been prospectively eliminated) are currently available to all employees benefiting under the plan.
- (6) Any past service credit under the plan meets the safe harbor in [§ 1.401 \(a\) \(4\)-5 \(a\) \(3\)](#).
- (7) Any hardship distribution satisfies the safe harbor standards in the regulations under [§ 401 \(k\)](#).

.17 Additional Provisions Required in ESOPs - In addition to complying with sections 5.03 through 5.15, each Pre-approved Plan that includes an ESOP feature must include the following provisions:

- (1) A statement that the plan is an employee stock ownership plan within the meaning of [§ 4975 \(e\) \(7\)](#) and is designed to invest primarily in employer stock;
- (2) A provision that defines employer stock in accordance with [§ 409 \(l\) \(1\)](#) or [\(2\)](#);

- (3) Provisions that meet the diversification requirements of § 401 (a) (28) (B) or, if applicable, § 401 (a) (35);
- (4) Provisions that meet the valuation, independent appraiser, and allocation of earnings requirements set forth in § 401 (a) (28) (C), [§ 54.4975-11 \(d\) \(5\)](#), and [Rev. Rul. 80-155, 1980-1 C.B. 84](#);
- (5) Provisions that meet the voting requirements of [§ 409 \(e\)](#);
- (6) Provisions that meet the right-to-demand **[*27]** and put-option requirements of [§ 409 \(h\)](#), to the extent applicable;
- (7) Provisions that meet the distribution requirements of [§ 409 \(o\)](#);
- (8) Provisions that set forth the requirements relating to exempt loans as described in [§ 4975 \(d\) \(3\)](#), [§ 54.4975-7](#), and [§ 54.4975-11 \(c\)](#);
- (9) Provisions that meet the ESOP annual addition requirements described in [§ 1.415 \(c\)-1 \(f\)](#) and, if the ESOP is maintained by an employer that is a C corporation, the requirements described in [§ 415 \(c\) \(6\)](#);
- (10) If an ESOP provides for forfeitures, provisions that meet the forfeiture requirement of [§ 54.4975-11 \(d\) \(4\)](#);
- (11) If an ESOP holds employer securities consisting of stock in an S corporation, provisions that meet the requirements of [§ 409 \(p\)](#) and [§ 1.409 \(p\)-1](#);
- (12) If an ESOP is maintained by employers that are C corporations, provisions that meet the requirements of [§ 409 \(n\)](#); and
- (13) Provisions (in the plan document or adoption agreement) that identify the Adopting Employer as either a C corporation or an S corporation.

.18 Additional Provisions Required in Cash Balance Plans - In addition to complying with sections 5.03 through 5.15, each Pre-approved Plan that includes Cash Balance Formulas must meet the following **[*28]** requirements:

- (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 contain 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 **[*29]** with respect to the requirements of [§ 411 \(b\) \(1\)](#) for increasing Principal Credit schedules that are created by Adopting Employers by completing blanks in the plan formula, but may rely on the Opinion Letter with respect to the requirements of [§ 411 \(b\) \(1\)](#) for increasing Principal Credit schedules specified in the Pre-approved Plan document.

SECTION 6. OPINION LETTERS - SCOPE

.01 General Limits on Opinion Letters - Opinion Letters will be issued only to Providers or Mass Submitters. Opinion Letters constitute determinations as to the qualification of the plans as adopted by particular employers only under the circumstances, and to the extent, described in section 7. Opinion Letters do not constitute rulings or determinations as to the exempt status of related trusts or custodial accounts under § 501 (a).

.02 Nonapplicability of this Revenue Procedure to IRAs (including traditional IRAs, Roth IRAs, SEPS, and Simple IRAs) and to § 403 (b) Plans - Opinion Letters will not be issued under this revenue procedure for prototype plans intended to meet the requirements for individual retirement arrangements under [§ 408](#). (See the Form 5305 series,

which provides model IRA documents that have been **[*30]** pre-approved by the IRS and for which an opinion letter is not needed. See also [Rev. Proc. 87-50, 1987-2 C.B. 647](#), as modified by [Rev. Proc. 97-29, 1997-1 C.B. 698](#); [Rev. Proc. 98-59, 1998-2 C.B. 727](#); and [Rev. Proc. 2010-48, 2010-50 I.R.B. 828](#), for administrative procedures for seeking opinion letters for individual retirement arrangements under [§ 408](#).) In addition, Opinion Letters will not be issued under this revenue procedure for [§ 403 \(b\)](#) plans (see [Rev. Proc. 2013-22, 2013-18 I.R.B. 985](#), as modified by [Rev. Proc. 2014-28, 2014-16 I.R.B. 944](#), and clarified by [Rev. Proc. 2017-18, 2017-5 I.R.B. 743](#), and [Rev. Proc. 2015-22, 2015-11 I.R.B. 754](#), for administrative procedures for seeking opinion and advisory letters for [§ 403 \(b\)](#) arrangements).

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

- (1) Multiemployer plans;
- (2) Single-employer collectively bargained plans (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 **[*31]** as a single-employer plan that covers only bargaining employees of the employer);
- (3) Stock bonus plans other than ESOPs;
- (4) ESOPs that are a combination of a stock bonus plan and a money purchase plan;
- (5) ESOPs that provide for the holding of preferred employer stock, including ESOPs that hold stock described in [§ 409 \(l\) \(3\)](#);
- (6) Consistent with section 6.01, pooled fund arrangements contemplated by [Rev. Rul. 81-100, 1981-1 C.B. 326](#) (as modified by [Rev. Rul. 2004-67, 2004-2 C.B. 28](#); [Rev. Rul. 2011-1, 2011-2 I.R.B. 251](#); [Notice 2012-6, 2012-3 I.R.B. 293](#); and [Rev. Rul. 2014-24, 2014-37 I.R.B. 529](#));
- (7) Statutory Hybrid Plans with any of the following features:
 - (a) 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);
 - (b) Provisions 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 \(d\)](#);
 - (c) Provisions under which a rate used to determine Interest Credits is based on a subset of plan **[*32]** assets (as described in [§ 1.411 \(b\) \(5\)-1 \(d\) \(5\) \(ii\)](#)) or the rate of return on certain regulated investment companies (RICs) (as described in [§ 1.411 \(b\) \(5\)-1 \(d\) \(5\) \(iv\)](#));
 - (d) A Conversion Amendment, except for plans providing that, after the effective date of the Conversion Amendment, a participant's accrued benefit is equal to the sum of accruals under the prior formula plus the benefit based on the Cash Balance Formula ("A+B Conversion");
 - (e) Provisions that use the 3-percent accrual rule or the fractional accrual rule under [§ 411 \(b\) \(1\) \(A\)](#) or [\(C\)](#) to satisfy the accrued benefit requirements under [§ 411 \(b\) \(1\)](#);
 - (f) Provisions for funding exclusively through insurance contracts as described in [§ 412 \(e\) \(3\)](#); or
 - (g) Provisions for Offsets of benefits accrued under another plan (the "offsetting plan"), unless:
 - (i) The Offset is applied on an accumulated basis at the participant's annuity starting date, rather than offsetting each year's Principal Credit by that year's accruals or contributions under the offsetting plan;
 - (ii) 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 **[*33]** plan is a defined contribution plan and the Offset is applied by subtracting the account balance under the defined

contribution plan from the hypothetical account balance under the Cash Balance Formula prior to converting the balance to an annuity benefit;

- (iii) The Offset meets the safe-harbor requirements of [§ 1.401 \(a\) \(4\)-8 \(d\)](#) (except that the Offset can be computed by subtracting the account balance under the offsetting plan from the hypothetical account balance under the Cash Balance Formula), including the requirement that the offsetting plan may not be a [§ 401 \(k\)](#) plan or a [§ 401 \(m\)](#) plan;
 - (iv) For the purpose of determining the amount of the Offset against any defined benefit formula, the Offset reflects the value of any distributions from the offsetting plan made prior to the participant's annuity starting date under the Cash Balance Plan;
 - (v) The Offset is applied on a uniform basis for all participants;
 - (vi) The plan provides a minimum accrued benefit to participants (expressed as a lifetime annuity commencing at normal retirement age) of no less than 0.5% of compensation for each year of credited service, which is not reduced by the Offset applied to other formulas under the **[*34]** plan;
 - (vii) Accrued benefits, considered in conjunction with defined contribution accounts subject to any Offset, meet nondiscrimination requirements; and
 - (viii) The amount of the Offset, including any procedures and actuarial assumptions for converting a defined contribution account balance (under a specifically-named defined contribution plan) to an annuity amount, is definitely determinable.
- (8) Plans described in [§ 414 \(k\)](#) (relating to a defined benefit plan that provides a benefit derived from employer contributions that is based partly on the balance of the separate account of a participant);
 - (9) Target benefit plans, other than plans that, by their terms, satisfy each of the safe harbor requirements described in [§ 1.401 \(a\) \(4\)-8 \(b\) \(3\) \(i\)](#), as well as the additional rules in [§ 1.401 \(a\) \(4\)-8 \(b\) \(3\) \(ii\) through \(vii\)](#);
 - (10) Governmental defined benefit plans that include "deferred retirement option plan" (DROP) features, or similar provisions in which a participant earns additional benefits for continued employment post-normal retirement age in the form of credits to a separate account (including a cash balance account or other arrangement) under the same plan;
 - (11) Plans under which **[*35]** the [§ 415](#) limitations are incorporated by reference;
 - (12) Plans under which the ADP test under [§ 401 \(k\) \(3\)](#) or the ACP test under [§ 401 \(m\) \(2\)](#) are incorporated by reference;
 - (13) Standardized [§ 401 \(k\)](#) plans that provide for hardship distributions under circumstances other than those described in the safe harbor standards in the regulations under [§ 401 \(k\)](#);
 - (14) Nonstandardized [§ 401 \(k\)](#) plans that provide for hardship distributions under circumstances not described in the safe harbor standards in the regulations under [§ 401 \(k\)](#), unless these distributions are subject to nondiscriminatory and objective criteria contained in the plan;
 - (15) Fully-insured [§ 412 \(e\) \(3\)](#) plans, other than non-statutory hybrid plans that by their terms satisfy the safe harbor in [§ 1.401 \(a\) \(4\)-3 \(b\) \(5\)](#);
 - (16) Plans that include purported fail-safe provisions for [§ 401 \(a\) \(4\)](#) or the average benefit test under [§ 410 \(b\)](#);
 - (17) Plans that include blanks or fill-in provisions for the employer to complete, unless the provisions have parameters that preclude the employer from completing the provisions in a manner that could violate the qualification requirements;
 - (18) Plans designed to satisfy the provisions of [§ 105](#);
 - (19) Plans **[*36]** that include [§ 401 \(h\)](#) accounts;

(20) Eligible combined plans within the meaning of [§ 414 \(x\) \(2\)](#); or

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

.04 Opinion Letters Will Not Consider Title I Issues - The IRS will not review for and an Opinion Letter will not consider Title I issues, which are administered by the Department of Labor.

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

SECTION 7. EMPLOYER RELIANCE ON OPINION LETTER

.01 Standardized Plans - Except as provided in section 7.01 (1) through (3), an employer adopting a Standardized Plan may rely on that plan's Opinion Letter as to the qualification in form of the plan under the Code provisions provided in section 4.06 if the plan has a currently valid Opinion Letter, the employer's plan is identical to the Standardized Plan, the coverage and contributions or benefits under the employer's plan are not more favorable for highly compensated employees (as defined in [§ 414 \(q\)](#)) than for other employees, and the **[*37]** employer has not amended the plan other than to choose options provided under the plan or to make amendments as described in section 8.03. See also section 8.06, which provides that an employer that amends a Standardized Plan other than as provided in section 8.03 will be treated as maintaining an individually designed plan.

(1) An employer may not rely on an Opinion Letter for a Standardized Plan with respect to the requirements of [§§ 415](#) and [416](#) without obtaining a determination letter if the employer maintains at any time, or has maintained at any time, another plan, including a Standardized Plan, that was qualified or determined to be qualified and that covers or covered some of the same participants. An employer that adopts a Standardized Plan that is a defined contribution plan will not be 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, **[*38]** a plan that has been properly replaced by the adoption of a Standardized Plan is not considered another plan. To be considered a replacement plan and thus for the employer to be able to rely on the Standardized Plan with respect to the requirements of [§§ 415](#) and [416](#) without obtaining a determination letter, the plan that has been replaced and the Standardized Plan must be of the same type (for example, both defined benefit plans).

(2) An employer that has adopted a Standardized Plan that is a defined benefit plan may rely on an Opinion Letter with respect to the requirements of [§ 401 \(a\) \(26\)](#) only if the plan satisfies the requirements of [§ 401 \(a\) \(26\)](#) with respect to its prior benefit structure (within the meaning of [§ 1.401 \(a\) \(26\)-3](#)) or is deemed to satisfy [§ 401 \(a\) \(26\)](#) pursuant to regulations thereunder.

(3) An employer that adopts a Standardized Plan may not rely on an Opinion Letter with respect to: (a) whether the timing of any amendment to the plan (or series of amendments) satisfies the nondiscrimination requirements of [§ 1.401 \(a\) \(4\)-5 \(a\)](#), except with respect to plan amendments granting past service that meet the safe harbor described in [§ 1.401 \(a\) \(4\)-5 \(a\) \(3\)](#) and are **[*39]** not part of a pattern of amendments that significantly discriminates in favor of highly compensated employees; or (b) whether the plan satisfies the effective availability requirement of [§ 1.401 \(a\) \(4\)-4 \(c\)](#) with respect to any benefit, right, or feature. An employer that adopts a Standardized Plan as an amendment to a plan other than a Standardized Plan may not rely on an Opinion Letter with respect to whether a benefit, right, or feature that is prospectively eliminated satisfies the current availability requirements of [§ 1.401 \(a\) \(4\)-4](#).

.02 Nonstandardized Plans - An employer adopting a Nonstandardized Plan may rely on that plan's Opinion Letter as to the qualification in form of the plan under the Code provisions provided in section 4.06 if the plan has a currently valid Opinion Letter, the employer's plan is identical to the Nonstandardized Plan, and the employer has not amended the plan other than to choose options provided under the plan or to make amendments as described in section 8.03.

- (1) Except as otherwise provided in this section 7.02, Adopting Employers of Nonstandardized Plans may not rely on an Opinion Letter with respect to the requirements of:
 - (a) § 401 (a) (4), 401 (a) (26), **[*40]** 401 (l), [410 \(b\)](#), or [414 \(s\)](#); or
 - (b) if the employer maintains or has ever maintained another plan covering some of the same participants, [§ 415](#) or [416](#) (for this purpose, whether an employer maintains or has ever maintained another plan will be determined using principles consistent with section 7.01 (1)).
- (2) Adopting Employers of Nonstandardized Plans may rely on the Opinion Letter with respect to the requirements of [§§ 410 \(b\)](#) and 401 (a) (26) (other than the § 401 (a) (26) requirements that apply to a prior benefit structure) if all nonexcludable employees benefit under the plan.
- (3) Nonstandardized Plans may allow an Adopting Employer to select an allocation formula for employer nonelective contributions that satisfies one of the design-based safe harbors in [§ 1.401 \(a\) \(4\)-2 \(b\) \(2\)](#) or a benefit formula that satisfies one of the design-based safe harbors under [§ 1.401 \(a\) \(4\)-3 \(b\) \(3\)](#), [\(4\)](#), or [\(5\)](#), and the ability to select a safe harbor compensation definition for such formula that satisfies [§ 1.414 \(s\)-1 \(c\)](#). If the plan of the Adopting Employer allocates contributions or provides benefits using one of the design-based safe harbors in [§ 1.401 \(a\) \(4\)-2 \(b\) \(2\)](#) or [§ 1.401 \(a\) \(4\)-3 \(b\) \(3\)](#), **[*41]** [\(4\)](#), or [\(5\)](#), and the plan defines compensation using a definition that satisfies [§ 1.414 \(s\)-1 \(c\)](#), then the Adopting Employer may rely on an Opinion Letter with respect to the nondiscriminatory amounts requirement under § 401 (a) (4). Adopting Employers of Nonstandardized Plans that are § 401 (k) and/or § 401 (m) plans may rely on an Opinion Letter with respect to whether the form of the plan satisfies the actual deferral percentage test of § 401 (k) (3) or the actual contribution percentage test of § 401 (m) (2) if the employer elects to use a safe harbor definition of compensation in the test. Adopting Employers of Nonstandardized Plans described in § 401 (k) (11) and/or § 401 (m) (12) may rely on an Opinion Letter with respect to whether the form of the plan satisfies these requirements, unless the plan provides for the safe harbor contribution to be made under another plan.
- (4) Except as provided in section 5.18 (2), Adopting Employers of plans that contain 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 an Opinion Letter with respect to the requirements of [§ 411 \(b\) \(1\)](#).

.03 **[*42]** Other Limitations and Conditions on Reliance - The following conditions and limitations apply with respect to all Pre-approved Plans:

- (1) An Adopting Employer may rely on an Opinion Letter for a plan that amends or restates a plan of the employer only if the plan that is being amended or restated was qualified.
- (2) An Adopting Employer will not have reliance if the employer's adoption of the plan precedes the issuance of an Opinion Letter for the plan.
- (3) An Adopting Employer will not have reliance on the Opinion Letter if the adoption agreement or other elective provisions in the plan are not completed correctly when adopted by the employer.
- (4) An Adopting Employer may rely on an Opinion Letter only if the requirements of this section 7 are met and the employer's plan is identical (as described in section 8.03) to a Pre-approved Plan with a currently valid Opinion Letter. Thus, the employer must not have added any terms to the Pre-approved Plan and must not have modified or deleted any terms of the plan other than by choosing options permitted under the plan or by amending the document as permitted under section 8.03.
- (5) An Adopting Employer of any pension plan in which the normal retirement **[*43]** age selected by the employer is less than age 62 will not have reliance on the Opinion Letter that such age is reasonably representative of the typical retirement age for the employer's industry, as required by [§ 1.401 \(a\)-1 \(b\) \(2\)](#).
- (6) The Trust or Custodial Account Document may not contain a provision that states that the provisions of the trust override provisions of the plan. An Adopting Employer may not rely on an Opinion Letter to the extent

that provisions of a trust or custodial account that are a separate portion of the plan override or conflict with the provisions of the plan document.

.04 Reliance Equivalent to Determination Letter - If an employer may rely on an Opinion Letter pursuant to this section, the Opinion Letter will be equivalent to a determination letter. For example, the Opinion Letter is treated as a determination letter for purposes of section 23 of [Rev. Proc. 2017-4](#) (as updated annually), regarding the effect of a determination letter. As provided in this section, the extent of the employer's reliance may be limited.

.05 If an Adopting Employer may not rely on a plan's Opinion Letter, the employer, if eligible as provided in section 12 of [Rev. Proc. 2017-4](#) (as [*44] updated annually), may submit an application for a determination letter to obtain reliance. In addition, if an employer adds language to a Pre-approved Plan to satisfy the requirements of [§§ 415](#) and [416](#) given the required aggregation of plans, to obtain reliance with regard to [§§ 415](#) and [416](#), the employer must submit an application for a determination letter. In this case, section 12.01 (5) (a) of [Rev. Proc. 2017-4](#) provides that such submission must be made on Form 5300, *Application for Determination for Employee Benefit Plan*. However, pursuant to this revenue procedure, a determination letter application to obtain reliance for [§§ 415](#) and [416](#) may be made on Form 5307, *Application for Determination for Adopters of Modified Volume Submitter Plans*.

SECTION 8. PLAN AMENDMENTS

.01 Plan Amendments Generally - Providers are required to amend their Pre-approved Plans to ensure that the form of their plans continues to satisfy the requirements of § 401. 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. The date [*45] on which each amendment is adopted by the Provider must be included with the amendment. Failure to comply with this requirement may result in the loss of eligibility to offer plans and the revocation of Opinion Letters that have been issued to the Provider.

.02 Interim Amendment Requirement - A plan must be operated in accordance with the written plan document. When there are changes with respect to plan qualification requirements that affect the provisions of the written plan document, the adoption of interim amendments generally will be required in accordance with the rules set forth in section 15 of [Rev. Proc. 2016-37](#). See section 15.04 of [Rev. Proc. 2016-37](#) regarding the time by which such amendments must be adopted. Failure to so amend may result in the loss of a plan's qualified status. See section 9.04 for additional application submission requirements for interim amendments.

.03 Effect of Amendments; Reliance - As provided in section 7.03, an Adopting Employer may rely on an Opinion Letter issued with respect to a Pre-approved Plan only if the employer's plan is identical to the Pre-approved Plan. An employer that amends any provision of a Pre-approved Plan, including its adoption [*46] agreement, or an employer that chooses to discontinue participation in a plan as amended by its Provider without substituting another Pre-approved Plan will lose reliance on the Opinion Letter. Notwithstanding the preceding sentence, the following types of amendments will not cause a plan to fail to be identical to a Pre-approved Plan and, thus, will not result in the employer losing reliance on the Opinion Letter:

- (1) Amendments to the plan to add or change a provision (including choosing among options in the plan) and/or to specify or change the effective date of a provision, provided the employer is permitted to make the modification or amendment under the terms of the Pre-approved Plan as well as under § 401 or 403 (a), and, except for the effective date, the provision is identical to a provision in the Pre-approved Plan;
- (2) Sample or model amendments published by the IRS that specifically provide that their adoption will not cause such plan to fail to be identical to the 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, other than amendments that add automatic cost-of-living [*47] adjustment provisions to the plan;

- (4) Plan language completed by the employer if such overriding language is necessary to satisfy [§ 415](#) or [416](#) because of the required aggregation of multiple plans under these sections, in accordance with section 5.05;
- (5) Interim amendments or discretionary amendments that are related to a change in qualification requirements, in accordance with section 15 of [Rev. Proc. 2016-37](#);
- (6) Amendments that reflect a change of a Provider's name, in which case the Provider must notify the IRS, in writing, of the change in name and certify that it still meets the conditions to be a Provider described in section 4.08 (see also section 14 regarding changes in employer identification numbers); and
- (7) Amendments to the administrative provisions in the plan (such as provisions relating to investments, plan claims procedures, and employer contact information), provided the amended provisions are not in conflict with any other provision of the plan and do not cause the plan to fail to qualify under [§ 401](#).

.04 Obtaining Reliance After Employer Amendment - An employer maintaining a Nonstandardized Plan that may not rely on the plan's Opinion Letter pursuant to this revenue procedure **[*48]** may obtain reliance for its plan by requesting a determination letter under certain circumstances. See section 20.03 (3) of [Rev. Proc. 2016-37](#) and sections 12 and 13 of [Rev. Proc. 2017-4](#) (as updated annually) for application procedures and the conditions under which an employer that has made modifications to a Pre-approved Plan may file for a determination letter to obtain reliance. Section 12 of [Rev. Proc. 2017-4](#) (as updated annually) provides guidance on (a) who is eligible to file for a determination letter, (b) which form to use in applying for a determination letter (for example, Form 5307 or Form 5300), and (c) whether the Cumulative List or the Required Amendments List as described in section 17 or 9, respectively, of [Rev. Proc. 2016-37](#) will be used by the IRS in reviewing an employer's plan. Under section 20.03 (3) of [Rev. Proc. 2016-37](#), an employer may submit a determination letter application on a Form 5300 only if the application is made upon initial qualification, plan termination, or in other circumstances identified by the IRS. For this purpose, an employer that previously filed an application on Form 5300 or Form 5307 with respect to the plan and was issued a favorable **[*49]** determination letter is not eligible to file a Form 5300 for initial plan qualification.

.05 Effect of Employer Amendments on Remedial Amendment Cycle

- (1) Employer amendments made to a Pre-approved Plan will not affect the plan's eligibility for a six-year remedial amendment cycle. However, if an employer amends a Pre-approved Plan as provided in section 8.06 (2) within one year of the date the employer initially adopted the plan, the plan will not be eligible for the six-year remedial amendment cycle. In cases in which an amended plan remains eligible for the six-year cycle and the Adopting Employer wishes to and is otherwise eligible to file for a determination letter for the plan as provided in section 12 of [Rev. Proc. 2017-4](#) (as updated annually), the determination letter application must be filed during the applicable two-year window for employer adoption described in section 12.03 of this revenue procedure. Except for plans that are treated as individually designed, as described in section 8.06, the plan submitted for a determination letter will be reviewed based on the Cumulative List applicable to the underlying Pre-approved Plan. See also section 8.07.
- (2) A plan will not lose **[*50]** eligibility for the six-year remedial amendment cycle if a closing agreement under the Audit Closing Agreement Program or a compliance statement under the Voluntary Correction Program of the Employee Plans Compliance Resolution System (EPCRS) has been issued with respect to the employer's plan with regard to the amendment. See section 6.05 (2) (b) of [Rev. Proc. 2016-51, 2016-42 I.R.B. 465](#), regarding the ability of the employer to rely on the Opinion Letter.

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

- (1) Except as provided in section 8.03, an employer makes any amendment to a Standardized Plan;
- (2) An employer amends a Pre-approved Plan (including its adoption agreement if applicable) to incorporate a type of plan not allowed in the Opinion Letter program, as described in section 6.03;
- (3) The IRS, in its discretion, determines that a plan is an individually designed plan due to the nature and extent of amendments made; or

- (4) An employer chooses to discontinue participation in a Pre-approved Plan that has been amended by the Provider, without substituting another Pre-approved Plan.

.07 **[*51]** Procedures for Pre-approved Plans Treated as Individually Designed - If a plan is treated as individually designed, the employer may not file for a determination letter using a Form 5307. However, if an employer is otherwise eligible to file a determination letter application pursuant to section 4 of [Rev. Proc. 2016-37](#), the employer may file for a determination letter on Form 5300. In this case, the IRS will review the plan using the Required Amendments List (as described in section 12 of [Rev. Proc. 2016-37](#)) that was issued during the second calendar year preceding the submission of the determination letter application. See section 8.05 (1) with respect to a plan's continued eligibility for the six-year remedial amendment cycle and the time period for filing a determination letter (if applicable).

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

.01 Issuance of Opinion Letters -The IRS will, upon the request of a Provider, issue an Opinion Letter as to the qualification in form of the Provider's plan under §§ 401, 403 (a), and [4975 \(e\) \(7\)](#).

.02 Submission of Opinion Letter Applications - [Rev. Proc. 2016-37](#) provides that every **[*52]** Pre-approved Plan will continue to have a regular six-year remedial amendment cycle. [Rev. Proc. 2016-37](#) also states that Providers of Pre-approved Plans must submit requests for Opinion Letters during the on-cycle submission period that relates to an applicable six-year remedial amendment cycle. The third six-year remedial amendment cycle for pre-approved defined contribution plans began on February 1, 2017, and ends on January 31, 2023. Pursuant to this revenue procedure, the on-cycle submission period for Pre-approved Plan Providers to submit applications for Opinion Letters begins on October 2, 2017, and ends on October 1, 2018. Providers may apply for Opinion Letters at other times, but these filings will be considered "off-cycle." See section 11 regarding IRS review of off-cycle filings.

.03 Procedure for Requesting Opinion Letters - A request for an Opinion Letter relating to a plan must be submitted on the version of Form 4461, *Application for Approval of Master or Prototype or Volume Submitter Defined Contribution Plans*, Form 4461-A, *Application for Approval of Master or Prototype or Volume Submitter Defined Benefit Plan*, or Form 4461-B, *Application for Approval of Master or* **[*53]** *Prototype or Volume Submitter Plans (Mass Submitter Adopting Sponsor or Practitioner)*, as appropriate, that is applicable at the time of the request. The IRS is updating these forms and will announce when the forms become available. Until such time as the forms become available, an application for an Opinion Letter for a Pre-approved Plan must be made by submitting to the IRS the plan along with a completed and signed *Submission for Pre-approved Defined Contribution Plan Opinion Letter* provided in Appendix A of this revenue procedure. The request must be accompanied by (1) the applicable required user fee as provided in Appendix B of this revenue procedure, (2) a signed certification that all necessary amendments required by the IRS to retain the qualified status of the Provider's plan have been made and communicated to all Adopting Employers, and (3) either Attachment I to Form 4461 or Attachment I-A to Form 4461-A, as applicable. These attachments may be downloaded from the Internet at the following address: <http://www.irs.gov/Retirement-Plans/Preapproved-Plan-Submission-Procedures>. All information on the *Submission for Pre-approved Defined Contribution Plan Opinion Letter* must be **[*54]** typed. The request must be sent to the address listed in section 19. The application must include a copy of the plan document and any adoption agreement, if applicable. Copies of trusts or other funding mediums should not be submitted. The IRS will not review for, and the Opinion Letter will not cover, any provisions included in trust documents.

.04 Additional Submission Requirements for Interim Amendments - In addition to the application described in section 9.03, the Provider must submit a certification that all interim amendments on the applicable Cumulative List have been made, and a cover letter summarizing the changes to the plan that are affected by each such interim amendment. The IRS retains the right to request and secure from the Provider in appropriate circumstances copies of all interim amendments reflected 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 11 regarding off-cycle filing. To expedite the review of substantially [*55] identical plans that are not Mass Submitter plans, the IRS encourages plan drafters and Providers to include with each Opinion Letter application, if appropriate, a cover letter setting forth the following information:

- (1) The name and file folder number (if available) of the plan that, for review purposes, the plan drafter designates as the "lead plan" (including the name and EIN of the Provider);
- (2) A list of all plans written by the plan drafter that are substantially identical to the lead plan (including the information described in paragraph (1) above 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 penalty of perjury by the plan drafter that the information described in paragraph (3) above 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, [*56] lead plans and substantially identical plans should be submitted together. The IRS will regard the information and certification described in paragraphs (3) and (4) above as a representation of a material fact for purposes of issuing an Opinion Letter.

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

- (1) In general, provided that the provisions of a basic plan document are identical for all plans using that document, separate defined contribution adoption agreements may be associated with the same defined contribution basic plan document and separate defined benefit adoption agreements may be associated with the same defined benefit basic plan document. 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. Defined benefit plans and defined contribution plans may not use the same basic plan document.
- (2) A profit-sharing plan (with or without a § 401 (k) arrangement) that does not include an ESOP and a money purchase pension plan that is not a target benefit [*57] plan may use the same adoption agreement; however, separate adoption agreements are required for ESOPs and target benefit plans. In addition, although an ESOP is permitted to contain both profit-sharing and § 401 (k) features in the same adoption agreement, an employer that adopts the plan may not adopt such profit-sharing and § 401 (k) features without also adopting the ESOP portion of the plan. The adoption agreement submitted for a defined benefit plan may contain any combination of integrated formulas (that is, formulas that provide for permitted disparity), non-integrated formulas, and cash balance formulas. Standardized and Nonstandardized Plans may not be combined in a single adoption agreement.
- (3) Basic plan documents and associated adoption agreements used for governmental plans (that is, plans described in [§ 414 \(d\)](#)) must be separate from the basic plan documents and associated adoption agreements used for nongovernmental plans. Similarly, separate basic plan documents and the associated adoption agreements must be used for non-electing church plans (church plans described in [§ 414 \(e\)](#) that have not made the election provided in [§ 410 \(d\)](#)). Thus, for example, a Provider that [*58] 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.
- (4) A separate application form must be submitted with respect to each adoption agreement for which an Opinion Letter is requested. A basic plan document and all associated adoption agreements should be submitted simultaneously. Only one copy of the basic plan document should be provided. 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. The plan number given to such basic plan document must remain the same as in the prior submission.

.07 Separate Categories and Applications Required for Single Document Plans

- (1) A separate plan and application are required for each of the following categories of Single Document Plans: a target benefit plan, an ESOP, and a defined benefit plan. A profit-sharing plan (with [*59] 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 contain both profit-sharing and § 401 (k) features in the same plan, an employer that adopts the plan may not select the profit-sharing and § 401 (k) features without also selecting the ESOP provisions in the plan. Standardized and Nonstandardized Plans may not be combined in one Single Document Plan.
- (2) With respect to a governmental plan or a non-electing church plan, a separate plan and application must be submitted for each. Thus, for example, separate plans and application forms must be submitted for a governmental plan, a nongovernmental plan, and a non-electing church plan.

.08 Sample Language - A Listing of Required Modifications (LRM) containing sample plan language is available from the IRS. Although the sample language is designed for use in plans that use an adoption agreement format, in order to expedite processing, Providers are encouraged to refer to the sample language as a guide in drafting plans that do not use an adoption agreement format. [*60] To expedite the review of their plans, Providers are encouraged to use LRM language if appropriate and to identify the location of such language in their Pre-approved Plan. LRMs may be downloaded from the Internet at <http://www.irs.gov/Retirement-Plans/Listing-of-Required-Modifications-LRMs>.

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

.10 Effect of Failure to Disclose Material Fact or to Accurately Provide Information - A failure to disclose a material fact or misrepresentation of a material fact in the application or the 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.

.11 Additional Information May Be Requested - When reviewing the application for an Opinion Letter, the IRS may, in its discretion, require any additional information that it deems necessary, including a demonstration of how the variables (options or alternatives) in the Pre-approved Plan interrelate to [*61] satisfy the qualification requirements of the Code. 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.

.12 Inadequate Submissions - The IRS will return, without further action, plans that are not in substantial compliance with the qualification requirements of § 401, 403 (a), or 4975 (e) (7), 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 merely incorporates qualification 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 [*62] revised, and the modified plan will be treated as a new request for approval as of the date it is resubmitted. No additional user fee will be charged if an inadequate submission is amended to be in substantial compliance and is resubmitted to the IRS within 30 days following the date the Provider is notified of such inadequacy.

.13 Nonidentification of Questionable Issues May Cause Delay - If the Pre-approved Plan submitted as part of an Opinion Letter request contains a provision that gives rise to an issue for which contrary published authorities exist, failure to disclose and address significant contrary authorities may result in requests for additional information, which will delay action on the request. See section 9.11.

SECTION 10. MASS SUBMITTERS

.01 Opinion Letters Issued to Mass Submitters

- (1) The IRS will, upon request by a Mass Submitter, issue an Opinion Letter as to the qualification in form of the Mass Submitter's plan under §§ 401, 403 (a), and [4975 \(e\) \(7\)](#). With respect to its plan, the Mass Submitter must submit the version of Form 4461 or Form 4461-A that is applicable at the time of the request and include a completed Attachment I for a defined contribution plan or Attachment **[*63]** I-A for a defined benefit plan. The IRS is updating these forms and will announce when the forms will become available. Until such time as the forms are available, an application for an Opinion Letter for a Pre-approved Plan may be made by submitting the plan to the IRS along with a completed and signed *Submission for Pre-approved Defined Contribution Plan Opinion Letter* provided in Appendix A of this revenue procedure. The request must be sent to the address in section 19. In the case of an initial submission of a Pre-approved Plan under this revenue procedure, the Mass Submitter's application also must be accompanied by applications for Opinion Letters filed on behalf of the requisite number of Providers that are offering the same plan on a word-for-word basis as provided in section 10.02, unless the Mass Submitter has already satisfied this requirement in connection with a previous application under this revenue procedure involving another Pre-approved Plan. Any plan submitted by a Mass Submitter must include language designating the Mass Submitter as agent for the Provider for purposes of making plan amendments. The request must be accompanied by the applicable required user fee **[*64]** as provided in Appendix B of this revenue procedure and a signed certification that all necessary amendments required by the IRS to retain the qualified status of the Mass Submitter's plan have been made and communicated to all adopting Providers. Attachments I and I-A may be downloaded from the Internet at the following address: <http://www.irs.gov/Retirement-Plans/Preapproved-Plan-Submission-Procedures>.
- (2) After satisfying the requirement as to the number of adopting Providers, the Mass Submitter may submit additional applications on behalf of other Providers that wish to adopt a word-for-word identical plan or a plan that contains minor modifications to the Mass Submitter plan, as provided in section 10.03 (2). In addition, the Mass Submitter may then submit requests for Opinion Letters under this section 10.01 for its other plans, regardless of the number of identical adopters of such other plans.

.02 Reduced Procedural Requirements for Providers That Use Mass Submitter Plans - A Provider of a plan of a Mass Submitter must obtain an Opinion Letter. The Mass Submitter must submit on behalf of each Provider a completed *Submission for Pre-approved Defined Contribution Plan Opinion Letter* **[*65]** which contains 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 is a minor modification of the Mass Submitter's plan. The *Submission for Pre-approved Defined Contribution Plan Opinion Letter* must be typed. If the Provider is offering a word-for-word identical plan (including a flexible plan) a copy of the plan need not be submitted. If the Mass Submitter submits a plan with minor modifications, it must comply with the requirements of section 10.03 (2). The request must be accompanied by the required user fee as provided in Appendix B and a signed certification that all necessary amendments required by the IRS to retain the qualified status of the Provider's plan have been made and communicated to all Adopting Employers. Upon receipt of the request for an Opinion Letter, the IRS will, as soon as administratively feasible, issue an Opinion Letter with respect to the Provider's plan (provided that an Opinion Letter has been issued with respect to the Mass Submitter's plan).

.03 Definitions for Mass Submitter Plans -

(1) Flexible Plan

- (a) In general - A "flexible plan" **[*66]** is a plan submitted by a Mass Submitter that contains optional provisions (as defined in paragraph (b) immediately below). Providers that adopt the flexible plan may

include or delete any optional provision that is designated as such in the Mass Submitter's plan, provided the inclusion or deletion of specific optional provisions conforms to the Mass Submitter's written representation to the IRS concerning the choices available to Providers and the coordination of optional provisions. A Mass Submitter must bracket and identify the optional provisions when submitting such plan, and also must provide the IRS a written representation describing the choices available to Providers and the coordination of optional provisions. Thus, such a representation must indicate whether a Provider's plan may contain only one of a certain group of optional provisions, may contain only a specific combination of provisions, or may exclude the provisions entirely. Similarly, if the inclusion (or deletion) of a specific optional provision in a Provider's plan will automatically result in the inclusion (or deletion) of any other optional provision, this must be set forth in the Mass Submitter's representation. **[*67]** A flexible plan may contain only optional provisions that meet the requirements of section 10.03 (1) (b), and must be drafted so that the qualification of any Provider's plan will not be affected by the inclusion or deletion of optional provisions. For example, if a Provider's defined contribution plan contains an optional provision that allows a portion of a participant's account to be invested in life insurance, then under the terms of the 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 plan only because the Provider has deleted certain optional provisions from its plan in conformance with the Mass Submitter's representation described in this paragraph will be treated as a word-for-word identical plan to the Mass Submitter plan. The IRS encourages Mass Submitters to limit the number of optional provisions described in section 10.03 (1) (b) (i) and (ii) that they provide under a flexible plan to six investment provisions and six administrative provisions.

- (b) Optional Provisions - A flexible plan may contain optional provisions that **[*68]** comply with the requirements set forth in this paragraph. 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 contain related optional provisions in the adoption agreement. For example, if a plan document for a Mass Submitter flexible plan contains an optional provision that would allow for loans under a Provider's plan, the adoption agreement may also include an optional provision that would enable an Adopting Employer to elect whether loans will be available under the plan it adopts. If the Provider does not wish to enable Adopting Employers to make loans available under their plans, the Provider would delete from the Provider's plan both the plan document optional provision and the adoption agreement optional provision. A Provider may include or delete optional provisions of a Mass Submitter plan, but once the Provider has decided to include an optional provision, it must offer that provision to all Adopting Employers. Any optional provision that the IRS determines does not meet the requirements of this section must be changed to **[*69]** a non-optional provision or deleted from the Mass Submitter's plan. The following is an exclusive list of the allowable optional provisions that a flexible plan may contain:

- (i) Investment Provisions - A Mass Submitter may offer a variety of investment provisions in its plan for Providers to include or delete from their version of the plan. However, the plan as 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 the trust or custodial funds, including provisions such as the availability of loans and investments in insurance contracts or other funding media, and self-directed investments.
- (ii) Administrative Provisions - A Mass Submitter may offer a variety of administrative provisions in its plan for Providers to include or delete from their version of the plan. However, the plan as adopted by the Provider must describe how the plan will be administered. Administrative provisions are those provisions that describe the administration of the plan, including the powers, duties, and responsibilities of a plan's custodian, trustee, administrator, employer, and other fiduciaries. **[*70]** Administrative provisions include the allocation of responsibilities among fiduciaries, the resignation or replacement of fiduciaries, the claims procedures under the plan, and the record-keeping requirements. However, procedural provisions that are required for plan qualification are not administrative provisions under this section. For example, provisions that provide for the notice

to participants required by [§ 417](#) and record-keeping required by regulations under §§ 401 (k) and/or 401 (m) are not administrative provisions for purposes of this revenue procedure, and may not be optional provisions.

- (iii) Cash or Deferred Arrangement - A Mass Submitter of a defined contribution 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 "minor modification" is 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. On the other hand, a change in the method of accrual of benefits in [*71] a defined benefit plan would not be considered a minor modification. A minor modification must be submitted by the Mass Submitter on behalf of the Provider that will adopt the modified plan. Subject to sections 10.05 and 11 and the provisions of this section, submissions with respect to minor modifications will be reviewed on an expedited basis, and Opinion Letters will be issued to the Provider as soon as possible.
- (b) The IRS reserves the right to determine if changes described in the previous paragraph are minor. If it is determined that the changes are extensive or require an in-depth technical review, the plan submitted under paragraph (c) immediately below will not be entitled to expedited review and will otherwise be treated as a non-mass submitter plan. In the event the plan is treated as a non-mass submitter plan, the IRS will notify the Mass Submitter in writing of its determination. Within 30 days following the date of such communication, either the Mass Submitter may revise the plan so that the modifications are minor and resubmit the revised plan, or the Provider may submit Form 4461 or 4461-A, whichever is applicable, and an additional user fee in an amount equal to the [*72] difference between a non-mass submitter plan application user fee and a minor modifier application user fee. If, after such 30 day period, neither action has been taken, the IRS may treat the application as having been withdrawn.
- (c) The Mass Submitter must initially submit the first page of the applicable Form 4461-B as a placeholder with respect to each Provider that will offer a plan that is a minor modification of the Mass Submitter's plan. The form must be typed. When the IRS sends a notification to the applicable Mass Submitter with respect to the lead plan indicating that the IRS has determined that the plan appears to be in full compliance with the applicable qualification requirements, the Mass Submitter must submit a copy of the Mass Submitter's plan with the modifications highlighted, as well as a statement indicating the location and effect of each change. The Mass Submitter must certify under penalty of perjury that the plan of the Provider, except for the delineated changes, is word-for-word identical to the plan for which the Mass Submitter received an Opinion Letter. If a Mass Submitter fails to identify each modification, such failure will be considered a material misrepresentation, [*73] and an Adopting Employer may not rely on any Opinion Letter that may be issued with respect to the plan. If a Mass Submitter repeatedly fails to identify such modifications, the IRS may deny permission to that Mass Submitter to submit additional modifications.

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

.05 Expeditious Processing Accorded Mass Submitter Plans - Subject to section 11, all Mass Submitter plans, including the adoption of approved Mass Submitter plans [*74] by Providers, will be accorded more expeditious processing than plans submitted by non-mass submitters, to the extent administratively feasible.

SECTION 11. OFF-CYCLE FILINGS

An application for an Opinion Letter for a plan that is word-for-word identical to a Mass Submitter plan will not be treated as off-cycle merely because it is submitted after the end of the applicable on-cycle submission period for the six-year cycle. Any other application for an Opinion Letter that is submitted after the applicable on-cycle submission period for the six-year remedial amendment cycle is treated as an off-cycle application. If such an off-cycle application is submitted before the beginning of the two-year window for employer adoption announced by the IRS for an applicable six-year cycle (as described in section 12.03), the IRS generally will not review the application until it has reviewed and processed all on-cycle plans. However, the IRS may, in its discretion, determine whether the processing of off-cycle filings may be prioritized and accelerated. Off-cycle applications that are submitted during or after the two-year window will not be accepted.

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

.01 **[*75]** The IRS will review the plans that have been submitted during the applicable on-cycle submission period for a six-year cycle (as well as off-cycle plans that the IRS will review in accordance with section 11) taking into account the applicable Cumulative List that identifies changes in the qualification requirements of the Code as well as items of published guidance relating to the plan qualification requirements, such as regulations and revenue rulings. However, in order to be qualified, a plan must comply with all relevant qualification requirements, not just those on the applicable Cumulative List.

.02 Timing of Issuance of Opinion Letters - The IRS intends to issue Opinion Letters to Mass Submitters and Providers at approximately the same time within the applicable six-year cycle. In the interim, the IRS will send a notification to the applicable Mass Submitter or Provider, if the IRS determines that the plan appears to be in full compliance with the applicable qualification requirements, based on the submissions and the review as of the date of notification. However, this notification only indicates that the plan appears to meet the applicable qualification requirements under review **[*76]** as of the date of the notification. This notification is for the convenience of the applicable Provider or Mass Submitter 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.

.03 When the review of Pre-approved Plan documents for a specific six-year remedial amendment cycle is close to being completed, the IRS will announce the date by which Adopting Employers must adopt newly approved Pre-approved Plans. Depending upon the length of the review process employers will have approximately a two-year period to adopt the updated plan ("two-year window").

SECTION 13. WITHDRAWAL OF REQUESTS

.01 Notification and Effect - A Provider may withdraw its request for an Opinion Letter at any time prior to the issuance of such letter by notifying the IRS in writing of such withdrawal at the address provided in section 19.01. The Provider also must notify each employer that adopted the plan that the request has been withdrawn. The plan of such an employer will become an individually designed plan unless the employer adopts another **[*77]** Pre-approved Plan.

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

SECTION 14. NONTRANSFERABILITY OF OPINION LETTER

An Opinion Letter issued to a Provider is not transferable to any other entity. In the case of a change in entity with respect to a Provider, an Opinion Letter issued to such 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 letter. Such an application may be filed at the time of the assumption of plan sponsorship by the new Provider, and the filing is not limited to the applicable on-cycle submission period. The application will be subject to a reduced

user fee as provided in Appendix A of [Rev. Proc. 2017-4](#) (as updated annually). The new letter will recognize the change in sponsorship and will not modify the scope of or change the reliance **[*78]** on the original letter. The IRS may, in appropriate circumstances, request documentation of the assumption of sponsorship prior to issuing a letter to the new entity. Examples of a change in entity include, but are not limited to, 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 an employer's employer identification number.

SECTION 15. NOTIFICATION OF ADOPTING EMPLOYER REGARDING LOSS OF QUALIFIED STATUS

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

SECTION 16. DISCONTINUED PLANS

.01 Notification to the IRS - A Provider must notify the IRS in writing if an approved plan is no longer in use by any Adopting Employers **[*79]** or the Provider no longer intends to offer the plan for adoption. The written notification must be sent to the address in section 19 and must refer to the file folder number appearing on the latest Opinion Letter issued.

.02 Notification to Employers - A Provider that intends to discontinue an approved plan that has one or more Adopting Employers must inform each Adopting Employer that the plan has ceased to be a Pre-approved Plan, and that the employer's plan will convert to an individually designed plan (unless the employer adopts another Pre-approved Plan). After so informing the Adopting Employers, the Provider must notify the IRS in accordance with section 16.01.

SECTION 17. REVOCATION

Revocation of Opinion Letter by the IRS - An Opinion Letter found to be in error or not in accord with the current procedures of the IRS or the IRS's current interpretation of applicable law may be revoked. See also sections 4.08, 8.01, and 18.01 for other circumstances under which an Opinion Letter may be revoked. Except in rare or unusual circumstances, such revocation will not be applied retroactively. For this purpose, Opinion Letters will be given the same effect as rulings. See section 23 of [Rev. Proc. 2017-4](#) **[*80]** (as updated annually). Revocation may be effected by a notice to the Provider to which the letter was originally issued. The Provider should then notify each Adopting Employer of the revocation as soon as possible. The content of the notification to each Adopting Employer must explain how the revocation affects any reliance an Adopting Employer has on the applicable Opinion Letter and on any determination letter issued.

SECTION 18. RECORD KEEPING REQUIREMENTS

.01 Filing of Opinion Letter Application Constitutes Agreement to Comply with Record Keeping Requirements - By submitting an application for an Opinion Letter under this revenue procedure (or by having an application filed on its behalf by a Mass Submitter), a Provider agrees, as provided in section 4.08, to comply with the requirements imposed on the Provider by this revenue procedure, including the record keeping requirements of this section. Failure to comply with the requirements imposed on the Provider by this revenue procedure may result in the loss of eligibility to be a Provider and the revocation of Opinion Letters that have been issued to the Provider.

.02 Maintenance and Availability of Records of Adopting Employers - **[*81]** 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 such 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 such employers continue to maintain the plan as a Pre-

approved Plan and which of such employers have ceased to maintain its Pre-approved Plan within the preceding three years.

SECTION 19. WHERE TO FILE

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

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

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

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

SECTION 20. EFFECT ON OTHER DOCUMENTS

[Rev. Proc. 2015-36](#) [*82] is modified and superseded regarding defined contribution plan and defined benefit plan Opinion Letter applications submitted with respect to a plan's third (and subsequent) six-year remedial amendment cycles. The provisions of [Rev. Proc. 2015-36](#) continue to apply to opinion and advisory letter applications for defined contribution plans and defined benefit plans submitted with respect to a plan's previous six-year remedial amendment cycles. [Rev. Proc. 2016-37](#) and [Rev. Proc. 2017-4](#) are modified.

SECTION 21. EFFECTIVE DATE

This revenue procedure is effective on October 2, 2017, and will apply solely to applications for Opinion Letters submitted with respect to a plan's third (and subsequent) six-year remedial amendment cycles.

SECTION 22. PUBLIC COMMENTS

The Treasury Department and the IRS invite comments on this revenue procedure. Send submissions to CC:PA:LPD:PR, ([Rev. Proc. 2017-41](#)), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044. Comments also may be hand delivered Monday through Friday between the hours of 8 a.m. and 4:00 p.m. to: Internal Revenue Service, CC:PA:LPD:PR, ([Rev. Proc. 2017-41](#)), Courier's Desk, Internal Revenue Service, 1111 [*83] Constitution Avenue, N.W., Washington DC. Alternatively, comments may be submitted via the Internet at notice.comments@irs.counsel.treas.gov. Please include "[Rev. Proc. 2017-41](#)" in the subject line of any electronic communication. All comments will be available for public inspection.

SECTION 23. PAPERWORK REDUCTION ACT

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

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

The collection of information in this revenue procedure is in sections 5.10, 8.01, 8.02, 9.03, 10, and 18. This information is required to enable the Commissioner, Tax Exempt and Government Entities Division of the Internal Revenue Service, to make determinations in connection with plan qualification. This information will be used to

determine whether a plan is entitled to favorable tax treatment. The likely respondents are banks, insurance companies, other financial [*84] institutions, law, actuarial, and consulting firms, employee benefit practitioners and employers.

The estimated total annual reporting and/or recordkeeping burden is 1,108,225 hours.

The estimated annual burden per respondent/recordkeeper varies from 1/2 to 2,000 hours, depending on individual circumstances, with an estimated average of 3.45 hours. The estimated number of respondents and/or recordkeepers is 321,500.

The estimated frequency of responses is occasional.

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

DRAFTING INFORMATION

The principal author of this revenue procedure is Kathleen Herrmann of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure, contact Employee Plans at (513) 975-6319 (not a toll-free number).

Attachment

APPENDIX A

Submission for Pre-approved Defined Contribution Plan Opinion Letter

1. Enter amount of user fee submitted: \$

2. Name of applicant:

a. EIN:

b. Address:

c. Phone:

3. Person [*85] to contact:

a. Phone:

b. Fax:

c. Email address:

d. Power of attorney attached?

4. Type of applicant (check one):

a. Provider

b. Mass Submitter

c. Identical Provider of Mass Submitter plan

d. Minor modifier of Mass Submitter plan

5. Form of plan (check either a. or b.);

a. Standardized Plan

- i. Adoption Agreement Plan
- ii. Single Document Plan

b. Nonstandardized Plan

- i. Adoption Agreement Plan
- ii. Single Document Plan

6. Approval requested:

- a. Initial application
- b. Amendment
 - i. File folder number on last letter:
 - ii. Date of last letter issued:

7. Type of Plan (check all that apply):

See sections 9.06 and 9.07 of this revenue procedure for how a Provider may structure an Adoption Agreement Plan or a Single Document Plan. Under certain circumstances, more than one type of plan may be included in one adoption agreement or in one Single Document Plan (for example, a money purchase, profit-sharing, and § 401 (k)).

- a. Money purchase
- b. Profit-sharing
- c. Profit-sharing/§ 401 (k)
- d. Target benefit
- e. ESOP
- f. Governmental
- g. Non-electing church plan

7.a. Plan document number:

7.b. Adoption agreement number, if applicable:

8. If 4.a. is checked, do you expect at least 15 employer-clients to adopt this plan's basic [*86] plan document or Single Document Plan?

- a. If you will provide more than one basic plan document (for an Adoption Agreement Plan) or Single Document Plan, do you have at least 30 employer-clients in the aggregate that are reasonably expected to adopt one of the plans?

9. If 4.b. is checked, are applications on behalf of at least 30 unaffiliated Providers who are offering the same basic plan document (for an Adoption Agreement Plan) or Single Document Plan on a word-for-word identical basis included with this application?

- a. If no, enter the file folder number (or plan number, if file folder number not available) of the basic plan document or Single Document Plan for which the requisite number of Providers requirement is met:

10. If 4.a. or 4.b. is checked, are the following documents included with the application:

- a. Basic plan document or Single Document Plan?
- b. Adoption Agreement (if applicable)?

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

- a. Name of Mass Submitter:
- b. File folder number:
- c. Letter serial number:
- d. Date of letter:
- e. Basic plan document [*87] number or Single Document Plan number (if b, c, and d not available):
- f. Adoption agreement number, if applicable (if b, c, and d not available)

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

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

Signature:

Title: Date:

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

Under penalties of perjury, I declare that the Provider identified in line 2 of this application will offer an Adoption Agreement Plan or Single Document Plan that is identical to the Mass Submitter plan identified in line 11, or is a minor modifier of the Mass Submitter plan identified in line 11.

Provider's signature:

Title: Date:

Mass Submitter's signature:

Title: Date:

APPENDIX B

User Fees For Pre-approved Plans

1) Opinion letters for Mass Submitter and non-Mass Submitter plans **with** adoption agreements

- | | |
|---|----------|
| a) Per basic plan document, new or amended, | |
| with one adoption agreement | \$16,000 |
| b) Per each additional adoption agreement | \$11,000 |

2) Opinion letters for [*88] Mass Submitter and non-Mass Submitter Single Document Plans (NO ADOPTION AGREEMENTS)

- | | |
|----------------------------------|----------|
| a) Per each Single Document Plan | \$28,000 |
|----------------------------------|----------|

3) Provider's word-for-word identical adoption of Mass Submitter's basic plan document per adoption agreement **or** Single

Document Plan	\$30
	0

4) Provider's minor modification of Mass Submitter's basic plan document per adoption agreement **or** Single Document

Plan \$70
0

See [Revenue Procedure 2017-4](#) (as updated annually) for additional fees regarding Pre-approved Plans that remain unchanged.

Load Date: 2017-07-01

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