

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

**Bulletin No. 2017-29**  
**July 17, 2017**

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

## EMPLOYEE PLANS

### **Notice 2017-37, page 89.**

This notice contains the Cumulative List of Changes in Plan Qualification Requirements for Pre-Approved Defined Contribution Plans for 2017 (2017 Cumulative List). The 2017 Cumulative List identifies changes in the qualification requirements of the Internal Revenue Code that are required to be taken into account in a plan document submitted to the IRS under the pre-approved plan program for purposes of receiving an opinion letter.

### **Rev. Proc. 2017-41, page 92.**

This revenue procedure modifies and supersedes, in part, Rev. Proc. 2015-36, 2015-27 I.R.B. 20, which sets forth the procedures for issuing opinion and advisory letters on the form of qualified retirement plans submitted under the pre-approved plan program. The revenue procedure simplifies the current program by restructuring the current master and prototype and volume submitter pre-approved programs into a single program that increases the types of eligible plans and permits additional plan design options.

## ADMINISTRATIVE

### **Rev. Proc. 2017-42, page 124.**

This procedure provides specifications for the private printing of red-ink substitutes for the 2017 Forms W-2 and W-3. This procedure will be produced as the next revision of Publication 1141. Rev. Proc. 2016-54 is superseded.

## EXEMPT ORGANIZATIONS

### **T.D. 9819, page 85.**

These final regulations allow the Commissioner of Internal Revenue to adopt a streamlined application process that eligible organizations may use to apply for recognition of tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

# The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

26 CFR 1.501(c)(3)-1: Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes...

## T.D. 9819

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

#### Guidelines for the Streamlined Process of Applying for Recognition of Section 501(c)(3) Status

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that allow the Commissioner of Internal Revenue to adopt a streamlined application process that eligible organizations may use to apply for recognition of tax-exempt status under section 501(c)(3) of the Internal Revenue Code (Code). The final regulations affect organizations seeking recognition of tax-exempt status under section 501(c)(3).

DATES: *Effective Date:* These regulations are effective on June 30, 2017.

*Applicability Dates:* For dates of applicability, see §§ 1.501(a)-1(f), 1.501(c)(3)-1(h), and 1.508-1(c).

FOR FURTHER INFORMATION CONTACT: Peter A. Holiat at (202) 317-5800 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

Since 1969, section 508 of the Code has required an organization seeking tax-exempt status under section 501(c)(3), as a condition of its exemption, to notify the Secretary of the Treasury (or his delegate) that it is applying for recognition of exempt status in the manner prescribed in regulations, unless it is specifically excepted from the requirement. Long-

standing regulations under §§ 1.501(a)-1, 1.501(c)(3)-1, and 1.508-1 had required all organizations applying for recognition of section 501(c)(3) exempt status to submit a properly completed and executed Form 1023, "Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code," (see § 1.508-1(a)(2) as contained in 26 CFR part 1, revised April 1, 2014) and to submit with, and as part of, the application, a detailed statement of its proposed activities (see §§ 1.501(a)-1(b)(1)(iii) and 1.501(c)(3)-1(b)(1)(v) as contained in 26 CFR part 1, revised April 1, 2014). Detailed procedures for applying for recognition of exemption are included in annual revenue procedures and in the instructions for Form 1023. See § 601.601(d)(2)(i)(b).

On July 2, 2014, final and temporary regulations (TD 9674) authorizing the Commissioner to adopt a streamlined application process that eligible organizations may use to apply for recognition of tax-exempt status under section 501(c)(3) were published in the **Federal Register** (79 FR 37630). The final and temporary regulations were effective and applicable on July 1, 2014. The 2014 final regulations removed and reserved certain paragraphs of the longstanding final regulations addressed by corresponding paragraphs of the new temporary regulations. Under the temporary regulations, the IRS instituted the streamlined application process on Form 1023-EZ, "Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code," the detailed procedures for which have been provided in annual revenue procedures, most recently in Rev. Proc. 2017-5, 2017-1 IRB 230, and in the instructions for Form 1023-EZ.

Also on July 2, 2014, a notice of proposed rulemaking (REG-110948-14) cross-referencing the temporary regulations and soliciting public comments and requests for a hearing was published in the **Federal Register** (79 FR 37697). No comments responding to the notice of proposed rulemaking were received, and no public hearing was requested or held. The IRS continues to consider improvements

to Form 1023-EZ based on its own experience and informal comments received from the public and other stakeholders on the form, including whether to require applicants to submit a brief statement of actual or proposed activities. Because the proposed regulations contemplate that guidance published in the Internal Revenue Bulletin may prescribe the information required of Form 1023-EZ filers, including regarding their proposed activities, the Department of the Treasury (Treasury Department) and the IRS have concluded that the proposed regulations are sufficiently flexible to allow such a revision to the Form 1023-EZ at a future date, as resources permit. Accordingly, this Treasury decision adopts as final regulations, without substantive change, the proposed regulations set forth in the 2014 notice of proposed rulemaking and removes the corresponding temporary regulations.

#### Explanation of Provisions

The Treasury Department and the IRS have considered how the process of meeting the notice requirement of section 508 in seeking recognition of tax-exempt status may be made more efficient for certain smaller organizations. The IRS developed Form 1023-EZ to provide a simplified application form that relies more heavily on attestations by the organization that it meets the section 501(c)(3) organizational and operational requirements, which are explained in the accompanying form instructions. The new form was made available for use by eligible small organizations in July 2014, following the issuance of the temporary regulations and a revenue procedure describing the streamlined application process. The streamlined application process generally allows eligible small organizations to receive IRS determinations of tax-exempt status more quickly and allows the IRS to focus resources on more complex exemption applications and on compliance programs. This Treasury decision adopts the 2014 proposed regulations by amending §§ 1.501(a)-1, 1.501(c)(3)-1, and 1.508-1 to authorize

the continued use of the IRS' streamlined process by eligible organizations to meet the notice requirements of section 508.

Specifically, this Treasury decision amends §§ 1.501(a)-1 and 1.501(c)(3)-1, as in effect before July 2, 2014, to authorize the Treasury Department and the IRS to modify, by applicable regulations or other guidance published in the Internal Revenue Bulletin, the requirement that an organization applying for section 501(c)(3) tax-exempt status provide a detailed statement of its proposed activities. This document also amends the § 1.501(a)-1 provisions relating to the Commissioner's ability to revoke a determination because of a change in the law or regulations, or for other good cause, to reference the Commissioner's authority to retroactively revoke a determination under section 7805(b). No substantive change is intended by this amendment. This Treasury decision also amends the requirement in § 1.501(a)-1(b)(3) that an organization claiming to be exempted from filing annual returns file a statement supporting its claim with and as a part of its application. As amended, § 1.501(a)-1(b)(3) allows an organization to file the statement either in its application, or in a manner prescribed in guidance published in the Internal Revenue Bulletin. *See* Rev. Proc. 2017-5 for rules for filing this statement on Form 8940, "Request for Miscellaneous Determinations."

In addition, this document amends § 1.508-1 to provide that eligible organizations may use Form 1023-EZ to notify the Commissioner of their applications for tax-exempt status under section 501(c)(3). This Treasury decision also amends §§ 1.501(a)-1 and 1.508-1 to state that the office to which applications should be submitted will be published in the Internal Revenue Bulletin or instructions to the Form 1023 or Form 1023-EZ.

Finally, this Treasury decision incorporates minor revisions within the portions of §§ 1.501(a)-1, 1.501(c)(3)-1, and 1.508-1 that are otherwise being amended. In § 1.501(a)-1(a)(2), the reference to "internal revenue district" is removed because such reference has been made obsolete by the enactment of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, 112 Stat. 685. References to a district director in §§ 1.501(a)-1,

1.501(c)(3)-1, and 1.508-1 are also modified as appropriate, as those positions no longer exist within the IRS. Similarly, references to obsolete due dates for filing notices described in section 508 and related transition relief provisions that are no longer relevant have been removed from §§ 1.508-1(a)(2)(i) and (b)(2)(iv). In addition, § 1.508-1(b)(2)(v) has been revised to remove a reference to the instructions for Form 4653, which is no longer in use.

### **Effective/Applicability Dates**

The temporary regulations have applied since July 1, 2014, and this Treasury decision adopts the proposed regulations that cross-referenced the text of those temporary regulations without substantive change. Thus, the final regulations apply on and after July 1, 2014.

### **Statement of Availability of IRS Documents**

Rev. Proc. 2017-5 is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

### **Special Analyses**

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. Although this rule may affect a substantial number of eligible small entities that choose to use Form 1023-EZ to apply for recognition of tax-exempt status under section 501(c)(3), the Form 1023-EZ streamlines the application process, thereby reducing the economic impact on these entities. This rule merely permits use of the streamlined form of application available to satisfy the notice requirements under section 508(a). Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f), the temporary and proposed regulations preceding these

final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business and no comments were received.

### **Drafting Information**

The principal author of these regulations is Peter A. Holiat of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in their development.

\*\*\*\*\*

### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

#### **PART 1—INCOME TAXES**

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.501(a)-1 is amended by revising paragraphs (a)(2), (b)(1), (b)(3), and (f) to read as follows:

*§ 1.501(a)-1 Exemption from taxation.*

(a) \* \* \*

(2) An organization, other than an employees' trust described in section 401(a), is not exempt from tax merely because it is not organized and operated for profit. In order to establish its exemption, it is necessary that every such organization claiming exemption file an application form as set forth below with the appropriate office as designated by the Commissioner in guidance published in the Internal Revenue Bulletin, forms, or instructions to the applicable forms. Subject only to the Commissioner's inherent power to revoke rulings, including with retroactive effect as permitted under section 7805(b), because of a change in the law or regulations or for other good cause, an organization that has been determined by the Commissioner (or previously by a district director) to be exempt under section 501(a) or the corresponding provision of prior law may rely upon such determination so long as there are no substantial changes in the organization's character, purposes, or



methods of operation. An organization that has been determined to be exempt under the provisions of the Internal Revenue Code of 1939 or prior law is not required to secure a new determination of exemption merely because of the enactment of the Internal Revenue Code of 1954 unless affected by substantive changes in law made by such Code.

\* \* \* \* \*

(b) *Additional proof by particular classes of organizations*—(1) Unless otherwise prescribed by applicable regulations or other guidance published in the Internal Revenue Bulletin, organizations mentioned below shall submit with and as a part of their applications the following information:

(i) Mutual insurance companies shall submit copies of the policies or certificates of membership issued by them.

(ii) In the case of title holding companies described in section 501(c)(2), if the organization for which title is held has not been specifically notified in writing by the Internal Revenue Service that it is held to be exempt under section 501(a), the title holding company shall submit the information indicated herein as necessary for a determination of the status of the organization for which title is held.

(iii) An organization described in section 501(c)(3) shall submit with, and as a part of, an application filed after July 26, 1959, a detailed statement of its proposed activities.

\* \* \* \* \*

(3) An organization claiming to be specifically exempted by section 6033(a) from filing annual returns shall submit with and as a part of its application (or in such other manner as is prescribed in guidance published in the Internal Revenue Bulletin) a statement of all the facts on which it bases its claim.

\* \* \* \* \*

(f) *Effective/applicability date*. Paragraphs (a)(2), (b)(1), and (b)(3) of this section apply on and after July 1, 2014.

#### **Section 1.501(a)–1T [Removed].**

Par. 3. Section 1.501(a)–1T is removed.

Par. 4. Section 1.501(c)(3)–1 is amended by revising paragraphs (b)(1)(v), (b)(6), and (h) to read as follows:

*§ 1.501(c)(3)–1 Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.*

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(v) Unless otherwise prescribed by applicable regulations or other guidance published in the Internal Revenue Bulletin, an organization must, in order to establish its exemption, submit a detailed statement of its proposed activities with and as a part of its application for exemption (see § 1.501(a)–1(b)).

\* \* \* \* \*

(6) *Applicability of the organizational test*. A determination by the Commissioner that an organization is described in section 501(c)(3) and exempt under section 501(a) will not be granted after July 26, 1959, regardless of when the application is filed, unless such organization meets the organizational test prescribed by this paragraph (b). If, before July 27, 1959, an organization has been determined by the Commissioner or district director to be exempt as an organization described in section 501(c)(3) or in a corresponding provision of prior law and such determination has not been revoked before such date, the fact that such organization does not meet the organizational test prescribed by this paragraph (b) shall not be a basis for revoking such determination. Accordingly, an organization that has been determined to be exempt before July 27, 1959, and which does not seek a new determination of exemption is not required to amend its articles of organization to conform to the rules of this paragraph (b), but any organization that seeks a determination of exemption after July 26, 1959, must have articles of organization that meet the rules of this paragraph (b). For the rules relating to whether an organization determined to be exempt before July 27, 1959, is organized exclusively for one or more exempt purposes, see 26 CFR (1939) 39.101(6)–1 (Regula-

tions 118) as made applicable to the Code by Treasury Decision 6091, approved August 16, 1954 (19 FR 5167; 1954–2 CB 47).

\* \* \* \* \*

(h) *Effective/applicability date*. Paragraphs (b)(1)(v) and (b)(6) of this section apply on and after July 1, 2014.

#### **Section 1.501(c)(3)–1T [Removed].**

Par. 5. Section 1.501(c)(3)–1T is removed.

Par. 6. Section 1.508–1 is amended by revising paragraphs (a)(2)(i), (a)(2)(ii), (b)(2)(iv), (b)(2)(v), and (c) to read as follows:

*§ 1.508–1 Notices.*

(a) \* \* \*

(2) *Filing of notice*—(i) For purposes of paragraph (a)(1) of this section, except as provided in paragraph (a)(3) of this section, an organization seeking exemption under section 501(c)(3) must file the notice described in section 508(a) within 15 months from the end of the month in which the organization was organized. Such notice is filed by submitting a properly completed and executed Form 1023 (or, if applicable, Form 1023–EZ) exemption application. Notice should be filed with the appropriate office as designated by the Commissioner in guidance published in the Internal Revenue Bulletin, forms, or instructions to the applicable forms. A request for extension of time for the filing of such notice should be submitted to such appropriate office. Such request may be granted if it demonstrates that additional time is required.

(ii) Although the information required by either Form 1023 or Form 1023–EZ must be submitted to satisfy the notice required by this section, the failure to supply, within the required time, all of the information required to complete such form is not alone sufficient to deny exemption from the date of organization to the date such complete information for such form is submitted by the organization. If the information that is submitted within the required time is incomplete, and the organization supplies the necessary additional information requested by the Commissioner within the additional

time period allowed, the original notice will be considered timely.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iv) Any organization filing notice under this paragraph (b)(2)(iv) shall file its notice by submitting a properly completed and executed Form 1023 (or, if applicable, Form 1023-EZ) and providing information that it is not a private foundation. The organization shall also submit all information required by the regulations under section 170 or 509 (whichever is applicable) necessary to establish recognition of its classification as an organization described in section 509(a)(1), (2), (3), or (4). The notice required by this paragraph (b)(2)(iv) should

be filed with the appropriate office as designated by the Commissioner in guidance published in the Internal Revenue Bulletin, forms, or instructions to the applicable forms.

(v) An extension of time for the filing of a notice under this paragraph (b)(2) may be granted by the office with which the notice is filed upon timely request by the organization, if the organization demonstrates that additional time is required.

\* \* \* \* \*

(c) *Effective/applicability date.* Paragraphs (a)(2)(i), (a)(2)(ii), (b)(2)(iv), and (b)(2)(v) of this section apply on and after July 1, 2014.

## **Section 1.508-1T [Removed].**

Par. 7. Section 1.508-1T is removed.

Kirsten B. Wielobob

*Deputy Commissioner for Services and  
Enforcement.*

Approved: June 9, 2017

Thomas West

*Tax Legislative Counsel*

(Filed by the Office of the Federal Register on June 29, 2017, 8:45 a.m., and published in the issue of the Federal Register for June 30, 2017, 82 F.R. 29733)

## Part III. Administrative, Procedural, and Miscellaneous

### Cumulative List of Changes in Plan Qualification Requirements for Pre-Approved Defined Contribution Plans for 2017

#### Notice 2017-37

##### I. PURPOSE

This notice contains the Cumulative List of Changes in Plan Qualification Requirements for Pre-Approved Defined Contribution Plans for 2017 (2017 Cumulative List). As described in section 17 of Rev. Proc. 2016-37, 2016-29 I.R.B. 136, 146, Cumulative Lists identify changes in the qualification requirements of the Internal Revenue Code that are required to be taken into account in a pre-approved plan document submitted under the pre-approved plan program administered by the Internal Revenue Service (IRS) and that will be considered by the IRS for purposes of issuing opinion letters.

The 2017 Cumulative List is to be used to submit opinion letter applications for pre-approved defined contribution plans during the third six-year remedial amendment cycle, which began February 1, 2017, and ends January 31, 2023 (“third-cycle opinion letter applications”). Defined contribution plans may be submitted for approval during the on-cycle submission period, which begins October 2, 2017, and ends October 1, 2018.

The list of changes in section IV of this notice does not extend the deadline by which a plan must be amended to comply with any statutory, regulatory, or guidance changes. The general deadline for timely adoption of an interim or discretionary amendment is provided in section 15 of Rev. Proc. 2016-37.

##### II. BACKGROUND

Rev. Proc. 2016-37 sets forth procedures for issuing opinion letters and describes the six-year remedial amendment

cycle for pre-approved plans. Pre-approved defined contribution plans and pre-approved defined benefit plans each have separate six-year cycles. In section 17 of Rev. Proc. 2016-37, the IRS announced its intention to publish Cumulative Lists to identify changes in the qualification requirements that will be considered by the IRS in its review of pre-approved plan documents for purposes of issuing opinion letters. A change in the qualification requirements includes a statutory change or a change in the requirements provided in regulations or other guidance published in the Internal Revenue Bulletin.

Rev. Proc. 2016-37 also modifies the IRS determination letter program for qualified plans by eliminating, as of January 1, 2017, the five-year remedial amendment cycle system for individually designed plans that was set forth in Rev. Proc. 2007-44, 2007-2 C.B. 54. Prior to Rev. Proc. 2016-37, Cumulative Lists were used by the IRS in reviewing both individually designed plan documents and pre-approved plan documents. Pursuant to sections 12 and 17 of Rev. Proc. 2016-37, beginning in 2017, the IRS will use Cumulative Lists to review pre-approved plan documents submitted for opinion letters and will use Required Amendments Lists, described in section 9 of Rev. Proc. 2016-37, to review individually designed plan documents submitted for determination letters. For the Required Amendments List for 2016, see Notice 2016-80, 2016-52 I.R.B. 918.

To assist plan sponsors in achieving operational compliance, the IRS intends to provide an Operational Compliance List periodically to identify changes in qualification requirements that are effective during a calendar year. For the current Operational Compliance List, see <https://www.irs.gov/retirement-plans/operational-compliance-list>.

##### III. APPLICATION OF THE 2017 CUMULATIVE LIST

This notice relates to the opinion letter program for pre-approved defined contribu-

tion plans. The third six-year remedial amendment cycle for pre-approved defined contribution plans began February 1, 2017, and ends January 31, 2023. Pursuant to section 16.02 of Rev. Proc. 2016-37, as modified by section 9.02 of Rev. Proc. 2017-41, 2017-29 I.R.B. 92, 110 (July 17, 2017), the on-cycle submission period for the third six-year remedial amendment cycle begins October 2, 2017, and ends October 1, 2018.

The 2017 Cumulative List set forth in section IV of this notice lists specific matters the IRS has identified for review in determining whether a defined contribution plan document that has been filed for an opinion letter has been properly updated.

Except as provided in section IV of this notice, the IRS will not consider any of the following items in its review of any opinion letter application for the six-year remedial amendment cycle that began February 1, 2017:

1. Guidance issued after February 1, 2017.
2. Statutes enacted after February 1, 2017.
3. Qualification requirements first effective in 2018 or later.
4. Statutory provisions that are first effective in 2017 for which there is no guidance identified in this notice.

In order to be qualified, a plan must comply with all relevant qualification requirements, not only those on the 2017 Cumulative List.

#### IV. CUMULATIVE LIST OF CHANGES IN PLAN QUALIFICATION REQUIREMENTS FOR PRE-APPROVED DEFINED CONTRIBUTION PLANS FOR 2017

The 2017 Cumulative List contains items that relate to pre-approved defined contribution plans that were included on the 2011-2015 Cumulative Lists<sup>1</sup> or were issued after October 1, 2015.<sup>2</sup> However, if a plan has not been previously reviewed for items on earlier Cumulative Lists that relate to pre-approved defined contribu-

<sup>1</sup>For recent previous Cumulative Lists, see Notice 2015-84, 2015-52 I.R.B. 880; Notice 2014-77, 2014-52 I.R.B. 974; Notice 2013-84, 2013-52 I.R.B. 822; Notice 2012-76, 2012-52 I.R.B. 775; and Notice 2011-97, 2011-52 I.R.B. 923.

<sup>2</sup>Previous Cumulative Lists included certain items that the IRS does not intend to review in connection with third-cycle opinion letter applications, including items that affected only defined benefit retirement plans or that affected the operations of a plan but did not require a change in the plan document. Those items have been removed from this 2017 Cumulative List. See the Operational Compliance List, at <https://www.irs.gov/retirement-plans/operational-compliance-list>, for the current list of changes in qualification requirements that affect operational compliance.

tion plans, those items must also be taken into account. The items on earlier Cumulative Lists that are referred to in the preceding sentence can be found in the 2010 Cumulative List, Notice 2010–90, 2010–52 I.R.B. 909, and in the 2004 Cumulative List, Notice 2004–84, 2004–2 C.B. 1030.

The 2017 Cumulative List sets forth changes in the qualification requirements. At the end of each item, a parenthetical note indicates the year the item first appeared on a Cumulative List or identifies the item as new.

### 1. Section 401(a):

- Notice 2012–29, 2012–18 I.R.B. 872, provides that the IRS and the Department of the Treasury (Treasury Department) intend to modify the normal retirement age regulations to clarify that governmental plans that do not provide for in-service distributions before age 62 do not need to have a definition of normal retirement age and to modify the age-50 safe harbor rule for qualified public safety employees. The notice also provides that the IRS and Treasury Department intend to amend the normal retirement age regulations to extend the effective date for governmental plans to annuity starting dates that occur in plan years beginning on or after the later of (1) January 1, 2015, or (2) the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is 3 months after the final regulations are published in the Federal Register. See also the description, later in this 2017 Cumulative List, of proposed regulations under § 401(a) published on January 27, 2016, relating to normal retirement ages under § 414(d) governmental pension plans. (2012 C. L.)
- *United States v. Windsor*, 570 U.S. \_\_\_, 133 S. Ct. 2675 (2013). The Supreme Court found that Section 3 of the Defense of Marriage Act (DOMA), which provides that, in determining the meaning of any Act of Congress or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word “marriage”

means only a legal union between one man and one woman as husband and wife, and the word “spouse” refers only to a person of the opposite sex who is a husband or a wife, is unconstitutional because it violates the principles of equal protection. (2013 C. L.)

- Rev. Rul. 2013–17, 2013–38 I.R.B. 201, provides that for Federal tax purposes, the terms “spouse,” “husband and wife,” “husband,” and “wife” include an individual married to a person of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex, and the IRS adopts a general rule recognizing a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages. (2013 C. L.)
- Notice 2014–19, 2014–17 I.R.B. 979, provides guidance on the application (including the retroactive application) of the decision in *United States v. Windsor*, and the holdings of Rev. Rul. 2013–17, to retirement plans qualified under § 401(a). (2014 C. L.)
- Notice 2015–86, 2015–52 I.R.B. 887, provides that qualified retirement plans are not required to make additional changes as a result of the decision in *Obergefell v. Hodges*, 576 U.S. \_\_\_, 135 S. Ct. 2584 (2015). However, a plan sponsor may decide to amend its plan following *Obergefell* to make certain discretionary amendments (also described in Notice 2015–86). (New)
- Proposed regulations under § 401(a) were published on January 27, 2016 (81 Fed. Reg. 4599), and provide safe harbors and other rules regarding normal retirement age under a § 414(d) governmental pension plan. These regulations are proposed to be effective for employees hired during plan years beginning on or after the later of (1) January 1, 2017, or (2) the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is three months after the

final regulations are published in the Federal Register. However, employers may choose to rely on these proposed regulations currently and for prior periods. (New)

### 2. Section 401(a)(4):

- Notice 2014–66, 2014–46 I.R.B. 820, provides a special nondiscrimination rule for a qualified defined contribution plan that provides lifetime income by offering, as investment options, a series of target date funds (TDFs) that include deferred annuities among their assets, even if some of the TDFs within the series are available only to older participants. (2014 C. L.)

### 3. Section 401(a)(9):

- Final regulations that provide a limited modification of the required minimum distribution rules for tax-qualified defined contribution plans holding qualifying longevity annuity contracts were published on July 2, 2014 (79 Fed. Reg. 37633). (2014 C. L.)

### 4. Section 401(a)(22):

- Notice 2011–19, 2011–11 I.R.B. 550, provides that the terms “readily tradable on an established securities market” and “readily tradable on an established market” mean employer securities that are readily tradable on an established securities market within the meaning of § 1.401(a)(35)–1(f)(5) for purposes of § 401(a)(22). Notice 2011–19 is effective for plan years that begin on or after January 1, 2012, except for certain plans that have a delayed effective date. (2011 C. L.)

### 5. Section 401(a)(28)(C):

- Notice 2011–19 provides that the terms “readily tradable on an established securities market” and “readily tradable on an established market” mean employer securities that are readily tradable on an established securities market within the meaning of § 1.401(a)(35)–1(f)(5) for purposes of § 401(a)(28)(C). Notice 2011–19 is effective for plan years that begin on or after January 1, 2012, except for certain plans that have a delayed effective date. (2011 C. L.)

### 6. Section 401(a)(35):

- Notice 2013–17, 2013–20 I.R.B. 1082, provides relief from anti-cutback rules for an amendment to an employee



stock ownership plan (ESOP) that becomes subject to the diversification requirements of § 401(a)(35) to eliminate all in-service distribution options previously used to satisfy the diversification requirements of § 401(a)(28)(B)(i). (2013 C. L.)

**7. Section 401(k), 401(m):**

- Final regulations that provide guidance on permitted mid-year reductions or suspensions of safe harbor nonelective contributions in certain circumstances for amendments adopted after May 18, 2009, and revise the requirements for permitted mid-year reductions or suspensions of safe harbor matching contributions for plan years beginning on or after January 1, 2015, were published on November 15, 2013 (78 Fed. Reg. 68735). (2013 C. L.)
- Notice 2016–16, 2016–7 I.R.B. 318, permits mid-year changes to safe harbor 401(k) plans under certain circumstances. (New)
- Proposed regulations under §§ 401(k) and 401(m) were published on January 18, 2017 (82 Fed. Reg. 5477), and provide that qualified matching contributions (QMACs) and qualified nonelective contributions (QNECs) must satisfy applicable nonforfeitability and distribution requirements at the time they are allocated to participants' accounts, but need not meet these requirements when they are contributed to the plan. These proposed regulations apply only to taxable years beginning on or after the publication of final regulations, but taxpayers may choose to rely on these proposed reg-

ulations currently and for prior periods. (New)

**8. Section 402(c):**

- Protecting Americans from Tax Hikes Act of 2015 § 306 amended § 408(p)(1)(B) to permit rollovers from a qualified plan to a SIMPLE IRA. (New)

**9. Section 402A:**

- American Taxpayer Relief Act of 2012 § 902 added § 402A(c)(4)(E), which provides that rollovers from a plan account to the plan's designated Roth account can include a rollover of an otherwise nondistributable amount. (2013 C. L.)
- Notice 2013–74 provides guidance regarding § 402A(c)(4)(E) and also provides guidance that applies to all in-plan Roth rollovers under § 402A(c)(4). (2013 C. L.)

**10. Section 409:**

- Notice 2011–19 provides that the terms “readily tradable on an established securities market” and “readily tradable on an established market” mean employer securities that are readily tradable on an established securities market within the meaning of § 1.401(a)(35)–1(f)(5) for purposes of § 409(h)(1)(B) and § 409(l). Notice 2011–19 is effective for plan years that begin on or after January 1, 2012, except for certain plans that have a delayed effective date. (2011 C. L.)

**11. Section 411(d)(6):**

- Notice 2013–17 provides relief from anti-cutback rules for an amendment

to an ESOP to eliminate all in-service distribution options previously used to satisfy the diversification requirements of § 401(a)(28)(B)(i). (2013 C. L.)

**12. Section 415:**

- Proposed regulations under § 415 were published on November 15, 2013 (78 Fed. Reg. 68780), and provide that amounts paid to an Indian tribe member as remuneration for services performed in a fishing rights-related activity may be treated as compensation for purposes of applying the limits on qualified plan benefits and contributions. Taxpayers may rely on the proposed regulations for periods preceding the effective date of the final regulations. (2014 C. L.)

**13. Section 417:**

- Rev. Rul. 2012–3, 2012–6 I.R.B. 383, describes how the qualified joint and survivor annuity (QJSA) and the qualified preretirement survivor annuity (QPSA) rules, described in §§ 401(a)(11) and 417, apply when a deferred annuity contract is purchased under a profit sharing plan. (2012 C. L.)

**DRAFTING INFORMATION**

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## Rev. Proc. 2017-41

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## SECTION 1. PURPOSE

.01 This revenue procedure sets forth the procedures of the Internal Revenue Service (IRS) for issuing Opinion Letters regarding the 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 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 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 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,<sup>1</sup> 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. 89, 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 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.

.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 3.12<sup>2</sup> describe the significant changes made by this revenue procedure to Rev. Proc. 2015–36.

.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 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

**SECTION 3.  
SIGNIFICANT CHANGES  
TO REVENUE  
PROCEDURE 2015–36;  
FUTURE  
ENHANCEMENTS**

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

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



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 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 (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 - 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” 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 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 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 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 (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 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 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 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 § 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 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 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 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) 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 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 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 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, 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 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 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 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 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 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 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 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 plan;

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

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

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

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

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

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

(12) Plans 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 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 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, 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 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), 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), (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 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 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 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. APPROVED PLANS - 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 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 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 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 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 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 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 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).

.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 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.

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

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 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 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 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, 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 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 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 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. 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 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 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 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 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* 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” 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. 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 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 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. 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 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 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, 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 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 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 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 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 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 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 (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 - 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 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 Constitution Avenue, N.W., Washington DC. Alternatively, comments may be submitted via the Internet at [notice.comments@irs.counsel.treas.gov](mailto: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 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.

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).

**DRAFTING  
INFORMATION**

## 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 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 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 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 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 \$300
- 4) Provider's minor modification of Mass Submitter's basic plan document per adoption agreement **or** Single Document Plan \$700

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

**NOTE.** This revenue procedure will be reproduced as the next revision of IRS Publication 1141, General Rules and Specifications for Substitute Forms W-2 and W-3.

26 CFR 601.602: Tax forms and instructions.(Also Part I, Sections 6041, 6051, 6071, 6081, 6091; 1.6041-1, 1.6041-2, 31.6051-1, 31.6051-2, 31.6071(a)-1, 31.6081(a)-1, 31.6091-1.)

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Part 1  
General

Section 1.1 – Purpose

- .01** The purpose of this revenue procedure is to state the requirements of the Internal Revenue Service (IRS) and the Social Security Administration (SSA) regarding the preparation and use of substitute forms for Form W-2, Wage and Tax Statement, and Form W-3, Transmittal of Wage and Tax Statements, for wages paid during the 2017 calendar year.
- .02** For purposes of this revenue procedure, substitute Form W-2 (Copy A) and substitute Form W-3 are forms that are not printed by the IRS. Copy A or any other copies of a substitute Form W-2 or a substitute Form W-3 must conform to the specifications in this revenue procedure to be acceptable to the IRS and the SSA. No IRS office is authorized to allow deviations from this revenue procedure. Preparers also should refer to the 2017 General Instructions for Forms W-2 and W-3 for details on how to complete these forms. See Section 3.4 for information on obtaining the official IRS forms and instructions. See Sections 2.3 and 2.4 for requirements for the copies of substitute forms furnished to employees and for electronic delivery of recipient statements.
- .03** For purposes of this revenue procedure, the official IRS-printed red dropout ink Forms W-2 (Copy A) and W-3, and their exact substitutes, are referred to as “red-ink.” The SSA-approved black-and-white Forms W-2 (Copy A) and W-3 are referred to as “substitute black-and-white Copy A” and “substitute black-and-white W-3” forms.

Any questions about the red-ink Form W-2 (Copy A) and Form W-3 and the substitute employee statements should be emailed to *Substituteforms@irs.gov*. Please enter “Substitute Forms” on the subject line. Or send your questions to:

Internal Revenue Service  
Attn: Substitute Forms Program  
SE:W:CAR:MP:P:TP  
5000 Ellin Rd., C6-440  
Lanham, MD 20706

Any questions about the black-and-white Copy A and W-3 forms should be emailed to *copy.a.forms@ssa.gov* or sent to:

Social Security Administration  
Direct Operations Center  
**Attn: Substitute Black-and-White Copy A Forms, Room 341**  
1150 E. Mountain Drive  
Wilkes-Barre, PA 18702-7997

**Note.** You should receive a response from either the IRS or the SSA within 30 days.

**.04** Some Forms W-2 that include logos, slogans, and advertisements (including advertisements for tax preparation software) may be considered as suspicious or altered Forms W-2 (also known as “questionable Forms W-2”). An employee may not recognize the importance of the employee copy for tax reporting purposes due to the use of logos, slogans, and advertisements. Thus, the IRS has determined that logos, slogans, and advertising will not be allowed on Copy A of Forms W-2, Forms W-3, or any employee copies reporting wages, with the following exceptions for the employee copies.

- Forms may include the exact name of the employer or agent, primary trade name, trademark, service mark, or symbol of the employer or agent.
- Forms may include an embossment or watermark on the information return (and copies) that is a representation of the name, a primary trade name, trademark, service mark, or symbol of the employer or agent.
- Presentation may be in any typeface, font, stylized fashion, or print color normally used by the employer or agent, and used in a non-intrusive manner.
- These items must not materially interfere with the ability of the recipient to recognize, understand, and use the tax information on the employee copies.

The IRS e-file logo on the IRS official employee copies may be included, but it is not required, on any of the substitute form copies.

The information return and employee copies must clearly identify the employer’s name associated with its employer identification number.

Logos and slogans, may be used on permissible enclosures, such as a check or account statement, but not on information returns and employee copies.

Forms W-2 and W-3 are subject to annual review and possible change. This revenue procedure may be revised to state other requirements of the IRS and the SSA regarding the preparation and

use of substitute forms for Form W-2 and Form W-3 for wages paid during the 2017 calendar year, at a future date. If you have comments about the restrictions on including logos, slogans, and advertising on information returns and employee copies, send or email your comments to: Internal Revenue Service, Attn: Substitute Forms Program, SE:W:CAR:MP:P:TP, 5000 Ellin Road, C6-440, Lanham, MD 20706, or [Substituteforms@irs.gov](mailto:Substituteforms@irs.gov).

**.05** The Internal Revenue Service/Information Returns Branch (IRS/IRB) maintains a centralized customer service call site to answer questions related to information returns (Forms W-2, W-3, W-2c, W-3c, 1099 series, 1096, etc.). You can reach the call site at 866-455-7438 (toll-free) or 304-263-8700 (not a toll-free number). Persons with a hearing or speech disability with access to Telecommunication Device for the Deaf (TDD) can call 304-579-4827 (not a toll-free number). You also may email questions to [mccirp@irs.gov](mailto:mccirp@irs.gov). Do not submit employee information via email, because electronic mail is not secure and the information may be compromised.

File paper or electronic Forms W-2 (Copy A) with the SSA. IRS/IRB does not process Forms W-2 (Copy A). IRS/IRB does not process any information returns filed on paper forms. However, IRS/IRB does process Form 8508, Request for Waiver From Filing Information Returns Electronically, and Form 8809, Application for Extension of Time to File Information Returns, for Forms W-2 (Copy A) and requests for an extension of time to furnish the employee copies of Form W-2. See Publication 1220, Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G, for information on waivers and extensions of time.

**.06** The following form instructions and publications provide more detailed filing procedures for certain information returns.

- General Instructions for Forms W-2 and W-3 (Including Forms W-2AS, W-2CM, W-2GU, W-2VI, W-3SS, W-2c, and W-3c).
- Publication 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c.

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## Section 1.2 – What’s New

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**.01 New Box 9 Verification code.** Box 9 is used by participants in the W-2 Verification Code initiative. For more information, go to [www.irs.gov/individuals/W-2-verification-code](http://www.irs.gov/individuals/W-2-verification-code).

**.02 New Box 12 Code FF.** A new box 12 Code FF has been added to report the total amount of permitted benefits under a qualified small employer health reimbursement arrangement (QSEHRA). For more information, see the 21st Century Cures Act, Public Law 114-255, Division C, Section 18001.

**.03 Editorial changes.** We made editorial changes. Redundancies were eliminated as much as possible.

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## Section 1.3 – General Rules for Paper Forms W-2 and W-3

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**.01** Employers not filing electronically must file paper Forms W-2 (Copy A) along with Form W-3 with the SSA by using either the official IRS form or a substitute form that exactly meets the specifications shown in Parts 2 and 3 of this revenue procedure.



**Note.** Substitute territorial forms (W-2AS, W-2GU, W-2VI, W-3SS) also must conform to the specifications as outlined in this revenue procedure. These forms require the form designation (“W-2AS,” “W-2GU,” “W-2VI”) on Copy A to be in black ink. If you are an employer in the Commonwealth of the Northern Mariana Islands, you must contact Department of Finance, Division of Revenue and Taxation, Commonwealth of the Northern Mariana Islands, P.O. Box 5234 CHRB, Saipan, MP 96950 or [www.cnmidof.net](http://www.cnmidof.net) to get Form W-2CM and instructions for completing and filing the form. For information on Forms 499R-2/W-2PR, use this website: [www.hacienda.gobierno.pr](http://www.hacienda.gobierno.pr).

Employers may design their own statements to furnish to employees. Employee statements designed by employers must comply with the requirements shown in Parts 2 and 3.

**.02** Red-ink substitute forms that completely conform to the specifications contained in this revenue procedure may be privately printed without prior approval from the IRS or the SSA. Only the substitute black-and-white Copy A and W-3 forms need to be submitted to the SSA for approval, prior to their use (see Section 2.2).

**.03** As in the past, SSA-approved black-and-white Copy A and Form W-3 may be generated using a printer by following all guidelines and specifications (also see Section 2.2). In general, regardless of the method of entering data, use black ink on Forms W-2 and W-3 which provides better readability for processing by scanning equipment. Colors other than black are not easily read by the scanner and may result in delays or errors in the processing of Forms W-2 (Copy A) and W-3. The printing of the data should be centered within the boxes. The size of the variable data must be printed in a font no smaller than 10-point.

**Note.** With the exception of the identifying number, the year, the form number for Form W-3, and the corner register marks, the preprinted form layout for the red-ink Forms W-2 (Copy A) and W-3 must be in Flint J-6983 red OCR dropout ink or an exact match.

**.04** Substitute forms filed with the SSA and substitute copies furnished to employees that do not conform to these specifications are unacceptable. Penalties may be assessed for not complying with the form specifications. Forms W-2 (Copy A) and W-3 filed with the SSA that do not conform may be returned.

**.05** Substitute red-ink forms should not be submitted to either the IRS or the SSA for specific approval. If you are uncertain of any specification and want clarification, do the following.

- Submit a letter or email to the appropriate address in Section 1.1 citing the specification.
- State your understanding of the specification.
- Enclose an example (if appropriate) of how the form would appear if produced using your understanding. Do not use actual employee information in the example.
- Be sure to include your name, complete address, and phone number with your correspondence. If you want the IRS to contact you via email, also provide your email address.

**.06** Any questions about the specifications, especially those for the red-ink Form W-2 (Copy A) and Form W-3, should be emailed to: [Substituteforms@irs.gov](mailto:Substituteforms@irs.gov). Please enter “Substitute Forms” on the subject line. Or send your questions to:

Internal Revenue Service  
Attn: Substitute Forms Program  
SE:W:CAR:MP:P:TP  
5000 Ellin Rd., C6-440  
Lanham, MD 20706

Any questions about the substitute black-and-white Copy A and W-3 should be emailed to [copy.a.forms@ssa.gov](mailto:copy.a.forms@ssa.gov) or sent to:

Social Security Administration  
Direct Operations Center  
**Attn: Substitute Black-and-White Copy A Forms, Room 341**  
1150 E. Mountain Drive  
Wilkes-Barre, PA 18702-7997

**Note.** You should receive a response within 30 days from either the IRS or the SSA.

**.07** Forms W-2 and W-3 are subject to annual review and possible change. Therefore, employers are cautioned against overstocking supplies of privately printed substitutes.

**.08** Separate instructions for Forms W-2 and W-3 are provided in the 2017 General Instructions for Forms W-2 and W-3. Form W-3 should be used only to transmit paper Forms W-2 (Copy A). Form W-3 is a single sheet including only essential filing information. Be sure to make a copy of your completed Form W-3 for your records. You can order current year official IRS Forms W-2, W-2AS, W-2GU, W-2VI, W-3, and W-3SS, and the 2017 General Instructions for Forms W-2 and W-3, online at [www.irs.gov/businesses](http://www.irs.gov/businesses). Click on the *Online Ordering for Information Returns and Employer Returns* link. The IRS provides only cutsheet sets of Forms W-2 and cutsheets of Form W-3.

**.09** Because substitute Forms W-2 (Copy A) and W-3 are machine-imaged and scanned by the SSA, the forms must meet the same specifications as the official IRS Forms W-2 and W-3 (as shown in the exhibits).

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#### **Section 1.4 – General Rules for Filing Forms W-2 (Copy A) Electronically**

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**.01** Employers must file Forms W-2 (Copy A) with the SSA electronically if they are required to file 250 or more for a calendar year unless the IRS grants a waiver. For details, see the 2017 General Instructions for Forms W-2 and W-3. The SSA publication EFW2, *Specifications for Filing Forms W-2 Electronically*, contains specifications and procedures for electronic filing of Form W-2 information with the SSA. Employers are cautioned to obtain the most recent revision of EFW2 (and supplements) due to any subsequent changes in specifications and procedures.

**.02** You may obtain a copy of the EFW2 by:

- Accessing the SSA website at: [www.ssa.gov/employer/EFW2&EFW2C.htm](http://www.ssa.gov/employer/EFW2&EFW2C.htm).

**.03** Electronic filers do not file a paper Form W-3. See the SSA publication EFW2 for guidance on transmitting Form W-2 (Copy A) information to SSA electronically.

**.04** Employers filing fewer than 250 Forms W-2 are encouraged to electronically file Forms W-2 (Copy A) with the SSA. Doing so will enhance the timeliness and accuracy of forms processing. You may visit the SSA's employer website at [www.ssa.gov/employer](http://www.ssa.gov/employer). This helpful site has links to Business Services Online (BSO) and tutorials on registering and using BSO to file your Forms W-2.

**.05** Employers who do not comply with the electronic filing requirements for Form W-2 (Copy A) and who are not granted a waiver by the IRS may be subject to penalties. Employers who file Form W-2 information with the SSA electronically must not send the same data to the SSA on paper Forms W-2 (Copy A). Any duplicate reporting may subject filers to unnecessary contacts by the SSA or the IRS.

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## Part 2

### Specifications for Substitute Forms W-2 and W-3

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#### Section 2.1 – Specifications for Red-Ink Substitute Form W-2 (Copy A) and Form W-3 Filed with the SSA

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**.01** The official IRS-printed red dropout ink Form W-2 (Copy A) and W-3 and their exact substitutes are referred to as red-ink in this revenue procedure. Employers may file substitute Forms W-2 (Copy A) and W-3 with the SSA. The substitute forms must be exact replicas of the official IRS forms with respect to layout and content because they will be read by scanner equipment.

**Note.** Even the slightest deviation can result in incorrect scanning, and may affect money amounts reported for employees.

**.02** Paper used for cutsheets and continuous-pinfed forms for substitute Form W-2 (Copy A) and Form W-3 that are to be filed with the SSA must be white 100% bleached chemical wood, 18–20 pound paper only, optical character recognition (OCR) bond produced in accordance with the following specifications:

● Acidity: Ph value, average, not less than . . . . .	4.5
● Basis weight: 17 x 22 inch 500 cut sheets, pound . . . . .	18–20
● Metric equivalent—gm./sq. meter (a tolerance of +5 pct. is allowed) . . . . .	68–75
● Stiffness: Average, each direction, not less than—milligrams	
Cross direction . . . . .	50
Machine direction . . . . .	80
● Tearing strength: Average, each direction, not less than—grams . . . . .	40
● Opacity: Average, not less than—percent . . . . .	82
● Reflectivity: Average, not less than—percent . . . . .	68
● Thickness: Average—inch . . . . .	0.0038
Metric equivalent—mm . . . . .	0.097
(a tolerance of +0.0005 inch (0.0127 mm) is allowed) Paper cannot vary more than 0.0004 inch (0.0102 mm) from one edge to the other.	
● Porosity: Average, not less than—seconds . . . . .	10
● Finish (smoothness): Average, each side—seconds . . . . .	20–55
(for information only) the Sheffield equivalent—units . . . . .	170–d200
● Dirt: Average, each side, not to exceed—parts per million . . . . .	8

**Note.** Reclaimed fiber in any percentage is permitted, provided the requirements of this standard are met.

**.03** All printing of red-ink substitute Forms W-2 (Copy A) and W-3 must be in Flint red OCR dropout ink except as specified below. The following must be printed in nonreflective black ink.

- Identifying number “22222” or “33333” at the top of the forms.
- Tax year at the bottom of the forms.
- The four (4) corner register marks on the forms.
- The form identification number (“W-3”) at the bottom of Form W-3.
- All the instructions below Form W-3 beginning with “Send this entire page....” line to the bottom of Form W-3.

**.04** The vertical and horizontal spacing for all federal payment and data boxes on Forms W-2 and W-3 must meet specifications. On Form W-3 and Form W-2 (Copy A), all the perimeter rules must be 1-point (0.014-inch), while all other rules must be one-half point (0.007-inch). Vertical rules must be parallel to the left edge of the form; horizontal rules parallel to the top edge.

**.05** The official red-ink Form W-3 and Form W-2 (Copy A) are 7.50 inches wide. Employers filing Forms W-2 (Copy A) with the SSA on paper also must file a Form W-3. Form W-3 must be the same width (7.50 inches) as the Form W-2. One Form W-3 is printed on a standard-size, 8.5 x 11-inch page. Two official Forms W-2 (Copy A) are contained on a single 8.5 x 11-inch page (exclusive of any snap-stubs).

**.06** The top, left, and right margins for the Form W-2 (Copy A) and Form W-3 are 0.50 inches (½ inch). All margins must be free of printing except for the words “DO NOT STAPLE” on red-ink Form W-3. The space between the two Forms W-2 (Copy A) is 1.33 inches.

**.07** The identifying numbers are “22222” for Form W-2 (Copies A (and 1)) and “33333” for Form W-3. No printing should appear anywhere near the identifying numbers.

**Note.** The identifying number must be printed in nonreflective black ink in OCR-A font of 10 characters per inch.

**.08** The depth of the individual scannable image on a page must be the same as that on the official IRS forms. The depth from the top line to the bottom line of an individual Form W-2 (Copy A) must be 4.17 inches and the depth from the top line to the bottom line of Form W-3 must be 4.67 inches.

**.09** Continuous-pinfed Forms W-2 (Copy A) must be separated into 11-inch deep pages. The pinfed strips must be removed when Forms W-2 (Copy A) are filed with the SSA. The two Forms W-2 (Copy A) on the 11-inch page must not be separated (only the pages are to be separated (burst)). The words “Do Not Cut, Fold, or Staple Forms on This Page” must be printed twice between the two Forms W-2 (Copy A) in Flint red OCR dropout ink. All other copies (Copies 1, B, C, 2, and D) must be able to be distinguished and separated into individual forms.

**.10** Box 12 of Form W-2 (Copy A) contains four entry boxes – 12a, 12b, 12c, and 12d. Do not make more than one entry per box. Enter your first code in box 12a (for example, enter Code D in box 12a, not 12d, if it is your first entry). If more than four items need to be reported in box 12, use a second Form W-2 to report the additional items (see “Multiple forms” in the 2017 General Instructions for Forms W-2 and W-3). Do not report the same federal tax data to the SSA on more than one Form W-2 (Copy A). However, repeat the identifying information (employee’s name, address, and SSN; employer’s name, address, and EIN) on each additional form.

**.11** The checkboxes in box 13 of Form W-2 (Copy A) and in box b of Form W-3 must be 0.14 inches each. The space before the first checkbox is 0.24 inches; the space between the first and

second checkbox and between the second and third checkbox must be 0.36 inches; the space between the third checkbox to the right border of box 13 should be 0.32 inches (see Exhibit A).

**Note.** More than 50% of an applicable checkbox must be covered by an “X.”

**.12** All substitute Forms W-2 (Copy A) and W-3 in the red-ink format must have the tax year, form number, and form title printed on the bottom face of each form using type identical to that of the official IRS form. The red-ink substitute Form W-2 (Copy A) and Form W-3 must have the form producer’s EIN entered directly to the left of “Department of the Treasury,” in red.

**.13** The words “For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.” must be printed in Flint red OCR dropout ink in the same location as on the official Form W-2 (Copy A). The words “For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.” must be printed at the bottom of the page of Form W-3 in black ink.

**.14** The Office of Management and Budget (OMB) Number must be printed on substitute Forms W-3 and W-2 (on each ply) in the same location as on the official IRS forms.

**.15** All substitute Forms W-3 must include the instructions that are printed on the same sheet below the official IRS form.

**.16** The back of substitute Form W-2 (Copy A) and Form W-3 must be free of all printing.

**.17** All copies must be clearly legible. Fading must be minimized to assure legibility.

**.18** Chemical transfer paper is permitted for Form W-2 (Copy A) only if the following standards are met.

- Only chemically backed paper is acceptable for Form W-2 (Copy A). Front and back chemically treated paper cannot be processed properly by scanning equipment.
- Chemically transferred images must be black.
- Carbon-coated forms are not permitted.

**.19** The Government Printing Office (GPO) symbol and the Catalog Number (Cat. No.) must be deleted from substitute Form W-2 (Copy A) and Form W-3.

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## Section 2.2 – Specifications for Substitute Black-and-White Copy A and W-3 Forms Filed with the SSA

---

**.01** The SSA-approved substitute black-and-white Forms W-2 (Copy A) and W-3 are referred to as substitute black-and-white Copy A and W-3. Specifications for the substitute black-and-white Copy A and W-3 are similar to the red-ink forms (Section 2.1) except for the items that follow (see Exhibits D and E). Exhibits are samples only and must not be downloaded to meet tax obligations.

1. Forms must be printed on 8.5 x 11-inch single-sheet paper only. There must be two Forms W-2 (Copy A) printed on a page. There must be no horizontal perforations between the two Forms W-2 (Copy A) on each page.

2. All forms and data must be printed in nonreflective black ink only.
3. The data and forms must be programmed to print simultaneously. Forms cannot be produced separately from wage data entries.
4. The forms must not contain corner register marks.
5. The forms must not contain any shaded areas, including those boxes that are entirely shaded on the red-ink forms.
6. Identifying numbers on both Form W-2 (“22222”) and Form W-3 (“33333”) must be preprinted in 14-point Arial bold font or a close approximation.
7. The form numbers (“W-2” and “W-3”) must be in 18-point Arial font or a close approximation. The tax year (for example, “2017”) on Forms W-2 (Copy A) and W-3 must be in 20-point Arial font or a close approximation.
8. No part of the box titles or the data printed on the forms may touch any of the vertical or horizontal lines, nor should any of the data intermingle with the box titles. The data should be centered in the boxes.
9. Do not print any information in the margins of the substitute black-and-white Copy A and W-3 forms (for example, do not print “DO NOT STAPLE” in the top margin of Form W-3).
10. The word “Code” must not appear in box 12 on Form W-2 (Copy A).
11. A 4-digit vendor code preceded by four zeros and a slash (for example, 0000/9876) must appear in 12-point Arial font, or a close approximation, under the tax year in place of the Cat. No. on Form W-2 (Copy A) and in the bottom right corner of the “For Official Use Only” box at the bottom of Form W-3. Do not display the form producer’s EIN to the left of “Department of the Treasury.” The vendor code will be used to identify the form producer.
12. Do not print Catalog Numbers (Cat. No.) on either Form W-2 (Copy A) or Form W-3.
13. Do not print the checkboxes in:
  - Box 13 of Form W-2 (Copy A). The “X” should be programmed to be printed and centered directly below the applicable box title.
14. Do not print dollar signs. If there are no money amounts being reported, the entire field should be left blank.
15. The space between the two Forms W-2 (Copy A) is 1.33 inches.

**.02** You must submit samples of your substitute black-and-white Copy A and W-3 forms to the SSA. Only black-and-white substitute Forms W-2 (Copy A) and W-3 for tax year 2017 will be accepted for approval by the SSA. Questions regarding other red-ink forms (that is, red-ink Forms W-2c, W-3c, 1099 series, 1096, etc.) must be directed to the IRS only.

**.03** You will be required to send one set of blank and one set of dummy-data substitute black-and-white Copy A and W-3 forms for approval. Sample data entries should be filled in to the maximum length for each box entry, preferably using numeric data or alpha data, depending upon the type required to be entered. Include in your submission the name, telephone number, fax number, and email address of a contact person who can answer questions regarding your sample forms.

**.04** To receive approval, you may first contact the SSA at [copy.a.forms@ssa.gov](mailto:copy.a.forms@ssa.gov) to obtain a template and further instructions in PDF or Excel format. You may also send your 2017 sample substitute black-and-white Copy A and W-3 forms to:

Social Security Administration  
Direct Operations Center  
**Attn: Substitute Black-and-White Copy A Forms, Room 341**  
1150 E. Mountain Drive  
Wilkes-Barre, PA 18702-7997



Send your sample forms via private mail carrier or certified mail in order to verify their receipt. You can expect approval (or disapproval) by the SSA within 30 days of receipt of your sample forms.

**.05** The 4-digit vendor code preceded by four zeros and a slash (0000/9876) must be preprinted on the sample substitute black-and-white Copy A and W-3 forms. Forms not containing a vendor code will be rejected and will not be submitted for testing or approval. If you have a valid vendor code provided to you through the National Association of Computerized Tax Processors, you should use that code. If you do not have a valid vendor code, contact the Social Security Administration at [copy.a.forms@ssa.gov](mailto:copy.a.forms@ssa.gov) to obtain an SSA-issued code. (Additional information on vendor codes may be obtained from the SSA or the National Association of Computerized Tax Processors (NACTP) via email at [president@nactp.org](mailto:president@nactp.org).)

**Note.** Vendor codes **from the NACTP** are required by those companies producing the W-2 family of forms as part of a product for resale to be used by multiple employers and payroll professionals. Employers developing Forms W-2 or W-3 to be used only for their individual company **require a vendor code issued by Social Security Administration.**

**.06 If you use forms produced by a vendor and have questions concerning approval,** do not send the forms to the SSA for approval. Instead, you may contact the software vendor to obtain a copy of SSA's dated approval notice supplied to that vendor.

**.07** In response to feedback from the user community, the SSA (and the IRS) have added a 2-D barcoded version for the substitute Form W-2 and Form W-2 to the list of acceptable submission formats. This version is an optional alternative to the non-barcoded substitute Forms W-2 and W-3. Both versions are fully supported by the SSA. At this time, neither the IRS nor the SSA mandates the use of 2-D barcoded substitute forms.

**Note.** The data contained in the barcode must not differ from the data displayed on the form. If they differ, the data in the barcode will be ignored and the data displayed on the form will be considered the submission. This also occurs when the barcode is not read correctly. The information on the form needs to be manually keyed into the database.  
To get the barcode information:

- See the SSA's BSO website at [www.ssa.gov/bsa](http://www.ssa.gov/bsa),
- Get the PDF version of the specifications at [copy.a.forms@ssa.gov](mailto:copy.a.forms@ssa.gov), and
- Download the substitute W3/W2 2-D barcoding standards from [www.ssa.gov/employer/subBarCodeStd.pdf](http://www.ssa.gov/employer/subBarCodeStd.pdf).

If you are using a form produced by another vendor that contains a 2-D barcode, you must submit the form for approval using your own NACTP code. Prior to sending your first submission for approval, contact the SSA at [copy.a.forms@ssa.gov](mailto:copy.a.forms@ssa.gov) to register your NACTP code and explain what forms you want to submit.

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## Section 2.3 – Requirements for Substitute Forms Furnished to Employees (Copies B, C, and 2 of Form W-2)

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**Note. Rules in Section 2.3 apply only to employee copies of Form W-2 (Copies B, C, and 2).** Printers are cautioned that the paper filers who send Forms W-2 (Copy A) to the SSA must follow the requirements in Sections 2.1 and/or 2.2 above.

**.01** All employers (including those who file electronically) must furnish employees with at least two copies of Form W-2 (three or more for employees required to file a state, city, or local income tax return). The following rules are guidelines for preparing employee copies.

The dimensions of these copies (Copies B, C, and 2), but not Copy A, may differ from the dimensions of the official IRS form to allow space for reporting additional information, including additional entries such as withholding for health insurance, union dues, bonds, or charity in box 14. The limitation of a maximum of four items in box 12 of Form W-2 applies only to Copy A, which is filed with the SSA.

**Note.** Payee statements (Copies B, C, and 2 of Form W-2) may be furnished electronically if employees give their consent (as described in Treasury Regulations *Section 31.6051-1(j)*). See also Publication 15-A, Employer's Supplemental Tax Guide.

**.02** The minimum dimensions for employee copies only (not Copy A) of Form W-2 should be 2.67 inches deep by 4.25 inches wide. The maximum dimensions should be no more than 6.50 inches deep by no more than 8.50 inches wide.

**Note.** The maximum and minimum size specifications in this document are for tax year 2017 only and may change in future years.

**.03** Either horizontal or vertical format is permitted (see Exhibit D).

**.04** The paper for all copies must be white and printed in black ink. The substitute Copy B, which employees are instructed to attach to their federal income tax returns, should be at least 9-pound paper (basis 17 x 22-500). Other copies furnished to employees also should be at least 9-pound paper (basis 17 x 22-500) unless a state, city, or local government provides other specifications.

**.05** Employee copies of Form W-2 (Copies B, C, and 2), including those that are printed on a single sheet of paper, must be easily separated. The best method of separation is to provide perforations between the individual copies. Whatever method of separation is used, each copy should be easily distinguished.

**Note.** Perforation does not apply to printouts of copies of Forms W-2 that are furnished electronically to employees (as described in Treasury Regulations *Section 31.6051-1(j)*). However, these employees should be cautioned to carefully separate the copies of Form W-2. See Publication 15-A, for information on electronically furnishing Forms W-2 to employees.

**.06** Interleaved carbon and chemical transfer paper employee copies must be clearly legible. Fading must be minimized to assure legibility.

**.07** The electronic tax logo on the IRS official employee copies is not required on any of the substitute form copies. To avoid confusion and questions by employees, employers are encouraged to delete the identifying number (“22222”) from the employee copies of Form W-2.

**.08** All substitute employee copies must contain boxes, box numbers, and box titles that match the official IRS Form W-2. Boxes that do not apply can be deleted. However, certain core boxes must be included. The placement, numbering, and size of this information is specified as follows.

- The core boxes must be printed in the exact order shown on the official IRS form. The items and box numbers that constitute the core data are:

Box 1 — Wages, tips, other compensation,  
Box 2 — Federal income tax withheld,  
Box 3 — Social security wages,  
Box 4 — Social security tax withheld,  
Box 5 — Medicare wages and tips, and  
Box 6 — Medicare tax withheld.

- The core data boxes (1 through 6) must be placed in the upper right of the form. Substitute vertical-format copies may have the core data across the top of the form. Boxes or other information definitely will not be permitted to the right of the core data.
- The form title, number, or copy designation (B, C, or 2) may be at the top of the form. Also, a reversed or blocked-out area to accommodate a postal permit number or other postal considerations is allowed in the upper right.
- Boxes 1 through 6 must each be a minimum of 1 1/8 inches wide x 1/4 inch deep.
- Other required boxes are:
  - a) Employee’s social security number,
  - b) Employer identification number (EIN),
  - c) Employer’s name, address, and ZIP code,
  - e) Employee’s name, and
  - f) Employee’s address and ZIP code.

Identifying items must be present on the form and be in boxes similar to those on the official IRS form. However, they may be placed in any location other than the top or upper right. You do not need to use the lettering system (a-c, e-f) used on the official IRS form. The employer identification number (EIN) may be included with the employer’s name and address and not in a separate box.

**Note.** Box d (“Control number”) is not required.

**.09** All copies of Form W-2 furnished to employees must clearly show the form number, the form title, and the tax year prominently displayed together in one area of the form. The title of Form W-2 is “Wage and Tax Statement.” It is recommended (but not required) that this be located on the bottom left of substitute Forms W-2. The reference to the “Department of the Treasury — Internal Revenue Service” must be on all copies of substitute Forms W-2 furnished to employees. It is recommended (but not required) that this be located on the bottom right of Form W-2.

**.10** If the substitute employee copies are labeled, the forms must contain the applicable description.

- “Copy B, To Be Filed With Employee’s FEDERAL Tax Return.”
- “Copy C, For EMPLOYEE’S RECORDS.”
- “Copy 2, To Be Filed With Employee’s State, City, or Local Income Tax Return.”

It is recommended (but not required) that these be located on the lower left of Form W-2. If the substitute employee copies are not labeled as to the disposition of the copies, then written notification using similar wording must be provided to each employee.

**.11** The tax year (for example, 2017) must be clearly printed on all copies of substitute Form W-2. It is recommended (but not required) that this information be in the middle at the bottom of the Form W-2. The use of 24-pt. OCR-A font is recommended (but not required).

**.12** Boxes 1 and 2 (if applicable) on Copy B must be outlined in bold 2-point rule or highlighted in some manner to distinguish them. If “Allocated tips” are being reported, it is recommended (but not required) that box 8 also be outlined. If reported, “Social security tips” (box 7) must be shown separately from “Social security wages” (box 3).

**Note.** Boxes 8 and 9 may be omitted if not applicable.

**.13** If employers are required to withhold and report state or local income tax, the applicable boxes are also considered core information and must be placed at the bottom of the form. State information is included in:

- Box 15 (State, Employer’s state ID number)
- Box 16 (State wages, tips, etc.)
- Box 17 (State income tax)

Local information is included in:

- Box 18 (Local wages, tips, etc.)
- Box 19 (Local income tax)
- Box 20 (Locality name)

**.14** Boxes 7 through 14 may be omitted from substitute employee copies unless the employer must report any of that information to the employee. For example, if an employee did not have “Social security tips” (box 7), the form could be printed without that box. But if an employer provided dependent care benefits, the amount must be reported separately, shown in box 10, and labeled “Dependent care benefits.”

**.15** Employers may enter more than four codes in box 12 of substitute Copies B, C, and 2 (and 1 and D) of Form W-2, but each entry must use Codes A-FF (see the 2017 General Instructions for Forms W-2 and W-3).

**.16** If an employer has employees in any of the three categories in box 13, all checkbox headings must be shown and the proper checkmark made, when applicable.

**.17** Employers may use box 14 for any other information that they wish to give to their employees. Each item must be labeled. (See the instructions for box 14 in the 2017 General Instructions for Forms W-2 and W-3.)

**.18** The front of Copy C of a substitute Form W-2 must contain the note “This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a

negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.”

**.19** Instructions similar to those contained on the back of Copies B, C, and 2 of the official IRS Form W-2 must be provided to each employee. An employer may modify or delete instructions that do not apply to its employees. (For example, remove Railroad Retirement Tier 1 and Tier 2 compensation information for nonrailroad employees or information about dependent care benefits that the employer does not provide.)

**.20** Employers must notify their employees who have no income tax withheld that they may be able to claim a tax refund because of the earned income credit (EIC). They will meet this notification requirement if they furnish a substitute Form W-2 with the EIC notice on the back of Copy B, IRS Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit (EIC), or on their own statement containing the same wording. They also may change the font on Copies B, C, and 2 so that the EIC notification and Form W-2 instructions fit differently. For more information about notification requirements, see Notice 1015, “Have You Told Your Employees About the Earned Income Credit (EIC)?”

**Note.** An employer does not have to notify any employee who claimed exemption from withholding on Form W-4, Employee’s Withholding Allowance Certificate, for the calendar year.

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## Section 2.4 – Electronic Delivery of Form W-2 and W-2c Recipient Statements

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**.01** If you are required to furnish a written statement (Copy B or an acceptable substitute) to a recipient, then you may furnish the statement electronically instead of on paper. This includes furnishing the statement to recipients of Forms W-2 and W-2c.

If you meet the requirements listed below, you are treated as furnishing the statement timely.

**.02** The recipient must consent in the affirmative and not have withdrawn the consent before the statement is furnished. The consent by the recipient must be made electronically in a way that shows that he or she can access the statement in the electronic format in which it will be furnished.

You must notify the recipient of any hardware or software changes prior to furnishing the statement. A new consent to receive the statement electronically is required after any new hardware or software is put into service.

To furnish Forms W-2 electronically, you must meet the following disclosure requirements as described in Treasury Regulations *Section 31.6051-1(j)* or Publication 15-A and provide a clear and conspicuous statement of each requirement to your employees.

- The employee must be informed that he or she will receive a paper Form W-2 if consent isn’t given to receive it electronically.
- The employee must be informed of the scope and duration of the consent.
- The employee must be informed of any procedure for obtaining a paper copy of his or her Form W-2 and whether or not the request for a paper statement is treated as a withdrawal of his or her consent to receiving his or her Form W-2 electronically.

- The employee must be notified about how to withdraw a consent and the effective date and manner by which the employer will confirm the withdrawn consent.
- The employee also must be notified that the withdrawn consent doesn't apply to the previously issued Forms W-2.
- The employee must be informed about any conditions under which electronic Forms W-2 will no longer be furnished (for example, termination of employment).
- The employee must be informed of any procedures for updating his or her contact information that enables the employer to provide electronic Forms W-2.
- The employer must notify the employee of any changes to the employer's contact information.

.03 Additionally, you must:

- Ensure the electronic format complies with the guidelines in this document and contains all the required information described in the 2017 General Instructions for Forms W-2 and W-3.
- If posting the statement on a website, post it for the recipient to access on or before the January 31 due date through October 15 of that year.
- Inform the recipient in person, electronically, or by mail, of the posting and how to access and print the statement.

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### Part 3 Additional Instructions

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#### Section 3.1 – Additional Instructions for Form Printers

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.01 If paper copies are used for filing with the SSA, the substitute copies of Forms W-2 (either red-ink or substitute black-and-white forms) must be assembled in the same order as the official IRS Forms W-2. Copy A must be first, followed sequentially by perforated sets (Copies 1, B, C, 2, and D).

.02 The substitute form to be filed by the employer with the SSA must carry the designation "Copy A."

**Note.** Electronic filers do not submit either red-ink or substitute black-and-white paper Form W-2 (Copy A) or Form W-3 to the SSA.

.03 Employers must retain a copy of Forms W-2 and W-3 (or be able to reconstruct the information) for at least 4 years. Employers also must be able to generate Forms W-2 (Copy A) that meet the requirements of this revenue procedure in case of loss.

.04 Except for copies in the official assembly, described in Section 3.1.01 above, no additional copies that may be prepared by employers should be placed ahead of Form W-2 (Copy C) "FOR EMPLOYEE'S RECORDS."

.05 You must provide instructions similar to those contained on the back of Copies B, C, and 2 of the official IRS Form W-2 to each employee. You may print them on the back of the substitute Copies B, C, and 2 or provide them to employees on a separate statement. You do not need to use the back of Copy 2. If you do not use Copy 2, you may include all the information that appears on the back of the official Copies B, C, and 2 on the back of your substitute Copies B and C only. As an example, you may use the "Note" on the back of the official Copy C as the dividing point between the text for your substitute Copies B and C. Do not print these instructions on the back of Copy 1. Any Forms



W-2 (Copy A) and W-3 that are filed with the SSA must have no printing on the reverse side.

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## Section 3.2 – Instructions for Employers

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**.01** Only originals of Form W-2 (Copy A) and Form W-3 may be filed with the SSA. Carbon copies and photocopies are unacceptable.

**.02** Employers should type or machine-print data entries on plain paper forms whenever possible. Ensure good quality by using a high-quality type face, inserting data in the middle of blocks that are well separated from other printing and guidelines, and taking any other measures that will guarantee clear, sharp images. Black ink must be used with no script type, inverted font, italics, or dual-case alpha characters.

**Note.** 12-point Courier font is preferred by the SSA.

**.03** Form W-2 (Copy A) requires decimal entries for wage data. Do not print dollar signs with money amounts on Forms W-2 (Copy A) and W-3.

**.04** The employer must provide a machine-scannable Form W-2 (Copy A). The employer also must provide employee copies (Copies B, C, and 2) that are legible and able to be photocopied (by the employee). Do not print any data in the top margin of the payee copies of the forms.

**.05** Any printing in box d (Control number) on Form W-2 or box a on Form W-3 may not touch any vertical or horizontal lines and should be centered in the box.

**.06** The filer's employer identification number (EIN) must be entered in box b of Form W-2 and box e of Form W-3. The EIN entered on Form(s) W-2 (box b) and Form W-3 (box e) must be the same as on Forms 941, 941-SS, 943, 944, CT-1, Schedule H (Form 1040), or any other corresponding forms filed with the IRS. Be sure to use EIN format (00-0000000) rather than SSN format (000-00-0000).

**.07** The employer's name, address, and EIN may be preprinted.

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## Section 3.3 – OMB Requirements for Both Red-Ink and Black-and-White Copy A and W-3 Substitute Forms

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**.01** The Paperwork Reduction Act (the Act) of 1995 (Public Law 104-13) requires the following.

- The Office of Management and Budget (OMB) approves all IRS tax forms that are subject to the Act.
- Each IRS form contains (in or near the upper right corner) the OMB approval number, if assigned. (The official OMB numbers may be found on the official IRS printed forms and also are shown on the forms in Exhibits A, B, C, E, and F.)
- Each IRS form (or its instructions) states:

1. Why the IRS needs the information,
2. How it will be used, and
3. Whether or not the information is required to be furnished to the IRS.

**.02** This information must be provided to any users of official or substitute IRS forms or instructions.

**.03** The OMB requirements for substitute IRS Form W-2 (Copy A) and Form W-3 are the following.

- Any substitute form or substitute statement to a recipient must show the OMB number as it appears on the official IRS form.
- The OMB number for both Form W-2 and Form W-3 is 1545-0008 and must appear exactly as shown on the official IRS form.
- For any copy of Form W-2 other than Copy A, the OMB number must use one of the following formats.

1. OMB No. 1545-0008 (preferred) or

2. OMB # 1545-0008 (acceptable).

**.04** Any substitute Form W-2 (Copy A only) and Form W-3 must state “For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.” If no instructions are provided to users of your forms, you must furnish them with the exact text of the Privacy Act and Paperwork Reduction Act Notice.

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### Section 3.4 – Order Forms and Instructions

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**.01** You can order IRS Forms W-2, Forms W-3, the General Instructions for Forms W-2 and W-3, and other tax material online at IRS.gov. Click on the *Forms and Pubs* link and then the *Order Forms and Pubs* link or by clicking on *www.irs.gov/businesses* and then the *Online Ordering for Information Returns and Employer Returns* link.

**.02** Copies of Form W-2 (Copy A) and Form W-3 downloaded from IRS.gov cannot be used for filing with the SSA. These copies of Forms W-2 and W-3 are for information purposes only.

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### Section 3.5 – Effect on Other Documents

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**.01** Revenue Procedure 2016-54, 2016-45 I.R.B. 685, dated November 7, 2016 (reprinted as Publication 1141, Revised 11-2016), is superseded.

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### Section 3.6 – Exhibits

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Exhibits A through F provide the general measurements for Forms W-2 and W-3 as discussed in this revenue procedure. Certain exhibits show a 0000/ in the location designated for your vendor code. See Section 2.2.01, item 11, and Section 2.2.05 for more information.

Exhibit A — Form W-2 (Copy A) (Red-Ink) 2017

Exhibit B — Form W-2 (Copy B) 2017

Exhibit C — Form W-3 (Red-Ink) 2017

Exhibit D — Form W-2 (Copy A) (Substitute Black-and-White) 2017

Exhibit E — Form W-3 (Substitute Black-and-White) 2017

Exhibit F — Form W-2 Alternative Employee Copies (Illustrating Horizontal and Vertical Formats)

# Exhibit A

Form W-2 (Copy A) (Red Ink)

2222		14 in Void <input type="checkbox"/>		a Employee's social security number		For Official Use Only OMB No. 1545-0008		7.50 in		.50 in	
b Employer identification number (EIN)				1 Wages, tips, other compensation				2 Federal income tax withheld			
c Employer's name, address, and ZIP code				3 Social security wages				4 Social security tax withheld			
d Control number				5 Medicare wages and tips				6 Medicare tax withheld			
e Employee's first name and initial				Last name				7 Social security tips			
f Employee's address and ZIP code				9 Verification code				10 Dependent care benefits			
15 State Employer's state ID number				16 State wages, tips, etc.				17 State income tax			
18 Local wages, tips, etc.				19 Local income tax				20 Locality name			

**W-2 Wage and Tax Statement** **2017**

Form **Copy A For Social Security Administration** — Send this entire page with Form W-3 to the Social Security Administration; photocopies are **not** acceptable.

Department of the Treasury—Internal Revenue Service  
For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.  
Cat. No. 10134D

**Do Not Cut, Fold, or Staple Forms on This Page**

2222		Void <input type="checkbox"/>		a Employee's social security number		For Official Use Only OMB No. 1545-0008		4.10 in			
b Employer identification number (EIN)				1 Wages, tips, other compensation				2 Federal income tax withheld			
c Employer's name, address, and ZIP code				3 Social security wages				4 Social security tax withheld			
d Control number				5 Medicare wages and tips				6 Medicare tax withheld			
e Employee's first name and initial				Last name				7 Social security tips			
f Employee's address and ZIP code				9 Verification code				10 Dependent care benefits			
15 State Employer's state ID number				16 State wages, tips, etc.				17 State income tax			
18 Local wages, tips, etc.				19 Local income tax				20 Locality name			


**W-2 Wage and Tax Statement** **2017**

Form **Copy A For Social Security Administration** — Send this entire page with Form W-3 to the Social Security Administration; photocopies are **not** acceptable.

Department of the Treasury—Internal Revenue Service  
For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.  
Cat. No. 10134D

# Exhibit B

Form W-2 (Copy B)

<b>a</b> Employee's social security number		Safe, accurate, FAST! Use  Visit the IRS website at <a href="http://www.irs.gov/efile">www.irs.gov/efile</a>	
<b>b</b> Employer identification number (EIN)		<b>1</b> Wages, tips, other compensation	<b>2</b> Federal income tax withheld
<b>c</b> Employer's name, address, and ZIP code		<b>3</b> Social security wages	<b>4</b> Social security tax withheld
		<b>5</b> Medicare wages and tips	<b>6</b> Medicare tax withheld
		<b>7</b> Social security tips	<b>8</b> Allocated tips
<b>d</b> Control number		<b>9</b> Verification code	<b>10</b> Dependent care benefits
<b>e</b> Employee's first name and initial Last name Suff.		<b>11</b> Nonqualified plans	<b>12a</b> See instructions for box 12
		<b>13</b> Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>	<b>12b</b>
		<b>14</b> Other	<b>12c</b>
			<b>12d</b>
<b>f</b> Employee's address and ZIP code			
<b>15</b> State Employer's state ID number	<b>16</b> State wages, tips, etc.	<b>17</b> State income tax	<b>18</b> Local wages, tips, etc.
			<b>19</b> Local income tax
			<b>20</b> Locality name

Form **W-2** Wage and Tax Statement

2017  
0000/

Department of the Treasury—Internal Revenue Service

Copy B—To Be Filed With Employee's FEDERAL Tax Return.  
This information is being furnished to the Internal Revenue Service.

# Exhibit C

Form W-3 (Red Ink)

DO NOT STAPLE			
a Control number 99999		For Official Use Only OMB No. 1545-0008	
b Kind of Payer (Check one)	941 Military 943 Hshld. emp. 944 Medicare govt. emp.	Kind of Employer (Check one)	None apply State/local non-501c State/local 501c Federal govt.
c Total number of Forms W-2	d Establishment number	1 Wages, tips, other compensation	2 Federal income tax withheld
e Employer identification number (EIN)		3 Social security wages	4 Social security tax withheld
f Employer's name		5 Medicare wages and tips	6 Medicare tax withheld
		7 Social security tips	8 Allocated tips
		9	10 Dependent care benefits
g Employer's address and ZIP code		11 Nonqualified plans	12a Deferred compensation
h Other EIN used this year		13 For third-party sick pay use only	12b
15 State Employer's state ID number		14 Income tax withheld by payer of third-party sick pay	
16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax
Employer's contact person		Employer's telephone number	
Employer's fax number		For Official Use Only	
		Employer's email address	

Under penalties of perjury, I declare that I have examined this return and accompanying documents and, to the best of my knowledge and belief, they are true, correct, and complete.

Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

**Form W-3 Transmittal of Wage and Tax Statements 2017**

Send this entire page with the entire Copy A page of Form(s) W-2 to the Social Security Administration (SSA). Photocopies are not acceptable. Do not send Form W-3 if you filed electronically with the SSA. Do not send any payment (cash, checks, money orders, etc.) with Forms W-2 and W-3.

**Reminder**

**Separate instructions.** See the 2017 General Instructions for Forms W-2 and W-3 for information on completing this form. Do not file Form W-3 for Form(s) W-2 that were submitted electronically to the SSA.

**Purpose of Form**

Complete a Form W-3 Transmittal only when filing paper Copy A of Form(s) W-2, Wage and Tax Statement. Don't file Form W-3 alone. All paper forms must comply with IRS standards and be machine readable. Photocopies are not acceptable. Use a Form W-3 even if only one paper Form W-2 is being filed. Make sure both the Form W-3 and Form(s) W-2 show the correct tax year and Employer Identification Number (EIN). Make a copy of this form and keep it with Copy D (For Employer) of Form(s) W-2 for your records. The IRS recommends retaining copies of these forms for four years.

**E-Filing**

The SSA strongly suggests employers report Form W-3 and Forms W-2 Copy A electronically instead of on paper. The SSA provides two free e-filing options on its Business Services Online (BSO) website:

- **W-2 Online.** Use fill-in forms to create, save, print, and submit up to 50 Forms W-2 at a time to the SSA.
- **File Upload.** Upload wage files to the SSA you have created using payroll or tax software that formats the files according to the SSA's *Specifications for Filing Forms W-2 Electronically (EFW2)*.

W-2 Online fill-in forms or file uploads will be on time if submitted by **January 31, 2018**. For more information, go to [www.socialsecurity.gov/employer](http://www.socialsecurity.gov/employer). First time filers, select "Register"; returning filers select "Log In."

**When To File Paper Forms**

Mail Form W-3 with Copy A of Form(s) W-2 by **January 31, 2018**.

**Where To File Paper Forms**

Send this entire page with the entire Copy A page of Form(s) W-2 to:

**Social Security Administration  
Direct Operations Center  
Wilkes-Barre, PA 18769-0001**

**Note:** If you use "Certified Mail" to file, change the ZIP code to "18769-0002." If you use an IRS-approved private delivery service, add "ATTN: W-2 Process, 1150 E. Mountain Dr." to the address and change the ZIP code to "18702-7997." See Publication 15 (Circular E), Employer's Tax Guide, for a list of IRS-approved private delivery services.

**For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.**

# Exhibit D

## Form W-2 (Copy A) (Substitute Black-and-White)

22222		Void <input type="checkbox"/>		Employee's social security number		For Official Use Only OMB No. 1545-0008	
b Employer identification number (EIN)				1 Wages, tips, other compensation		2 Federal income tax withheld	
c Employer's name, address, and ZIP code				3 Social security wages		4 Social security tax withheld	
				5 Medicare wages and tips		6 Medicare tax withheld	
				7 Social security tips		8 Allocated tips	
d Control number				9 Verification code		10 Dependent care benefits	
e Employee's first name and initial		Last name		Suff.		11 Nonqualified plans	
f Employee's address and ZIP code				13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12a See instructions for box 12	
				14 Other		12b	
						12c	
						12d	
15 State Employer's state ID number		16 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.	
19 Local income tax		20 Locality name					

**Form W-2 Wage and Tax Statement** 2017

Copy A For Social Security Administration — Send this entire page with 0000/  
Form W-3 to the Social Security Administration; photocopies are **not** acceptable.

**Do Not Cut, Fold, or Staple Forms on This Page**

Department of the Treasury — Internal Revenue Service  
For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.  
Cat. No. 10134D

22222		Void <input type="checkbox"/>		Employee's social security number		For Official Use Only OMB No. 1545-0008	
b Employer identification number (EIN)				1 Wages, tips, other compensation		2 Federal income tax withheld	
c Employer's name, address, and ZIP code				3 Social security wages		4 Social security tax withheld	
				5 Medicare wages and tips		6 Medicare tax withheld	
				7 Social security tips		8 Allocated tips	
d Control number				9 Verification code		10 Dependent care benefits	
e Employee's first name and initial		Last name		Suff.		11 Nonqualified plans	
f Employee's address and ZIP code				13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12a See instructions for box 12	
				14 Other		12b	
						12c	
						12d	
15 State Employer's state ID number		16 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.	
19 Local income tax		20 Locality name					

**Form W-2 Wage and Tax Statement** 2017

Copy A For Social Security Administration — Send this entire page with 0000/  
Form W-3 to the Social Security Administration; photocopies are **not** acceptable.

Department of the Treasury — Internal Revenue Service  
For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.  
Cat. No. 10134D



# Exhibit E

## Form W-3 (Substitute Black-and-White)

**DO NOT STAPLE**

33333		a Control number		For Official Use Only OMB No. 1545-0008	
b Kind of Payer (Check one)		c Kind of Employer (Check one)		d Establishment number	
<input type="checkbox"/> 941 Military <input type="checkbox"/> 943 Civilian <input type="checkbox"/> 944 Other		<input type="checkbox"/> None apply <input type="checkbox"/> State/local non-501(c)(3) <input type="checkbox"/> State/local 501(c)(3) <input type="checkbox"/> Federal govt.		<input type="checkbox"/> Third-party sick pay (Check if applicable)	
e Total number of Forms W-2		f Employer's name		g Employer's address and ZIP code	
1.20 in		1.40 in		.67 in	
h Other EIN used this year		i For third-party sick pay use only		j Income tax withheld by payer of third-party sick pay	
1.00 in		1.25 in		.66 in	
15 State Employer's state ID number		16 State wages, tips, etc.		17 State income tax	
3.20 in		2.15 in		.33 in	
Employer's contact person		Employer's telephone number		Employer's fax number	
Employer's email address		4.30 in		.50 in	

Under penalties of perjury, I declare that I have examined this return and accompanying documents and, to the best of my knowledge and belief, they are true, correct, and complete.

Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

**Form W-3 Transmittal of Wage and Tax Statements 2017**

Send this entire page with the entire Copy A page of Form(s) W-2 to the Social Security Administration (SSA). Photocopies are not acceptable. Do not send Form W-3 if you filed electronically with the SSA. Do not send any payment (cash, checks, money orders, etc.) with Forms W-2 and W-3.

Department of the Treasury  
Internal Revenue Service

### Reminder

**Separate instructions.** See the 2017 General Instructions for Forms W-2 and W-3 for information on completing this form. Do not file Form W-3 for Form(s) W-2 that were submitted electronically to the SSA.

### Purpose of Form

Complete a Form W-3 Transmittal only when filing paper Copy A of Form(s) W-2, Wage and Tax Statement. Don't file Form W-3 alone. All paper forms must comply with IRS standards and be machine readable. Photocopies are not acceptable. Use a Form W-3 even if only one paper Form W-2 is being filed. Make sure both the Form W-3 and Form(s) W-2 show the correct tax year and Employer Identification Number (EIN). Make a copy of this form and keep it with Copy D (For Employer) of Form(s) W-2 for your records. The IRS recommends retaining copies of these forms for four years.

### E-Filing

The SSA strongly suggests employers report Form W-3 and Forms W-2 Copy A electronically instead of on paper. The SSA provides two free e-filing options on its Business Services Online (BSO) website:

- **W-2 Online.** Use fill-in forms to create, save, print, and submit up to 50 Forms W-2 at a time to the SSA.
- **File Upload.** Upload wage files to the SSA you have created using payroll or tax software that formats the files according to the SSA's *Specifications for Filing Forms W-2 Electronically (EFW2)*.

W-2 Online fill-in forms or file uploads will be on time if submitted by **January 31, 2018**. For more information, go to [www.socialsecurity.gov/employer](http://www.socialsecurity.gov/employer). First time filers, select "Register"; returning filers select "Log In."

### When To File Paper Forms

Mail Form W-3 with Copy A of Form(s) W-2 by **January 31, 2018**.

### Where To File Paper Forms

Send this entire page with the entire Copy A page of Form(s) W-2 to:


**Social Security Administration  
Direct Operations Center  
Wilkes-Barre, PA 18769-0001**

**Note:** If you use "Certified Mail" to file, change the ZIP code to "18769-0002." If you use an IRS-approved private delivery service, add "ATTN: W-2 Process, 1150 E. Mountain Dr." to the address and change the ZIP code to "18702-7997." See Publication 15 (Circular E), Employer's Tax Guide, for a list of IRS-approved private delivery services.

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.

# Exhibit F

## Form W-2 Copy B Alternative Employee Copies

<b>a</b> Employee's social security number		Safe, accurate, FAST! Use  Visit the IRS website at <a href="http://www.irs.gov/efile">www.irs.gov/efile</a>	
<b>b</b> Employer identification number (EIN)		<b>1</b> Wages, tips, other compensation	<b>2</b> Federal income tax withheld
<b>c</b> Employer's name, address, and ZIP code		<b>3</b> Social security wages	<b>4</b> Social security tax withheld
		<b>5</b> Medicare wages and tips	<b>6</b> Medicare tax withheld
		<b>7</b> Social security tips	<b>8</b> Allocated tips
<b>d</b> Control number		<b>9</b> Verification code	<b>10</b> Dependent care benefits
<b>e</b> Employee's first name and initial Last name Suff.		<b>11</b> Nonqualified plans	<b>12a</b> See instructions for box 12
		<b>13</b> Statutory employee Retirement plan Third-party sick pay	<b>12b</b>
		<b>14</b> Other	<b>12c</b>
			<b>12d</b>
<b>f</b> Employee's address and ZIP code			
<b>15</b> State Employer's state ID number	<b>16</b> State wages, tips, etc.	<b>17</b> State income tax	<b>18</b> Local wages, tips, etc.
			<b>19</b> Local income tax
			<b>20</b> Locality name

### Form W-2 Wage and Tax Statement

2017  
0000/

Department of the Treasury—Internal Revenue Service

Copy B—To Be Filed With Employee's FEDERAL Tax Return.  
This information is being furnished to the Internal Revenue Service.

<b>1</b> Wages, tips, other compensation	<b>2</b> Federal income tax withheld
<b>3</b> Social security wages	<b>4</b> Social security tax withheld
<b>5</b> Medicare wages and tips	<b>6</b> Medicare tax withheld
Employee's social security number	
Employer identification number (EIN)	
Employer's name, address, and ZIP code	
Employee's name	
Employee's address and ZIP code	
<b>15</b> State Employer's state ID number	<b>16</b> Local wages, tips, etc.
<b>16</b> State wages, tips, etc.	<b>19</b> Local income tax
<b>17</b> State income tax	<b>20</b> Locality name

Form W-2  
Wage and Tax  
Statement

2017  
0000/

Department of the Treasury—  
Internal Revenue Service

**Note:** Exhibit F displays examples of how Form W-2 Copy B can be furnished to employees. Copy B can be furnished in horizontal or vertical format. Specifications and requirements for employee copies can be found in Section 2.3 — Requirements for Substitute Forms Furnished to Employees (Copies B, C, and 2 of Form W-2).

Although employee copies can be manipulated, Section 2.3 has specific requirements for core data boxes that must be present on substitute employee copies.

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new

ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.  
ER—Employer.

ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel's Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.

PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

## **Numerical Finding List<sup>1</sup>**

Bulletin 2017–27 through 2017–29

### **Action on Decision:**

2017-5, 2017-27 I.R.B. *1*

### **Announcements:**

2017-05, 2017-27 I.R.B. *5*

2017-08, 2017-28 I.R.B. *9*

### **Notices:**

2017-37, 2017-29 I.R.B. *89*

### **Proposed Regulations:**

REG-136118-15, 2017-28 I.R.B. *9*

### **Revenue Procedures:**

2017-41, 2017-29 I.R.B. *92*

2017-42, 2017-29 I.R.B. *124*

### **Revenue Rulings:**

2017-14, 2017-27 I.R.B. *2*

### **Treasury Decisions:**

9819, 2017-29 I.R.B. *85*

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2017–01 through 2017–26 is in Internal Revenue Bulletin 2017–26, dated June 27, 2017.

## **Finding List of Current Actions on Previously Published Items<sup>1</sup>**

Bulletin 2017–27 through 2017–29

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2017–01 through 2017–26 is in Internal Revenue Bulletin 2017–26, dated June 27, 2017.

# **Internal Revenue Service**

## **Washington, DC 20224**

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## **INTERNAL REVENUE BULLETIN**

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *[www.irs.gov/irb/](http://www.irs.gov/irb/)*.

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## **We Welcome Comments About the Internal Revenue Bulletin**

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (*[www.irs.gov](http://www.irs.gov)*) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.