# INTERNAL REVENUE BULLETIN

IRS

Bulletin No. 2015–27
July 6, 2015


## HIGHLIGHTS OF THIS ISSUE

**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.**

## INCOME TAX

### Rev. Rul. 2015–15, page 1.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for July 2015.

## EMPLOYEE PLANS

### Rev. Proc. 2015–34, page 4.

This revenue procedure prescribes the application process for proposed suspensions of benefits for certain multiemployer defined benefit pension plans that are in critical and declining funded status. This revenue procedure also provides a model notice that a plan sponsor proposing a benefit suspension may use.

### Rev. Proc. 2015–36, page 20.

This revenue procedure modifies Rev. Proc. 2011–49 by expanding the scope of the pre-approved program to include defined benefit plans containing cash balance features and defined contribution plans containing employee stock ownership plan (ESOP) features and extends the deadline for submitting on-cycle applications for opinion and advisory letters for pre-approved defined benefit plans to October 30, 2015. In addition, this revenue procedure updates Rev. Proc. 2011–49 to reflect changes made to the determination letter program in 2012. Rev. Proc. 2011–49 is superseded.

## EXEMPT ORGANIZATIONS

### REG–102837–15, page 43.

This document contains proposed regulations under section 529A of the Internal Revenue Code that provide guidance regarding programs under The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014. Section 529A provides rules under which States or State agencies or instrumentalities may establish and maintain a new type of tax-favored savings program through which contributions may be made to the account of an eligible disabled individual to meet qualified disability expenses. These accounts also receive favorable treatment for purposes of certain means-tested Federal programs. In addition, these proposed regulations provide corresponding amendments to regulations under sections 511 and 513, with respect to unrelated business taxable income, sections 2501, 2503, 2511, 2642 and 2652, with respect to gift and generation-skipping transfer taxes, and section 6011, with respect to reporting requirements. This document also provides notice of a public hearing on these proposed regulations.

**Finding Lists begin on page ii.**

# 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.

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

## Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2015. See Rev. Rul. 2015–15, page 1.

## Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2015. See Rev. Rul. 2015–15 , page 1.

## Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of July 2015. See Rev. Rul. 2015–15 , page 1.

## Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2015. See Rev. Rul. 2015–15, page 1.

## Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2015. See Rev. Rul. 2015–15, page 1.

## Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2015. See Rev. Rul. 2015–15, page 1.

## Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2015. See Rev. Rul. 2015–15, page 1.

## Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2015. See Rev. Rul. 2015–15, page 1.

## Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2015. See Rev. Rul. 2015–15, page 1.

## Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2015. See Rev. Rul. 2015–15, page 1.

## Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2015. See Rev. Rul. 2015–15, page 1.

## Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

## Rev. Rul. 2015–15

This revenue ruling provides various prescribed rates for federal income tax purposes for July 2015 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, with respect to housing credit dollar amount allocations made before January 1, 2015 shall not be less than 9%.

Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520. Finally, Table 6 contains the blended annual rate for 2015 for purposes of section 7872.

REV. RUL. 2015–15 TABLE 1

Applicable Federal Rates (AFR) for July 2015

| | Period for Compounding | | | |
|---|---|---|---|---|
| | *Annual* | *Semiannual* | *Quarterly* | *Monthly* |
| | | *Short-term* | | |
| AFR | .48% | .48% | .48% | .48% |
| 110% AFR | .53% | .53% | .53% | .53% |
| 120% AFR | .58% | .58% | .58% | .58% |
| 130% AFR | .62% | .62% | .62% | .62% |
| | | *Mid-term* | | |
| AFR | 1.77% | 1.76% | 1.76% | 1.75% |
| 110% AFR | 1.95% | 1.94% | 1.94% | 1.93% |
| 120% AFR | 2.12% | 2.11% | 2.10% | 2.10% |
| 130% AFR | 2.30% | 2.29% | 2.28% | 2.28% |
| 150% AFR | 2.66% | 2.64% | 2.63% | 2.63% |
| 175% AFR | 3.10% | 3.08% | 3.07% | 3.06% |
| | | *Long-term* | | |
| AFR | 2.74% | 2.72% | 2.71% | 2.70% |
| 110% AFR | 3.01% | 2.99% | 2.98% | 2.97% |
| 120% AFR | 3.29% | 3.26% | 3.25% | 3.24% |
| 130% AFR | 3.57% | 3.54% | 3.52% | 3.51% |

REV. RUL. 2015–15 TABLE 2

Adjusted AFR for July 2015

| | Period for Compounding | | | |
|---|---|---|---|---|
| | *Annual* | *Semiannual* | *Quarterly* | *Monthly* |
| Short-term adjusted AFR | .48% | .48% | .48% | .48% |
| Mid-term adjusted AFR | 1.67% | 1.66% | 1.66% | 1.65% |
| Long-term adjusted AFR | 2.74% | 2.72% | 2.71% | 2.70% |

REV. RUL. 2015–15 TABLE 3

Rates Under Section 382 for July 2015

| | |
|---|---|
| Adjusted federal long-term rate for the current month | 2.74% |
| Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.) | 2.74% |

REV. RUL. 2015–15 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for July 2015

Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, with respect to housing credit dollar amount allocations made before January 1, 2015 shall not be less than 9%.

| | |
|---|---|
| Appropriate percentage for the 70% present value low-income housing credit | 7.52% |
| Appropriate percentage for the 30% present value low-income housing credit | 3.22% |

REV. RUL. 2015–15 TABLE 5

Rate Under Section 7520 for July 2015

| | |
|---|---|
| Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest | 2.2% |

REV. RUL. 2015–15 TABLE 6

Blended Annual Rate for 2015

| | |
|---|---|
| Section 7872(e)(2) blended annual rate for 2015 | .45% |

## Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2015. See Rev. Rul. 2015–15, page 1.

## Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2015. See Rev. Rul. 2015-15, page 1.

## Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2015. See Rev. Rul. 2015–15, page 1.

# Part III. Administrative, Procedural, and Miscellaneous

*Application Procedures for Approval of Benefit Suspensions for Certain Multiemployer Defined Benefit Pension Plans under § 432(e)(9)*

## Revenue Procedure 2015–34

### SECTION 1. BACKGROUND AND PURPOSE

Section 201 of the Multiemployer Pension Reform Act of 2014, Division O of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235 (128 Stat. 2130 (2014)) (MPRA), amended the Internal Revenue Code (Code) and the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829 (1974)), as amended (ERISA), to permit the sponsor of a multiemployer defined benefit plan in critical and declining status to suspend benefits in certain situations.

In particular, MPRA amended § 432(e)(9) of the Code and section 305(e)(9) of ERISA to permit the sponsor of a multiemployer defined benefit plan in critical and declining status to submit to the Secretary of the Treasury (Secretary) a proposal to suspend benefits in certain situations. MPRA requires the Secretary to approve a plan sponsor's proposed suspension if the plan is eligible for the proposed suspension and the proposed suspension satisfies § 432(e)(9)(C) through (F).[1]

On February 18, 2015, the Treasury Department issued a Request for Information on benefit suspensions under MPRA in the Federal Register (80 FR 8578). The Request for Information stated that the Treasury Department intends to issue guidance implementing § 432(e)(9) and that a plan sponsor should not submit an application for a suspension of benefits until a date specified in that future guidance.

Applications for a suspension of benefits under a multiemployer defined benefit pension plan that is in critical and declining status under § 432(e)(9) will be accepted on or after June 19, 2015. This revenue procedure prescribes the application process for approval of a proposed benefit suspension in accordance with § 432(e)(9)(G) and provides a model notice that a plan sponsor proposing a benefit suspension may use to satisfy the content and readability requirements of § 432(e)(9)(F)(ii) and (iii)(II). See Appendix A for the model notice. This revenue procedure does not affect the standards that will be applied in reviewing an application for a suspension of benefits under § 432(e)(9).

Proposed and temporary regulations under § 432(e)(9) were published in the Federal Register on June 19, 2015. The provisions of this revenue procedure should be interpreted in a manner consistent with the provisions of the proposed and temporary regulations under § 432(e)(9). Final regulations will be issued following a public hearing and consideration of public comments. If, and to the extent that, the final regulations differ from the proposed and temporary regulations in a manner that affects the provisions of this revenue procedure, or if changes to the application process are identified that would be necessary or helpful, a revised revenue procedure will be issued to take those changes into account.

While proposed and temporary regulations have been issued (and, as noted, applications proposing a benefit suspension will be accepted on or after June 19, 2015), it is expected that any such applications will not be approved prior to consideration of public comments on the regulations and subsequent issuance of final regulations. If a plan sponsor chooses to submit an application for approval of a proposed benefit suspension in accordance with the proposed and temporary regulations before the issuance of final regulations, then the plan sponsor may need to revise the proposed suspension (and potentially the related notices to plan participants) or supplement the application to take into account any differences in the regulatory provisions that might be included in the final regulations.

### SECTION 2. APPLICATION PROCEDURES

This section prescribes procedures for applying for approval of a proposed suspension of benefits, including information that must be included in the application. A plan sponsor may be required to provide additional information with respect to any application after it is submitted. For example, the plan sponsor may be required to provide individual participant data that would permit the Secretary to confirm that the sample and actuarial calculations provided in the application, such as those provided for purposes of section 4 of this revenue procedure, are accurate and applied in a consistent manner.

.01 *Who may submit application*. An application for approval of a proposed benefit suspension under § 432(e)(9) must be submitted by the plan sponsor as defined in § 432(j)(9) (generally, the joint board of trustees of the plan) or by an authorized representative of the plan sponsor. The application must be signed and dated by an authorized trustee who is a current member of the board of trustees or by an authorized representative of the plan sponsor who is described in section 7.01(13) of Rev. Proc. 2015–1, 2015–1 I.R.B. 1.[2]

.02 *Terms of proposed benefit suspension*. The application must include a description of the proposed benefit suspension. The description must include the following information:

(1) The effective date of the proposed suspension.

(2) If the proposed suspension will expire by its own terms, the expiration date.

(3) The categories or groups of individuals who would be affected by the proposed suspension and how those categories or groups are defined. If the proposed suspension would have a different

[1]The Secretary's approval of a proposed suspension would apply for purposes of section 305(e)(9) of ERISA, as well for purposes of § 432(e)(9) of the Code. Accordingly, the provisions of this revenue procedure pertaining to § 432(e)(9) of the Code apply also for purposes of the corresponding provisions of section 305(e)(9) of ERISA.

[2]Section 7.01(13) of Rev. Proc. 2015–1 provides that the following parties may be authorized representatives if appropriately accredited or authorized: attorney, certified public accountant, enrolled agent, enrolled actuary, and enrolled retirement plan agent.

effect on different categories or groups, the description must describe the differences, including the formula used to calculate the amount of the proposed benefit suspension for individuals in each category or group. Although any benefit suspension must take into account the limitations on a benefit suspension under the rules of § 432(e)(9)(D)(i), (ii) and (iii), for ease of presentation and understanding, the amount of the proposed benefit suspension described in this section 2.02 for an individual must be calculated as if the limitations of § 432(e)(9)(D)(i), (ii) and (iii) did not apply to that individual. (Note that the application of those limitations must be described pursuant to section 4.01 of this revenue procedure, below.)

.03 *Penalties of perjury*. The following statement signed by an authorized trustee on behalf of the board of trustees that the application is submitted under penalties of perjury: "Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete."

.04 *Public disclosure*. A statement signed by an authorized trustee on behalf of the board of trustees acknowledging that, pursuant to § 432(e)(9)(G)(ii), the application for approval of the proposed suspension of benefits, and the application's supporting material, will be publicly disclosed through publication on the Treasury Department website.

.05 *Where to submit application*. An application must be submitted to: *www.treasury.gov/mpra*

.06 *Signature*. Any signature required by this revenue procedure must be submitted electronically in Portable Document Format as part of the application. A stamped signature is not permitted.

.07 *Duty to correct*. If, after submission of an application for a suspension of benefits, any error in that application is discovered, the plan sponsor must provide prompt notice to the Treasury Department.

## SECTION 3. DEMONSTRATION THAT PLAN IS ELIGIBLE FOR SUSPENSION

The application must include the following information providing support for the plan sponsor's method of satisfying the benefit suspension criteria under § 432(e)(9), including the plan's eligibility for the suspension:

.01 *Plan actuary's certification of critical and declining status*. The plan actuary's certification required under § 432(b)(3)(B)(iv) that the plan is in critical and declining status as defined in § 432(b)(6) for the plan year in which the application is submitted. Documentation supporting the actuarial certification of status must be included with the certification, including a year-by-year projection of the available resources as defined in § 418E(b)(3) and the benefits under the plan, demonstrating that the plan is projected to become insolvent during the relevant period. The documentation must include a description of each of the assumptions used, including the total contribution base units and average contribution rates. The year-by-year projection must separately identify the market value of assets as of the beginning and end of each year in the relevant period and the following cash-flow items for each of those years:

(1) Contributions.
(2) Withdrawal liability payments.
(3) Benefit payments.
(4) Administrative expenses.
(5) Investment returns.

.02 *Plan actuary's certification that the plan is projected to avoid insolvency*. The plan actuary's certification to the plan sponsor under § 432(e)(9)(C)(i) that the plan is projected to avoid insolvency within the meaning of § 418E, taking into account the proposed benefit suspension (and, if applicable, a proposed partition of the plan under section 4233 of ERISA) and assuming that the proposed suspension continues until it expires by its own terms or, if no such expiration date is set, indefinitely. Documentation supporting the actuarial certification under § 432(e)(9)(C)(i) must be included with the certification, including a year-by-year projection of the available resources within the meaning of § 418E(b)(3) and the benefits under the plan demonstrating the avoidance of insolvency of the plan over the relevant period. The documentation must include a description of each of the assumptions used, including the total contribution base units and average contribution rates. The year-by-year projection must separately identify the market value of assets as of the beginning and end of each year in the relevant period and the following cash-flow items for each of those years:

(1) Contributions.
(2) Withdrawal liability payments.
(3) Benefit payments.
(4) Administrative expenses.
(5) Investment returns.

.03 *Plan sponsor's determination of projected insolvency*. The plan sponsor's determination under § 432(e)(9)(C)(ii) that the plan is projected to become insolvent unless benefits are suspended, even though all reasonable measures to avoid insolvency have been taken. The determination must include the documentation set forth in section 5 of this revenue procedure.

## SECTION 4. DEMONSTRATION THAT THE PROPOSED SUSPENSION SATISFIES THE STATUTORY REQUIREMENTS

The application must include the following information to demonstrate that certain statutory limitations and notice requirements are satisfied with respect to the proposed suspension of benefits:

.01 *Demonstration that limitations on individual suspensions are satisfied*. A demonstration of how the proposed suspension satisfies the limitations described in § 432(e)(9)(D)(i), (ii), and (iii).[3] The demonstration must include:

(1) A sample calculation applying the 110 percent limitation under § 432(e)(9)(D)(i) for an individual in each category or group identified in accordance with

[3]The sample calculations submitted pursuant to this section 4.01 must not include personally identifiable information relating to any individual.

section 2.02(3) of this revenue procedure. Each sample calculation must identify how the monthly benefit that would be guaranteed under section 4022A of ERISA is calculated (assuming, for this purpose, that no portion of the individual's benefit under the plan is subject to permitted forfeiture under § 411(a), due, for example, to a failure to vest in accordance with the vesting schedule specified under the plan). The calculation must identify the extent, if any, to which the monthly guaranteed benefit calculated under section 4022A is reduced on account of any of the following limitations or exclusions:

(a) The section 4022A(a) exclusion of certain forfeitable benefits (for example, increased benefits that have not become part of the accrued benefit).

(b) The section 4022A(b)(1)(A) exclusion of certain benefits and benefit increases in effect for less than 60 months.

(c) The limitations contained in the section 4022A(c)(2) definition of the accrual rate used for calculating the monthly guaranteed benefit (the accrual rate must be based on a benefit that is no greater than the monthly benefit payable under the plan at normal retirement age in the form of a single life annuity (for example, if the benefit reflected an actuarial increase related to delayed retirement or is paid in the form of a social security level income option) and must be calculated without regard to any reduction under § 411(a)(3)(E), divided by years of credited service (credited service cannot exceed 1 year for any year of participation)).

(d) The section 4022A(d) limitation that the guaranteed benefit will not exceed the benefit calculated under the plan as reduced under § 411(a)(3)(E).

(e) The section 4022A(e) exclusion, pursuant to section 4022(b)(6), of benefits that would not be guaranteed if paid under a single-employer plan (benefits paid from a plan that does not satisfy the requirements of § 401(a) or § 404(a)(2)).

(2) With respect to benefits based on disability, as calculated using the plan's definition of disability:

(a) A description of each benefit based on disability, as defined under the plan, that is paid to an individual under the plan, and

(b) A sample calculation under § 432(e)(9)(D)(iii) for an individual in each category or group identified in accordance with section 2.02(3) of this revenue procedure for each type of benefit based on disability that shows how the plan determines the extent to which any retirement benefit paid with respect to a participant who commenced benefits as a result of disability is, or is not, treated as a benefit based on disability. If the plan provides to a disabled individual a benefit that is not described in the plan as a disability benefit (for example, a retirement benefit paid at normal retirement age that is greater than a disability benefit paid before normal retirement age), then the calculation must show the extent to which the retirement benefit is, or is not, a benefit based on disability.

(3) A sample calculation for an individual in each category or group identified in accordance with section 2.02(3) of this revenue procedure that shows how the proposed suspension satisfies the age-based limitations of § 432(e)(9)(D)(ii), taking into account the guarantee-based limitation of § 432(e)(9)(D)(i). If the plan provides a benefit of the type described in the second sentence of paragraph 4.01(2)(b) of this revenue procedure, then the sample calculation must show how the proposed suspension satisfies the age-based limitations taking into account both the guarantee-based limitation and the disability-based limitation.

.02 *Demonstration that the proposed suspension is reasonably estimated to enable the plan to avoid insolvency*. A demonstration that, in accordance with § 432(e)(9)(D)(iv), the proposed benefit suspension (considered, if applicable, in combination with a proposed partition of the plan under section 4233 of ERISA) is reasonably estimated to enable the plan to avoid insolvency. The demonstration must include:

(1) An illustration, prepared on a deterministic basis, showing that:

(a) For each plan year beginning on the effective date of the proposed suspension and throughout an extended period as described in regulations under § 432(e)(9), the plan's solvency ratio – the ratio of the plan's available resources (as defined in § 418E(b)(3)) to the scheduled benefits payable under the plan for the plan year – is projected to be at least 1.0.

(b) If the plan's projected funded percentage at the end of the extended period is less than or equal to 100 percent, then neither the plan's solvency ratio nor its available resources are projected to decrease in any of the last five plan years of the extended period.

(2) An illustration using stochastic projections that reflect variance in investment return that the probability the plan will avoid insolvency throughout the extended period as a result of the proposed suspension is greater than 50 percent. (The plan sponsor of a plan that is not described

in § 432(e)(9)(B)(v)(I) is not required to use stochastic projections in demonstrating that the plan will avoid insolvency; however, if the plan sponsor chooses to use stochastic projections for this purpose, then it must provide this illustration.)

(3) A description of each of the assumptions used, including:

(a) If the actuarial assumptions used for the deterministic projections differ from those used under section 3.01 of this revenue procedure, a justification for that difference.

(b) With respect to the stochastic projections described in section 4.02(2) of this revenue procedure, the assumed mix of assets (and how it compares with the current mix of assets), the distribution of returns for each asset class, and the correlation among those rates of returns and any other economic variables in the projections.

(c) If the actuarial assumptions used for stochastic projections as described in section 4.02(2) of this revenue procedure differ from those used for deterministic projections as described in section 4.02(1) of this revenue procedure (other than those related to investment returns), a justification for that difference.

.03 *Demonstration that the proposed suspension is reasonably estimated to not materially exceed the level necessary to avoid insolvency*. In the case of a plan that is not applying for a partition in combination with a suspension, a demonstration that, in accordance with § 432(e)(9)(D)(iv), the proposed benefit suspension is reasonably estimated to not materially exceed the level necessary to enable the plan to avoid insolvency. For this purpose, the assumptions used must be the same as those used for purposes of 4.02 of this revenue procedure. The demonstration must include an illustration of the measures described in section 4.02(1) of this revenue procedure (and, if applicable to the plan, section 4.02(2) of this revenue procedure) showing that, if the dollar amount of the proposed suspension for each participant and beneficiary were reduced by 5 percent, then the proposed suspension would not reasonably be estimated to enable the plan to avoid insolvency.

.04 *Demonstration that the proposed benefit suspension is distributed equitably*. A demonstration that, in accordance with § 432(e)(9)(D)(vi), the proposed benefit suspension is distributed in an equitable manner across the participant and beneficiary population.

(1) With respect to this demonstration, the application must identify the factors (for example, those listed in section § 432(e)(9)(D)(vi)(I) through (XI)) that were taken into account in designing the proposed suspension.

(2) If none of the factors listed in § 432(e)(9)(D)(vi)(I) through (XI) were taken into account, then the application must explain why those factors were not considered relevant in designing the proposed suspension.

(3) If the proposed suspension applies differently to different categories or groups of individuals, then the application must state the approximate number of individuals in each category or group, the average monthly benefit before and after the suspension for individuals in that category or group, and the aggregate present value of the reduction in benefits for all individuals in that category or group. The application must also explain how any differences in the applicable benefit suspension formulas for the different categories or groups of individuals result from a reasonable application of the relevant factors.

(4) A demonstration of the distribution of the benefit suspension within each different category or group of individuals referred to in section 4.04(3) of this revenue procedure, taking into account the effect of the individual limitations under § 432(e)(9)(D)(i), (ii), and (iii). This can be expressed as a count of individuals within the category or group whose benefits are not reduced, or are reduced by a percentage within a range not exceeding 10 percent. For example, the distribution could show a count of the individuals who have no reduction, a reduction of 10 percent or less, a reduction of 20 percent or less but more than 10 percent, etc.

.05 *Notice*. A description of the plan sponsor's method for satisfying the notice requirements under § 432(e)(9)(F), including the following information:

(1) For each category or group of individuals described in section 2.02(3) of this revenue procedure, a copy of each type of actual notice[4] that has been or will be given to an individual in that category or group. (This is required even if the plan sponsor uses the model notice in Appendix A.)

(2) A description of the efforts that are being made to contact participants, beneficiaries and alternate payees.

(3) A description of the steps the plan sponsor has taken to ensure that any electronically delivered notices are reasonably accessible to the recipients.

(4) A list of:

(a) Each employer that has an obligation to contribute within the meaning of section 4212(a) of ERISA, and

(b) Each employee organization representing participants under the plan.

[4]The copy of the notice(s) attached to the application must not include personally identifiable information with respect to any individual, such as a name or social security number.

## SECTION 5. PLAN SPONSOR DETERMINATION RELATING TO REASONABLE MEASURES TAKEN TO AVOID INSOLVENCY

With respect to the plan sponsor's determination required under section 3.03 of this revenue procedure that the plan is projected to become insolvent unless benefits are suspended, the application must include the following information:

.01 *Measures taken to avoid insolvency*. A detailed description of measures taken in order to avoid insolvency over the past 10 plan years immediately preceding the plan year in which the application is submitted.

.02 *Plan factors*. In accordance with § 432(e)(9)(C)(ii), the following specific information with respect to the plan:

(1) For the past 10 plan years immediately preceding the plan year in which the application is submitted:
   (a) Contribution levels.
   (b) Levels of benefit accruals, including any prior reductions in the rate of benefit accruals.
   (c) Prior reductions, if any, of adjustable benefits under § 432(e)(8).
   (d) Any prior suspension of benefits under § 432(e)(9).
   (e) Measures undertaken by the plan sponsor to retain or attract contributing employers.

(2) The impact on plan solvency of the subsidies and ancillary benefits, if any, available to active participants.

(3) Compensation levels of active participants relative to employees in the participants' industry generally.

(4) Competitive and other economic factors facing contributing employers.

.03 *How plan factors were taken into account*. For each of the factors listed under section 5.02 of this revenue procedure and the factors described in § 432(e)(9)(C)(ii)(VIII) (the impact of benefit and contribution levels on retaining active participants and bargaining groups under the plan) and § 432(e)(9)(C)(ii)(IX) (the impact of past and anticipated contribution increases under the plan on employer attrition and retention levels), the application must describe how that factor was taken into account (or why that factor was not taken into account) in the plan sponsor's determination that all reasonable measures have been taken to avoid insolvency.

.04 *Other factors considered*. If the plan sponsor considered any other factors, then the application must discuss how and why that factor was taken into account in the plan sponsor's determination that all reasonable measures have been taken to avoid insolvency.

## SECTION 6. OTHER REQUIRED INFORMATION.

The application must also include the following information:

.01 *Ballot*. A proposed ballot intended to satisfy the requirements of § 432(e)(9)(H)(iii) (without the statement in opposition to the proposed benefit suspension described in § 432(e)(9)(H)(iii)(II) or the individualized estimate that was provided as part of the notice described in § 432(e)(9)(F)).

.02 *Partition*. Whether the plan sponsor is requesting approval from the PBGC of a proposed partition under section 4233 of ERISA. If the plan sponsor is requesting approval of a proposed partition, then the application for the proposed benefit suspension must include the proposed effective date of the partition and a year-by-year projection of the amount of the reduction in benefit payments (that is, the guaranteed amounts covered by financial assistance under the successor plan for each year) attributable to the partition.

.03 *Ten-year experience for certain critical assumptions*. With respect to each of the 10 plan years immediately preceding the plan year in which the application is submitted, a disclosure that separately identifies:

(1) Total contributions.
(2) Total contribution base units.
(3) Average contribution rates.
(4) Withdrawal liability payments.
(5) Rate of return on plan assets.

.04 *Demonstration of sensitivity of projections*. The application must include deterministic projections of the sensitivity of the plan's solvency ratio throughout the extended period to certain key assumptions. For this purpose, the application must include the following separate projections calculated using the same assumptions as those used under section 4.02(1) of this revenue procedure, except that:

(1) The assumed rate of return is reduced by 1 percentage point.
(2) The assumed rate of return is reduced by 2 percentage points.
(3) Future contribution base units increase or decrease at a rate equal to the average annual rate of increase or decrease that the plan experienced over the period of years described in section 6.03 of this revenue procedure.
(4) Future contribution base units increase or decrease at a rate equal to the rate described in section 6.04(3) of this revenue procedure reduced by 1 percentage point.

.05 *Projection of funded percentage*. The plan sponsor must include an illustration, prepared on a deterministic basis, of the projected value of plan assets, the accrued liability of the plan (calculated using the unit credit funding method) and the funded percentage for each year in the extended period.

.06 *Plan sponsor certifications relating to plan amendments*. The plan sponsor must certify that if it receives final authorization to implement the suspension as described in § 432(e)(9)(H)(vi) and chooses to implement the authorized suspension, then, in addition to the plan amendment implementing the suspension, the following plan amendments will be timely adopted and not modified at any time thereafter before the suspension of benefits expires:

(1) A plan amendment providing that in accordance with § 432(e)(9)(C)(ii) the benefit suspension will cease as of the first day of the first plan year following the plan year in which the plan sponsor fails to determine that both:

(a) All reasonable measures to avoid insolvency continue to be taken during the period of the benefit suspension.

(b) The plan is projected to become insolvent unless benefits continue to be suspended.

(2) A plan amendment providing that any future benefit improvements must satisfy the requirements of § 432(e)(9)(E).

.07 *Whether a plan is described in § 432(e)(9)(D)(vii)(III)*. Whether the plan is a plan described in § 432(e)(9)(D)(vii)(III) and, if so, how that fact is reflected in the proposed benefit suspension.

.08 *Optional additional information*. The plan sponsor may include other information about the plan, such as a narrative statement of the reasons the plan is in critical and declining status.

## SECTION 7. IDENTIFICATION AND BACKGROUND INFORMATION ON THE PLAN

The application must include the following identification and background information:

.01 *Plan sponsor*. Name, contact information (for example, address, telephone number, email address and fax number) and employer identification number (EIN) of the plan sponsor.

.02 *Plan identification*. Name of the plan, plan number and plan EIN (if different from the plan sponsor EIN) for which the application is submitted.

.03 *Retiree representative*. If applicable, name and contact information of the retiree representative for the plan described in § 432(e)(9)(B)(v).

.04 *Plan's enrolled actuary*. Name, enrollment number, and contact information of the plan's enrolled actuary within the meaning of § 7701(a)(35).

.05 *Power of Attorney*. A designation of power of attorney for each authorized representative who will represent the plan sponsor in connection with the application. See Appendix B.

.06 *Plan documents*. With respect to the plan document, the most recent plan document, including all amendments adopted since the last restatement[5] as well as the following documents related to that plan document:

(1) The most recent summary plan description as defined under section 102 of ERISA and any subsequent summaries of material modification.

(2) The most recent determination letter issued to the plan.

.07 *Collective bargaining and side agreements*. Excerpts from collective bargaining agreements and side agreements (such as participation agreements or reciprocity agreements) pursuant to which the plan is maintained. The plan sponsor must not submit the entire collective bargaining or side agreement. The required excerpts are:

(1) Language from any portions of a collective bargaining agreement that are relevant to the plan or the proposed suspension, and

(2) Language from any portions of a side agreement that are relevant to the plan or the proposed suspension.

.08 *Annual return*. Excerpts from the most recently filed Form 5500, Annual Return/Report of Employee Benefit Plan. The required excerpts are:

(1) Pages 1 and 2 of the Form 5500, without attachments or schedules.

(2) The Schedule MB, including attachments, and

(3) The Schedule R, including attachments.

.09 *Rehabilitation plan*. The rehabilitation plan described in § 432(e)(3) as most recently updated. If the rehabilitation plan includes more than one contribution or benefit schedule, then the application must specify the extent to which each schedule applies (either pursuant to collective bargaining or, with respect to the designated default schedule, as imposed on an employer), expressed as a percentage of the total contributions for the most recent year for which the information is available.

.10 *Completed checklist*. A completed checklist of information required to be included in the application. See Appendix C.

## SECTION 8. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(c)) under control number 1545-2260.

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

The collections of information in this revenue procedure appear in Appendix B (sample Power of Attorney form) and Appendix C (checklist for completeness of the application). Burden estimates with respect to information described in sections 2, 3, 4, 5, 6 and 7 of this revenue procedure are reported in the preamble to the proposed regulations under § 1.432(e)(9)–1.

We estimate the total number of respondents to be 28.

We estimate it will take 2 hours to comply. The estimated total annual and/or recordkeeping burden is 56 hours.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

## CONTACT INFORMATION

For general information regarding this revenue procedure, please contact the Treasury Department MPRA guidance information line at (202) 622-1559 (not a toll-free number). For information regarding a specific application for benefit suspension, please contact the Treasury Department at (202) 622-1534 (not a toll-free number).

[5]Submission of the plan document and amendments to the Treasury Department as part of the application for approval of a proposed suspension under this revenue procedure will not be treated as a request to the IRS for a favorable determination on the qualified status of the plan under § 401 or the exempt status of the related trust under § 501(a). For procedures governing an application to the IRS for a favorable determination under §§ 401 and 501(a), see Rev. Proc. 2015–6, 2015–1 I.R.B. 194, and Rev. Proc. 2007–44, 2007–2 C.B. 54, as modified.

## Appendix A

### MODEL NOTICE OF APPLICATION FOR APPROVAL OF A PROPOSED REDUCTION OF BENEFITS

*[This is a model notice that can be used to satisfy the requirements of § 432(e)(9)(F). If the plan sponsor applies for a partition of the Plan under section 4322 of ERISA, then this notice can be combined with the notice required under section 4322 assuming all other requirements, such as the timing of providing each notice, are satisfied.]*

[DATE]

### NOTICE OF APPLICATION FOR APPROVAL OF A PROPOSED REDUCTION OF BENEFITS UNDER *[Insert name of plan]*

This notice is to inform you that, on [*insert date*], the joint board of trustees of the *[insert Plan name]* ("Board of Trustees") [*insert submitted/will submit*] an application to the U.S. Treasury Department for approval to reduce benefits under the *[insert Plan name]* ("Plan"), effective *[insert effective date of proposed suspension of benefits]*. If the application is approved and other requirements are satisfied, then the Board of Trustees will be permitted to reduce, by plan amendment, benefits otherwise payable to participants or beneficiaries. This type of benefit reduction is authorized by the Multiemployer Pension Reform Act of 2014, which refers to it as a "suspension" of benefits. It is a reduction of any current or future payments from a multiemployer defined benefit pension plan to any participant or beneficiary, including retirees and beneficiaries who are receiving benefits at the time of the reduction.

Federal law requires the Board of Trustees to send this notice to contributing employers, unions representing participants, and every plan participant and beneficiary, even if his or her benefit is not being reduced. To see whether and how the proposed reduction applies to you, go to **"How the proposed reduction in benefits would affect you"** on page [*insert page number*] of this notice.

<u>PLAN'S ELIGIBILITY TO REDUCE BENEFITS</u>

Federal law permits the Board of Trustees to apply for a proposed reduction of benefits because the Plan's actuary certified that the Plan is in "critical and declining" status for the plan year beginning *[insert first day of plan year]*. This means that the Plan is experiencing funding and/or liquidity problems, such that it is in "critical" status, and it is projected to become insolvent (that is, not have enough assets to pay benefits) in the year *[insert year]*.

The Board of Trustees determined that it has taken "all reasonable measures" to avoid insolvency of the Plan, but that those measures have been insufficient to meet that goal, and that the proposed reduction of benefits is necessary to avoid insolvency. If the Plan were to become insolvent, benefits could be reduced below the proposed reduction. If this were to happen, the Pension Benefit Guaranty Corporation ("PBGC") would be required to provide a guarantee for a certain level of benefits that is set by federal law ("PBGC-guaranteed level").[6]

<u>DESCRIPTION OF THE PROPOSED BENEFIT REDUCTION AND FACTORS CONSIDERED BY THE BOARD OF TRUSTEES IN DESIGNING THE REDUCTION</u>

Federal law imposes limits on how a reduction of benefits can be designed. For example, a participant's or beneficiary's monthly benefit may not be reduced below 110% of the PBGC-guaranteed level. In addition, no reduction can apply to benefits based on disability. Finally, an individual's age affects the amount of the reduction that may apply to the monthly benefit. No reduction applies to the benefits of an individual who has reached age 80 as of the effective date of the reduction. For an individual who is between ages 75 and 80 as of the effective date of the reduction, the maximum amount of the reduction that can apply to his or her benefit is reduced. The closer the individual is to age 80 as of the effective date of the reduction, the smaller the reduction to the individual's benefit can be. If the age-based limits on the amount of a reduction apply for a participant, then the same limits will continue for any beneficiary of the participant after the participant's death, regardless of the beneficiary's age.

Federal law requires that any reduction of benefits be distributed fairly among the various categories or groups of participants and beneficiaries under the Plan. In deciding whether the proposed reduction would be distributed fairly under the Plan, the Board of Trustees took into account the following factors: *[List the factors the Board of Trustees took into account in designing the proposed suspension of benefits. This list may include (but is not limited to) factors found in § 432(e)(9)(D)(vi).]*

The Board of Trustees proposes the following reduction of benefits: *[Describe the proposed suspension of benefits and its effect. Describe each category or group of individuals who would be affected differently by the suspension (including categories or groups that would be unaffected) and how those categories or groups are defined; describe the formula used to determine how the amount of the proposed suspension is determined for individuals in each category or group; specify whether the proposed suspension will*

[6] For more information about the amount of benefits guaranteed by PBGC, visit: *http://pbgc.gov/prac/multiemployer/multiemployer-benefit-guarantees.html*.

*remain in effect indefinitely or will expire by its own terms (and if so, when it will expire); describe any proposed phase-in of the suspension; and describe the effect of the proposed suspension on the plan's projected insolvency.]*

**If you are a participant or beneficiary, the last part of this notice provides a dollar estimate of how the proposed reduction applies to you.**

AVAILABILITY OF THE APPLICATION AND HOW YOU CAN COMMENT ON IT

The application for approval of the proposed reduction of benefits will be made publicly available within 30 days after the application has been received by the Treasury Department. The application includes more information about the proposed reduction, including details about: 1) the Plan actuary's certification that the Plan is in critical and declining status; 2) how the proposed reduction would satisfy the requirement that it be large enough so that the Plan is projected to avoid insolvency, while not being larger than needed to avoid insolvency; and 3) the sensitivity of the projection to the assumptions used.

The application also includes a description of the measures the Board of Trustees has already taken to try to avoid insolvency of the Plan, as well as why the Board of Trustees believes that the proposed reduction is distributed fairly. Comments will be accepted regarding the application from employees, deferred vested participants (participants who are no longer earning benefits under the Plan but are not yet receiving benefits from the Plan), retirees, beneficiaries, contributing employers, unions representing participants, and other interested parties (such as the retiree representative, if any).

See www.treasury.gov/mpra for a copy of the Plan's application, for instructions on how to send a comment on the application, and for how to contact the Treasury Department for further information and assistance. The Treasury website will also provide updated information on the application, such as whether the application has been modified or withdrawn. If the application is withdrawn (or rejected), and the Board of Trustees submits a new application, you may receive a notice for that new application that supersedes this notice.

You may also contact the Treasury Department for further information and assistance at the following address:

Department of the Treasury
Attn: MPRA, Room 1001
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

RETIREE REPRESENTATIVE

The board of trustees of a multiemployer plan applying for approval to reduce benefits may select a retiree representative to advocate for the interests of retirees, beneficiaries, and deferred vested participants in connection with the approval process. If the plan has 10,000 or more participants, the board of trustees is required by Federal law to select a retiree representative.

*[If the Board of Trustees has selected a retiree representative under § 432(e)(9)(B)(v)(I), insert the following]*

On *[insert date], [insert name]* was selected to act as the retiree representative. The retiree representative, who is one of the retirees currently receiving benefits under the Plan, [is/is not] a member of the Board of Trustees of the Plan. Participants and beneficiaries may contact *[insert name of retiree representative]* at *[insert phone number, address, and e-mail address].*

*[If the Board of Trustees has not selected a retiree representative under § 432(e)(9)(B)(v)(I), insert the following]*

The Board of Trustees has not chosen to select a retiree representative.

RIGHTS AND REMEDIES OF PLAN PARTICIPANTS AND BENEFICIARIES

**Vote on Proposed Benefit Reduction**

If the application for the proposed reduction of benefits is approved by the Treasury Department, then participants and beneficiaries will be given the opportunity to vote to approve or reject the proposed reduction. Unless a majority of all participants and beneficiaries of the Plan vote to reject the reduction, the reduction will be permitted to go into effect following the vote.

**Final Authorization to Reduce Benefits**

If a majority of all plan participants and beneficiaries do not vote to reject the proposed reduction of benefits, then the Treasury Department is required to issue a final authorization to permit the reduction of benefits to take effect.

*[If the Board of Trustees believes that the PBGC will or may determine that the Plan is a systemically important plan (a plan with a present value of projected PBGC financial assistance payments that exceeds $1 billion), insert the following]*

If the Plan is a systemically important plan (a plan with a present value of projected PBGC financial assistance payments that exceeds $1 billion) and a majority of participants and beneficiaries vote to reject the proposed reduction of benefits, then Federal law requires the Treasury Department, notwithstanding the participants' and beneficiaries' vote to reject, to issue a final authorization to permit either the proposed reduction of benefits, or a modified version of the proposed reduction of benefits, to take effect. Before this occurs, the PBGC's Participant and Plan Sponsor Advocate may submit recommendations to the Treasury Department regarding possible modifications to the proposed reduction.

**Claims Process for Incorrect Calculations**

If you think the reduction to your benefits was calculated incorrectly, then you have the right to submit a claim to the Plan to have the calculation corrected. Your Plan's summary plan description is required to include the Plan's claims procedures, including information on your right to have a court review the Plan's final decision on your claim.

**Access to Plan Documents**

You, your contributing employer, the union representing you, and the retiree representative (if any) also have the right to request the documents listed below from the Plan. You may want to review these documents to help you understand your rights and the proposed reduction to your benefits:

- The Plan document (including any amendments adopted to reflect an authorized reduction of benefits), trust agreement, and other documents governing the Plan (such as collective bargaining agreements),
- The most recent summary plan description (SPD or plan brochure) and any summary of material modifications,
- The Plan's Form 5500 annual reports, including audited financial statements, filed with the U.S. Department of Labor during the last six years,
- The annual funding notices furnished by the Plan during the last six years,
- Actuarial reports, including reports prepared in anticipation of the benefit reduction, furnished to the Plan within the last six years,
- The Plan's current rehabilitation plan, including contribution schedules and annual plan-sponsor determinations that all reasonable measures to avoid insolvency continue to be taken and that the Plan is not projected to avoid insolvency unless benefits are reduced, and
- Any quarterly, semi-annual or annual financial reports prepared for the Plan by an investment manager, fiduciary or other advisor and furnished to the Plan within the last six years.

The plan administrator must respond to your request for these documents within 30 days, and may charge you the cost per page to the Plan for the least expensive means of reproducing documents, but cannot charge more than 25 cents per page. The Plan's Form 5500 Annual Return/Report of Employee Benefit Plan is also available free of charge at *www.dol.gov/ebsa/5500main.html*. Some of the documents also may be available for examination, without charge, at the plan administrator's office, your worksite or union hall.

<u>INDIVIDUAL ESTIMATE OF EFFECT OF PROPOSED REDUCTION IN BENEFITS</u>

*[Distribute this estimate to the affected individual]*

[Affected Individual's Name]
[Address]
[Town, State, Zip]

**How the proposed reduction in benefits would affect you**

The Plan's actuary has calculated that if the proposed reductions are not implemented, then the Plan is projected to be insolvent and unable to pay benefits when due in [*insert year of projected insolvency*]. If the Plan becomes insolvent, your benefit would be reduced to the monthly PBGC-guaranteed level. Your estimated monthly PBGC-guaranteed level is [*insert $xxxx.xx*].

*[Choose (a), (b), (c) or (d), as appropriate for an affected individual. Affected individuals include a participant (including a retiree), a beneficiary of a deceased participant, or an alternate payee. If (a), (b) or (c) is chosen, then insert a narrative description of the effect of the suspension if it is not possible to estimate its effect quantitatively (on an annual or monthly basis), such as in the case of a suspension that affects the payment of any future cost of living adjustment.]*

*[(a) For an affected individual who is in pay status and who has a proposed suspension]*

Effective *[insert effective date of proposed suspension],* your monthly benefit is proposed to be reduced from *[insert current monthly benefit]* to *[insert monthly benefit reflecting proposed suspension].*

*[(b) For an affected individual who has a proposed suspension, is not yet in pay status, and is* below *the participant's normal retirement age]*

Your future monthly benefit, based on the years of service you have (or, if you are a beneficiary or alternate payee, the participant has) already worked as of *[insert service calculation date, i.e. no earlier than 1 year before date this notice is sent],* if paid beginning *[insert participant's normal retirement date]* (your normal retirement date) in the form of a *[insert normal form of benefit]* is proposed to be reduced from *[insert monthly benefits earned as of proposed effective date of suspension]* to *[insert monthly benefits earned as of date of suspension reflecting proposed suspension].*[7]

*[(c) For an affected individual who has a proposed suspension, is not yet in pay status, and is* above *the participant's normal retirement age]*

Your future monthly benefit, based on the years of service you have (or, if you are a beneficiary or alternate payee, the participant has) already worked as of *[insert service calculation date, i.e. date no earlier than 1 year before date this notice is sent],* payable as of *[insert date]* in the form of a *[insert normal form of benefit]* is proposed to be reduced from *[insert monthly benefit as of proposed effective date of suspension]* to *[insert monthly benefit as of that date reflecting proposed suspension].*[8]

*[(d) For an affected individual whose benefits are not proposed to be suspended]*

Your monthly benefit would not change under the proposed reduction.

INFORMATION USED IN CALCULATING THE ESTIMATED BENEFIT REDUCTION

This is an estimate of your benefit under the proposed reduction. It is not a final benefit calculation. This estimate of the proposed reduction is based on an assumed effective date for the benefit reduction of *[insert proposed effective date]* (this date may be subject to change, but in no event will the proposed reduction be effective earlier). If the proposed reduction is effective at a later date, then the amount of the reduction to your benefit might change.

This estimate is also based on the following information:

**Years of Service**

*[If (a) or (d) above applies to the affected individual]*

Plan records show that you have *[insert total years and months of credited service]* under the Plan.

*[If (b) or (c) above applies to the affected individual]*

Plan records show that you have *[insert total years and months of credited service as of the service calculation date]* under the Plan.

**Age as of the Effective Date of the Proposed Reduction**

Plan records show that you will be *[insert age in years and months]* as of the effective date of the proposed reduction.

**Disability Benefits**

Plan records show that the portion of your benefit that is based on disability is *[insert amount].*

PLAN OFFICE CONTACT INFORMATION

If you believe the information used to calculate your estimate is incorrect, please contact the Plan office at *[insert phone number, address, and e-mail address].*

---

[7]The amount of your benefit before and after the proposed reduction will depend on when you decide to begin receiving benefits and the form of benefit you choose as well as, if applicable, whether you continue to work and earn years of service after the service calculation date. The amounts shown above are based on an assumed commencement at age [*insert the participant's normal retirement age*] (the plan's normal retirement age) without any additional years of service for future work. If you choose to begin receiving benefits before your normal retirement age, or if you choose a form of benefit that includes additional survivor benefits after your death, then any actuarial reduction for early commencement or survivor benefits will be applied to your benefit after reflecting the effect of the separate reduction due to the proposed amendment to the Plan described above. However, the combined reductions are not allowed to result in a benefit that is less than 110 percent of the PBGC-guaranteed level.

[8]This is the largest amount of proposed reduction that will apply and is based on commencement of benefits in the specified form of benefit. If you choose a form of benefit that includes additional survivor benefits after your death, then any actuarial reduction for those benefits will be applied to your benefit after reflecting the effect of the separate reduction due to the proposed amendment to the Plan described above. However, the combined reductions are not allowed to result in a benefit that is less than 110 percent of the PBGC-guaranteed level.

## Appendix B

### POWER OF ATTORNEY AND DECLARATION OF REPRESENTATIVE BEFORE THE DEPARTMENT OF THE TREASURY

**Applicant information [include name of plan, address, plan number, employer identification number, name of contact, title of contact, telephone number, email address, and fax number]:**

Applicant hereby appoints the following representative(s) as attorney(s)-in-fact to represent the taxpayer before the Department of the Treasury and perform acts related to the attached application dated ______________ for suspension of benefits under § 432(e)(9) of the Internal Revenue Code of 1986, as amended.

**Representative information: [include name, address, employer identification number, telephone number, email address, and fax number]:**

Send copies of notices and communications to representative [answer yes or no]

With the exception of the acts described below, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the attached application dated ______________ for suspension of benefits under § 432(e)(9). For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents.

Specific acts not authorized: [If the representative is not authorized to perform any act described above, describe the act that the representative is not authorized to perform.]

**Signature of Applicant and Date**

---

**Declaration of Representative**

Under penalties of perjury, by my signature below I declare that:

- I am not currently suspended or disbarred from practice before the Internal Revenue Service;
- I am authorized to represent the Applicant for the matter(s) specified in this Power of Attorney and Declaration of Representative; and
- I am one of the following:
  - **a** Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
  - **b** Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
  - **c** Enrolled Agent
  - **d** Officer—a bona fide officer of the Applicant.
  - **e** Full-Time Employee—a full-time employee of the Applicant.
  - **f** Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
  - **g** Enrolled Retirement Plan Agent

Required information for Representative [include the appropriate designation of a through g above. In addition, an officer or full-time employee of the Applicant must include the title or position with the Applicant, and other Representatives must include the licensing jurisdiction if applicable, and the bar, license, certification, registration, or enrollment number as applicable.]:

**Signature of Representative and date:**

---

## APPENDIX C

### CHECKLIST - IS THE SUBMISSION COMPLETE?

***Instructions*** The application must include a completed checklist placed on top of the application. This will help ensure that the application is complete. Answer each question in the checklist by circling Y for yes, N for no or N/A for not applicable, as appropriate, in the blank next to the item. Also insert in the appropriate blank next to each item the page number or numbers where the item appears in the application.

***APPLICATION FOR APPROVAL OF BENEFIT SUSPENSION FOR [INSERT NAME OF PLAN]***

| Response | Item number | Description of item | Page number in application |
|---|---|---|---|
| Yes<br>No<br>N/A | 1. | Does the application include an original signature of the plan sponsor or an authorized representative of the plan sponsor. See section 2.01. | |
| Yes<br>No<br>N/A | 2. | Does the application include a description of the proposed benefit suspension - calculated as if no other limitations apply - that includes:<br>● the suspension's effective date (and its expiration date, if applicable),<br>● a description of the different categories or groups of individuals affected, and<br>● how the suspension affects these individuals differently. See section 2.02. | |
| Yes<br>No<br>N/A | 3. | Does the application include a penalties-of-perjury statement signed by an authorized trustee on behalf of the board of trustees. See Section 2.03. | |
| Yes<br>No<br>N/A | 4. | Does the application include a statement, signed by an authorized trustee on behalf of the board of trustees, acknowledging that the application and the application's supporting material will be publicly disclosed on the Treasury Department's website. See section 2.04. | |
| Yes<br>No<br>N/A | 5. | Does the application include the plan actuary's certification of critical and declining status and the supporting illustrations, including:<br>● the year-by-year projections demonstrating projected insolvency during the relevant period and<br>● separately identifying the available resources (and the market value of assets and changes in cash flow) during each of those years. See section 3.01. | |
| Yes<br>No<br>N/A | 6. | Does the application describe the assumptions used. See section 3.01. | |
| Yes<br>No<br>N/A | 7. | Does the application include the plan actuary's certification that the plan is projected to avoid insolvency if the suspension takes effect and the supporting illustrations, including:<br>● the year-by-year projections demonstrating projected solvency during the relevant period and<br>● separately identifying the available resources (and the market value of assets and changes in cash flow)during each of those years. See section 3.02. | |

| Response | Item number | Description of item | Page number in application |
|---|---|---|---|
| Yes<br>No<br>N/A | 8. | Does the application include the plan sponsor's determination of projected insolvency that includes the documentation set forth in section 5 of the revenue procedure. See section 3.03. | |
| Yes<br>No<br>N/A | 9. | Does the application include a demonstration that the limitations on individual suspensions are satisfied, including calculations regarding:<br>• the guarantee-based limitation,<br>• the disability-based limitation, and<br>• the age-based limitation. See section 4.01. | |
| Yes<br>No<br>N/A | 10. | Does the application include a demonstration that the proposed suspension is reasonably estimated to achieve the level necessary to avoid insolvency for the extended period, including illustrations regarding the plan's solvency ratio and available resources. See section 4.02(1). | |
| Yes<br>No<br>N/A | 11. | Does the application include the required illustration utilizing stochastic projections. (This illustration is not required if the plan is not required to appoint a retiree representative under § 432(e)(9)(B)(v)(I) and stochastic projections were not used in making the required determination.) See section 4.02(2). | |
| Yes<br>No<br>N/A | 12. | Does the application include a demonstration that the proposed suspension is not projected to materially exceed the level necessary to avoid insolvency, including illustrations regarding the plan's solvency ratio and available resources. See section 4.03. | |
| Yes<br>No<br>N/A | 13. | Does the application include a demonstration that the proposed suspension is equitably distributed, including<br>• a list of the factors taken into account,<br>• an explanation of why none of the factors listed in § 432(e)(9)(D)(vi) were taken into account (if applicable), and<br>• how any difference in treatment among categories or groups of individuals results from a reasonable application of the relevant factors. See section 4.04. | |
| Yes<br>No<br>N/A | 14. | Does the application include a copy of the actual notices (including redacted sample calculations) that meet the requirements under § 432(e)(9)(F). See section 4.05(1). | |
| Yes<br>No<br>N/A | 15. | Does the application include a description of the efforts that are being taken to contact participants, beneficiaries in pay status, and alternate payees. See section 4.05(2). | |
| Yes<br>No<br>N/A | 16. | Does the application describe the steps the plan sponsor has taken to ensure that notices delivered electronically are reasonably accessible to the recipients. See section 4.05(3) | |
| Yes<br>No<br>N/A | 17. | Does the application include a list of each employer who has an obligation to contribute under the Plan and each employee organization representing participants under the Plan. See section 4.05(4). | |

| Response | Item number | Description of item | Page number in application |
|---|---|---|---|
| Yes<br>No<br>N/A | 18. | Does the application include information on past and current measures taken to avoid insolvency. See section 5.01. | |
| Yes<br>No<br>N/A | 19. | Does the application include the plan information required by section 5.02. | |
| Yes<br>No<br>N/A | 20. | Does the application describe how the plan sponsor took into account – or did not take into account – the factors listed in section 5.02 in the determination that all reasonable measures were taken to avoid insolvency. See section 5.03. | |
| Yes<br>No<br>N/A | 21. | Does the application describe how the plan sponsor took into account - or did not take into account - in the determination that all reasonable measures have been taken to avoid insolvency the impact of<br>• benefit and contribution levels on retaining active participants and bargaining groups under the plan, and<br>• past and anticipated contribution increases under the plan on employer attrition and retention levels. See section 5.03. | |
| Yes<br>No<br>N/A | 22. | Does the application include a discussion of any other factors the plan sponsor took into account including how and why those factors were taken into account. See section 5.04. | |
| Yes<br>No<br>N/A | 23. | Does the application include a copy of the proposed ballot. See section 6.01. | |
| Yes<br>No<br>N/A | 24. | Does the application indicate whether the plan sponsor is requesting approval from the PBGC of a proposed partition under section 4233 of ERISA. See section 6.02. | |
| Yes<br>No<br>N/A | 25. | If the answer to item 24 is yes, does the application specify the effective date of the proposed partition and include a year-by-year projection of the amount of the reduction in benefit payments attributable to the partition. See section 6.02. | |
| Yes<br>No<br>N/A | 26. | Does the application describe the plan's experience with certain critical assumptions, including a disclosure for each of the 10 plan years immediately preceding the application that separately identifies<br>• total contributions,<br>• total contribution base units,<br>• average contribution rates,<br>• withdrawal liability payments, and<br>• the rate of return on plan assets. See section 6.03. | |
| Yes<br>No<br>N/A | 27. | Does the application include deterministic projections of the sensitivity of the plan's solvency ratio throughout the extended period by taking into account more conservative assumptions of investment experience and future contribution base units than assumed elsewhere in the application. See section 6.04. | |

| Response | Item number | Description of item | Page number in application |
|---|---|---|---|
| Yes<br>No<br>N/A | 28. | Does the plan include deterministic projections for each year in the extended period of<br>• the value of plan assets,<br>• the plan's accrued liability, and<br>• the plan's funded percentage. See section 6.05. | |
| Yes<br>No<br>N/A | 29. | Does the application include the plan sponsor's representation that, if it receives the Treasury Department's final authorization to suspend and then chooses to implement the suspension, it will also amend the plan<br>• to indicate that the suspension will cease upon the plan sponsor's failure to determine that both all reasonable measures continue to be taken to avoid insolvency and that the plan is projected to become insolvent without a suspension,<br>• to require that any future benefit improvements must satisfy § 432(e)(9)(E), and<br>• to specify that the plan sponsor will not modify these amendments, notwithstanding any other provision of the plan document.<br>See section 6.06. | |
| Yes<br>No<br>N/A | 30. | Does the application indicate whether the plan is a plan described in § 432(e)(9)(D)(vii)(III) and, if so, how is that fact reflected in the proposed benefit suspension. See section 6.07. | |
| Yes<br>No<br>N/A | 31. | Does the application include the required plan sponsor information, including<br>• name<br>• address<br>• telephone number<br>• email address<br>• fax number<br>• employer identification number (EIN) and<br>• 3-digit plan number (PN).<br>See section 7.01. | |
| Yes<br>No<br>N/A | 32. | Does the application include the required plan identification information. See section 7.02. | |
| Yes<br>No<br>N/A | 33. | Does the application include the required retiree representative information (if applicable). See section 7.03. | |
| Yes<br>No<br>N/A | 34. | Does the application include the required enrolled actuary information. See section 7.04. | |
| Yes<br>No<br>N/A | 35. | Does the application include a designation of power of attorney for each authorized representative who will represent the plan sponsor in connection with the application. See section 7.05 and Appendix B. | |

| Response | Item number | Description of item | Page number in application |
|---|---|---|---|
| Yes<br>No<br>N/A | 36. | Does the application include<br>• the required plan documents,<br>• any recent amendments,<br>• the summary plan description (SPD),<br>• the summary of material modifications, and<br>• the most recent determination letter.<br>See section 7.06. | |
| Yes<br>No<br>N/A | 37. | Does the application include the required excerpts from the relevant collective bargaining agreements and side agreements. See section 7.07. | |
| Yes<br>No<br>N/A | 38. | Does the application include the required excerpts from the most recently filed Form 5500. See section 7.08. | |
| Yes<br>No<br>N/A | 39. | Does the application include the most recently updated rehabilitation plan. See section 7.09. | |
| Yes<br>No<br>N/A | 40. | Does the application include this checklist, completed and placed on top of the application. See section 7.10. | |

**Signature** **Date**

**Title or Authority**

**Typed or printed name of person signing checklist**

*26 CFR § 601.201: Rulings and determination letters.*
*(Also Part I, §§ 401, 403, and 501; Reg. §§ 1.401(a)–1, 1.403(a)–1, and 1.501(a)–1.)*

# Rev. Proc. 2015–36

**Table of Contents**


SECTION 1. PURPOSE....20
SECTION 2. BACKGROUND....21
SECTION 3. CHANGES TO REVENUE PROCEDURE 2011–49....22

PART I – M&P PLANS

SECTION 4. DEFINITIONS....22
SECTION 5. PROVISIONS REQUIRED IN M&P PLANS....24
SECTION 6. OPINION LETTERS - SCOPE....27
SECTION 7. OPINION LETTER APPLICATIONS - INSTRUCTIONS TO SPONSORS....28
SECTION 8. APPROVED PLANS - MAINTENANCE OF APPROVED STATUS....29
SECTION 9. WITHDRAWAL OF REQUESTS....30
SECTION 10. ABANDONED PLANS....30
SECTION 11. RECORD KEEPING REQUIREMENTS....30
SECTION 12. M&P MASS SUBMITTERS....30

PART II – VOLUME SUBMITTER PLANS

SECTION 13. DEFINITIONS....33
SECTION 14. PROVISIONS REQUIRED IN EVERY VS PLAN....34
SECTION 15. APPROVED PLANS - MAINTENANCE OF APPROVED STATUS....35
SECTION 16. ADVISORY LETTERS - SCOPE....36
SECTION 17. ADVISORY LETTER APPLICATIONS- INSTRUCTIONS TO VS PRACTITIONERS....37
SECTION 18. VS MASS SUBMITTERS....38

PART III – ALL PRE-APPROVED PLANS

SECTION 19. EMPLOYER RELIANCE....38
SECTION 20. WHERE TO FILE AND OTHER RULES FOR APPLICATIONS AND LETTERS....40
SECTION 21. AMENDMENTS....41
SECTION 22. REVOCATION....41
SECTION 23. SECOND ON-CYCLE SUBMISSION PERIOD (POST-EGTRRA) FOR PRE-APPROVED DB PLANS....41
SECTION 24. REMEDIAL AMENDMENT PERIOD....42
SECTION 25. EFFECT ON OTHER DOCUMENTS....42
SECTION 26. EFFECTIVE DATE....42
SECTION 27. PAPERWORK REDUCTION ACT....42


**SECTION 1. PURPOSE**

.01 This revenue procedure sets forth the procedures of the Internal Revenue Service (IRS) for issuing opinion and advisory letters regarding the acceptability under §§ 401, 403(a), and 4975(e)(7) of the Internal Revenue Code (Code) of the form of pre-approved plans (that is, master and prototype (M&P) and volume submitter (VS) plans). This revenue procedure modifies and supersedes Rev. Proc. 2011–49, 2011–44 I.R.B. 608. Section 3 describes the changes to Rev. Proc. 2011–49.

.02 This revenue procedure also extends to October 30, 2015, the deadline for submitting on-cycle applications for opinion and advisory letters for pre-approved defined benefit plans for the plans' second six-year remedial amendment cycle. The extension to October 30, 2015, applies to pre-approved defined benefit mass submitter lead and specimen plans, word-for-word identical plans, M&P minor modifier placeholder applications, and defined benefit non-mass submitter plans.

## SECTION 2. BACKGROUND

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

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

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

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

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

.06 The second six-year remedial amendment cycle for pre-approved defined benefit plans began on February 1, 2013, and ends on January 31, 2019. Section 18.02(2) of Rev. Proc. 2007–44 provides that the 9-month applicable on-cycle submission period for sponsors and VS practitioners maintaining defined benefit mass submitter plans ended on October 31, 2013, and for sponsors and VS practitioners maintaining non-mass submitter plans ended on January 31, 2014. Ann. 2013–37 extended the submission period for defined benefit mass submitter plans to January 31, 2014. Ann. 2014–4 provided an extension to February 2, 2015, for submissions of pre-approved defined benefit plans by sponsors and VS practitioners seeking opinion and advisory letters for the second six-year remedial amendment cycle. Ann. 2014–41 further extended the end of this period to June 30, 2015. Therefore, the 12-month on-cycle submission period for both mass and non-mass submitter sponsors and VS practitioners, word-for-word identical adopters, and M&P minor modifier placeholder applications was scheduled to end on June 30, 2015. Section 23 of this revenue procedure further extends this submission deadline to October 30, 2015. The 2012 Cumulative List of Changes in Plan Qualification Requirements, Notice 2012–76, 2012–52 I.R.B. 775 (2012 Cumulative List), is to be used by plan sponsors and VS practitioners submitting opinion or advisory letter applications for defined benefit plans during the second remedial amendment cycle.

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

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

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

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

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

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

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

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

.03 Section 5 is modified to set forth additional provisions required by M&P ESOPs and cash balance plans, as provided in section 5.15 and 5.16, respectively.[2] In addition, section 15.13 is modified with regard to the eligibility of employees to participate in an ESOP.

.04 Section 6.03(4) is deleted and replaced with section 6.03(4) and (5) in order to allow sponsors to request opinion letters for ESOPs and to set forth the specific areas for which opinion letters will not be issued for ESOPs. The remaining paragraphs in section 6.03 have been renumbered to reflect these changes.

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

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

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

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

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

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

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

.12 Section 16.03(4) is deleted and replaced with section 16.03(4) and (5) in order to allow VS practitioners to request advisory letters for ESOPs and to set forth specific areas for which advisory letters will not be issued for ESOPS. The remaining paragraphs in section 16.03 have been renumbered to reflect these changes.

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

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

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

## PART I – M&P PLANS

## SECTION 4. DEFINITIONS

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

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

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

ployers, a trust or custodial account document.

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

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

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

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

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

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

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

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

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

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

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

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

By submitting an application for an opinion letter for a M&P plan under this revenue procedure (or by having an application filed on its behalf by a M&P mass submitter), a person represents to the IRS that it is a sponsor, as defined in this section 4.07, and agrees to comply with any requirements imposed on sponsors by this revenue procedure. Failure to comply with these requirements may result in the loss of eligibility to sponsor M&P plans and the revocation of opinion letters that have been issued to the sponsor.

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

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

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

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

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

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

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

(3) Under the plan, allocations, in the case of a defined contribution plan (other than any cash or deferred arrangement part of the plan), or benefits, in the case of a defined benefit plan, are determined on the basis of total compensation. For this purpose, total compensation means a definition of compensation that includes all compensation within the meaning of § 415(c)(3) and excludes all other compensation, or that otherwise satisfies § 414(s) and § 1.414(s)–1(c).

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

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

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

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

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

.11 ESOP Definitions

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

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

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

.12 Hybrid Plan Definitions

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

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

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

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

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

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

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

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

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

.01 Sponsor Amendments - M&P plans must provide a procedure for sponsor amendment, so that changes in the Code, regulations, revenue rulings, other statements published by the IRS, or corrections of prior approved plans may be applied to all employers who have adopted the plan. Sponsors must make reasonable and diligent efforts to ensure that adopting employers of the sponsor's M&P plan have actually received and are aware of all plan amendments and that such employers complete and sign new adoption agreements if necessary. See section 5.11. The provision for sponsor amendment must provide that, for purposes of reliance on the opinion letter, the sponsor will no longer have the authority to amend the plan on behalf of the adopting employer as of the date of the adoption of an employer amendment to the plan to incorporate a type of plan not allowable in the M&P program described in section 6.03 (e.g. the addition of enabling language for multiemployer plan features) or as of the date the IRS notifies the sponsor that the plan is being treated as an individually designed plan pursuant to section 24.03. Failure to comply with this requirement may result in the loss of eligibility to sponsor M&P plans and the revocation of opinion letters that have been issued to the sponsor.

.02 Employer Amendments - An employer that amends any provision of an approved M&P plan including its adoption agreement (other than to change the choice of options selected, if the plan permits or contemplates such a change) or an employer that chooses to discontinue participation in a plan as amended by its sponsor without substituting another approved M&P plan is considered to have adopted an individually designed plan. However, this rule does not apply in the case of amendments permitted under sections 5.06 and 5.09 and sample or model amendments published by the IRS that specifically provide that their adoption by an adopter of a M&P plan will not cause such plan to be treated as individually designed. Additionally, a plan will not be treated as individually designed if a closing agreement under the Audit Closing Agreement Program or a compliance statement under the Voluntary Correction Program of the Employee Plans Compliance Resolution System (EPCRS) has been issued with respect to the employer's plan with regard to the amendment.[3] Also see section 19.03 regarding the effect of employer amendments on an employer's ability to rely on an opinion letter, and section 24 with respect to applicable remedial amendment periods. An employer that amends a M&P plan because of a waiver of the minimum funding requirement under § 412(d) will also be considered to have an individually designed plan. The procedures set forth in Rev. Proc. 2015–6, as amended annually and as related to the issuance of determination letters for individually designed plans, will then apply to the plan as adopted by the employer. See also section 19 of Rev. Proc. 2007–44 regarding the effect employer amendments have on eligibility for the six-year remedial amendment cycle applicable to pre-approved plan adopters.

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

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

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

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

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

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

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

[3]See Section 6.05(5)(b) of Rev. Proc. 2013–12, 2013–4 I.R.B. 313.

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

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

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

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

.12 Sponsor Telephone Numbers - M&P plan adoption agreements must include the sponsor's name, address, and telephone number (or a space for the address and telephone number of the sponsor's authorized representative) for inquiries by adopting employers regarding the adoption of the plan, the meaning of plan provisions, or the effect of the opinion letter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## SECTION 6. OPINION LETTERS - SCOPE

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

.02 Nonapplicability of this Revenue Procedure to IRAs (including traditional IRAs, Roth IRAs, SEPS, and Simple IRAs) and section 403(b) Plans - Opinion letters will not be issued under this revenue procedure for prototype plans intended to meet the requirements for individual retirement arrangements under § 408 or for § 403(b) plans (see Rev. Proc. 87–50, 1987–2 C.B. 647; Rev. Proc. 97–29, 1997–1 C.B. 698; Rev. Proc. 98–59, 1998–2 C.B. 727; Rev. Proc. 2010–48, 2010–50 I.R.B. 828; Rev. Proc. 2013–22, 2013–18 I.R.B. 985; Rev. Proc. 2014–28, 2014–16 I.R.B. 944; and Rev. Proc. 2015–22, 2015–11 I.R.B. 754).

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

(1) Multiemployer plans;

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

(3) Stock bonus plans other than ESOPs;

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

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

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

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

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

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

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

(d) A conversion amendment, except for plans providing that, after the effective date of the conversion amendment, a 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 that provide for funding exclusively through insurance contracts as described in § 412(e)(3); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.03 Expediting Review of Substantially Identical Plans - The IRS reserves the right to review applications in any order that will expedite the processing of opinion letter applications, subject to section 21.03. To expedite the review of substantially identical plans that are not mass submitter plans, the IRS encourages plan drafters and sponsors to include with each opinion letter application, if appropriate, a cover letter setting forth the following information:

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

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

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

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

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

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

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

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

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

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

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

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

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

## SECTION 9. WITHDRAWAL OF REQUESTS

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

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

## SECTION 10. ABANDONED PLANS

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

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

## SECTION 11. RECORD KEEPING REQUIREMENTS

.01 Filing of Opinion Letter Application Constitutes Agreement to Comply with Record Keeping Requirements - By submitting an application for an opinion letter under this revenue procedure (or by having an application filed on its behalf by a M&P mass submitter), a M&P plan sponsor agrees, as provided in section 4.07, to comply with the requirements imposed on the sponsor by this revenue procedure, including the record keeping requirements of this section. Failure to comply with the requirements imposed on the sponsor by this revenue procedure may result in the loss of eligibility to sponsor M&P plans and the revocation of opinion letters that have been issued to the sponsor.

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

## SECTION 12. M&P MASS SUBMITTERS

.01 Opinion Letters Issued to M&P Mass Submitters

(1) The IRS will, upon request by a M&P mass submitter, issue an opinion letter as to the acceptability of the form of the mass submitter's M&P plan and any related trust or custodial account documents under §§ 401(a), 403(a), 4975(e)(7), and 501(a). With respect to its plan, the M&P mass submitter must submit a completed Form 4461 or 4461-A, and Attachment I to Form 4461 or Attachment I-A to Form 4461-A, as applicable, to the address in section 20. The first page of the Form 4461 or 4461-A must be typed. In the case of an initial submission of a basic plan document under this revenue procedure, the M&P mass submitter's application must also be accompanied by applications for opinion letters filed on behalf of the requisite number of identical adopters (as determined under section 4.08), unless the M&P mass submitter has already satisfied this requirement in connection with a previous application under this revenue procedure involving another basic plan document. Any plan submitted by a M&P mass submitter must include language designating the M&P mass submitter as agent for the sponsor for purposes of making plan amendments. The M&P request must be accompanied by the required user fee submitted with Form 8717-A, and a signed certification that all necessary amendments required by the IRS to retain the qualified status of the M&P mass submitter's plan have been made and communicated to all adopting sponsors. These forms and attachments may be downloaded from the Internet at the following address: *http://www.irs.gov/Retirement-Plans/Preapproved-Plan-Submission-Procedures.*

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

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

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

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

.03 Definitions - (1) Flexible Plan

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

(b) Optional Provisions - A flexible plan may contain optional provisions that comply with the requirements set forth in this paragraph. The optional provisions may be arranged as separate optional articles or as separate optional provisions within a single article. A flexible plan may also contain optional provisions in the adoption agreement. For example, if a M&P mass submitter flexible plan basic plan document contains an optional provision that would allow for loans under a sponsor's M&P plan, the adoption agreement could also include an optional provision that would enable an adopting employer to elect whether loans will be available under the plan it adopts. If the sponsor does not wish to enable adopting employers to make loans available under their plans, both the basic plan document optional provision and the adoption agreement optional provision would be deleted from the sponsor's M&P plan. Sponsors may include or delete optional provisions of M&P mass submitter plans, but once the sponsor has decided to include an optional provision, it must offer that provision to all adopting employers. Any optional provision that the IRS determines does not meet the requirements of this section will have to be changed to a non-optional provision or deleted from the M&P mass submitter's plan. The following is an exclusive list of the allowable optional provisions that a flexible plan may contain:

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

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

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

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

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

(d) Notification to Employer - If a M&P mass submitter adds optional provisions, as described in the preceding paragraph, all adopting sponsors who wish to include the additional optional provisions must furnish each adopting employer with a copy of the plan that includes such additional provisions. If a sponsor decides to include or delete an optional provision after it initially adopted the plan, it must also furnish each adopting employer with a copy of the new plan. However, if such inclusion or deletion results in a change to the language of the adoption agreement, such change will be treated as a plan amendment and the sponsor and its adopting employers may not continue to rely on previously issued opinion letters.

(2) Minor Modifications

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

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

(c) The M&P mass submitter must initially submit the first page of the applicable Form 4461–B, as a placeholder. Such form must be typed. When the IRS sends a notification to the applicable sponsor with respect to the lead plan indicating that the IRS has determined that the plan appears to be in full compliance with the applicable qualification requirements, as described above, the M&P mass submitter must submit a copy of the M&P mass submitter's plan with the modifications highlighted, as well as a statement indicating the location and effect of each change. The M&P mass submitter must certify under penalty of perjury that the plan of the sponsor, except for the delineated changes, is word-for-word identical to the plan for which the M&P mass submitter received a favorable opinion letter. If a M&P mass submitter fails to identify each modification, such failure will be considered a material misrepresentation, and an employer may not rely on any opinion letter that may be issued with respect to the plan. If a M&P mass submitter repeatedly fails to identify such modifications, the IRS may deny permission to that M&P mass submitter to submit additional modifications.

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

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

## PART II – VOLUME SUBMITTER PLANS

### SECTION 13. DEFINITIONS

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

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

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

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

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

A VS practitioner may submit more than one specimen plan for an advisory letter provided it represents to the IRS that it has at least 30 employer-clients in the aggregate, each of which is reasonably expected to adopt at least one of the practitioner's specimen plans on a substantially similar basis. The IRS reserves the right at any time to request from the VS practitioner a list of the employers that have adopted or are expected to adopt the VS practitioner's specimen plans, including the employers' business addresses and employer identification numbers. Notwithstanding the preceding two sentences, any person that has an established place of business in the United States where it is accessible during every business day may sponsor a specimen plan as a word-for-word identical adopter of a specimen plan of a VS mass submitter, regardless of the number of employers that are expected to adopt the plan.

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

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

.07 ESOP Definitions

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

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

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

.08 Hybrid Plan Definitions

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

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

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

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

hypothetical account balance as of the beginning of the period.

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

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

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

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

## SECTION 14. PROVISIONS REQUIRED IN EVERY VS PLAN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Prior benefit structures protected - All cash balance plans must ensure compliance with the anti-cutback provisions of § 411(d)(6). To receive a favorable advisory letter under this revenue procedure, a cash balance plan must provide that, at all times, prior accrued benefits (and other benefits protected under § 411(d)(6)(B)) are protected. A cash balance plan that was the subject of a conversion amendment must comply with the provisions of § 411(b)(5)(B)(iii) and must comply with § 1.411(b)(5)–1(c). However, a favorable advisory letter will not be issued for a plan that uses an opening hypothetical account balance as described in § 1.411(b)(5)–1(c)(3) to meet the requirements of § 1.411(b)(5)–1(c).

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

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

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

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

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

.03 Option to Permit VS Practitioner Amendment - A VS practitioner may amend its specimen plan. Ordinarily the amendments will apply only to the plans of employers who adopt the plan after it has been amended and will not apply to plans of employers who adopted the plan prior to the amendment. However, a VS plan may, but is not required to, include a provision that authorizes the VS practitioner to amend the plan on behalf of employers who have previously adopted the plan, so that changes in the Code, regulations, revenue rulings, other statements published by the IRS (including model and sample amendments that specifically provide that their adoption will not cause such plan to be individually designed), or corrections of prior approved plans may be applied to all employers who have adopted the plan. The provision for VS practitioner amendment must provide that, for purposes of reliance on the advisory letter, the VS practitioner will no longer have the authority to amend the plan on behalf of the adopting employer as of the date of the adoption of an employer amendment to the plan to incorporate a type of plan not allowable in the VS program described in section 16.03 (e.g., the addition enabling language for multiemployer plan features) or as of the date the IRS notifies the VS practitioner that the plan is being treated as an individually designed plan pursuant to section 24.03.

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

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

**SECTION 16. ADVISORY LETTERS - SCOPE**

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

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

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

(1) Multiemployer plans;

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

(3) Stock bonus plans other than ESOPs;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

single document without an adoption agreement.

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

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

## SECTION 18. VS MASS SUBMITTERS

.01 Advisory Letters Issued to VS Mass Submitters - The IRS will, upon request by a VS mass submitter issue an advisory letter as to the acceptability of the form of the VS mass submitter's specimen plan under § 401(a), 403(a), or 4975(e)(7). See section 20 for the address to file the application. The provisions of section 17.05 on the timing of the issuance of advisory letters and an interim notification by the IRS also apply under this section.

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

# PART III – ALL PRE-APPROVED PLANS

## SECTION 19. EMPLOYER RELIANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The employer adopts a model or sample amendment that the IRS has indicated will not cause the plan to be treated as an individually designed plan.

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

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

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

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

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

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

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

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

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

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

.05 Inadequate Submissions - The IRS will return, without further action, plans that are not in substantial compliance with the qualification requirements of § 401(a), 403(a), or 4975(e)(7), or plans that are so deficient that they cannot be reviewed in a reasonable amount of time. A plan may be considered not to be in substantial compliance if, for example, it omits or merely incorporates qualification requirements by reference to the applicable Code section. The IRS will not consider these plans until after they are revised, and they will be treated as new requests as of the date they are resubmitted. No additional user fee will be charged if an inadequate submission is amended to be in substantial compliance and is resubmitted to the IRS within 30 days following the date the sponsor or VS practitioner is notified of such inadequacy.

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

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

.08 Nontransferability of Opinion and Advisory Letters - An opinion or advisory letter issued to a sponsor or VS practitioner is not transferable to any other entity. In the case of a change in entity, a letter issued to a sponsor or VS practitioner may not be relied upon by a different entity. If a different entity assumes sponsorship of the plan, it must submit an application for a new letter. Such an application may be filed at the time of the assumption of sponsorship and the filing is not limited to the applicable on-cycle submission period. The application will be subject to a reduced user fee as provided in section 6.03(8) or 6.04(4) of Rev. Proc. 2015–8. The new letter will recognize the change in sponsorship and will not modify the scope of or change the reliance on the original letter. The IRS may in appropriate circumstances request documentation of the assumption of sponsorship prior to issuing a letter to the new entity. Examples of a change in entity include, but are not limited to, a change in the employer identification number, the acquisition of a sponsor by another entity or the sale or transfer of the stock or assets of the sponsor to another entity.

## SECTION 21. AMENDMENTS

.01 Opinion or Advisory Letters for Sponsor or VS Practitioner Amendments - A plan must be operated in accordance with the written plan document. When there are changes with respect to plan qualification requirements that will impact the provisions of the written plan document, the adoption of interim amendments will generally be required in accordance with the rules set forth in Rev. Proc. 2007–44. Interim amendments adopted by a pre-approved sponsor or VS practitioner on behalf of adopting employers must be provided to the adopting employers. The date on which each amendment is adopted by the sponsor or VS practitioner must be provided with the amendment. The requirement to provide the date for each amendment is effective for amendments adopted by the sponsor or VS practitioner on or after October 31, 2011. However, this does not change the applicable on-cycle submission period for the six-year cycle when sponsors or VS practitioners must request opinion or advisory letters, which will still only occur once every six years. The IRS will entertain a request for an opinion or advisory letter as to the acceptability, for purposes of § 401(a), 403(a), or 4975(e)(7), of the form of the plan as restated, during the applicable on-cycle submission period for the six-year cycle, as provided in section 8.01 and section 15.01. The sponsor or VS practitioner must, except as provided in section 12 or section 18, submit an application under the procedures in section 7 or section 17, together with a copy of the plan's certification regarding interim amendments, a cover letter summarizing the changes to the plan that are affected by such amendment(s), and a copy of the plan that is being restated. The IRS retains the right to request and secure from the sponsor/VS practitioner in appropriate circumstances copies of all interim amendments reflected on the applicable Cumulative List that the sponsor / VS practitioner has adopted on behalf of its adopting employers.

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

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

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

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

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

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

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

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

## SECTION 22. REVOCATION

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

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

The second on-cycle submission period (post-EGTRRA) began on February 1, 2013, and was scheduled to end on January 31, 2014, for applications for opinion and advisory letters for defined benefit plans that take into account the changes identified on the 2012 Cumulative List. Anns. 2014–4 and 2014–41 extended the deadline to submit on-cycle applications for opinion and advisory letters for such defined benefit plans to June 30, 2015. Pursuant to this revenue procedure, the deadline to submit on-cycle applications for opinion and advisory letters for such defined benefit plans is extended to October 30, 2015. Plans submitted in accordance with this extension will continue to be reviewed based on the 2012 Cumulative List. However, a plan must comply in operation with all relevant qualification requirements, not just those on the 2012 Cumulative List. In addition, if a plan has not been previously reviewed for items on earlier cumulative lists, the plan must still take those items into account. For example, pre-approved defined benefit plans have not yet been reviewed for items on the 2007 Cumulative List, so those items have been retained on the 2012 Cumulative List. The IRS will announce the deadline for timely adoption by employers when the review of the pre-approved documents is close to being completed.

## SECTION 24. REMEDIAL AMENDMENT PERIOD

.01 Rev. Proc. 2007–44 contains the IRS's procedures for issuing letters for pre-approved plans under a regular, six-year remedial amendment cycle and individually designed plans under a staggered five-year remedial amendment cycle. It explains the conditions under which an adopting employer that timely adopts a pre-approved plan will be treated as having adopted the plan within the employer's six-year remedial amendment cycle, and which Cumulative List will apply in the case of plans that become individually designed under the circumstances described in section 24.02.

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

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

## SECTION 25. EFFECT ON OTHER DOCUMENTS

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

## SECTION 26. EFFECTIVE DATE

This revenue procedure is effective June 8, 2015.

## SECTION 27. PAPERWORK REDUCTION ACT

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

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

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

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

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

The estimated frequency of responses is occasional.

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

## DRAFTING INFORMATION

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

# Part IV. Items of General Interest

## Notice of Proposed Rulemaking Guidance under Section 529A: Qualified ABLE Programs

### REG–102837–15

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 529A of the Internal Revenue Code that provide guidance regarding programs under The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014. Section 529A provides rules under which States or State agencies or instrumentalities may establish and maintain a new type of tax-favored savings program through which contributions may be made to the account of an eligible disabled individual to meet qualified disability expenses. These accounts also receive favorable treatment for purposes of certain means-tested Federal programs. In addition, these proposed regulations provide corresponding amendments to regulations under sections 511 and 513, with respect to unrelated business taxable income, sections 2501, 2503, 2511, 2642 and 2652, with respect to gift and generation-skipping transfer taxes, and section 6011, with respect to reporting requirements. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments must be received by September 21, 2015. Outlines of topics to be discussed at the public hearing scheduled for October 14, 2015, at 10 am, must be received by September 21, 2015.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–102837–15), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–102837–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–102837–15). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under section 529A, Taina Edlund or Terri Harris, (202) 317-4541, or Sean Barnett, (202) 317-5800; concerning the proposed estate and gift tax regulations, Theresa Melchiorre, (202) 317-4643; concerning the reporting provisions under section 529A, Mark Bond, (202) 317-6844; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, call Regina Johnson, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by August 21, 2015.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in the proposed regulations is in §§ 1.529A–2, 1.529A–5, 1.529A–6 and 1.529A–7. The collection of information flows from sections 529A(d)(1), (d)(2), (d)(3), (e)(1) and (e)(2) of the Internal Revenue Code (Code). Section 529A(d)(1) requires qualified ABLE programs to provide reports to the Secretary and to designated beneficiaries with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary may require. Section 529A(d)(2) provides that the Secretary shall make available to the public reports containing aggregate information, by diagnosis and other relevant characteristics, on contributions and distributions from the qualified ABLE program. Section 529A(d)(3) requires qualified ABLE programs to provide notice to the Secretary upon the establishment of an ABLE account, containing the name and State of residence of the designated beneficiary and such other information as the Secretary may require. Section 529A(e)(1) requires that a disability certification with respect to certain individuals be filed with the Secretary. Section 529A(e)(2) provides that the disability certification include a certification to the satisfaction of the Secretary that the individual has a medically determinable physical or mental impairment that occurred before the date on which the individual attained age 26 and also include a copy of a physician's diagnosis. The burden under §§ 1.529A–5 and 1.529A–6 is reflected in the burden under the new Form 5498–QA, "ABLE Account Contribution Information," and the new Form 1099–QA, "Distributions from ABLE Accounts," respectively.

The expected recordkeepers are programs described in section 529A, established and maintained by a State or a State agency or instrumentality and individuals with ABLE accounts.

Estimated number of recordkeepers: 10,050.

Estimated average annual burden hours per recordkeeper: 1.6 hours.

Estimated total annual recordkeeping burden: 16,080.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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 return information are confidential, as required by 26 U.S.C. 6103.

**Background**

The Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act of 2014, enacted on December 19, 2014, as part of The Tax Increase Prevention Act of 2014 (Public Law 113–295), added section 529A to the Internal Revenue Code. Congress recognized the special financial burdens borne by families raising children with disabilities and the fact that increased financial needs generally continue throughout the disabled person's lifetime. Section 101 of the ABLE Act confirms that one of the purposes of the Act is to "provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits" otherwise available to those individuals, whether through private sources, employment, public programs, or otherwise. Prior to the enactment of the ABLE Act, various types of tax-advantaged savings arrangements existed, but none adequately served the goal of promoting saving for these financial needs. Section 529A allows the creation of a qualified ABLE program by a State (or agency or instrumentality thereof) under which a separate ABLE account may be established for a disabled individual who is the designated beneficiary and owner of that account. Generally, contributions to that account are subject to both an annual and a cumulative limit, and, when made by a person other than the designated beneficiary, are treated as non-taxable gifts to the designated beneficiary. Distributions made from an ABLE account for qualified disability expenses of the designated beneficiary are not included in the designated beneficiary's gross income. The earnings portion of distributions from the ABLE account in excess of the qualified disability expenses is includible in the gross income of the designated beneficiary. An ABLE account may be used for the long-term benefit and/or short-term needs of the designated beneficiary.

Section 103 of the ABLE Act, while not a tax provision, is critical to achieving the goal of the ABLE Act of providing financial resources for the benefit of disabled individuals. Because so many of the programs that provide essential financial, occupational, and other resources and services to disabled individuals are available only to persons whose resources and income do not exceed relatively low dollar limits, section 103 generally provides that a designated beneficiary's ABLE account (specifically, its account balance, contributions to the account, and distributions from the account) is disregarded for purposes of determining the designated beneficiary's eligibility for and the amount of any assistance or benefit provided under certain means-tested Federal programs. However, in the case of the Supplemental Security Income program under title XVI of the Social Security Act, distributions for certain housing expenses are not disregarded, and the balance (including earnings) in an ABLE account is considered a resource of the designated beneficiary to the extent that balance exceeds $100,000. Section 103 also addresses the impact of an excess balance in an ABLE account on the designated beneficiary's eligibility under the Supplemental Security Income program and Medicaid.

Finally, section 104 of the ABLE Act addresses the treatment of ABLE accounts in bankruptcy proceedings.

Notice 2015–18, 2015–12 IRB 765 (March 23, 2015), provides that the section 529A guidance will confirm that the owner of the ABLE account is the designated beneficiary of the account, and that the person with signature authority over (if not the designated beneficiary of) the account may neither have nor acquire any beneficial interest in the ABLE account and must administer that account for the benefit of the designated beneficiary of that account. The Notice further provides that, in the event that state legislation creating ABLE programs enacted in accordance with section 529A prior to issuance of guidance does not fully comport with the guidance when issued, the Treasury Department and the IRS intend to provide transition relief to provide sufficient time to allow States to implement the changes necessary to avoid the disqualification of the program and of the ABLE accounts already established under the program.

The Treasury Department and the IRS reiterate that States that enact legislation creating an ABLE program in accordance with section 529A, and those individuals establishing ABLE accounts in accordance with such legislation, will not fail to receive the benefits of section 529A merely because the legislation or the account documents do not fully comport with the final regulations when they are issued. The Treasury Department and the IRS intend to provide transition relief to enable those State programs and accounts to be brought into compliance with the requirements in the final regulations, including providing sufficient time after issuance of the final regulations in order for changes to be implemented.

**Explanation of Provisions**

*Qualification as an ABLE program*

The proposed regulations provide guidance on the requirements a program must satisfy in order to be a qualified ABLE program described in section 529A. Specifically, in addition to other requirements, the program must: be established and maintained by a State or a State's agency or instrumentality; permit the establishment of an ABLE account only for a designated beneficiary who is a resident of that State, or a State contracting with that State for purposes of the ABLE program; permit the establishment of an ABLE account only for a designated beneficiary who is an eligible individual;

limit a designated beneficiary to only one ABLE account, wherever located; permit contributions to an ABLE account established to meet the qualified disability expenses of the account's designated beneficiary; limit the nature and amount of contributions that can be made to an ABLE account; require a separate accounting for the ABLE account of each designated beneficiary with an ABLE account in the program; limit the designated beneficiary to no more than two opportunities in any calendar year to provide investment direction, whether directly or indirectly, for the ABLE account; and prohibit the pledging of an interest in an ABLE account as security for a loan.

Because each qualified ABLE program will have significant administrative obligations beyond what is required for the administration of qualified tuition programs under section 529 (on which section 529A was loosely modeled), and because the frequency of distributions from the ABLE accounts is likely to be far greater than those made from qualified tuition accounts, the proposed regulations expressly allow a qualified ABLE program or any of its contractors to contract with one or more Community Development Financial Institutions (CDFIs) that commonly serve disabled individuals and their families to provide one or more required services. For example, a CDFI could provide screening and verification of disabilities, certification of the qualified purpose of distributions, debit card services to facilitate distributions, and social data collection and reporting. A CDFI also may be able to obtain grants to defray the cost of administering the program. In general, if certified by the Treasury Department, a CDFI may receive a financial assistance award from the CDFI Fund that was established within the Treasury Department in 1994 to promote community development in economically distressed communities through investments in CDFIs across the country.

*Established and maintained*

The proposed regulations provide that a program is established by a State, or its agency or instrumentality, if the program is initiated by State statute or regulation, or by an act of a State official or agency with the authority to act on behalf of the State. A program is maintained by a State or its agency or instrumentality if: all the terms and conditions of the program are set by the State or its agency or instrumentality, and the State or its agency or instrumentality is actively involved on an ongoing basis in the administration of the program, including supervising all decisions relating to the investment of assets contributed to the program. The proposed regulations set forth factors that are relevant in determining whether a State, or its agency or instrumentality, is actively involved in the administration of the program. Included in the factors is the manner and extent to which it is permissible for the program to contract out for professional and financial services.

*Establishment of an ABLE account*

The proposed regulations provide that, consistent with the definition of a designated beneficiary in section 529A(e)(3), the designated beneficiary of an ABLE account is the eligible individual who establishes the account or an eligible individual who succeeded the original designated beneficiary. The proposed regulations also provide that the designated beneficiary is the owner of that account.

The Treasury Department and the IRS recognize, however, that certain eligible individuals may be unable to establish an account themselves. Therefore, the proposed regulations clarify that, if the eligible individual cannot establish the account, the eligible individual's agent under a power of attorney or, if none, his or her parent or legal guardian may establish the ABLE account for that eligible individual. For purposes of these proposed regulations, because each of these individuals would be acting on behalf of the designated beneficiary, references to actions of the designated beneficiary, such as opening or managing the ABLE account, are deemed to include the actions of any other such individual with signature authority over the ABLE account. The proposed regulations also provide that, consistent with Notice 2015–18, a person other than the designated beneficiary with signature authority over the account of the designated beneficiary may neither have, nor acquire, any beneficial interest in the account during the designated beneficiary's lifetime and must administer the account for the benefit of the designated beneficiary.

At the time an ABLE account is created for a designated beneficiary, the designated beneficiary must provide evidence that the designated beneficiary is an eligible individual as defined in section 529A(e)(1). Section 529A(e)(1) provides that an individual is an eligible individual for a taxable year if, during that year, either the individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act and the blindness or disability occurred before the date on which the individual attained age 26, or a disability certification meeting specified requirements is filed with the Secretary. If an individual is asserting he or she is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act and the blindness or disability occurred before the date on which the individual attained age 26, the proposed regulations provide that each qualified ABLE program may determine the evidence required to establish the individual's eligibility. For example, a qualified ABLE program could require the individual to provide a copy of a benefit verification letter from the Social Security Administration and allow the individual to certify, under penalties of perjury, that the blindness or disability occurred before the date on which the individual attained age 26.

Alternatively, the designated beneficiary must submit the disability certification when opening the ABLE account. Consistent with section 529A(e)(2), the proposed regulations provide that a disability certification is a certification by the designated beneficiary that he or she: (1) has a medically determinable physical or mental impairment, which results in marked or severe functional limitations, and which (i) can be expected to result in death or (ii) has lasted or can be expected to last for a continuous period of not less than 12 months; or (2) is blind (within the meaning of section 1614(a)(2) of the Social Security Act) and that such blindness or disability occurred before the date on which the individual attained age 26. The certification must include a copy of the individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a licensed physician (as defined in section 1861(r) of the Social Security Act, 42 U.S.C. 1395x(r)). Consistent with other IRS filing requirements, the proposed regulations also provide that the certification must be signed under penalties of perjury.

While evidence of an individual's eligibility based on entitlement to Social Security benefits should be objectively verifiable, the sufficiency of a disability certification that an individual is an eligible individual for purposes of section 529A might not be as easy to establish. Nevertheless, the Treasury Department and the IRS wish to facilitate an eligible individual's ability to establish an ABLE account without undue delay. Therefore, the proposed regulations provide that an eligible individual must present the disability certification, accompanied by the diagnosis, to the qualified ABLE program to demonstrate eligibility to establish an ABLE account. The proposed regulations further provide that the disability certification will be deemed to be filed with the Secretary once the qualified ABLE program has received the disability certification or a disability certification has been deemed to have been received under the rules of the qualified ABLE program, which information the qualified ABLE program, as discussed further below, will file with the IRS in accordance with the filing requirements under § 1.529A–5(c)(2)(iv).

*Disability determination*

Consistent with section 529A(g)(4), the Treasury Department and the IRS have consulted with the Commissioner of Social Security regarding disability certifications and determinations of disability. For purposes of the disability certification, the proposed regulations provide that the phrase "marked and severe functional limitations" means the standard of disability in the Social Security Act for children claiming benefits under the Supplemental Security Income for the Aged, Blind, and Disabled (SSI) program based on disability, but without regard to the age of the individual. This phrase refers to a level of severity of an impairment that meets, medically equals, or functionally equals the listings in the Listing of Impairments (the listings) in appendix 1 of subpart P of 20 CFR part 404. (*See* 20 CFR 416.906, 416.924 and 416.926a). This listing developed and used by the Social Security Administration describes for each of the major body systems impairments that cause marked and severe functional limitations. Most body system sections are in two parts: an introduction, followed by the specific listings. The introduction contains information relevant to the use of the listings with respect to that body system, such as examples of common impairments in the body system and definitions used in the listings for that body system. The introduction may also include specific criteria for establishing a diagnosis, confirming the existence of an impairment, or establishing that an impairment satisfies the criteria of a particular listing with respect to the body system. The specific listings that follow the introduction for each body system specify the objective medical and other findings needed to satisfy the criteria of that listing. Most of the listed impairments are permanent or expected to result in death, although some listings state a specific period of time for which an impairment will meet the listing.

An impairment is medically equivalent to a listing if it is at least equal in severity and duration to the severity and duration of any listing. An impairment that does not meet or medically equal any listing may result in limitations that functionally equal the listings if it results in marked limitations in two domains of functioning or an extreme limitation in one domain of functioning, as explained in 20 CFR 416.926a. In addition, the proposed regulations provide that certain conditions, specifically those listed in the Compassionate Allowances Conditions list maintained by the Social Security Administration, are deemed to meet the requirements of an impairment sufficient for a disability certification without a physician's diagnosis, provided that the condition was present before the date on which the individual attained age 26. The proposed regulations also provide the flexibility from time to time to identify additional impairments that will be deemed to meet these requirements. The Treasury Department and the IRS request comments on what other conditions should be deemed to meet the requirements of section 529A(e)(2)(A)(i).

*Change in eligible individual status*

The Treasury Department and the IRS recognize that there may be circumstances in which a designated beneficiary ceases to be an eligible individual but subsequently regains that status. Consequently, the Treasury Department and the IRS believe that it is appropriate to permit continuation of the ABLE account (albeit with some changes in the applicable rules) during the period in which a designated beneficiary is not an eligible individual as long as the designated beneficiary was an eligible individual when the account was established. Therefore, if at any time a designated beneficiary no longer meets the definition of an eligible individual, his or her ABLE account remains an ABLE account to which all of the provisions of the ABLE Act continue to apply, and no (taxable) distribution of the account balance is deemed to occur. However, the proposed regulations provide that, beginning on the first day of the taxable year following the taxable year in which the designated beneficiary ceased to be an eligible individual, no contributions to the ABLE account may be accepted. If the designated beneficiary subsequently again becomes an eligible individual, then additional contributions may be accepted subject to the applicable annual and cumulative limits. In this way, the Treasury Department and the IRS intend to prevent a deemed distribution of the ABLE account (and preserve the account's qualification as an ABLE account for all purposes) if, for example, the disease that caused the impairment goes into a temporary remission, and to preserve the ABLE account with its tax-free distributions for qualified disability expenses if the impairment resumes and once again qualifies the designated beneficiary as an eligible individual. Note that expenses will not be qualified disability expenses if they are incurred at a time when a designated beneficiary is neither disabled nor blind within the meaning of § 1.529A–1(b)(9)(i) or § 1.529A–2(e)(1)(i).

The proposed regulations provide flexibility regarding annual recertifications. A qualified ABLE program generally must require annual recertifications that the designated beneficiary continues to satisfy the definition of an eligible individual. However, a qualified ABLE program may deem an annual recertification to have been provided in appropriate circumstances. For example, a qualified ABLE program may permit certification by an individual that he or she has a permanent disability to be considered to meet the annual requirement to present a certification to the qualified ABLE program. In other cases, a program may require all of the same evidence needed for the initial disability certification when the account was established, may require a statement under penalties of perjury that nothing has changed that would change the original disability certification, or may incorporate some other method of ensuring that the designated beneficiary continuously qualifies as an eligible individual. Alternatively, a qualified ABLE program may identify certain impairments or categories of impairments for which recertifications will be deemed to have been made annually to the qualified ABLE program unless and until the qualified ABLE program provides otherwise (for example, if a cure is discovered for a disease that causes an impairment). An initial certification or recertification that meets the requirements of the qualified ABLE program will be deemed to have met the requirement of section 529A(e)(1)(B). The Treasury Department and the IRS request comments regarding how a qualified ABLE program will be able to demonstrate eligibility in subsequent years if it allows deemed recertifications.

*Contributions to an ABLE account*

The proposed regulations provide that, as a general rule, all contributions to an ABLE account must be made in cash. The proposed regulations provide that a qualified ABLE program may accept cash contributions in the form of cash or a check, money order, credit card payment, or other similar method of payment. In addition, the proposed regulations provide that the total contributions to an ABLE account in the designated beneficiary's taxable year, other than amounts received in rollovers and program-to-program transfers, must not exceed the amount of the annual per-donee gift tax exclusion under section 2503(b) in effect for that calendar year (currently $14,000) in which the designated beneficiary's taxable year begins. Finally, a qualified ABLE program must provide adequate safeguards to ensure that total contributions to an ABLE account (including the proceeds from a preexisting ABLE account) do not exceed that State's limit for aggregate contributions under its qualified tuition program.

To implement these requirements, the proposed regulations provide that a qualified ABLE program must return contributions in excess of the annual gift tax exclusion (excess contributions) to the contributor(s), along with all net income attributable to those excess contributions. Similarly, the proposed regulations also require the return of all contributions, along with all net income attributable to those contributions, that caused an ABLE account to exceed the limit established by the State for its qualified tuition program (excess aggregate contributions). If an excess contribution or excess aggregate contribution is returned to a contributor other than the designated beneficiary, the qualified ABLE program must notify the designated beneficiary of such return at the time of the return. The proposed regulations further provide that such returns of excess contributions and excess aggregate contributions must be received by the contributor(s) on or before the due date (including extensions) of the designated beneficiary's income tax return for the year in which the excess contributions were made or in the year the excess aggregate contributions caused amounts in the ABLE account to exceed the limit in effect under section 529A(b)(6), respectively. The proposed regulations provide rules for determining the net income attributable to a contribution made to an ABLE account, and also provide that these excess contributions and excess aggregate contributions must be returned to contributors on a last-in, first-out basis. In the case of contributions that exceed the annual gift tax exclusion, a failure to return such excess contributions within the time period discussed in this paragraph will result in the imposition on the designated beneficiary of a 6 percent excise tax under section 4973(a)(6) on the amount of excess contributions. As part of a planned revision of IRA regulations, the Treasury Department and the IRS intend to propose regulations under section 4973 to reflect that ABLE accounts are subject to section 4973.

*Application of gift tax to contributions to an ABLE account*

Gift tax consequences may arise from contributions to an ABLE account even though the aggregate amount of such contributions to an ABLE account from all contributors may not exceed the annual exclusion amount under section 2503(b) applicable to any single contributor. Specifically, if a contributor makes other gifts to a designated beneficiary in addition to the gift to the designated beneficiary's ABLE account, the contributor's total gifts made to the designated beneficiary in that year could give rise to a gift tax liability.

Contributions may be made by any person. The term *person* is defined in section 7701(a)(1) to include an individual, trust, estate, partnership, association, company, or corporation. Therefore, for purposes of section 529A(b)(1)(A), a person would include an individual and each of the entities described in section 7701(a)(1). Under section 2501(a)(1), the gift tax applies only to gifts by individuals, but it also applies to gifts made directly or indirectly. As a result, a gift made by a trust, estate, association, company, corporation, or partnership is treated as having been made by the owner(s) of that entity. For example, a gift from a corporation to a designated beneficiary is treated as a gift from the shareholders of the corporation to the designated beneficiary. *See Example (1)* of § 25.2511–1(h). Accordingly, the proposed regulations provide that, for purposes of sections 529A(b)(1)(A) and 529A(c)(1)(C), a contribution by a corporation is treated as a gift by its shareholders and a contribution by a partnership is treated as a gift by its partners. This rule also applies to trusts, estates, associations, and companies. *See* section 2511 and § 25.2511–1(c).

The legislative history of section 529A suggests that a "person" described in section 529A(b)(1)(A) includes the designated beneficiary of an ABLE account.

*See* 160 Cong. Rec. H7051, H8317, H8318, H8321, H8322 (2014). A person may transfer his or her property into an account, such as a bank account or a trust, for his or her benefit and retain dominion and control over the property transferred. Because an individual cannot make a transfer of property to himself or herself and a transfer of property is a fundamental requirement for a completed gift, this type of transfer from a person's own property cannot be treated as a completed gift for tax purposes. *See* § 25.2511–2(b) and (c). Therefore, the proposed regulations provide that any contribution by a designated beneficiary to a qualified ABLE program benefitting the designated beneficiary is not treated as a completed gift. Because the designated beneficiary remains the owner of the account for purposes of chapter 12, if the designated beneficiary transfers the funds in the account to another person as permitted under these proposed regulations, the designated beneficiary making the transfer is the donor for purposes of chapter 12 and the transferor for generation-skipping transfer tax purposes of chapter 13.

*Distributions*

If distributions from an ABLE account do not exceed the designated beneficiary's qualified disability expenses, no amount is includible in the designated beneficiary's gross income. Otherwise, the earnings portion of the distributions from the ABLE account as determined in the manner provided under section 72, reduced by the product of such earnings portion and the ratio of the amount of the distributions for qualified disability expenses to total distributions, is includible in the gross income of the designated beneficiary to the extent not otherwise excluded from gross income. As required by section 529A(c)(1)(D), the proposed regulations provide that, for purposes of applying section 72 to amounts distributed from an ABLE account: (1) all distributions during a taxable year are treated as one distribution; and (2) the value of the contract, income on the contract, and investment in the contract are computed as of the close of the calendar year in which the designated beneficiary's taxable year begins.

The proposed regulations also provide that, in addition to the income tax on the portion of a distribution included in gross income, an additional tax of 10 percent of the amount includible in gross income is imposed. This additional tax does not apply, however, to distributions on or after the designated beneficiary's death or to returns of excess contributions, excess aggregate contributions, or contributions to additional purported ABLE accounts made by the due date (including extensions) of the designated beneficiary's tax return for the year in which the relevant contributions were made.

Section 529A(c)(1)(C) addresses the tax consequences of the rollover of an ABLE account to an ABLE account for the same designated beneficiary maintained under a different State's qualified ABLE program, as well as a change of designated beneficiary. The proposed regulations describe with respect to these two situations the circumstances in which amounts will not be includible in income. The first is any change of designated beneficiary if the new designated beneficiary is both (1) an eligible individual for his or her taxable year in which the change is made and (2) a sibling of the former designated beneficiary. For purposes of these proposed regulations, a sibling also includes step-siblings and half-siblings, whether by blood or by adoption. The proposed regulations provide that a qualified ABLE program must permit a change of designated beneficiary, as long as the change is made prior to the death of the former designated beneficiary and as long as the successor designated beneficiary is an eligible individual. Because the designated beneficiary will be subject to gift and/or generation-skipping transfer tax if the successor designated beneficiary is not a sibling of the designated beneficiary, the Treasury Department and the IRS request comments regarding whether the final regulations should permit States to require that a successor designated beneficiary also must be a sibling of the designated beneficiary.

The second situation in which a distribution is not included in gross income arises if a distribution to the designated beneficiary of the ABLE account is paid, not later than the 60th day after the date of the distribution, to another (or the same) ABLE account for the benefit of the designated beneficiary or for the benefit of an eligible individual who is a sibling of the designated beneficiary. However, the preceding sentence does not apply to such a distribution that occurs within 12 months of a previous rollover to another ABLE account for the same designated beneficiary.

The Treasury Department and the IRS have been asked whether a qualified tuition account under section 529 may be rolled into an ABLE account for the same designated beneficiary free of tax. Because such a distribution to the ABLE account would not constitute a qualified higher education expense under section 529, the Treasury Department and the IRS do not believe they have the authority to allow such a transfer on a tax-free basis.

In addition, the proposed regulations authorize a qualified ABLE program to allow program-to-program transfers to effectuate a change of qualified ABLE program or a change of designated beneficiary to another eligible individual. Such a direct transfer is neither a distribution taxed in accordance with section 72 nor an excess contribution. A program-to-program transfer also could be accomplished, if permitted by the qualified ABLE program, through a check delivered to the designated beneficiary but negotiable only by the qualified State program under which the new ABLE account is being established.

The Treasury Department and the IRS recognize that moving funds by use of a program-to-program transfer may be preferable to moving them by a rollover because a rollover, even if made within the permissible 60-day period, may jeopardize the designated beneficiary's eligibility for certain benefits under various means-tested programs. Moreover, a direct program-to-program transfer could facilitate the efficient transfer of all relevant information regarding the application of contribution limits and the total amount of accumulated earnings that will also apply to the new account. The Treasury Department and the IRS request comments as to whether and to what extent a qualified ABLE program should be permitted to require that funds from another State's ABLE program be accepted only through program-to-program transfers.

*Qualified disability expenses*

Section 529A(e)(5) defines a *qualified disability expense*. Consistent with that subsection, the proposed regulations provide that qualified disability expenses are expenses that relate to the designated beneficiary's blindness or disability and are for the benefit of that designated beneficiary in maintaining or improving his or her health, independence, or quality of life. Such expenses include, but are not limited to, expenses for education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses that may be identified from time to time in future guidance published in the Internal Revenue Bulletin. As previously stated, expenses incurred at a time when a designated beneficiary is neither disabled nor blind within the meaning of the proposed regulations are not qualified disability expenses.

In order to implement the legislative purpose of assisting eligible individuals in maintaining or improving their health, independence, or quality of life, the Treasury Department and the IRS conclude that the term "qualified disability expenses" should be broadly construed to permit the inclusion of basic living expenses and should not be limited to expenses for items for which there is a medical necessity or which provide no benefits to others in addition to the benefit to the eligible individual. For example, expenses for common items such as smart phones could be considered qualified disability expenses if they are an effective and safe communication or navigation aid for a child with autism. The Treasury Department and the IRS request comments regarding what types of expenses should be considered qualified disability expenses and under what circumstances. The proposed regulations authorize the identification of additional types of qualified disability expenses in guidance published in the Internal Revenue Bulletin. *See* § 601.601(d)(2). A qualified ABLE program must establish safeguards to distinguish between distributions used for the payment of qualified disability expenses and other distributions, and to permit the identification of the amounts distributed for housing expenses as that term is defined for purposes of the Supplemental Security Income program of the Social Security Administration.

*Limitation on number of ABLE accounts of a designated beneficiary*

Section 529A(c)(4) generally provides that, except with respect to certain rollovers, once an ABLE account has been established for a designated beneficiary, no account subsequently established for that same designated beneficiary may qualify as an ABLE account. The proposed regulations provide that, except with respect to rollovers and program-to-program transfers, no designated beneficiary may have more than one ABLE account in existence at the same time, but provides that a prior ABLE account that has been closed does not prohibit the subsequent creation of another ABLE account for the same designated beneficiary. A qualified ABLE program must obtain a verification from the eligible individual, signed under penalties of perjury, that he or she has no other ABLE account (except in the case of a rollover or program-to-program transfer). The proposed regulations provide that, in the event that any additional ABLE account is opened for a designated beneficiary with an ABLE account already in existence, only the first such account created for that designated beneficiary qualifies as an ABLE account, and each other account is treated for all purposes as being an account of the designated beneficiary that is not an ABLE account under a qualified ABLE program. The proposed regulations also provide, however, that a return, in accordance with the rules that apply to returns of excess contributions and excess aggregate contributions under § 1.529A–2(g)(4), of the entire balance of a second or other subsequent account received by the contributor(s) on or before the due date (including extensions) for filing the designated beneficiary's income tax return for the year in which the account was opened and contributions to the second or subsequent account were made will not be treated as a gift or distribution to the designated beneficiary for purposes of section 529A.

The prohibition of multiple ABLE accounts, however, does not apply to prevent a timely rollover or program-to-program transfer of the designated beneficiary's account to an ABLE account under a different qualified ABLE program.

*Residency requirements*

Consistent with section 529A(b)(1)(C), the proposed regulations require that an ABLE account for a designated beneficiary may be established only under the qualified ABLE program of the State in which that designated beneficiary is a resident or with which the State of the designated beneficiary's residence has contracted for the provision of ABLE accounts. If a State does not establish and maintain a qualified ABLE program, it may contract with another State to provide an ABLE program for its residents. The statute is silent as to whether a designated beneficiary must move his or her existing ABLE account when the designated beneficiary changes his or her residence. The Treasury Department and the IRS are concerned about imposing undue administrative burdens and costs on designated beneficiaries who frequently change State residency, such as members of military families. Therefore, the proposed regulations provide that a qualified ABLE program may permit a designated beneficiary to continue to maintain his or her ABLE account that was created in that State, even after the designated beneficiary is no longer a resident of that State. However, in order to enforce the one ABLE account limitation and in accordance with section 529A(g)(1), the proposed regulations provide that, other than in the case of a rollover or a program-to-program transfer of a designated beneficiary's ABLE account, a qualified ABLE program must require the designated beneficiary to verify, under penalties of perjury, when creating an ABLE account that the account being established is the designated beneficiary's only ABLE account. For example, the eligible individual could be required to check a box providing such verification on a form used to establish the account. The Treasury Department and the IRS are concerned that without such safeguards individuals could inadvertently establish two accounts with adverse tax consequences due to the loss of ABLE account status for the second account and expect qualified ABLE programs to establish safeguards to ensure that the required limit of one ABLE account per designated beneficiary is not violated.

*Investment direction*

Section 529A(b)(4) states that a program shall not be treated as a qualified ABLE program unless it provides that the designated beneficiary may directly or indirectly direct the investment of any contributions to the program or any earnings thereon no more than two times in any calendar year. A program will not violate this requirement merely because it permits a designated beneficiary or a person with signature authority over a designated beneficiary's account to serve as one of the program's board members or employees, or as a board member or employee of a contractor that the program hires to perform administrative services.

*Cap on contributions*

Section 529A(b)(6) provides that a qualified ABLE program must provide adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the limit established by the State under section 529(b)(6) relating to Qualified State Tuition Programs. The proposed regulations provide a safe harbor that permits a qualified ABLE program to satisfy this requirement regarding total cumulative contributions if the program prohibits any additional contributions to an account as soon as the account balance reaches the specified contribution limit under such State's program established under section 529. Once the account balance falls below the prescribed limit, contributions may resume, subject to the same limitation. The Treasury Department and the IRS believe that recommencement of contributions is appropriate based on the nature and purposes of the ABLE program.

*Gift and generation-skipping transfer (GST) taxes*

The proposed regulations provide that contributions to an ABLE account by a person other than the designated beneficiary are treated as completed gifts to the designated beneficiary of the account, and that such gifts are neither gifts of a future interest nor a qualified transfer under section 2503(e). Accordingly, no distribution from an ABLE account to the designated beneficiary of that account is treated as a taxable gift. Finally, neither gift nor GST taxes apply to the change of designated beneficiary of an ABLE account, as long as the new designated beneficiary is an eligible individual who is a sibling of the former designated beneficiary.

*Distribution on death*

The proposed regulations provide that, upon the death of the designated beneficiary, all amounts remaining in the ABLE account are includible in the designated beneficiary's gross estate for purposes of the estate tax. *See* section 2031. Further, the proposed regulations cross-reference section 2053 for purposes of determining the deductibility by the designated beneficiary's estate of amounts payable from the ABLE account to satisfy claims by creditors such as a State and also cross-reference section 2652(a)(1) for treatment of the deceased designated beneficiary as the transferor of any property remaining in the ABLE account that may pass to a beneficiary.

Pursuant to section 529A(f), a qualified ABLE program must provide that, upon the designated beneficiary's death, any State may file a claim (either with the person with signature authority over the ABLE account or the executor of the designated beneficiary's estate as defined in section 2203) for the amount of the total medical assistance paid for the designated beneficiary under the State's Medicaid plan after the establishment of the ABLE account. The amount paid in satisfaction of such a claim is not a taxable distribution from the ABLE account. Further, the amount is to be paid only after the payment of all outstanding payments due for the qualified disability expenses of the designated beneficiary and is to be reduced by the amount of all premiums paid by or on behalf of the designated beneficiary to a Medicaid Buy-In program under that State's Medicaid plan.

*Unrelated business taxable income and filing requirements*

A qualified ABLE program generally is exempt from income taxation. A qualified ABLE program, however, is subject to the taxes imposed by section 511 relating to the imposition of tax on unrelated business taxable income ("UBTI"). For purposes of this tax, certain administrative and other fees do not constitute unrelated business income to the ABLE program. A qualified ABLE program is not required to file Form 990, "Return of Organization Exempt From Income Tax," but will be required to file Form 990-T, "Exempt Organization Business Income Tax Return," if a filing would be required under the rules of §§1.6012–2(e) and 1.6012–3(a)(5) if the ABLE program were an organization described in those sections.

*Reporting requirements*

The proposed regulations set forth recordkeeping and reporting requirements. A qualified ABLE program must maintain records that enable the program to account to the Secretary with respect to all contributions, distributions, returns of excess contributions or additional accounts, income earned, and account balances for any designated beneficiary's ABLE account. In addition, a qualified ABLE program must report to the Secretary the establishment of each ABLE account, including the name and residence of the designated beneficiary, and other relevant information regarding the account that is included on the new Form 5498-QA, "ABLE Account Contribution Information." It is anticipated that the qualified ABLE program will report if the eligible individual has presented an adequate disability certification, accompanied by a diagnosis, to demonstrate eligibility to establish an account. Information regarding distributions will be reported on the new Form 1099-QA, "Distributions from ABLE Accounts." The proposed regulations contain more detail on how the information must be reported.

In addition, section 529A(b)(3) requires that a qualified ABLE program provide separate accounting for each designated beneficiary. Separate accounting requires that contributions for the benefit of a designated beneficiary, as well as earnings attributable to those contributions, are allocated to that designated beneficiary's account. Whether or not a program ordinarily provides each designated beneficiary an annual account statement showing the income and transactions related to the account, the program must give this information to the designated beneficiary upon request.

Section 529A(d)(4) provides that States are required to submit electronically to the Commissioner of Social Security, on a monthly basis and in the manner specified by the Commissioner of Social Security, statements on relevant distributions and account balances from all ABLE accounts. The report of the Committee on Ways and Means (H.R. Rep. No. 113–614, pt. 1, at 15 (2014)) indicates that States should work with the Commissioner of Social Security to identify data elements for the monthly reports, including the type of qualified disability expenses.

**Effective Date/Applicability Date**

These regulations are proposed to be effective as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register.** These rules, when adopted as final regulations, will apply to taxable years beginning after December 31, 2014. The reporting requirements of §§1.529A–5 through 1.529A–7 will apply to information returns required to be filed, and payee statements required to be furnished, after December 31, 2015. Until the issuance of final regulations, taxpayers and qualified ABLE programs may rely on these proposed regulations.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation and, because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. This regulation, if adopted, would primarily affect states and individuals and therefore would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are timely submitted to the IRS as prescribed in this preamble under the "Addresses" heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register.**

A public hearing has been scheduled for **October 14, 2015**, beginning at **10:00 am** in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments by September 21, 2015, and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 21, 2015. Submit a signed paper original and eight (8) copies or an electronic copy. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information**

The principal authors of these regulations are Terri Harris and Sean Barnett, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

* * * * *

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR parts 1, 25, 26 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

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

Sections 1.529A–1 through 1.529A–7 also issued under 26 U.S.C. 529A(g).* * *

Par. 2. Section 1.511–2 is amended by adding paragraph (e) to read as follows:

*§ 1.511–2 Organizations subject to tax.*

* * * * *

(e) *ABLE programs*—(1) *Unrelated business taxable income*. A qualified ABLE program described in section 529A generally is exempt from income taxation, but is subject to taxes imposed by section 511 relating to the imposition of tax on unrelated business income. A qualified ABLE program is required to file Form 990-T, "Exempt Organization Business Income Tax Return," if such filing would be required under the rules of §§1.6012–2(e) and 1.6012–3(a)(5) if the ABLE program were an organization described in those sections.

(2) *Effective/applicability dates*. This paragraph (e) applies to taxable years beginning after December 31, 2014.

Par. 3. Section 1.513–1 is amended by adding *Example 4* to paragraph (d)(4)(i) to read as follows:

*§ 1.513–1 Definition of unrelated trade or business.*

* * * * *

(d) * * *

(4) * * *

(i) * * *

*Example 4*. P is a qualified ABLE program described in section 529A. P receives amounts in order to open or maintain ABLE accounts, as administrative or maintenance fees and other similar fees including service charges. Because the payment of these amounts are essential to the operation of a qualified ABLE program, the income generated from the activity does not constitute gross income from an unrelated trade or business.

* * * * *

Par. 4. An undesignated center heading is added immediately following § 1.528–10 and §§1.529A–0 through 1.529A–7 are added to read as follows:

Sec.

* * * * *

QUALIFIED ABLE PROGRAMS


*1.529A–0 Table of contents.*

*1.529A–1 Exempt status of qualified ABLE program and definitions.*

*1.529A–2 Qualified ABLE program.*

*1.529A–3 Tax treatment.*

*1.529A–4 Gift, estate, and generation-skipping transfer taxes.*

*1.529A–5 Reporting of the establishment of and contributions to an ABLE account.*

*1.529A–6 Reporting of distributions from and termination of an ABLE account.*

*1.529A–7 Electronic furnishing of statements to designated beneficiaries and contributors.*


* * * * *

*§ 1.529A–0 Table of contents.*

This section lists the following captions contained in §§1.529A–1 through 1.529A–7.

*§ 1.529A–1 Exempt status of qualified ABLE program and definitions.*


(a) In general.
(b) Definitions.
(1) ABLE account.
(2) Contracting State.
(3) Contribution.
(4) Designated beneficiary.
(5) Disability certification.
(6) Distribution.
(7) Earnings.
(8) Earnings ratio.
(9) Eligible individual.
(10) Excess contribution.
(11) Excess aggregate contribution.
(12) Investment in the account.
(13) Member of the family.
(14) Program-to-program transfer.
(15) Qualified ABLE program.
(16) Qualified disability expenses.
(17) Rollover.
(c) Effective/applicability date.


*§ 1.529A–2 Qualified ABLE program.*


(a) In general.
(b) Established and maintained by a State or agency or instrumentality of a State.
(1) Established.
(2) Maintained.
(3) Community Development Financial Institutions (CDFIs).
(c) Establishment of an ABLE account.
(1) In general.
(2) Only one ABLE account.
(3) Beneficial interest.
(d) Eligible individual.
(1) In general.
(2) Frequency of recertification.
(3) Loss of qualification as an eligible individual.
(e) Disability certification.
(1) In general.
(2) Marked and severe functional limitations.
(3) Compassionate allowance list.
(4) Additional guidance.
(5) Restriction on use of certification.
(f) Change of designated beneficiary.
(g) Contributions.
(1) Permissible property.
(2) Annual contributions limit.
(3) Cumulative limit.
(4) Return of excess contributions and excess aggregate contributions.
(h) Qualified disability expenses.
(1) In general.
(2) Example.
(i) Separate accounting.
(j) Program-to-program transfers.
(k) Carryover of attributes.
(l) Investment direction.
(m) No pledging of interest as security.
(n) No sale or exchange.
(o) Change of residence.
(p) Post-death payments.
(q) Reporting requirements.
(r) Effective/applicability date.


*§ 1.529A–3 Tax treatment.*


(a) Taxation of distributions.
(b) Additional exclusions from gross income.
(1) Rollover.
(2) Program-to-program transfers.
(3) Change in designated beneficiary.
(4) Payments to creditors post-death.
(c) Computation of earnings.
(d) Additional tax on amounts includible in gross income.
(1) In general.
(2) Exceptions.
(e) Tax on excess contributions.
(f) Filing requirements.
(g) Effective/applicability date.


*§ 1.529A–4 Gift, estate, and generation-skipping transfer taxes.*


(a) Contributions.
(1) In general.
(2) Generation-skipping transfer (GST) tax.
(3) Designated beneficiary as contributor.
(b) Distributions.
(c) Change of designated beneficiary.
(d) Transfer tax on death of designated beneficiary.
(e) Effective/applicability date.


*§ 1.529A–5 Reporting of the establishment of and contributions to an ABLE account.*


(a) In general.
(b) Additional definitions.
(1) Filer.
(2) TIN.
(c) Requirement to file return.
(1) Form of return.
(2) Information included on return.

(3) Time and manner of filing return.
(d) Requirement to furnish statement.
(1) In general.
(2) Time and manner of furnishing statement.
(3) Copy of Form 5498–QA.
(e) Request for TIN of designated beneficiary.
(f) Penalties.
(1) Failure to file return.
(2) Failure to furnish TIN.
(g) Effective/applicability date.

*§ 1.529A–6 Reporting of distributions from and termination of an ABLE account.*

(a) In general.
(b) Requirement to file return.
(1) Form of return.
(2) Information included on return.
(3) Time and manner of filing return.
(c) Requirement to furnish statement.
(1) In general.
(2) Time and manner of furnishing statement.
(3) Copy of Form 1099-QA.
(d) Request for TIN of contributor(s).
(e) Penalties.
(1) Failure to file return.
(2) Failure to furnish TIN.
(f) Effective/applicability date.

*§ 1.529A–7 Electronic furnishing of statements to designated beneficiaries and contributors.*

(a) Electronic furnishing of statements.
(1) In general.
(2) Consent.
(3) Required disclosures.
(4) Format.
(5) Notice.
(6) Access period.
(b) Effective/applicability date.

*§ 1.529A–1 Exempt status of qualified ABLE program and definitions.*

(a) *In general*. A qualified ABLE program described in section 529A is exempt from income tax, except for the tax imposed under section 511 on the unrelated business taxable income of that program.

(b) *Definitions*. For purposes of section 529A, this section and §§ 1.529A–2 through 1.529A–7—

(1) *ABLE account* means an account established under a qualified ABLE program and owned by the designated beneficiary of that account.

(2) *Contracting State* means a State without a qualified ABLE program of its own, which, in order to make ABLE accounts available to its residents who are eligible individuals, contracts with another State having such a program.

(3) *Contribution* means any payment directly allocated to an ABLE account for the benefit of a designated beneficiary.

(4) *Designated beneficiary* means the individual who is the owner of the ABLE account and who either established the account at a time when he or she was an eligible individual or who has succeeded the former designated beneficiary in that capacity (successor designated beneficiary). If the designated beneficiary is not able to exercise signature authority over his or her ABLE account or chooses to establish an ABLE account but not exercise signature authority, references to the designated beneficiary with respect to his or her actions include actions by the designated beneficiary's agent under a power of attorney or, if none, a parent or legal guardian of the designated beneficiary.

(5) *Disability certification* means a certification deemed sufficient by the Secretary to establish a certain level of physical or mental impairment that meets the requirements described in § 1.529A–2(e).

(6) *Distribution* means any payment from an ABLE account. A *program-to-program transfer* is not a distribution.

(7) *Earnings* attributable to an account are the excess of the total account balance on a particular date over the *investment in the account* as of that date.

(8) *Earnings ratio* means the amount of earnings attributable to the account as of the last day of the calendar year in which the designated beneficiary's taxable year begins, divided by the total account balance on that same date, after taking into account all distributions made during that calendar year and all contributions received during that same year other than those (if any) returned in accordance with § 1.529A–2(g)(4).

(9) *Eligible individual* for a taxable year means an individual who either:

(i) Is entitled during that taxable year to benefits based on blindness or disability under title II or XVI of the Social Security Act, provided that such blindness or disability occurred before the date on which the individual attained age 26 (and, for this purpose, an individual is deemed to attain age 26 on his or her 26th birthday); or

(ii) Is the subject of a disability certification filed with the Secretary for that taxable year.

(10) *Excess contribution* means the amount by which the amount contributed during the taxable year of the designated beneficiary to an ABLE account exceeds the limit in effect under section 2503(b) for the calendar year in which the taxable year of the designated beneficiary begins.

(11) *Excess aggregate contribution* means the amount contributed during the taxable year of the designated beneficiary that causes the total of amounts contributed since the establishment of the ABLE account (or of an ABLE account for the same designated beneficiary that was rolled into the current ABLE account) to exceed the limit in effect under section 529(b)(6). In the context of the safe harbor in § 1.529A–2(g)(3), however, excess aggregate contribution means a contribution that causes the account balance to exceed the limit in effect under section 529(b)(6).

(12) *Investment in the account* means the sum of all contributions made to the account, reduced by the aggregate amount of contributions included in distributions, if any, made from the account. In the case of a rollover into an ABLE account the amount included as investment in the recipient account is not the full amount of the rollover contribution, but instead is equal to the amount of the rollover contribution that constituted the investment in the account from which the rollover was made.

(13) *Member of the family* means a sibling, whether by blood or by adoption. Such term includes a brother, sister, stepbrother, stepsister, half-brother, and half-sister.

(14) *Program-to-program transfer* means the direct transfer of the entire balance of an ABLE account into an ABLE account of the same designated beneficiary in which the transferor ABLE account is closed upon completion of the transfer, or of part or all of the balance to an ABLE account of another eligible in-

dividual who is a member of the family of the former designated beneficiary, without any intervening distribution or deemed distribution to the designated beneficiary.

(15) *Qualified ABLE program* means a program established and maintained by a State, or agency or instrumentality of a State, under which an ABLE account may be established by and for the benefit of the account's designated beneficiary who is an eligible individual, and that meets the requirements described in § 1.529A–2.

(16) *Qualified disability expenses* means any expenses incurred at a time when the designated beneficiary is an eligible individual that relate to the blindness or disability of the designated beneficiary of an ABLE account, including expenses that are for the benefit of the designated beneficiary in maintaining or improving his or her health, independence, or quality of life. *See* § 1.529A–2(h). Any expenses incurred at a time when a designated beneficiary is neither disabled nor blind within the meaning of § 1.529A–1(b)(9)(i) or § 1.529A–2(e)(i) are not qualified disability expenses.

(17) *Rollover* means a contribution to an ABLE account of a designated beneficiary (or of an eligible individual who is a member of the family of the designated beneficiary) of all or a portion of an amount withdrawn from the designated beneficiary's ABLE account, provided the contribution is made within 60 days of the date of the withdrawal and, in the case of a rollover to the designated beneficiary's ABLE account, no rollover has been made to an ABLE account of the designated beneficiary within the prior 12 months.

(c) *Effective/applicability date*. This section applies to taxable years beginning after December 31, 2014.

*§ 1.529A–2 Qualified ABLE program.*

(a) *In general*. A qualified ABLE program is a program established and maintained by a State, or an agency or instrumentality of a State, that satisfies all of the requirements of this section and under which—

(1) An ABLE account may be established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account;

(2) The designated beneficiary must be a resident of such State or a resident of a Contracting State (as residence is determined under the law of the State of the designated beneficiary's residence);

(3) A designated beneficiary is limited to only one ABLE account at a time except as otherwise provided with respect to program-to-program transfers and rollovers;

(4) Any person may make contributions to such an ABLE account, subject to the limitations described in paragraph (g) of this section; and

(5) Distributions (other than rollovers and returns of contributions as described in paragraph (g)(4) of this section) may be made only to or for the benefit of the designated beneficiary of the ABLE account.

(b) *Established and maintained by a State or agency or instrumentality of a State*—(1) *Established*. A program is established by a State or its agency or instrumentality if the program is initiated by State statute or regulation or by an act of a State official or agency with the authority to act on behalf of the State.

(2) *Maintained*. A program is maintained by a State or an agency or instrumentality of a State if—

(i) The State or its agency or instrumentality sets all of the terms and conditions of the program, including but not limited to who may contribute to the program, who may be a designated beneficiary of the program, and what benefits the program may provide; and

(ii) The State or its agency or instrumentality is actively involved on an ongoing basis in the administration of the program, including supervising the implementation of decisions relating to the investment of assets contributed under the program. Factors that are relevant in determining whether a State or its agency or instrumentality is actively involved in the administration of the program include, but are not limited to: whether the State or its agency or instrumentality provides services to designated beneficiaries that are not provided to persons who are not designated beneficiaries; whether the State or its agency or instrumentality establishes detailed operating rules for administering the program; whether officials of the State or its agency or instrumentality play a substantial role in the operation of the program, including selecting, supervising, monitoring, auditing, and terminating the relationship with any private contractors that provide services under the program; whether the State or its agency or instrumentality holds the private contractors that provide services under the program to the same standards and requirements that apply when private contractors handle funds that belong to the State or its agency or instrumentality or provide services to the State or its agency or instrumentality; whether the State or its agency or instrumentality provides funding for the program; and whether the State or its agency or instrumentality acts as trustee or holds program assets directly or for the benefit of the designated beneficiaries. For example, if the State or its agency or instrumentality thereof exercises the same authority over the funds invested in the program as it does over the investments in or pool of funds of a State employees' defined benefit pension plan, then the State or its agency or instrumentality will be considered actively involved on an ongoing basis in the administration of the program.

(3) *Community Development Financial Institutions (CDFIs)*. Some or all of the services described in paragraphs (b)(2)(i) and (ii) of this section may be performed by one or more Community Development Financial Institutions (CDFIs) with whom the State (or its agency or instrumentality) contracts for that purpose.

(c) *Establishment of an ABLE account*—(1) *In general*. Except as otherwise provided in this paragraph (c), a qualified ABLE program must provide that an ABLE account may be established only for an eligible individual under a qualified ABLE program of the State in which the eligible individual is a resident. The qualified ABLE program also may allow the establishment of an ABLE account for an eligible individual who is a resident of a *Contracting State* as defined in § 1.529A–1(b)(2). If an eligible individual is unable to establish an ABLE account on his or her own behalf, the ABLE account may be established on behalf of the eligible individual by the eligible individual's agent under a power of attorney or, if none, by a parent or legal guardian of the eligible individual.

(2) *Only one ABLE account*—(i) *In general*. Except in the case of rollovers or program-to-program transfers, a designated beneficiary is limited to one ABLE account at a time, regardless of where located. To ensure that this requirement is met, a qualified ABLE program must obtain a verification, signed under penalties of perjury, that the eligible individual has no other existing ABLE account (other than an ABLE account that will terminate with the rollover or program-to-program transfer into the new ABLE account) before that program can permit the establishment of an ABLE account for that eligible individual. In the case of a rollover, the ABLE account from which amounts were rolled must be closed as of the 60th day after the amount was distributed from the ABLE account in order for the account that received the rollover to be treated as an ABLE account.

(ii) *Treatment of additional accounts*. Except in the case of rollovers or program-to-program transfers, if an ABLE account is established for a designated beneficiary who already has an ABLE account in existence, an additional account will not be treated as an ABLE account. However, if all contributions made to that account are returned in accordance with the rules that apply to excess contributions and excess aggregate contributions under paragraph (g)(4) of this section, the additional account will be treated as never having been established.

(3) *Beneficial interest*. The eligible individual for whose benefit an ABLE account is established is the designated beneficiary of the account. A person other than the designated beneficiary with signature authority over the account of the designated beneficiary may neither have nor acquire any beneficial interest in the account during the lifetime of the designated beneficiary and must administer the account for the benefit of the designated beneficiary of the account.

(d) *Eligible individual*—(1) *In general*. Whether an individual is an eligible individual (as defined in § 1.529A–1(b)(9)) is determined for each taxable year, and that determination applies for the entire year. A qualified ABLE program must specify the documentation that an individual must provide, both at the time an ABLE account is established for that individual and thereafter, in order to ensure that the designated beneficiary of the ABLE account is, and continues to be, an eligible individual. For purposes of determining whether an individual is an eligible individual, a disability certification will be deemed to be filed with the Secretary once the qualified ABLE program has received the disability certification (as described in paragraph (e) of this section) or a disability certification has been deemed to have been received under the rules of the qualified ABLE program, which information the qualified ABLE program will file in accordance with the filing requirements under § 1.529A–5(c)(2)(iv).

(2) *Frequency of recertification*—(i) *In general*. A qualified ABLE program may choose different methods of ensuring a designated beneficiary's status as an eligible individual and may impose different periodic recertification requirements for different types of impairments.

(ii) *Considerations*. In developing its rules on recertification, a qualified ABLE program may take into consideration whether an impairment is incurable and, if so, the likelihood that a cure may be found in the future. For example, a qualified ABLE program may provide that the initial certification will be deemed to be valid for a stated number of years, which may vary with the type of impairment. If the qualified ABLE program imposes an enforceable obligation on the designated beneficiary or other person with signature authority over the ABLE account to promptly report changes in the designated beneficiary's condition that would result in the designated beneficiary's failing to satisfy the definition of eligible individual, the program also may provide that a certification is valid until the end of the taxable year in which the change in the designated beneficiary's condition occurred.

(3) *Loss of qualification as an eligible individual*. If the designated beneficiary of an ABLE account ceases to be an eligible individual, then for each taxable year in which the designated beneficiary is not an eligible individual, the account will continue to be an ABLE account, the designated beneficiary will continue to be the designated beneficiary of the ABLE account (and will be referred to as such), and the ABLE account will not be deemed to have been distributed. However, beginning on the first day of the designated beneficiary's first taxable year for which the designated beneficiary does not satisfy the definition of an eligible individual, additional contributions to the designated beneficiary's ABLE account must not be accepted by the qualified ABLE program. Additionally, no amounts incurred during that year and each subsequent year in which the designated beneficiary does not satisfy the definition of an eligible individual will be qualified disability expenses. If the designated beneficiary subsequently again becomes an eligible individual, contributions to the designated beneficiary's ABLE account again may be accepted subject to the contribution limits under section 529A, and expenses incurred that meet the definition of a qualified disability expense will be qualified disability expenses.

(e) *Disability certification*—(1) *In general*. Except as provided in paragraph (e)(3) of this section or additional guidance described in paragraph (e)(4) of this section, a disability certification with respect to an individual is a certification signed under penalties of perjury by the individual, or by the other individual establishing (or with signature authority over) the ABLE account for the individual, that—

(i) The individual—

(A) Has a medically determinable physical or mental impairment that results in marked and severe functional limitations (as defined in paragraph (e)(2) of this section), and that—

(*1*) Can be expected to result in death; or

(*2*) Has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) Is blind (within the meaning of section 1614(a)(2) of the Social Security Act);

(ii) Such blindness or disability occurred before the date on which the individual attained age 26 (and, for this purpose, an individual is deemed to attain age 26 on his or her 26th birthday); and

(iii) Includes a copy of the individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a physician meeting the criteria of section 1861(r)(1) of the Social Security Act (42 U.S.C. 1395x(r)).

(2) *Marked and severe functional limitations*. For purposes of paragraph (e)(1) of this section, the phrase "marked and severe functional limitations" means the standard of disability in the Social Security Act for children claiming Supplemental Security Income for the Aged, Blind, and Disabled (SSI) benefits based on disability (*see* 20 CFR 416.906). Specifically, this is a level of severity that meets, medically equals, or functionally equals the severity of any listing in appendix 1 of subpart P of 20 CFR part 404, but without regard to age. (*See* 20 CFR 416.906, 416.924 and 416.926a.) Such phrase also includes any impairment or standard of disability identified in future guidance published in the Internal Revenue Bulletin (*see* §601.601(d)(2) of this chapter). Consistent with the regulations of the Social Security Administration, the level of severity is determined by taking into account the effect of the individual's prescribed treatment. (*See* 20 CFR 416.930.)

(3) *Compassionate allowance list*. Conditions listed in the "List of Compassionate Allowances Conditions" maintained by the Social Security Administration (at www.socialsecurity.gov/compassionateallowances/conditions.htm) are deemed to meet the requirements of section 529A(e)(1)(B) regarding the filing of a disability certification, if the condition was present before the date on which the individual attained age 26. To establish that an individual with such a condition meets the definition of an eligible individual, the individual must identify the condition and certify to the qualified ABLE program both the presence of the condition and its onset prior to age 26, in a manner specified by the qualified ABLE program.

(4) *Additional guidance*. Additional guidance on conditions deemed to meet the requirements of section 529A(e)(1)(B) may be identified in future guidance published in the Internal Revenue Bulletin. *See* § 601.601(d)(2) of this chapter.

(5) *Restriction on use of certification*. No inference may be drawn from a disability certification described in this paragraph (e) for purposes of establishing eligibility for benefits under title II, XVI, or XIX of the Social Security Act.

(f) *Change of designated beneficiary*. A qualified ABLE program must permit a change in the designated beneficiary of an ABLE account, but only during the life of the designated beneficiary. At the time of the change, the successor designated beneficiary must be an eligible individual.

(g) *Contributions*—(1) *Permissible property*. Except in the case of program-to-program transfers, contributions to an ABLE account may only be made in cash. A qualified ABLE program may allow cash contributions to be made in the form of a check, money order, credit card, electronic transfer, or similar method.

(2) *Annual contributions limit*. A qualified ABLE program must provide that no contribution to an ABLE account will be accepted to the extent such contribution, when added to all other contributions (whether from the designated beneficiary or one or more other persons) to that ABLE account made during the designated beneficiary's taxable year causes the total of such contributions to exceed the amount in effect under section 2503(b) for the calendar year in which the designated beneficiary's taxable year begins. For this purpose, contributions do not include rollovers or program-to-program transfers.

(3) *Cumulative limit*—(i) *In general*. A qualified ABLE program maintained by a State or its agency or instrumentality must provide adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the limit established by that State under section 529(b)(6). For purposes of the preceding sentence, aggregate contributions include contributions to any prior ABLE account maintained by any State or its agency or instrumentality for the same designated beneficiary or any prior designated beneficiary.

(ii) *Safe harbor*. A qualified ABLE program maintained by a State or its agency or instrumentality satisfies the requirement in paragraph (g)(3)(i) of this section if it refuses to accept any additional contribution to an ABLE account once the balance in that account reaches the limit established by that State under section 529(b)(6). Once the account balance falls below such limit, additional contributions again may be accepted, subject to the limits under this paragraph (g)(3)(i) of this section.

(4) *Return of excess contributions and excess aggregate contributions*. If an excess contribution as defined in § 1.529A–1(b)(10) or an excess aggregate contribution as defined in § 1.529A–1(b)(11) is allocated to or deposited into the ABLE account of a designated beneficiary, a qualified ABLE program must return that excess contribution or excess aggregate contribution, including all net income attributable to that excess contribution or excess aggregate contribution, as determined under the rules set forth in § 1.408–11 (treating an IRA as an ABLE account and returned contributions under section 408(d)(4) as excess contributions or excess aggregate contributions), to the person or persons who made that contribution. An excess contribution or excess aggregate contribution must be returned to its contributor(s) on a last-in-first-out basis until the entire excess contribution or excess aggregate contribution, along with all net income attributable to such contribution, has been returned. Returned contributions must be received by the contributor(s) on or before the due date (including extensions) for the Federal income tax return of the designated beneficiary for the taxable year in which the excess contribution or excess aggregate contribution was made. *See* § 1.529A–3(e) for income tax considerations for the contributor(s). If an excess contribution or excess aggregate contribution and the net income attributable to the excess contribution or excess aggregate contribution are returned to a contributor other than the designated beneficiary, the qualified ABLE program must notify the designated beneficiary of such return at the time of the return.

(h) *Qualified disability expenses*—(1) *In general*. Qualified disability expenses, as defined in § 1.529A–1(b)(16), are expenses incurred that relate to the blindness or disability of the designated beneficiary of the ABLE account and are for the benefit of that designated beneficiary in maintaining or improving his or her health, independence, or quality of life. Such expenses include, but are not limited to, expenses related to the designated beneficiary's education, housing, transportation, employment training and support, assistive technology and related services, personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, and funeral and burial expenses, as well as other expenses that may be identified from time to time in future guidance published in the Internal Revenue Bulletin. *See* § 601.601(d)(2) of this chapter. Qualified disability expenses include basic living expenses and are not limited to items for which there is a medical necessity or which solely benefit a disabled individual. A qualified ABLE program must establish safeguards to distinguish between distributions used for the payment of qualified disability expenses and other distributions, and to permit the identification of the amounts distributed for housing expenses as that term is defined for purposes of the Supplemental Security Income program of the Social Security Administration.

(2) *Example*. The following example illustrates this paragraph (h):

*Example*. B, an individual, has a medically determined mental impairment that causes marked and severe limitations on her ability to navigate and communicate. A smart phone would enable B to navigate and communicate more safely and effectively, thereby helping her to maintain her independence and to improve her quality of life. Therefore, the expense of buying, using, and maintaining a smart phone that is used by B would be considered a qualified disability expense.

(i) *Separate accounting*. A program will not be treated as a qualified ABLE program unless it provides separate accounting for each ABLE account. Separate accounting requires that contributions for the benefit of a designated beneficiary and any earnings attributable thereto must be allocated to that designated beneficiary's account. Whether or not a program provides each designated beneficiary an annual account statement showing the total account balance, the investment in the account, the accrued earnings, and the distributions from the account, the program must give this information to the designated beneficiary upon request.

(j) *Program-to-program transfers*. A qualified ABLE program may permit a change of qualified ABLE program or a change of designated beneficiary by means of a program-to-program transfer as defined in § 1.529A–1(b)(14). In that event, subject to any contrary provisions or limitations adopted by the qualified ABLE program, rules similar to the rules of § 1.401(a)(31)–1, Q&A-3 and 4 (which apply for purposes of a direct rollover from a qualified plan to an eligible retirement plan) apply for purposes of determining whether an amount is paid in the form of a program-to-program transfer.

(k) *Carryover of attributes*. Upon a rollover or program-to-program transfer, all of the attributes of the former ABLE account relevant for purposes of calculating the investment in the account and applying the annual and cumulative limits on contributions are applicable to the recipient ABLE account. The portion of the rollover or transfer amount that constituted investment in the account from which the distribution or transfer was made is added to investment in the recipient ABLE account. Similarly, the portion of the rollover or transfer amount that constituted earnings of the account from which the distribution or transfer was made is added to the earnings of the recipient ABLE account.

(l) *Investment direction*. A program will not be treated as a qualified ABLE program unless it provides that the designated beneficiary of an ABLE account established under such program may direct, whether directly or indirectly, the investment of any contributions to the program (or any earnings thereon) no more than two times in any calendar year.

(m) *No pledging of interest as security*. A program will not be treated as a qualified ABLE program unless the terms of the program, or a state statute or regulation that governs the program, prohibit any interest in the program or any portion thereof from being used as security for a loan. This restriction includes, but is not limited to, a prohibition on the use of any interest in the ABLE program as security for a loan used to purchase such interest in the program.

(n) *No sale or exchange*. A qualified ABLE program must ensure that no interest in an ABLE account may be sold or exchanged.

(o) *Change of residence*. A qualified ABLE program may continue to maintain the ABLE account of a designated beneficiary after that designated beneficiary changes his or her residence to another State.

(p) *Post-death payments*. A qualified ABLE program must provide that a portion or all of the balance remaining in the ABLE account of a deceased designated beneficiary must be distributed to a State that files a claim against the designated beneficiary or the ABLE account itself with respect to benefits provided to the designated beneficiary under that State's Medicaid plan established under title XIX of the Social Security Act. The payment of such claim (if any) will be made only after providing for the payment from the designated beneficiary's ABLE account of all outstanding payments due for his or her qualified disability expenses, and will be limited to the amount of the total medical assistance paid for the designated beneficiary after the establishment of the ABLE account (the date on which the ABLE account, or any ABLE account from which amounts were rolled or transferred to the ABLE account of the same designated beneficiary, was opened) over the amount of any premiums paid, whether from the ABLE account or otherwise by or on behalf of the designated beneficiary, to a Medicaid Buy-In program under any such State Medicaid plan.

(q) *Reporting requirements*. A qualified ABLE program must comply with all applicable reporting requirements, including without limitation those described in §§ 1.529A–5 through 1.529A-7.

(r) *Effective/applicability dates*. This section applies to taxable years beginning after December 31, 2014.

*§ 1.529A–3 Tax treatment*.

(a) *Taxation of distributions*. Each distribution from an ABLE account consists of earnings (computed in accordance with paragraph (c) of this section) and investment in the account. If the total amount distributed from an ABLE account to or for the benefit of the designated beneficiary of that ABLE account during his or her taxable year does not exceed the qualified disability expenses of the designated beneficiary for that year, no amount distributed is includible in the gross income of the designated beneficiary for that year. If the total amount distributed from an ABLE account to or for the benefit of the designated beneficiary of that ABLE account during his or her taxable year exceeds the qualified disability expenses of the designated beneficiary for that year, the distributions from the ABLE account, except to the extent excluded from gross income under this section or any other provision of chapter 1 of the Internal Revenue Code, must be included in the gross income of the designated beneficiary in the manner provided under this section and section 72. In such a case, the earnings portion of the distribution includible in gross income is equal to the earnings portion of the distribution reduced by an amount that bears the same ratio to the earnings portion as the amount of qualified disability expenses during the year bears to the total distributions during the year. For this purpose, all amounts relevant under section 72 are determined as of December 31 of the year in which the designated beneficiary's taxable year begins, and all amounts distributed from an ABLE account to or for the benefit of the designated beneficiary during his or her taxable year are treated as one distribution. If an excess contribution or excess aggregate contribution is returned within the time period required in § 1.529A–2(g)(4), any net income distributed is includible in the gross income of the contributor(s) in the taxable year in which the excess contribution or excess aggregate contribution was made.

(b) *Additional exclusions from gross income*—(1) *Rollover*. A rollover as defined in § 1.529A–1(b)(17) is not includible in gross income under paragraph (a) of this section.

(2) *Program-to-program transfers*. A program-to-program transfer as defined in § 1.529A–1(b)(14) is not a distribution and is not includible in gross income under paragraph (a) of this section.

(3) *Change of designated beneficiary*—(i) *In general*. A change of designated beneficiary of an ABLE account is not treated as a distribution for purposes of section 529A, and is not includible in gross income under paragraph (a) of this section, if the successor designated beneficiary is—

(A) An eligible individual for such calendar year; and

(B) A member of the family of the former designated beneficiary.

(ii) *Other designated beneficiary changes*. In the case of any change of designated beneficiary not described in paragraph (b)(3)(i) of this section, the former designated beneficiary of that ABLE account will be treated as having received a distribution of the fair market value of the assets in that ABLE account on the date on which the change is made to the new designated beneficiary.

(4) *Payments to creditors post-death*. Distributions made after the death of the designated beneficiary in payment of outstanding obligations due for qualified disability expenses of the designated beneficiary are not includible in the gross income of the designated beneficiary or his or her estate. Included among these obligations is the post-death payment of any part of a claim filed against the designated beneficiary or the ABLE account by a State under a State Medicaid plan.

(c) *Computation of earnings*. The earnings portion of a distribution is equal to the product of the amount of the distribution and the earnings ratio, as defined in § 1.529A–1(b)(8). The balance of the distribution (the amount of the distribution minus the earnings portion of that distribution) is the portion of that distribution that constitutes the return of investment in the account.

(d) *Additional tax on amounts includible in gross income*—(1) *In general*. If any amount of a distribution from an ABLE account is includible in the gross income of a person for any taxable year under paragraph (a) of this section (the "includible amount"), the tax imposed on that person by Chapter 1 of the Internal Revenue Code shall be increased by an amount equal to 10 percent of the includible amount.

(2) *Exceptions*—(i) *Distributions on or after the death of the designated beneficiary*. Paragraph (d)(1) of this section does not apply to any distribution made from the ABLE account on or after the death of the designated beneficiary to the estate of the designated beneficiary, to an heir or legatee of the designated beneficiary, or to a creditor described in paragraph (b)(4) of this section.

(ii) *Returned excess contributions and additional accounts*. Paragraph (d)(1) of this section does not apply to any return made in accordance with § 1.529A–2(g)(4) of an excess contribution, excess aggregate contribution, or additional account.

(e) *Tax on excess contributions*. Under section 4973(h), a contribution to an ABLE account in excess of the annual contributions limit described in § 1.529A–2(g)(2) is subject to an excise tax in an amount equal to 6 percent of the excess contribution. However, if the excess contribution is returned in accordance with the provisions of § 1.529A–2(g)(4), it is treated as an amount not contributed.

(f) *Filing requirements*. A qualified ABLE program is not required to file Form 990, "Return of Organization Exempt From Income Tax," Form 1041, "U.S. Income Tax Return for Estates and Trusts," or Form 1120, "U.S. Corporation Income Tax Return." However, a qualified ABLE program is required to file Form 990–T, "Exempt Organization Business Income Tax Return," if such filing would be required under the rules of §§ 1.6012–2(e) and 1.6012–3(a)(5) if the ABLE program were an organization described in those sections.

(g) *Effective/applicability dates*. This section applies to taxable years beginning after December 31, 2014.

*§ 1.529A–4 Gift, estate, and generation-skipping transfer taxes.*

(a) *Contributions*—(1) *In general*. Each contribution by a person to an ABLE account other than by the designated beneficiary of that account is treated as a completed gift to the designated beneficiary of the account for gift tax purposes. Under the applicable gift tax rules, a contribution from a corporation, partnership, trust, estate, or other entity is treated as a gift by the shareholders, partners, or other beneficial owners in proportion to their respective ownership interests in the entity. *See* § 25.2511–1(c) and (h). A gift into an ABLE account is not treated as either a gift of a future interest in property, or a qualified transfer under section 2503(e). To the extent a contributor's gifts to the designated beneficiary, including gifts paid into the designated beneficiary's ABLE account, do not exceed the annual limit in section 2503(b), the contribution is not subject to gift tax. This provision, however, does not change any other provision applicable to the transfer. For example, a contribution by the employer of the designated beneficiary's parent continues to constitute earned income to the parent and then a gift by the parent to the designated beneficiary.

(2) *Generation-skipping transfer (GST) tax*. To the extent the contribution into an ABLE account is a nontaxable gift for gift tax purposes, the inclusion ratio for purposes of the GST tax will be zero pursuant to section 2642(c)(1).

(3) *Designated beneficiary as contributor*. A designated beneficiary may make a contribution to fund his or her own ABLE account. That contribution is not a gift. However, in the event of any change of designated beneficiary, the portion of the then fair market value of the ABLE account attributable to that contribution and any earnings attributable to that contribution will constitute a gift by the designated beneficiary to the successor designated beneficiary, and the usual gift and GST tax rules will apply.

(b) *Distributions*. No distribution from an ABLE account to or for the benefit of the designated beneficiary is treated as a taxable gift to that designated beneficiary.

(c) *Change of designated beneficiary*. Neither gift tax nor generation-skipping transfer tax applies to a change of designated beneficiary if the successor designated beneficiary is both an eligible individual and a member of the family (as described in § 1.529A–1(b)(13)) of the designated beneficiary. The previous sentence does not apply to any other change of designated beneficiary.

(d) *Transfer tax on death of designated beneficiary*. Upon the death of the designated beneficiary, the designated beneficiary's ABLE account is includible in his or her gross estate for estate tax purposes under section 2031. The payment of outstanding qualified disability expenses and the payment of certain claims made by a State under its Medicaid plan may be deductible for estate tax purposes if the requirements of section 2053 are satisfied.

(e) *Effective/applicability date*. This section applies to taxable years beginning after December 31, 2014.

*§ 1.529A–5 Reporting of the establishment of and contributions to an ABLE account.*

(a) *In general*. A filer defined in paragraph (b)(1) of this section must, with respect to each ABLE account—

(1) File an annual information return, as described in paragraph (c) of this section, with the Internal Revenue Service; and

(2) Furnish an annual statement, as described in paragraph (d) of this section, to the designated beneficiary of the ABLE account.

(b) *Additional definitions*. In addition to the definitions in § 1.529A–1(b), the following definitions also apply for purposes of this section—

(1) *Filer* means the State or its agency or instrumentality that establishes and maintains the qualified ABLE program under which an ABLE account is established. The filing may be done by either an officer or employee of the State or its agency or instrumentality having control of the qualified ABLE program, or the officer's or employee's designee.

(2) *TIN* means taxpayer identification number as defined in section 7701(a)(41).

(c) *Requirement to file return*—(1) *Form of return*. For purposes of reporting the information described in paragraph (c)(2) of this section, the filer must file Form 5498-QA, "ABLE Account Contribution Information," or any successor form, together with Form 1096, "Annual Summary and Transmittal of U.S. Information Returns."

(2) *Information included on return*. With respect to each ABLE account, the filer must include on the return—

(i) The name, address, and TIN of the designated beneficiary of the ABLE account;

(ii) The name, address, and TIN of the filer;

(iii) Information regarding the establishment of the ABLE account, as required by the form and its instructions;

(iv) Information regarding the disability certification or other basis for eligibility of the designated beneficiary, as required by the form and its instructions. For further information regarding eligibility and disability certification, *see* § 1.529A–2(d) and (e), respectively;

(v) The total amount of any contributions made with respect to the ABLE account during the calendar year;

(vi) The fair market value of the ABLE account as of the last day of the calendar year; and

(vii) Any other information required by the form, its instructions, or published guidance. *See* §§601.601(d) and 601.602 of this chapter.

(3) *Time and manner of filing return*—(i) *In general*. Except as provided in paragraph (c)(3)(ii) of this section, the information returns required under this paragraph must be filed on or before May 31 of the year following the calendar year with respect to which the return is being filed, in accordance with the forms and their instructions.

(ii) *Extensions of time*. *See* §§ 1.6081–1 and 1.6081–8 of this chapter for rules relating to extensions of time to file information returns required in this section.

(iii) *Electronic filing*. *See* § 301.6011–2 of this chapter for rules relating to electronic filing.

(iv) *Substitute forms*. The filer may file the returns required under this paragraph (c) on a substitute form. A substitute form must comply with applicable revenue procedures (*see* § 601.601(d)(2) of this chapter) or other guidance published by the IRS, including Publication 1179, "General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns."

(d) *Requirement to furnish statement*—(1) *In general*. The filer must furnish a statement to the designated beneficiary of the ABLE account for which it is required to file a Form 5498–QA (or any successor form). The statement must include—

(i) The information required under paragraph (c)(2) of this section;

(ii) A legend that identifies the statement as important tax information that is being furnished to the Internal Revenue Service; and

(iii) The name and address of the office or department of the filer that is the information contact for questions regarding the ABLE account to which the Form 5498–QA relates.

(2) *Time and manner of furnishing statement*—(i) *In general*. Except as provided in paragraph (d)(2)(ii) of this section, the filer must furnish the statement described in paragraph (d)(1) of this section to the designated beneficiary on or before March 15 of the year following the calendar year with respect to which the statement is being furnished. If mailed,

the statement must be sent to the designated beneficiary's last known address. The statement may be furnished electronically, as provided in § 1.529A–7.

(ii) *Extensions of time*. The Internal Revenue Service may grant an extension of time to furnish statements required in this section upon a showing of good cause. *See* the instructions to Form 5498–QA.

(3) *Copy of Form 5498–QA*. The filer may satisfy the requirement of this paragraph (d) by furnishing either a copy of Form 5498-QA (or successor form) or another document that contains the information required by paragraph (d)(1) of this section, if the document complies with applicable revenue procedures (*see* §601.601(d)(2) of this chapter) or other guidance published by the IRS relating to substitute statements, including Publication 1179, "General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns."

(e) *Request for TIN of designated beneficiary*. The filer must request the TIN of the designated beneficiary at the time the ABLE account is opened if the filer does not already have a record of the designated beneficiary's correct TIN. The filer must clearly notify the designated beneficiary that the law requires the designated beneficiary to furnish a TIN so that it may be included on an information return to be filed by the filer. The designated beneficiary may provide his or her TIN in any manner including orally, in writing, or electronically. If the TIN is furnished in writing, no particular form is required. Form W–9, "Request for Taxpayer Identification Number and Certification," may be used, or the request may be incorporated into the forms related to the establishment of the ABLE account.

(f) *Penalties*—(1) *Failure to file return*. The section 6693 penalty may apply to the filer that fails to file information returns at the time and in the manner required by this section, unless it is shown that such failure is due to reasonable cause. *See* section 6693 and the regulations thereunder.

(2) *Failure to furnish TIN*. The section 6723 penalty may apply to any designated beneficiary who fails to furnish his or her TIN to the filer. *See* section 6723, and the regulations thereunder, for rules relating to the penalty for failure to furnish a TIN.

(g) *Effective/applicability date*. The rules of this section apply to information returns required to be filed, and payee statements required to be furnished, after December 31, 2015.

*§ 1.529A–6 Reporting of distributions from and termination of an ABLE account.*

(a) *In general*. The filer as defined in § 1.529A–5(b)(1) must, with respect to each ABLE account from which any distribution is made or which is terminated during the calendar year—

(1) File an annual information return, as described paragraph (b) of this section, with the Internal Revenue Service; and

(2) Furnish an annual statement, as described in paragraph (c) of this section, to the designated beneficiary of the ABLE account and to each contributor who received a returned contribution in accordance with § 1.529A–2(g)(4) attributable to the calendar year.

(b) *Requirement to file return*—(1) *Form of return*. For purposes of reporting the information in paragraph (b)(2) of this section, the filer must file Form 1099–QA, "Distributions from ABLE Accounts," or any successor form, together with Form 1096, "Annual Summary and Transmittal of U.S. Information Returns."

(2) *Information included on return*. The filer must include on the return—

(i) The name, address, and TIN of the designated beneficiary of the ABLE account or of any contributor who received a returned contribution in accordance with § 1.529A–2(g)(4) attributable to the calendar year, as applicable;

(ii) The name, address, and TIN of the filer;

(iii) The aggregate amount of distributions from the ABLE account during the calendar year;

(iv) Information as to basis and earnings with respect to such distributions or returns of contributions;

(v) Information regarding termination (if any) of the ABLE account;

(vi) Information regarding each rollover and any program-to-program transfer to or from the ABLE account during the designated beneficiary's taxable year;

(vii) Whether the return is being furnished to the designated beneficiary or to a contributor; and

(viii) Any other information required by the form, its instructions, or published guidance. *See* §§ 601.601(d) and 601.602 of this chapter.

(3) *Time and manner of filing return*—(i) *In general*. Except as provided in paragraph (b)(3)(ii) of this section, the Forms 1099–QA and 1096 must be filed on or before February 28 (March 31 if filing electronically) of the year following the calendar year with respect to which the return is being filed, in accordance with the forms and their instructions.

(ii) *Extensions of time*. *See* §§ 1.6081–1 and 1.6081–8 of this chapter for rules relating to extensions of time to file information returns required in this section.

(iii) *Electronic filing*. *See* § 301.6011–2 of this chapter for rules relating to electronic filing.

(iv) *Substitute forms*. The filer may file the return required under this paragraph (b) on a substitute form. A substitute form must comply with applicable revenue procedures (*see* § 601.601(d)(2) of this chapter) or other guidance published by the IRS, including Publication 1179, "General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns."

(c) *Requirement to furnish statement*—(1) *In general*. The filer must furnish a statement to the designated beneficiary and each contributor (if any) of the ABLE account for which it is required to file a Form 1099–QA (or any successor form). The statement must include—

(i) The information required under paragraph (b)(2) of this section.

(ii) A legend that identifies the statement as important tax information that is being furnished to the Internal Revenue Service;

(iii) The name and address of the office or department of the filer that is the information contact for questions regarding the ABLE account to which the Form 1099–QA relates.

(2) *Time and manner of furnishing statement*—(i) *In general*. Except as provided in paragraph (c)(2)(ii) of this section, a filer must furnish the statement described in paragraph (c)(1) of this section to the designated beneficiary on or

before January 31 of the year following the calendar year with respect to which the statement is being furnished. If mailed, the statement must be sent to the recipient's last known address. The statement may be furnished electronically, as provided in § 1.529A–7.

(ii) *Extensions of time*. The Internal Revenue Service may grant an extension of time to furnish statements required in this section upon a showing of good cause. *See* the instructions to Form 1099–QA.

(3) *Copy of Form 1099–QA*. A filer may satisfy the requirement of this paragraph (c) by furnishing either a copy of Form 1099–QA (or successor form) or another document that contains the information required by paragraph (c)(1) of this section and that complies with applicable revenue procedures (*see* §601.601(d)(2) of this chapter) or other guidance published by the IRS relating to substitute statements, including Publication 1179, "General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns."

(d) *Request for TIN of contributor(s)*. A filer must request the TIN for each contributor to the ABLE account at the time a contribution is made, if the filer does not already have a record of that person's correct TIN. The filer must clearly notify each contributor to the account that the law requires that person to furnish a TIN so that it may be included on an information return to be filed by the filer. The contributor may provide his or her TIN in any manner including orally, in writing, or electronically. If the TIN is furnished in writing, no particular form is required. Form W–9, "Request for Taxpayer Identification Number and Certification," may be used, or the request may be incorporated into the forms related to the establishment of the ABLE account.

(e) *Penalties*—(1) *Failure to file return*. The section 6693 penalty may apply to a filer that fails to file information returns at the time and in the manner required by this section, unless it is shown that such failure is due to reasonable cause. *See* section 6693 and the regulations thereunder.

(2) *Failure to furnish TIN*. The section 6723 penalty may apply to any contributor who fails to furnish his or her TIN to the filer. *See* section 6723, and the regulations thereunder, for rules relating to the penalty for failure to furnish a TIN.

(f) *Effective/applicability date*. The rules of this section apply to information returns required to be filed, and payee statements required to be furnished, after December 31, 2015.

*§ 1.529A–7 Electronic furnishing of statements to designated beneficiaries and contributors*.

(a) *Electronic furnishing of statements*—(1) *In general*. A filer required under § 1.529A–5 or § 1.529A–6 of this chapter to furnish a written statement to a designated beneficiary of or contributor to an ABLE account may furnish the statement in an electronic format in lieu of a paper format. A filer who meets the requirements of paragraphs (a)(2) through (6) of this section is treated as furnishing the required statement.

(2) *Consent*—(i) *In general*. The recipient of the statement must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a paper document if it is confirmed electronically.

(ii) *Withdrawal of consent*. The consent requirement of this paragraph (a)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The filer may provide that a withdrawal of consent takes effect either on the date it is received by the filer or on another date no more than 60 days later. The filer also may provide that a request for a paper statement will be treated as a withdrawal of consent.

(iii) *Change in hardware or software requirements*. If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the statement, the filer must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the filer if the recipient does not want to withdraw the consent. After implementing the revised hardware and software, the filer must obtain from the recipient, in the manner described in paragraph (a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.

(iv) *Examples*. For purposes of the following examples that illustrate the rules of this paragraph (a)(2), assume that the requirements of § 1.529A–7(a)(3) have been met:

*Example 1*. Filer F sends Recipient R a letter stating that R may consent to receive statements required under § 1.529A–5 or § 1.529A–6 electronically on a Web site instead of in a paper format. The letter contains instructions explaining how to consent to receive the statements electronically by accessing the Web site, downloading the consent document, completing the consent document, and e-mailing the completed consent back to F. The consent document posted on the Web site uses the same electronic format that F will use for the electronically furnished statements. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

*Example 2*. Filer F sends Recipient R an e-mail stating that R may consent to receive statements required under § 1.529A–5 or § 1.529A–6 electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive the statements electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished statements. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

*Example 3*. Filer F posts a notice on its Web site stating that Recipient R may receive statements required under § 1.529A–5 or § 1.529A–6 electronically instead of in a paper format. The Web site contains instructions on how R may access a secure Web page and consent to receive the statements electronically. By accessing the secure Web page and giving consent, R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

(3) *Required disclosures*—(i) *In general*. Prior to, or at the time of, a recipient's consent, the filer must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (a)(3)(ii) through (viii) of this section.

(ii) *Paper statement*. The recipient must be informed that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent*. The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to statements furnished every year after the consent is given until it is withdrawn in the manner described in paragraph (a)(3)(v)(A) of this section, or only to the statement required to be furnished on or before the due date immediately following the date on which the consent is given.

(iv) *Post-consent request for a paper statement*. The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) *Withdrawal of consent*. The recipient must be informed that—

(A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department whose name, mailing address, and e-mail address is provided in the disclosure statement;

(B) The filer will confirm, in writing (either electronically or on paper), the withdrawal and the date on which it takes effect; and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (a) before the date on which the withdrawal of consent takes effect.

(vi) *Notice of termination*. The recipient must be informed of the conditions under which a filer will cease furnishing statements electronically to the recipient.

(vii) *Updating information*. The recipient must be informed of the procedures for updating the information needed by the filer to contact the recipient. The filer must inform the recipient of any change in the filer's contact information.

(viii) *Hardware and software requirements*. The recipient must be provided with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the Web site.

(4) *Format*. The electronic version of the statement must contain all required information and comply with applicable revenue procedures or other guidance published by the IRS relating to substitute statements to recipients, including Publication 1179, "General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns."

(5) *Notice*—(i) *In general*. If the statement is furnished on a Web site, the filer must notify the recipient that the statement is posted on a Web site. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) *Undeliverable electronic address*. If an electronic notice described in paragraph (a)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the filer's records or from the recipient, then the filer must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected statements*. If the filer has corrected a recipient's statement that was furnished electronically, the filer must furnish the corrected statement to the recipient electronically. If the recipient's statement was furnished through a Web site posting and the filer has corrected the statement, the filer must notify the recipient that it has posted the corrected statement on the Web site within 30 days of such posting in the manner described in paragraph (a)(5)(i) of this section. The corrected statement or the notice must be furnished by mail or in person if—

(A) An electronic notice of the Web site posting of an original statement or the corrected statement was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) *Access period*. Statements furnished on a Web site must be retained on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15 if October 15 falls on a Saturday, Sunday, or legal holiday). The filer must maintain access to corrected statements that are posted on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15 if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected statements are posted, whichever is later. The rules in this paragraph (a)(6) do not replace the filer's obligation to keep records under section 6001 and § 1.6001–1(a) of this chapter.

(b) *Effective/applicability date*. This section applies to statements required to be furnished after December 31, 2015.

Part 25—GIFT TAXES

Par. 5. The authority citation for part 25 continues to read in part as follows:

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

Par. 6. Section 25.2501–1 is amended by adding a sentence at the end of paragraph (a)(1) to read as follows:

*§ 25.2501–1 Imposition of Tax.*

(a) * * *

(1) * * * For gift tax rules related to an ABLE account established under section 529A, *see* regulations promulgated thereunder.

* * * * *

Par. 7. Section 25.2503–3 is amended by adding a sentence at the end of paragraph (a) to read as follows:

*§ 25.2503–3 Future interests in property.*

(a)* * * A contribution to an ABLE account established under section 529A is not a future interest.

* * * * *

Par. 8. Section 25.2503–6 is amended by adding a sentence at the end of paragraph (a) to read as follows:

*§ 25.2503–6 Exclusion for certain qualified transfers to tuition or medical expenses.*

(a) * * * A contribution to an ABLE account established under section 529A is not a qualified transfer.

* * * * *

Par. 9. Section 25.2511–2 is amended by adding a sentence at the end of paragraph (a) to read as follows:

*§ 25.2511–2 Cessation of donor's dominion and control.*

(a) * * * For gift tax rules related to an ABLE account established under section 529A, *see* regulations promulgated thereunder.

* * * * *

Part 26—ESTATE TAXES

Par. 10. The authority citation for part 26 continues to read in part as follows:

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

Par. 11. Section 26.2642–1 is amended by adding a sentence at the end of paragraph (a) to read as follows:

*§ 26.2642–1 Inclusion ratio.*

(a) * * * For generation-skipping transfer tax rules related to an ABLE account established under section 529A, *see* regulations promulgated thereunder.

* * * * *

Par. 12. Section 26.2652–1 is amended by adding a sentence at the end of paragraph (a)(1) to read as follows:

*§ 26.2652–1 Transferor defined; other definitions.*

(a) * * *

(1) * * * For generation-skipping transfer tax rules related to an ABLE account established under section 529A, *see* regulations promulgated thereunder.

* * * * *

Part 301—REPORTING AND RECORDKEEPING REQUIREMENTS

Par. 13. The authority citation for part 301 continues to read in part as follows:

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

**§ 301.6011–2 [Amended]**

Par. 14. Section 301.6011–2 is amended by adding the word "series" after "5498" in the first sentence of paragraph (b)(1).

John Dalrymple
*Deputy Commissioner for Services and Enforcement.*

(Filed by the Office of the Federal Register on June 19, 2015, 8:45 a.m., and published in the issue of the Federal Register for June 22, 2015, 80 F.R. 35602)

# 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[1]

Bulletin 2015–27

### Proposed Regulations:

REG-102837-15, 2015-27 I.R.B. *43*

### Revenue Procedures:

2015-34, 2015-27 I.R.B. *4*
2015-36, 2015-27 I.R.B. *20*

### Revenue Rulings:

2015-15, 2015-27 I.R.B. *1*

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2015–01 through 2015–26 is in Internal Revenue Bulletin 2015–26, dated June 29, 2015.

## Finding List of Current Actions on Previously Published Items[1]

Bulletin 2015–27

### Revenue Procedures:

**2011-49**
Modified by
Rev. Proc. 2015-36, 2015-27 I.R.B. *20*

**2011-49**
Superseded by
Rev. Proc. 2015-36, 2015-27 I.R.B. *20*

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2015–01 through 2015–26 is in Internal Revenue Bulletin 2015–26, dated June 29, 2015.

**Internal Revenue Service**
Washington, DC 20224

Official Business
Penalty for Private Use, $300

# 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/*.

# 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*) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.