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SECTION 1. PURPOSE

This revenue procedure sets forth the procedures of the Internal Revenue Service for issuing opinion and advisory letters for § 403(b) pre-approved plans (that is, § 403(b) prototype plans and § 403(b) volume submitter plans). Under the program established by this revenue procedure, the Service will accept applications for opinion and advisory letters regarding the acceptability under § 403(b) of the Internal Revenue Code of the form of prototype plans and volume submitter plans, respectively, starting June 28, 2013.

SECTION 2. BACKGROUND

.01 Contributions for an annuity contract purchased for an employee by an eligible employer are generally excluded from the employee's gross income if the requirements described in § 403(b) are met. Amounts paid by an eligible employer to a custodial account which satisfies the requirements of § 401(f)(2) are treated as contributed to an annuity contract for an employee if the requirements of § 403(b)(7)(A)(i) and (ii) are met. A retirement income account, within the meaning of § 403(b)(9)(B), for employees of a Church-related organization, within the meaning of § 1.403(b)-2(b)(6) of the Treasury regulations, is treated as an annuity contract. For purposes of this revenue procedure, and except as otherwise indicated, an eligible employer is a public school, an employer described in § 501(c)(3) that is exempt from tax under § 501(a), an employer of a minister described in § 414(e)(5)(A) with respect to the minister, or a minister described in § 414(e)(5)(A) with respect to a retirement income account established for the minister.

.02 The 2007 regulations (as defined in section 3.01) were generally effective as of January 1, 2009.

.03 Sections 1.403(b)-3(b)(3) and 1.403(b)-9(a)(2)(ii) of the 2007 regulations provide that an annuity contract, custodial account, or retirement income account generally does not satisfy the requirements of § 403(b) unless it is maintained pursuant to a plan. A plan means a written defined contribution plan that, in both form and operation, satisfies the requirements of the 2007 regulations. Subsequent references in this revenue procedure to the requirements of § 403(b) include the requirements of the 2007 regulations.

.04 The Service has not heretofore maintained a program for the issuance of opinion and advisory letters regarding the acceptability of the form of a plan under § 403(b). However, the Service has on occasion issued private letter rulings regarding the excludability of contributions for a contract or account under § 403(b).

.05 The Service has received comments from the public recommending ways to assist eligible employers in complying with the written plan requirement of the 2007 regulations. Among the recommendations have been the publication of model plan language for § 403(b) plans of public schools and the expansion of the scope of the

Service's master and prototype opinion letter program for the pre-approval of plans qualified under § 401(a) to include § 403(b) plans.

.06 Rev. Proc. 2007-71, 2007-2 C.B. 1184, provides guidance regarding compliance with the 2007 regulations and includes model plan language that may be used by public schools either to adopt a written plan to reflect the requirements of § 403(b) or to amend a plan to reflect those requirements. Rev. Proc. 2007-71 also provides that other eligible employers may use the model language as sample language to comply with one or more of the requirements imposed by the 2007 regulations. Rev. Proc. 2007-71, including its provisions regarding the extent to which the model plan language may be relied upon, is not modified by this revenue procedure. Accordingly, absent further notice, public schools and other eligible employers may continue to utilize the language in Rev. Proc. 2007-71 as model or sample language.

.07 Notice 2009-3, 2009-1 I.R.B. 250, provides transition relief during 2009 for sponsors of § 403(b) plans with respect to the requirement to have a written § 403(b) plan in place by January 1, 2009. Notice 2009-3 provides that the Service will not treat a § 403(b) plan as failing to satisfy the requirements of § 403(b) during the 2009 calendar year, provided that:

(1) on or before December 31, 2009, the sponsor of the plan has adopted a written § 403(b) plan that is intended to satisfy the requirements of § 403(b) (including the 2007 regulations) effective as of January 1, 2009;

(2) during 2009, the sponsor operates the plan in accordance with a reasonable interpretation of § 403(b), taking into account the 2007 regulations; and

(3) before the end of 2009, the sponsor makes its best efforts to retroactively correct any operational failure during the 2009 calendar year to conform to the terms of the written § 403(b) plan, with such correction to be based on the general principles of correction set forth in the Service's Employee Plans Compliance Resolution System (EPCRS) at section 6 of Rev. Proc. 2008-50, 2008-35 I.R.B. 464.

The relief in Notice 2009-3 applies solely with respect to the 2009 calendar year and may not be relied on with respect to the operation of a § 403(b) plan or correction of operational defects in any prior or subsequent year.

.08 Announcement 2009-34, 2009-18 I.R.B. 916, asked for public comments on a draft revenue procedure for pre-approving the form of § 403(b) prototype plans and on draft sample plan language that can be used in writing these plans.

.09 Announcement 2009-89, 2009-52 I.R.B. 1009, provides that if a plan sponsor adopts a written § 403(b) plan on or before December 31, 2009, that is intended to satisfy the requirements of § 403(b), the sponsor will have a remedial amendment period in which to correct defects in the form of the plan, retroactive to January 1, 2010, provided that the plan sponsor timely adopts a pre-approved § 403(b) plan with an opinion letter or timely applies for an individual determination letter.

.10 Rev. Rul. 2011-7, 2011-10 I.R.B. 534, provides guidance clarifying how the 2007 regulations apply when a § 403(b) plan is terminated.

.11 Announcement 2011-82, 2011-52 I.R.B. 1052, describes changes to the determination letter program for plans qualified under § 401(a) that were first effective in 2012. Rev. Proc. 2013-6, 2013-1 I.R.B. 198, which sets forth the procedures for issuing determination letters for qualified plans, reflects the changes described in Announcement 2011-82. These changes resulted from the Service's reevaluation of how best to allocate its limited resources to help taxpayers understand and comply with the law. These changes eliminate features of the determination letter program that are of limited utility (i.e., elective demonstrations of a plan's satisfaction of nondiscrimination requirements) and limit the types of pre-approved qualified plans that may obtain individual determination letters. As a result of these changes, determination letters for qualified plans will no longer take into account, or provide reliance with respect to, certain issues, and determination letters for qualified plans that are based on the plan's pre-approved status will only be issued with respect to volume submitter plans that include minor modifications to the pre-approved volume submitter specimen plan. These resource allocation considerations are also reflected in the approach taken in this revenue procedure.

SECTION 3. DEFINITIONS

.01 *2007 regulations* means the final regulations under § 403(b) (§§ 1.403(b)-1 through 1.403(b)-11) that were published on July 26, 2007 (72 FR 41128).

.02 *Annuity contract* means a contract that includes payment in the form of an annuity and that is issued by an insurance company qualified to issue annuities in a State.

.03 *Church* means a church within the meaning of § 3121(w)(3)(A).

.04 *Church-related organization* means a church or a convention or association of churches, including an organization described in § 414(e)(3)(A).

.05 *Custodial account* means a plan or separate account under a plan in which an amount attributable to § 403(b) contributions or amounts rolled over to a § 403(b) contract is held by a bank or a person who satisfies the conditions in § 401(f)(2), if:

(1) all amounts in the account are invested in stock of a regulated investment company, as defined in § 851(a);

(2) the requirements of § 1.403(b)-6(c) restricting distributions are satisfied with respect to amounts in the account;

(3) the assets in the account cannot be used for, or diverted to, purposes other than the exclusive benefit of plan participants and their beneficiaries; and

(4) the account is not part of a retirement income account.

- .06 *Eligible employer* means an employer described in § 403(b)(1)(A).
- .07 *Governmental plan* means a governmental plan within the meaning of § 414(d).
- .08 *Investment arrangement* means the funding arrangement(s) under a § 403(b) plan and includes an *annuity contract*, *custodial account*, and, in the case of a § 403(b) plan for the employees of a Church-related organization, a *retirement income account*.
- .09 The term *mass submitter* has the meaning given in section 11.03.
- .10 The term *minor modifier* has the meaning given in section 11.03.
- .11 *Non-qualified church-controlled organization* or *Non-QCCO* means a church-controlled tax-exempt organization described in § 501(c)(3) that is not a qualified church-controlled organization within the meaning of § 3121(w)(3)(B).
- .12 The term *nonstandardized plan* has the meaning given in section 6.03.
- .13 *Prototype sponsor* means a person meeting the eligibility requirements of section 11.01 or section 11.03 that submits an application for an opinion letter for a § 403(b) prototype plan under this revenue procedure.
- .14 *Qualified church-controlled organization* or *QCCO* means a church-controlled tax-exempt organization described in § 501(c)(3) that is a qualified church-controlled organization within the meaning of § 3121(w)(3)(B).
- .15 *Retirement income account* means a defined contribution program established or maintained by a Church-related organization to provide benefits under § 403(b) for its employees or their beneficiaries as described in § 1.403(b)-9.
- .16 *Section 403(b) pre-approved plan* means a plan that is either a § 403(b) prototype plan or a § 403(b) volume submitter plan.
- .17 The term *§ 403(b) prototype plan* has the meaning given in section 5.
- .18 The terms *§ 403(b) volume submitter plan* and *§ 403(b) volume submitter specimen plan* have the meaning given in section 7.
- .19 The term *standardized plan* has the meaning given in section 6.
- .20 *Volume submitter practitioner* means a person meeting the eligibility requirements of section 11.02 or section 11.03 that submits an application for an advisory letter for a § 403(b) volume submitter specimen plan under this revenue procedure.

SECTION 4. OVERVIEW AND PRINCIPAL CHANGES FROM THE DRAFT REVENUE PROCEDURE

.01 Overview.

(1) This revenue procedure establishes a program for the pre-approval of § 403(b) plans. This program offers employers that maintain a § 403(b) plan an alternative to adopting an individually designed plan in order to satisfy the written plan requirement of the 2007 regulations. Under this program, the Service will issue an opinion or advisory letter as to whether the form of a § 403(b) prototype plan or a § 403(b) volume submitter plan, respectively, meets the requirements of § 403(b). An employer may satisfy the written plan requirement and obtain assurance that its plan meets the requirements of § 403(b) by adopting a plan that has received an opinion or advisory letter under this program.

(2) The program described in this revenue procedure is similar in many respects to the Service's pre-approved plan program for plans qualified under § 401(a), which is described in Rev. Proc. 2011-49, 2011-44 I.R.B. 608. For example, two categories of pre-approved plans -- prototype plans and volume submitter plans, which are described in section 5 and section 7 of this revenue procedure, respectively -- are available under both programs.

(3) Although the program described in this revenue procedure is similar in many respects to the program described in Rev. Proc. 2011-49, there are differences between the two programs, beyond those that result from the differences in the Code requirements under § 401(a) and § 403(b). Under the pre-approved plan program for qualified plans, adopting employers may be able to obtain individual determination letters under certain circumstances. The Service is not establishing a determination letter program for § 403(b) plans at this time and an employer who adopts a pre-approved § 403(b) plan will not be able to apply for an individual determination letter for the plan. The extent of the adopting employer's reliance on the opinion or advisory letter may be limited, based on the type of pre-approved § 403(b) plan the employer has adopted, as explained in sections 4.01(6) and 4.01(8). A § 401(a) volume submitter plan may provide that the volume submitter practitioner can amend the plan on behalf of adopting employers, but the plan is not required to include such a provision. Under this revenue procedure, a § 403(b) volume submitter plan must provide that the volume submitter practitioner can amend the plan on behalf of adopting employers so that changes in the Code, regulations, revenue rulings, or other guidance published by the Service, or corrections of prior approved plans, may be applied to all eligible employers that have adopted the plan.

(4) As more fully described in section 5, a § 403(b) prototype plan is a two-part plan document intended to satisfy the requirements of § 403(b) that a vendor or other entity (referred to as "the prototype sponsor") provides to eligible employers that wish to adopt a written § 403(b) plan. The prototype sponsor submits the document to the Service for approval that the form of the document meets the requirements of § 403(b).

Approval is provided in the form of an opinion letter issued to the sponsor by the Service.

(5) The first part of a § 403(b) prototype plan document, called the basic plan document, contains provisions that apply to the plan of any eligible employer that uses the document to adopt a written § 403(b) plan. An eligible employer may not modify the provisions of a basic plan document. The second part of the document, called the adoption agreement, is the part of the plan document which is completed and signed by an eligible employer in order to establish a written plan. The adoption agreement gives the eligible employer elections and options from which to choose in order to customize particular features of its plan. Thus, different eligible employers can use the same § 403(b) prototype plan document to adopt a written § 403(b) plan, with the plans differentiated by the choices each eligible employer makes in its plan's adoption agreement and the different investment arrangements offered under each plan. This revenue procedure does not impose any special restrictions on the types, number, or features of investment arrangements that may be offered under an eligible employer's § 403(b) prototype plan. However, the terms of the § 403(b) prototype plan must override any inconsistent provisions of investment arrangements under the plan.

(6) There are two forms of § 403(b) prototype plan under this revenue procedure: a "standardized plan" and a "nonstandardized plan." A § 403(b) prototype plan is a standardized plan if the only contributions the employer may choose to provide under the plan are elective deferrals or if the terms of the plan satisfy uniform coverage and nondiscrimination requirements with respect to any other contributions under the plan. For example, a standardized plan must satisfy one of the design-based safe harbors described in § 1.401(a)(4)-2(b)(2) with respect to any employer nonelective contributions (other than matching contributions) under the plan. A nonstandardized plan is a § 403(b) prototype plan that is not a standardized plan. An eligible employer that adopts a standardized plan generally can rely directly on the opinion letter for the plan. An eligible employer that adopts a nonstandardized plan generally can rely directly on the opinion letter for the plan if the plan is a governmental plan or the employer is a Church or QCCO. In all other cases, an eligible employer that adopts a nonstandardized plan generally can rely directly on the opinion letter for the plan except with respect to whether the plan satisfies the nondiscrimination requirements of §§ 401(a)(4) and 410(b) relating to contributions under the plan other than elective deferrals. An opinion letter may not be relied upon with respect to Title I of ERISA, although the Service may decline to issue an opinion letter on a plan that fails to satisfy a Code provision that is parallel to a provision of Part 2 of Subtitle B of Title I of ERISA. Standardized and nonstandardized plans are discussed in section 6, and reliance on an opinion letter for a § 403(b) prototype plan is discussed in section 14. Also see section 13 regarding the scope of an opinion or advisory letter.

(7) The second type of § 403(b) pre-approved plan is a § 403(b) volume submitter plan, which is described in section 7. Under this component of the pre-approved plan program, a § 403(b) volume submitter practitioner may apply for an advisory letter that a § 403(b) volume submitter specimen plan (that is, a sample plan of the practitioner rather than an employer's plan) satisfies the requirements of § 403(b).

A § 403(b) volume submitter plan is not required to have an adoption agreement, but may have one.

(8) An adopting employer of a § 403(b) volume submitter plan can rely directly on the advisory letter for the approved specimen plan, except to the extent that the employer's plan is not identical to the approved specimen plan, disregarding any differences attributable solely to the employer's choices of options provided under the specimen plan, and except with respect to the requirements of §§ 401(a)(4) and 410(b) (unless those requirements do not apply to the plan, for example, because the only contributions under the plan are elective deferrals). See section 15 regarding employer reliance on an advisory letter.

(9) Under the § 403(b) pre-approved plan program, the Service will review the basic plan document and adoption agreement, or the specimen plan, as applicable, but will not review any investment arrangements or any other documents that may form a part of an employer's plan. The terms of the pre-approved plan must therefore satisfy the requirements of § 403(b), independent of the terms of the investment arrangements under the plan. In addition, every § 403(b) pre-approved plan must provide that in the event of a conflict between the terms of the pre-approved plan and the terms of any investment arrangements under the plan, the terms of the plan will govern. Section 8 describes this and other provisions that must be included in every § 403(b) pre-approved plan. Sections 9 and 10 describe additional provisions that must be included in every § 403(b) prototype plan and in every § 403(b) plan intended to be a retirement income account under § 403(b)(9), respectively. Also see section 13 regarding the scope of an opinion or advisory letter.

(10) Some of the provisions described in section 8 that must be included in every § 403(b) pre-approved plan reflect procedural requirements of the § 403(b) pre-approved plan program. One of those requirements is that each § 403(b) pre-approved plan allow the prototype sponsor or volume submitter practitioner, as applicable, to amend the § 403(b) pre-approved plan on behalf of each eligible employer that has adopted the plan. Under this revenue procedure, each pre-approved plan sponsor must carry out certain duties, among them to keep the document up to date for changes in law and to notify adopting employers of amendments to the document. See section 11 for eligibility to sponsor a § 403(b) pre-approved plan, section 17 for opinion and advisory letter application procedures, and sections 12 and 16 through 20 regarding the duties of sponsorship.

(11) As indicated in Notice 2009-3 and Announcement 2009-89, this revenue procedure, in section 21, includes a remedial amendment provision that allows eligible employers to retroactively correct defects in the form of their § 403(b) plans for certain years through the timely adoption of remedial amendments. This provision applies to eligible employers that timely adopt a § 403(b) pre-approved plan or that otherwise timely amend a § 403(b) plan. No inferences should be drawn from this provision regarding the application of § 401(b) to retroactive changes in plans qualified under § 401(a).

.02 Principal changes from the draft revenue procedure.

(1) This revenue procedure incorporates a number of changes to the program described in the draft revenue procedure. Some of the changes reflect the changes to the qualified plan determination letter program described in Announcement 2011-82 and the Service's need to more efficiently direct its limited resources. Others are based on the Service's consideration of the comments submitted in response to Announcement 2009-34. The following are the principal changes to the draft revenue procedure that are incorporated in this revenue procedure:

(2) Announcement 2009-34 stated the Service's intent to establish a program for the issuance of determination letters for individually designed § 403(b) plans following establishment of the prototype program described in the draft revenue procedure. The draft revenue procedure provided that adopters of prototype § 403(b) plans would also be able to obtain individual determination letters in certain cases. A program for the pre-approval of prototype and volume submitter plans is a practical way to help large numbers of adopters of § 403(b) plans understand and comply with the tax rules regarding their plans. A pre-approval program will utilize the Service's resources efficiently. A determination letter program for individually designed § 403(b) plans, on the other hand, is costly and less efficient. Given the Service's limited resources, it is not feasible for the Service to establish such a program at this time. Furthermore, issuing individual determination letters to adopters of pre-approved § 403(b) plans would greatly increase the Service's cost of administering the pre-approved plan program with minimal additional benefit to plan sponsors and plan participants. Therefore, this revenue procedure does not contemplate the issuance of individual determination letters to sponsors of § 403(b) plans. Thus, a sponsor of a § 403(b) plan will be able to obtain reliance as to the acceptability of the form of its plan only if the plan is a pre-approved plan as described in this revenue procedure or if the employer is a public school that has adopted the model plan language included in Rev. Proc. 2007-71 and is entitled to reliance under that revenue procedure. In addition, the extent of a plan sponsor's reliance on an opinion or advisory letter will depend in some cases on the type of pre-approved § 403(b) plan that the sponsor adopts. See sections 4.01(6) and 4.01(8).

(3) Announcement 2009-89 and the draft revenue procedure contained a remedial amendment provision that would allow sponsors of § 403(b) plans to amend their plans retroactively to satisfy § 403(b) and the 2007 regulations by either adopting a pre-approved plan or amending an individually-designed plan and applying for a determination letter. Although a determination letter program for § 403(b) plans is no longer contemplated, sponsors of both pre-approved § 403(b) plans and individually designed § 403(b) plans will be permitted to amend their plans retroactively to satisfy § 403(b) and the 2007 regulations. An individually-designed § 403(b) plan that is eligible for remedial amendment under this revenue procedure must be amended to the extent necessary to correct, retroactively, any defects in the form of the plan by the time described in section 21.05. Employers using individually designed plans will not be entitled to reliance that their plan terms comply with the requirements of § 403(b) unless they timely restate their plans in the form of a pre-approved plan. As a result, after the

deadline described in section 21.05, the sponsor of an individually designed § 403(b) plan will not have reliance that the terms of the plan document meet the applicable requirements for favorable tax treatment.

(4) The scope of the § 403(b) pre-approved plan program has been expanded under this revenue procedure to provide for the issuance of advisory letters for § 403(b) volume submitter specimen plans, including mass submitter specimen plans, in addition to opinion letters for § 403(b) prototype plans. This change will provide eligible employers that choose not to use an adoption agreement format in their plans access to pre-approved § 403(b) plan documents.

(5) The provisions of the draft revenue procedure regarding mass submitter plans have been modified in this revenue procedure to provide for the issuance of opinion letters for § 403(b) prototype plans that are minor modifiers of a § 403(b) prototype plan of a mass submitter, regardless of the number of eligible employers expected to adopt the minor modifier plan.

(6) The scope of the program has been expanded under this revenue procedure to provide for the issuance of opinion and advisory letters for retirement income accounts.

(7) The definition of who is eligible to sponsor a § 403(b) pre-approved plan has been modified to include a Church-related organization that sponsors a retirement income account, regardless of the number of eligible employers expected to adopt the plan.

(8) This revenue procedure eliminates the provision of the draft revenue procedure that would have prohibited the issuance of opinion letters for plans that include provisions applicable only to Churches and QCCOs, Church-related organizations, or ministers described in § 414(e)(5)(A).

(9) This revenue procedure also eliminates the provision of the draft revenue procedure that would have prohibited the issuance of opinion letters for plans that include terms that are acceptable under § 403(b) only in a plan of a Church or QCCO. Thus, for example, the Service will not decline to issue an opinion or advisory letter for a plan merely because the plan does not require universal availability of § 403(b) elective deferrals if the plan is available for adoption only by a Church or QCCO.

(10) This revenue procedure clarifies an adopting employer's ability to rely on an opinion or advisory letter for a § 403(b) pre-approved plan. The provisions of the revenue procedure regarding reliance take into account the following factors:

(a) Generally, a § 403(b) plan must satisfy both (i) the universal availability requirement of § 1.403(b)-5(b) with respect to elective deferral contributions and (ii) the rules of § 1.403(b)-5(a) that require any nonelective contributions under the plan to satisfy the nondiscrimination requirements of §§ 401(a)(4), 401(a)(17), 401(m), and 410(b) in the same manner as a qualified plan under § 401(a). However, pursuant to § 1.403(b)-5(d), the universal availability and nondiscrimination requirements of

§ 1.403(b)-5 do not apply to a § 403(b) contract purchased by a Church or QCCO. In addition, pursuant to § 1.403(b)-5(a)(5), a governmental § 403(b) plan must satisfy the universal availability requirement with respect to elective deferrals under § 1.403(b)-5(b), but such a plan is not required to satisfy the nondiscrimination rules for nonelective contributions under § 1.403(b)-5(a), other than the requirement to limit compensation taken into account under the plan in accordance with § 401(a)(17).

(b) Section 8 of this revenue procedure generally requires every § 403(b) pre-approved plan to satisfy the requirements of the 2007 regulations. Under section 8.06(2) and (3) of this revenue procedure, every § 403(b) pre-approved plan must satisfy the universal availability requirement with respect to elective deferrals under § 1.403(b)-5(b) and must limit compensation taken into account under the plan with respect to nonelective contributions in accordance with § 401(a)(17), unless the adopting eligible employer is a Church or QCCO. Under section 8.06(4), a § 403(b) pre-approved plan that permits contributions subject to § 401(m) must include terms that satisfy § 401(m), unless the plan is available for adoption only as a governmental plan or by a Church or QCCO.

(c) A § 403(b) prototype plan that is a standardized plan as defined in section 6.01 of this revenue procedure limits the adoption agreement elections available to the adopting employer with respect to nonelective contributions to safe harbors that automatically satisfy the nondiscrimination requirements of §§ 401(a)(4) and 410(b). A § 403(b) nonstandardized prototype plan or a § 403(b) volume submitter plan may allow the employer to make elections with respect to nonelective contributions that require testing of the coverage and benefits under the plan to determine if the plan satisfies the nondiscrimination requirements of §§ 401(a)(4) and 410(b).

(d) An employer that adopts a § 403(b) volume submitter plan may modify the terms of the approved specimen volume submitter plan, in addition to selecting among options under the plan, without causing the employer's plan to be treated as an individually designed plan, provided the employer's plan is "substantially similar," within the meaning of section 7.01 of this revenue procedure, to the approved specimen plan.

(11) Taking into account the factors in the preceding paragraph, this revenue procedure provides in general that:

(a) Any eligible employer that adopts a standardized § 403(b) prototype plan may rely on an opinion letter for the plan.

(b) An eligible employer that adopts a nonstandardized § 403(b) prototype plan may rely on an opinion letter for the plan if the plan is a governmental plan or if the employer is a Church or QCCO.

(c) Any other eligible employer, including an employer that is a Non-QCCO, that adopts a nonstandardized § 403(b) prototype plan may rely on the opinion letter for the plan, except with respect to whether nonelective contributions under the plan satisfy the requirements of §§ 401(a)(4) and 410(b).

(d) An eligible employer that adopts a § 403(b) volume submitter plan may rely upon an advisory letter for the plan, except (i) to the extent that the employer modifies the terms of the approved specimen plan (other than by selecting options that are permitted under the terms of the approved specimen plan); and (ii) if the plan is not a governmental plan or a plan of a Church or QCCO, with respect to whether any nonelective contributions under the plan satisfy the requirements of §§ 401(a)(4) and 410(b).

Other limitations on employer reliance on opinion and advisory letters are described in sections 14 and 15 of this revenue procedure.

(12) This revenue procedure eliminates the provision of the draft revenue procedure that would have required every § 403(b) prototype plan to provide for full and immediate vesting of all contributions under the plan. Under this revenue procedure, a § 403(b) pre-approved plan may provide a vesting schedule for nonelective employer contributions, rather than full and immediate vesting of such contributions. Except in the case of certain volume submitter plans, as described below, nonelective employer contributions (and earnings thereon) under a § 403(b) pre-approved plan must vest at least as rapidly as would be required to satisfy the minimum vesting requirements of § 411(a)(2)(B), if the plan were a qualified plan under § 401(a), even if the plan is not subject to the parallel minimum vesting requirements under section 203 of ERISA. A volume submitter plan document that is designed to be used for a plan that is not subject to the minimum vesting requirements of section 203 of ERISA (for example, because the plan is a governmental plan) is not required to provide that nonelective employer contributions will vest at least as rapidly as would be required to satisfy § 411(a)(2)(B). Every § 403(b) pre-approved plan that provides that an employee's right to nonelective employer contributions is forfeitable must also satisfy the following requirements: (i) the portion of a participant's interest in the plan that is not vested is maintained in a separate account for the participant that is treated as a separate contract to which § 403(c) (or, in case of a custodial account, § 401(a)) applies; (ii) as amounts in the participant's separate account become nonforfeitable, they are removed from the separate account and treated as amounts held under a § 403(b) plan, to the extent permitted under § 1.403(b)-3(d)(2)(ii); and (iii) all nonvested amounts remaining in the participant's separate account become nonforfeitable upon termination of the plan.

(13) The preamble to the 2007 regulations notes that a written plan facilitates the allocation of responsibilities among various parties to a plan, helping ensure that these responsibilities are met. This revenue procedure therefore requires every § 403(b) pre-approved plan to provide that an appendix to the plan identify the parties responsible for the various administrative functions under the plan necessary to comply with the requirements of § 403(b) and other tax requirements, including such requirements that apply on the basis of the aggregated investment arrangements issued to a participant under the plan, and list all the vendors of investment arrangements approved for use under the plan, including sufficient information to identify the approved investment arrangements. This requirement replaces the requirement in the draft revenue procedure that this information be set forth in the adoption agreement of a § 403(b)

prototype plan. Changes to the information in the required appendix will not affect the employer's ability to rely on an opinion or advisory letter.

(14) This revenue procedure requires every pre-approved plan sponsor to timely notify adopting eligible employers of amendments and restatements of the plan and, in general, to inform employers of the need to timely adopt the plan in the case of both initial adoption and restatement of the plan. This requirement replaces the provision in the draft revenue procedure that would have required sponsors to have both a procedure to verify that adopting employers have timely adopted and signed the plan when required and a procedure for employers to acknowledge receipt of plan amendments if the employer is not required to complete a new adoption agreement.

(15) This revenue procedure clarifies that, under the remedial amendment provisions of the procedure, retroactive amendments that are permitted to correct defects in the form of the plan include amendments to investment arrangements and any other documents that are incorporated by reference into the plan.

(16) A number of commentators urged the Service to modify the provision in the draft revenue procedure that would have required every § 403(b) prototype plan to provide that in the event of any conflict between the terms of the basic plan document and adoption agreement and the terms of any investment arrangement under the plan, or of any other document that is incorporated by reference into the plan, the terms of the basic plan document and adoption agreement would control. After considering these comments, the Service has concluded that a provision of the type described in the draft revenue procedure is fundamental to proper operation of a § 403(b) pre-approved plan program, particularly since the investment arrangements and other documents that may be incorporated by reference will not be reviewed by the Service, and since the change recommended by commentators would result in an unacceptable degree of uncertainty as to which terms control in the event of conflict. Accordingly, this revenue procedure requires every § 403(b) pre-approved plan to incorporate by reference the terms of the investment arrangements under the plan and to provide that, in the event of any conflict between the terms of the basic plan document and adoption agreement or volume submitter plan and the terms of investment arrangements (or of any other documents incorporated by reference into the plan), the terms of the basic plan document and adoption agreement or volume submitter plan shall govern. Furthermore, an eligible employer may not rely on an opinion or advisory letter for the employer's § 403(b) pre-approved plan if the terms of any investment arrangement under the employer's plan provide that such arrangement's terms govern in the event of a conflict with the basic plan document and adoption agreement or volume submitter plan. The Service recognizes that this requirement will require vendors to be aware of and follow pre-approved plan provisions that may affect them. The Service made certain other changes, as described in section 4.02(17), that, in conjunction with the requirement to incorporate by reference the terms of investment arrangements, are intended to address concerns expressed by commentators regarding the requirement that the terms of a pre-approved plan's basic plan document and adoption agreement or volume submitter plan govern if there is a conflict with the terms of an investment arrangement under the plan. (Also see section 8.03.)

(17) In some cases, the objections described in section 4.02(16) (to the requirement that the terms of the basic plan document and adoption agreement or volume submitter plan govern in case of conflict) may have been based in part on a perception that the adoption of a prototype plan effectively prohibits the inclusion of additional features in the investment arrangements under the plan, or the availability of different features in different investment arrangements under the plan, and that the Service would not approve plans that allow adopting employers to provide that the availability of certain features may depend on the participant's choice of investment arrangement. In revising the sample plan language, the Service has clarified that, subject to the provisions of sections 8.04 and 8.05, such options are available to drafters of pre-approved plans.

(18) A provision in the draft revenue procedure would have allowed a prototype sponsor to correct certain typographical errors and incorrect cross-references in an approved § 403(b) prototype plan without adversely affecting adopting employers' reliance on the opinion letter if the correction would not change the original intended meaning. As explained in section 3.04(1)(d) of Rev. Proc. 2011-49, the ability to correct errors in this manner is no longer available for pre-approved qualified plans and will not be available for pre-approved 403(b) plans.

SECTION 5. WHAT IS A § 403(b) PROTOTYPE PLAN?

.01 A § 403(b) prototype plan is a defined contribution plan that is intended to satisfy the requirements of § 403(b) and is made available by a prototype sponsor for adoption by eligible employers. (A § 403(b) prototype plan is one of two types of § 403(b) pre-approved plans, the other being a § 403(b) volume submitter plan which is described in section 7 of this revenue procedure.) See section 11 of this revenue procedure regarding the entities that are permitted to sponsor a § 403(b) prototype plan. Each pre-approved form of a § 403(b) prototype plan, as made available for adoption by eligible employers, consists of one (and only one) basic plan document and one (and only one) adoption agreement. The basic plan document contains all the nonelective provisions of the prototype plan that apply to the plans of all adopting eligible employers. The basic plan document may not include any options or blanks to be completed. The adoption agreement facilitates the selection of plan design alternatives available under the basic plan document. By completing the adoption agreement, an eligible employer may establish a plan (that is, the combination of the basic plan document and the completed adoption agreement) that in form satisfies the requirements of § 403(b).

.02 In pre-approved form, an adoption agreement can be used with only one basic plan document. A basic plan document can be used with more than one adoption agreement, but each basic plan document/adoption agreement pair constitutes one separate § 403(b) prototype plan. Thus, for example, if a prototype sponsor sponsors one basic plan document and offers adopting employers the choice of three adoption agreements to be used with the basic plan document to establish a plan, the prototype sponsor has three separate § 403(b) prototype plans and would need to submit three applications for opinion letters under this procedure. A § 403(b) prototype plan that is

adopted by an eligible employer is a single plan regardless of whether there are multiple investment arrangements or multiple vendors (that is, insurance companies or regulated investment company custodians) under the plan. Adoption of two § 403(b) prototype plans (that is, execution of two separate adoption agreements) constitutes the adoption of two separate § 403(b) plans, regardless of whether the two plans use the same basic plan document.

.03 A prototype sponsor may maintain more than one basic plan document. For example, a prototype sponsor may maintain one or more basic plan documents to be used only with plans that limit contributions to elective deferrals as well as one or more basic plan documents to be used with plans that provide for elective deferrals and employer nonelective contributions, whether or not such plans also provide for matching contributions and/or after-tax employee contributions.

.04 A single basic plan document may not be used for both a § 403(b) plan that is a retirement income account and a § 403(b) plan that is not a retirement income account. Thus, a separate basic plan document is required for a plan that is intended to constitute a retirement income account under § 403(b)(9).

.05 As described above, a basic plan document may have more than one adoption agreement. Each plan (that is, each basic plan document/adoption agreement pair) must be either a standardized plan or a nonstandardized plan. (See section 6 for an explanation of the difference between a standardized plan and a nonstandardized plan.) This is because a standardized plan may not include certain options that are available to adopting employers of nonstandardized plans. Therefore, each adoption agreement must specify whether it is a standardized plan adoption agreement or a nonstandardized plan adoption agreement.

SECTION 6. STANDARDIZED PROTOTYPE PLANS AND NONSTANDARDIZED PROTOTYPE PLANS

.01 Each § 403(b) prototype plan is either a standardized plan or a nonstandardized plan. A § 403(b) prototype plan is a standardized plan if:

(1) the only contributions which an adopting eligible employer may elect to provide under the plan are elective deferrals; or

(2) the form of the plan satisfies the requirements of section 6.02 with respect to any contributions under the plan other than elective deferrals, irrespective of the elections the adopting eligible employer makes in the adoption agreement, and without regard to the terms of any investment arrangements under the plan or any documents incorporated by reference into the plan.

.02 The form of a § 403(b) prototype plan satisfies the requirements of this section 6.02 with respect to any contributions under the plan other than elective deferrals if all of the following conditions are satisfied with respect to such contributions:

(1) The plan by its terms benefits all employees except those who may be excluded under § 1.410(b)-6. For this purpose, “employee” means an employee, within the meaning of § 1.403(b)-2(b)(9), of the adopting eligible employer and any eligible employer within the meaning of § 1.403(b)-2(b)(8) in the adopting eligible employer’s controlled group. The controlled group consists of the adopting eligible employer and each other employer that is aggregated with the adopting eligible employer under § 414(b), (c), (m) or (o), including § 1.414(c)-5. Thus, if there is more than one eligible employer in the controlled group, the plan must benefit all the employees of all the eligible employers in the controlled group except those employees that may be excluded under § 1.410(b)-6. A plan does not fail to satisfy this requirement with respect to contributions other than elective deferrals merely because the plan provides that individuals who become employees as the result of a transaction described in § 410(b)(6)(C), relating to certain employer acquisitions and dispositions, are excluded from eligibility to participate in the plan during the period beginning on the date of the transaction and ending on a date that is not later than the earlier of the last day of the first plan year beginning after the date of the transaction or the date of a significant change in the plan or in the coverage of the plan.

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

(3) If the plan provides for employer nonelective contributions (other than matching contributions), the plan must satisfy one of the design-based safe harbors described in § 1.401(a)(4)-2(b)(2) with respect to such contributions.

(4) For purposes of determining the amount of contributions other than elective deferrals, the plan must define compensation as total compensation. For this purpose, total compensation means a definition of compensation that includes all compensation within the meaning of § 415(c)(3) (disregarding § 415(c)(3)(E)) and excludes all other compensation, or a definition that satisfies the rules under § 1.414(s)-1(c).

.03 A nonstandardized § 403(b) prototype plan is a § 403(b) prototype plan that is not a standardized plan. For example, a § 403(b) prototype plan is a nonstandardized plan if the adoption agreement allows the adopting employer to select an allocation formula for nonelective contributions that does not satisfy one of the design-based safe harbors described in § 1.401(a)(4)-2(b)(2).

SECTION 7. WHAT IS A § 403(b) VOLUME SUBMITTER PLAN?

.01 The term “§ 403(b) volume submitter plan” refers to either a “specimen § 403(b) plan” of a volume submitter practitioner or a plan of a client of the volume submitter practitioner that is substantially similar to the volume submitter’s approved specimen plan. For this purpose, an employer’s plan is not substantially similar to an approved specimen § 403(b) plan, and will be considered to be an individually designed plan rather than a pre-approved plan, if the Service determines (for example, during an

examination of the plan) that differences between the terms of the employer's plan and the terms of the approved specimen plan are so extensive or complex as to be incompatible with the pre-approved plan program. (A § 403(b) volume submitter plan is one of two types of § 403(b) pre-approved plans, the other being a § 403(b) prototype plan which is described in section 5 of this revenue procedure.) See section 11 of this revenue procedure regarding the entities that are permitted to sponsor a § 403(b) volume submitter specimen plan. A "specimen § 403(b) plan" is a model plan document (rather than the actual plan of an eligible employer) of a volume submitter that is intended to satisfy the requirements of § 403(b). A specimen § 403(b) plan is not required to, but may, include an adoption agreement. If more than one adoption agreement may be used with a specimen § 403(b) plan, each specimen plan/adoption agreement pair is a separate volume submitter plan. If an adoption agreement is used for a volume submitter plan, it must satisfy the requirements for prototype adoption agreements in section 9.03.

.02 A § 403(b) volume submitter plan that is adopted by an eligible employer is a single plan regardless of whether there are multiple investment arrangements or multiple vendors (that is, insurance companies or regulated investment company custodians) under the plan. Adoption of two § 403(b) volume submitter plans constitutes the adoption of two separate § 403(b) plans, regardless of whether both plans are substantially similar to a single specimen § 403(b) plan.

.03 A volume submitter may maintain more than one specimen plan. For example, a volume submitter may maintain one or more specimen plans that limit contributions to elective deferrals as well as one or more specimen plans that provide for elective deferrals and employer nonelective contributions, whether or not the plans also provide for matching contributions and/or after-tax employee contributions.

.04 A single specimen plan may not be used for both a § 403(b) plan that is a retirement income account and a § 403(b) plan that is not a retirement income account. Thus, a separate specimen plan is required for a plan that is intended to constitute a retirement income account under § 403(b)(9).

SECTION 8. PROVISIONS REQUIRED IN EVERY § 403(b) PRE-APPROVED PLAN

.01 Sections 8.04 through 8.10 describe provisions that must be included in every § 403(b) pre-approved plan.

.02 The Service's review of a § 403(b) pre-approved plan will consider only the terms of the basic plan document and adoption agreement or the volume submitter plan, as applicable. Accordingly, the provisions described in sections 8.04 through 8.10 must be included in the basic plan document or adoption agreement of every § 403(b) prototype plan and in every § 403(b) volume submitter plan, regardless of the terms of any investment arrangements under the plan or any other documents that may be incorporated by reference. This does not preclude the adoption of a § 403(b) pre-approved plan (including a standardized prototype plan, as described in section 6) if different investment arrangements under a plan have different features or prevent the

inclusion of additional provisions in the terms of the investment arrangements under the plan or other documents incorporated by reference. Nor does it prevent a § 403(b) pre-approved plan from using investment arrangements that are more restrictive than required by § 403(b) or the basic plan document and adoption agreement or the volume submitter plan. However, the terms of the basic plan document and adoption agreement or the volume submitter plan, as applicable, must satisfy the requirements of applicable law and sections 8.04 through 8.10 independent of any investment arrangements under the plan or any other documents incorporated by reference.

.03 For example, an eligible employer's § 403(b) prototype plan may offer both investment arrangements that permit loans and investment arrangements that do not. In this case, (1) the basic plan document must include provisions reflecting the requirements of the 2007 regulations, including § 1.403(b)-6, and § 1.72(p)-1, and (2) the basic plan document and adoption agreement, as completed by the employer, must provide that, to the extent permitted by the terms governing the applicable investment arrangement, participant loans are available. Similarly, an eligible employer's § 403(b) volume submitter plan must satisfy the requirements described in the preceding sentence if the plan offers both investment arrangements that permit loans and investment arrangements that do not. For sample plan language that satisfies these requirements, see the Listing of Required Modifications (for § 403(b) plans) which may be downloaded from the Internet at the following address: http://www.irs.gov/pub/irs-tege/403b_lrm0313.pdf. The following are additional examples that illustrate the application of section 8.03:

(1) A § 403(b) pre-approved plan may provide that the forms of annuity benefit available under the plan are those described in the investment arrangements under the plan. However, the terms of the basic plan document and adoption agreement or the volume submitter plan, as applicable, must ensure that the required minimum distribution requirements of § 401(a)(9) will be satisfied regardless of the form of benefit paid, and the distributable events under the plan must be described in the basic plan document and adoption agreement or the volume submitter plan, as applicable.

(2) A § 403(b) pre-approved plan may provide that hardship distributions of elective deferrals are available to the extent permitted under each investment arrangement under the plan. In this case, the basic plan document and adoption agreement or the volume submitter plan must either provide that hardship distributions are available only for the financial needs described in § 1.401(k)-1(d)(3)(iii)(B) or must set forth nondiscriminatory and objective standards for determining the existence of an immediate and heavy financial need. In addition, the basic plan document and adoption agreement or the volume submitter plan must provide that the participant's elective deferrals will be suspended for 6 months following the hardship distribution and set forth the other requirements that must be satisfied for a distribution to be treated as necessary to satisfy the financial need. The terms of any agreement governing the relationship between the vendor of an investment arrangement under the plan and the employer must provide that the vendor will timely notify the employer of a participant's hardship distribution and the requirement to suspend the participant's elective deferrals.

.04 A § 403(b) pre-approved plan includes the investment arrangements under the plan in addition to the basic plan document and adoption agreement or the volume submitter plan. Every § 403(b) pre-approved plan must therefore incorporate by reference the terms of the investment arrangements under the plan. While the Service's review of an application for an opinion or advisory letter is limited to the terms of the basic plan document and adoption agreement or the volume submitter plan, as applicable, the terms of investment arrangements and other documents that are incorporated by reference must satisfy applicable law and may not have any provisions that are inconsistent with § 403(b). For example, if the forms of annuity benefit available under a plan are described in investment arrangements under the plan, the terms of the investment arrangements must satisfy, if applicable to the plan, the joint and survivor annuity requirements of section 205 of ERISA and any applicable related rules, such as rules relating to transfers of benefits that are subject to the joint and survivor annuity requirement, and may not have any provisions that are inconsistent with § 403(b).

.05 Every § 403(b) pre-approved plan must provide that, in the event of any conflict between the terms of the pre-approved plan and the terms of investment arrangements under the plan (or of any other documents incorporated by reference into the plan), the terms of the pre-approved plan shall govern. Furthermore, an eligible employer may not rely on an opinion or advisory letter issued with respect to a § 403(b) pre-approved plan if any investment arrangement under the plan provides that the terms of the investment arrangement shall govern in the event of any conflict between the terms of the arrangement and the terms of the pre-approved plan. An eligible employer that adopts a § 403(b) pre-approved plan should take this requirement into account in considering investment arrangements to be offered under the plan as well as other documents that may be incorporated by reference. Since the terms of investment arrangements under a § 403(b) pre-approved plan must be incorporated by reference into the plan and those arrangements may not have any provisions that are inconsistent with § 403(b), plan terms that are required in a pre-approved plan under this section 8 or section 9 or 10 should not create a conflict with the terms of the investment arrangements under a properly drafted § 403(b) pre-approved plan. If there nevertheless is such a conflict, the terms of the pre-approved plan must control. For sample plan language for § 403(b) pre-approved plans, see: http://www.irs.gov/pub/irs-tege/403b_lrm0313.pdf.

.06 Every § 403(b) pre-approved plan must satisfy the requirements of §§ 1.403(b)-1 through 1.403(b)-11, including the following requirements:

(1) The plan must contain all the material terms and conditions for eligibility, benefits, applicable limitations, the investment arrangements available under the plan, and the time and form under which benefit distributions will be made.

(2) The plan must satisfy the universal availability requirement with respect to elective deferrals described in § 1.403(b)-5(b), unless the adopting eligible employer is a Church or QCCO.

(3) The plan must limit the amount of compensation that can be taken into account with respect to any contribution under the plan to the limitation in effect under § 401(a)(17), unless the adopting eligible employer is a Church or QCCO. The plan may provide that, if the plan is a governmental plan, the transition rule in § 1.401(a)(17)-1(d)(4)(ii) will be applied in determining the amount of a participant's compensation that may be taken into account.

(4) Unless the plan is designed by the prototype sponsor or volume submitter to be available for adoption only as a governmental plan or by a Church or QCCO, the plan must include terms that satisfy the applicable requirements of § 401(m) if the plan provides for matching or other contributions that are subject to the requirements of § 401(m).

(5) The plan must set forth the terms governing all of the plan's provisions relating to benefits, including any hardship distributions and other distribution events, loans, plan-to-plan transfers, contract-to-contract exchanges, and contributions and rollovers into the plan that are available under the plan, and may incorporate by reference the specific terms and conditions for those benefits set forth in the investment arrangements.

.07 The plan may provide a vesting schedule for nonelective employer contributions, rather than provide for full and immediate vesting of such contributions. Except in the case of certain volume submitter plans, as described below, nonelective employer contributions (and earnings thereon) under a § 403(b) pre-approved plan must vest at least as rapidly as would be required to satisfy the minimum vesting requirements of § 411(a)(2)(B), if the plan were a qualified plan under § 401(a), even if the plan is not subject to the parallel minimum vesting requirements under section 203 of ERISA. A volume submitter plan document that is designed to be used for a plan that is not subject to the minimum vesting requirements of section 203 of ERISA (for example, because the plan is a governmental plan) is not required to provide that nonelective employer contributions will vest at least as rapidly as would be required to satisfy § 411(a)(2)(B). Every § 403(b) pre-approved plan that provides a vesting schedule for nonelective employer contributions must also satisfy the following requirements: (i) the portion of a participant's interest in the plan that is not vested must be maintained in a separate account for the participant that is treated as a separate contract to which § 403(c) (or, in case of a custodial account, § 401(a)) applies; (ii) as amounts in the participant's separate account become nonforfeitable, they must be removed from the separate account and treated as amounts held under a § 403(b) plan, to the extent permitted under § 1.403(b)-3(d)(2)(ii); and (iii) all nonvested amounts remaining in the participant's separate account must become nonforfeitable upon termination of the plan.

.08 Every § 403(b) pre-approved plan must provide that an appendix to the plan will identify the parties responsible for the various administrative functions under the plan to comply with the requirements of § 403(b) and other tax requirements, including the requirements that apply on the basis of the aggregated investment arrangements issued to a participant under the plan, and will list all the vendors of investment

arrangements approved for use under the plan, including sufficient information to identify the approved investment arrangements. Changes to the information in the required appendix will not affect the employer's ability to rely on an opinion or advisory letter.

.09 Every § 403(b) pre-approved plan must provide a procedure for amendment of the plan by the prototype sponsor or volume submitter practitioner, as applicable, so that changes in the Code, regulations, revenue rulings, or other guidance published by the Service, or corrections of prior approved plans, may be applied to all eligible employers that have adopted the plan.

.10 Every § 403(b) pre-approved plan must provide that the prototype sponsor or volume submitter, as applicable, will inform the adopting eligible employer of any amendments made to the plan and will notify the employer of the discontinuance or abandonment of the plan.

SECTION 9. ADDITIONAL PROVISIONS REQUIRED IN EVERY § 403(b) PROTOTYPE PLAN

.01 Under § 1.415(f)-1(a)(3), all § 403(b) annuity contracts purchased by an employer for a participant are treated as one § 403(b) annuity contract for purposes of § 415. Section 1.415(f)-1(f)(2) contains a special rule providing that, if a participant on whose behalf a § 403(b) annuity contract is purchased is in control of any employer for a limitation year, the § 403(b) annuity contract is aggregated with all other defined contribution plans maintained by that employer. For these purposes, a custodial account and a retirement income account are treated as a § 403(b) annuity contract. Every § 403(b) prototype plan must include plan language reflecting these rules. In particular, the plan language must coordinate the application of the § 415 limits to all the § 403(b) prototype plans of the adopting eligible employer and its related employers so that, if the only § 403(b) plans maintained by the adopting employer and its related employers are prototype plans, the plans will satisfy § 415(c) and § 1.415(f)-1(a)(3) without requiring the addition of overriding plan language. Every § 403(b) prototype plan must also allow the adopting eligible employer to add overriding language to the adoption agreement if necessary to coordinate the application of the § 415 limits if the adopting eligible employer or its related employers also maintain § 403(b) plans that are not prototype plans. For this purpose, the term "related employers" means all employers that are aggregated with the adopting eligible employer under § 414(b) and (c) (each as modified by § 415(h)), (m), and (o), including § 1.414(c)-5. Sample language provided in the Listing of Required Modifications (for § 403(b) plans) may be downloaded from the Internet at the following address: http://www.irs.gov/pub/irs-tege/403b_lrm0313.pdf.

.02 Every § 403(b) prototype plan must provide that the eligible employer will be considered to have adopted an individually designed plan, and the eligible employer is not entitled to reliance on an opinion letter issued with respect to the plan, if:

(1) the eligible employer amends any provision of the plan, including the adoption agreement (other than (a) to change the choice of options in the adoption agreement, (b) to add overriding language in the adoption agreement if necessary to satisfy § 415 because of the required aggregation of multiple plans, (c) to change information in the required appendix described in section 8.08, or (d) to adopt sample or model amendments published by the Service that specifically provide that their adoption by an adopter of an approved § 403(b) prototype plan will not cause such plan to be treated as individually designed); or

(2) the eligible employer chooses to discontinue participation in the plan as amended by the prototype sponsor and does not substitute another approved § 403(b) prototype plan.

.03 The adoption agreement of every § 403(b) prototype plan must satisfy the following requirements:

(1) Although a single adoption agreement may be made available to different categories of eligible employers, the adoption agreement must require the adopting employer to show its status as an eligible employer by indicating whether the employer is:

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

(b) a tax-exempt organization described in § 501(c)(3) which is exempt from tax under § 501(a);

(c) an employer of a minister described in § 414(e)(5)(A); or

(d) a minister described in § 414(e)(5)(A).

(2) The adoption agreement must require the adopting employer to show its status with respect to the nondiscrimination requirements in § 1.403(b)-5 by indicating whether the plan is:

(a) a governmental plan of a public school;

(b) a governmental plan of a tax-exempt organization described in § 501(c)(3);

(c) a plan of an employer that is a Church or QCCO; or

(d) a plan (other than a plan described in (a), (b), or (c)) of an employer that is a tax-exempt organization described in § 501(c)(3).

(3) The adoption agreement must allow the adopting eligible employer to add overriding plan language if necessary to satisfy § 415 because of the required aggregation of multiple plans. See section 9.01.

(4) The adoption agreement must contain a dated employer signature line. The eligible 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 eligible 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 eligible employer.

(5) The adoption agreement must state that it is to be used only with one specific basic plan document, and must identify that document.

(6) 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 satisfy the requirements of § 403(b). The Service expects that § 403(b) prototype plan documents will be written in a manner designed to assist adopting eligible employers in the correct completion of the adoption agreement.

(7) The adoption agreement must include the prototype sponsor's name, address, and telephone number (or a space for the address and telephone number of the prototype sponsor's authorized representative) for inquiries by adopting eligible employers regarding the adoption of the plan, the meaning of plan provisions, or the effect of the opinion letter.

.04 The adoption agreement of every nonstandardized § 403(b) prototype plan must satisfy the following additional requirements:

(1) The adoption agreement must state that, unless the plan is a governmental plan, a Church, or a QCCO, the plan must satisfy the requirements of §§ 401(a)(4) and 410(b) with respect to nonelective contributions under the plan on a continuing basis.

(2) The adoption agreement must state that the opinion letter may not be relied upon with respect to whether the plan satisfies the requirements of §§ 401(a)(4) and 410(b).

SECTION 10. ADDITIONAL PROVISIONS REQUIRED IN EVERY § 403(b) PRE-APPROVED PLAN INTENDED TO BE A RETIREMENT INCOME ACCOUNT UNDER § 403(b)(9)

.01 Every § 403(b) pre-approved plan that is intended to be a retirement income account under § 403(b)(9) must state the intent to constitute a retirement income account in accordance with § 1.403(b)-9(a)(2)(ii) and must satisfy the other requirements of this section 10.

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

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

SECTION 11. WHO CAN SPONSOR A § 403(b) PROTOTYPE PLAN OR A § 403(b) VOLUME SUBMITTER SPECIMEN PLAN? WHO CAN BE A MASS SUBMITTER?

.01 A person is eligible to sponsor a § 403(b) prototype plan if the person (1) has an established place of business in the United States where it is accessible during every business day, and (2) expects at least 30 eligible employers to adopt its § 403(b) prototype plan basic plan document(s). A Church-related organization is eligible to sponsor a § 403(b) prototype plan that is intended to be a retirement income account under § 403(b)(9), without regard to the number of eligible employers that are expected to adopt the plan. A person eligible to sponsor a § 403(b) prototype plan may request opinion letters for any number of basic plan documents and adoption agreements.

.02 A person is eligible to sponsor a § 403(b) volume submitter specimen plan if the person (1) has an established place of business in the United States where it is accessible during every business day and (2) expects at least 30 eligible employers to adopt its § 403(b) volume submitter plan(s). A Church-related organization is eligible to sponsor a § 403(b) volume submitter plan that is intended to be a retirement income account under § 403(b)(9), without regard to the number of eligible employers that are expected to adopt the plan. A person eligible to sponsor a § 403(b) volume submitter specimen plan may request advisory letters for any number of specimen plans.

.03 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 of a § 403(b) prototype plan or as a word-for-word identical adopter of a § 403(b) volume submitter specimen plan of a mass submitter, regardless of the number of eligible employers expected to adopt the plan. A mass submitter is any person that (1) has an established place of business in the United States where it is accessible during every business day, and (2) submits opinion or advisory letter applications on behalf of at least 30 prototype sponsors, or 30 volume submitters, respectively, each of which is sponsoring, on a word-for-word identical basis, the same basic plan document or specimen plan. A minor modifier means a person that is sponsoring a § 403(b) prototype plan that is word-for-word identical to the plan of a mass submitter, but for minor changes that do not require in-depth technical review in order to issue an opinion letter. A § 403(b) prototype plan or volume submitter specimen plan of a mass submitter must include language designating the mass submitter as agent for the prototype sponsor or volume submitter for purposes of making plan amendments. A mass submitter may request opinion or advisory letters for any number of basic plan documents and adoption agreements or specimen plans.

.04 The filing of an application for an opinion or advisory letter for a § 403(b) prototype plan or volume submitter specimen plan constitutes a representation that the requirements in this section 11 are satisfied.

SECTION 12. DUTIES OF A PRE-APPROVED PLAN SPONSOR

.01 Except in the case of a Church-related organization that sponsors a § 403(b) prototype plan intended to be a retirement income account under § 403(b)(9), a pre-approved plan sponsor must maintain a written record of the eligible employers that have adopted the plan and, upon written request, must provide the Service a list of the names, addresses, and employer identification numbers of all eligible employers that, to the best of the sponsor's knowledge, have adopted the plan, other than employers that ceased to maintain the plan as a prototype plan more than three years prior to the request.

.02 Unless the pre-approved plan sponsor has withdrawn its opinion or advisory letter application pursuant to section 18, notified the Service and adopting eligible employers that it is abandoning the plan pursuant to section 19, or been notified by the Service under section 20 that its opinion or advisory letter has been revoked, the pre-approved plan sponsor must continue to maintain the approved status of the plan as provided in section 16. Thus, the pre-approved plan sponsor must timely amend the plan for changes in the Code, regulations, revenue rulings, or other guidance published by the Service, and must apply for new opinion or advisory letters when required. The pre-approved plan sponsor must provide to the eligible employer the plan and any restatements thereof, all amendments and all opinion or advisory letters, and must comply with the notice requirements under this procedure and any other written guidance. The plan, restatements, amendments, and opinion or advisory letters may be provided to adopting eligible employers electronically.

.03 The pre-approved plan sponsor must have a procedure to notify adopting eligible employers of amendments and restatements of the plan and to inform the employers, when applicable, of the need to timely adopt the plan in the case of both initial adoption and restatement of the plan. The pre-approved plan sponsor must also notify adopting employers that failure to timely adopt the plan or restatement, when required, or failure to take into account plan amendments in the operation of the plan could result in adverse tax consequences.

.04 The filing of an application for an opinion or advisory letter for a § 403(b) pre-approved plan constitutes a representation that the pre-approved plan sponsor agrees to comply with the requirements of this revenue procedure. Failure to do so may result in the loss of eligibility to sponsor § 403(b) pre-approved plans and the revocation of opinion or advisory letters that have been issued to the pre-approved plan sponsor.

.05 Also see section 16.03 regarding a pre-approved plan sponsor's duty to timely notify an adopting employer if the sponsor determines that the employer's plan may no longer satisfy the requirements of § 403(b).

SECTION 13. SCOPE OF AN OPINION OR ADVISORY LETTER

.01 An opinion or advisory letter for a § 403(b) pre-approved plan constitutes a determination that the form of the plan documents, as adopted by a particular adopting

eligible employer, satisfies the requirements of § 403(b) only under the circumstances, and to the extent, described in sections 14 and 15.

.02 The Service's review of a pre-approved plan sponsor's application for an opinion or advisory letter for a § 403(b) pre-approved plan will consider only the terms of the basic plan document and adoption agreement or the volume submitter plan, as applicable. The Service's review will not consider, and an opinion or advisory letter will not express an opinion with respect to, the terms of any investment arrangements under the plan of any adopting eligible employer or any other documents that may be incorporated by reference into an adopting eligible employer's plan.

.03 An opinion or advisory letter for a § 403(b) plan does not express an opinion, and may not be relied upon, with respect to whether any plan is subject to the requirements of Title I of ERISA or whether a plan satisfies any of those requirements.

.04 Opinion and advisory letters will not be issued for any of the following:

(1) TEFRA church defined benefit plans. (See § 1.403(b)-10(f)(2).)

(2) Plans grandfathered under Rev. Rul. 82-102, 1982-1 C.B. 62.

(3) Plans that include blanks or fill-in provisions for the eligible employer to complete unless the provisions have parameters that preclude the eligible employer from completing the provisions in a manner that could cause the plan to fail to satisfy § 403(b).

(4) Plans that incorporate by reference the limitations of § 415 or the ACP test of § 401(m)(2).

The Service may, in its discretion, decline to issue opinion or advisory letters for other types of plans not described in this section 13.04. For example, in the case of a plan that is subject to Title I of ERISA, the Service may, in its discretion, decline to issue an opinion or advisory letter if the plan fails to satisfy a Code provision that is parallel to a provision in Part 2 of Subtitle B of Title I of ERISA (such as §§ 410 and 411 of the Internal Revenue Code).

SECTION 14. EMPLOYER RELIANCE ON AN OPINION LETTER

.01 Governmental plans and plans of Churches or QCCOs. An eligible employer that adopts a § 403(b) prototype plan, whether standardized or nonstandardized, may rely upon an opinion letter issued for the plan that the form of the adopting eligible employer's plan satisfies the requirements of § 403(b) if the plan is a governmental plan or if the adopting eligible employer is a Church or QCCO. However, the issuance of an opinion letter does not constitute a determination that the plan is a governmental plan or that the adopting employer is a Church or QCCO.

.02 Standardized plans adopted by other § 501(c)(3) tax-exempt employers. An eligible employer that adopts a standardized § 403(b) prototype plan that is not a

governmental plan or a plan of a Church or QCCO may rely upon an opinion letter issued for the plan that the form of the adopting eligible employer's plan satisfies the requirements of § 403(b), including, if applicable, the requirements of §§ 401(a)(4) and 410(b), if (1) the only contributions under the plan are elective deferrals, or (2) the plan provides for contributions other than elective deferrals, all of the employers in the adopting eligible employer's controlled group are eligible employers within the meaning of § 1.403(b)-2(b)(8). If the plan provides for contributions other than elective deferrals and the adopting eligible employer's controlled group includes any employer that is not an eligible employer within the meaning of § 1.403(b)-2(b)(8), the adopting eligible employer may rely on the opinion letter, except with respect to whether nonelective contributions under the plan satisfy the requirements of §§ 401(a)(4) and 410(b).

.03 Nonstandardized plans adopted by other § 501(c)(3) tax-exempt employers. An eligible employer that adopts a nonstandardized § 403(b) prototype plan that is not a governmental plan or a plan of a Church or QCCO may rely upon an opinion letter issued for the plan that the form of the adopting eligible employer's plan satisfies the requirements of § 403(b), except with respect to whether nonelective contributions under the plan satisfy the requirements of §§ 401(a)(4) and 410(b).

.04 No reliance on § 415 in certain circumstances. Notwithstanding the other provisions of this section 14, an opinion letter issued for a § 403(b) prototype plan may not be relied upon with respect to the requirements of § 415 if the adopting eligible employer or any of its related employers maintains another § 403(b) plan covering any of the same participants as the § 403(b) prototype plan, unless the other plan is also a § 403(b) prototype plan. For this purpose, the term "related employers" means all employers that are aggregated with the adopting eligible employer under § 414(b) and (c) (each as modified by § 415(h)), (m), and (o), including § 1.414(c)-5. (Also see §§ 1.415(c)-1(d) and 1.415(f)-1(f) for special rules applicable to § 403(b) plans.)

.05 No reliance on inherently factual issues. An opinion letter for a § 403(b) prototype plan also may not be relied upon with respect to issues of an inherently factual nature, such as whether the effective availability of any benefits, rights, and features is nondiscriminatory, or with respect to whether a plan satisfies the requirements of §§ 401(a)(4) and 410(b) with respect to former employees.

SECTION 15. EMPLOYER RELIANCE ON AN ADVISORY LETTER

.01 In general. An eligible employer that adopts a § 403(b) volume submitter plan may rely upon an advisory letter issued for the plan that the form of the adopting eligible employer's plan satisfies the requirements of § 403(b) except (i) to the extent that the employer modifies the terms of the approved specimen plan (other than by selecting options that are permitted under the terms of the approved specimen plan); and (ii) if the plan is not a governmental plan or a plan of a Church or QCCO, with respect to whether nonelective contributions under the plan satisfy the requirements of §§ 401(a)(4) and 410(b). The issuance of an advisory letter does not constitute a determination that the plan is a governmental plan or that the adopting employer is a Church or QCCO.

.02 No reliance on § 415 in certain circumstances. Notwithstanding the other provisions of this section 15, an advisory letter issued for a § 403(b) volume submitter plan may not be relied upon with respect to the requirements of § 415 if the adopting eligible employer or any of its related employers maintain another § 403(b) plan covering any of the same participants as the § 403(b) volume submitter plan. For this purpose, the term “related employers” means all employers that are aggregated with the adopting eligible employer under § 414(b) and (c) (each as modified by § 415(h)), (m), and (o), including § 1.414(c)-5. (Also see §§ 1.415(c)-1(d) and 1.415(f)-1(f) for special rules applicable to § 403(b) plans.)

.03 No reliance on inherently factual issues. An advisory letter for a § 403(b) volume submitter plan also may not be relied upon with respect to issues of an inherently factual nature.

SECTION 16. MAINTENANCE OF APPROVED STATUS

.01 A § 403(b) pre-approved plan must be amended by the pre-approved plan sponsor and, if necessary, the adopting eligible employer(s), to retain its approved status if any provisions therein fail to meet the requirements of § 403(b) as a result of a change in the Code, regulations, revenue rulings, or other guidance published by the Service. The Service expects future guidance to require the restatement of every § 403(b) pre-approved plan by the pre-approved plan sponsor every six years. Upon issuance of a new opinion or advisory letter for the restated plan, adopting eligible employers would generally be required to adopt the restated plan (by completing a new adoption agreement, in the case of a prototype plan).

.02 As provided in section 8.05, every § 403(b) pre-approved plan must provide that, in the event of any conflict between the terms of the pre-approved plan and the terms of investment arrangements under the plan (or of any other documents incorporated by reference into the plan), the terms of the pre-approved plan shall govern. An eligible employer may not rely on an opinion or advisory letter issued with respect to a § 403(b) pre-approved plan if any investment arrangement under the plan provides that the terms of the investment arrangement shall govern in the event of any conflict between the terms of the arrangement and the terms of the pre-approved plan. Employers and their advisors should take this requirement into account in considering any investment arrangements to be offered under a § 403(b) pre-approved plan.

.03 If a pre-approved plan sponsor determines that a § 403(b) pre-approved plan as adopted by an eligible employer may no longer satisfy the requirements of § 403(b) and the pre-approved plan sponsor does not or cannot correct the failure to satisfy § 403(b) under the self-correction or voluntary correction components of the Employee Plans Compliance Resolution System (EPCRS), the pre-approved plan sponsor must notify the eligible employer that the plan may no longer satisfy § 403(b), advise the eligible employer that adverse tax consequences may ensue, and inform the eligible employer about the availability of EPCRS. See Rev. Proc. 2013-12, 2013-4 IRB 313. This section 16.03 does not impose a requirement on a pre-approved plan sponsor to monitor an adopting employer’s plan’s compliance with the requirements of § 403(b),

but it provides that the pre-approved plan sponsor has a duty to inform the adopting employer if the sponsor has knowledge that the employer's plan may no longer satisfy those requirements.

SECTION 17. HOW TO APPLY FOR AN OPINION OR ADVISORY LETTER

.01 The Service will accept applications for opinion and advisory letters for § 403(b) pre-approved plans beginning June 28, 2013.

.02 A separate application is required for each adoption agreement that is offered for adoption by a prototype sponsor and each specimen plan of a volume submitter. For example, assume a pre-approved plan sponsor maintains three volume submitter specimen plans and two prototype plan basic plan documents. One of the volume submitter plans does not use an adoption agreement, another has only one adoption agreement, and the third has two adoption agreements. Assume that there are three adoption agreements that may be used with each prototype plan basic plan document. In this case, the pre-approved plan sponsor must submit 10 separate applications, four applications for the volume submitter plans and six applications for the prototype plans.

.03 An application for an opinion letter for a § 403(b) prototype plan may be filed by a prototype sponsor, by a mass submitter with respect to its mass submitter plan, or by a mass submitter on behalf of a word-for-word identical adopter or minor modifier of the mass submitter's plan. An application for an advisory letter for a § 403(b) volume submitter specimen plan may be filed by a volume submitter practitioner, by a mass submitter with respect to its mass submitter plan, or by a mass submitter on behalf of a word-for-word identical adopter of the mass submitter's plan. The Service is developing forms for these applications and will issue an announcement when the forms become available. Until such time as the forms are available, an application for an opinion or advisory letter for a § 403(b) prototype or specimen plan may be made by submitting the plan to the Service along with a completed and signed "Application for Approval of § 403(b) Pre-approved Plan," as provided in the appendix to this revenue procedure. The applicable user fee, determined under section 6.03 or section 6.04 of Rev. Proc. 2013-8, 2013-1 I.R.B. 237, as if the application were for a master and prototype plan or a § 401(a) volume submitter plan, respectively, must also be included with the application. The request is to be sent to:

Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA
P.O. Box 27063
McPherson Station
Washington, DC 20038

.04 In the case of an initial submission of a mass submitter's basic plan document or specimen plan under this revenue procedure, the mass submitter's application(s) must also be accompanied by applications for opinion or advisory letters filed on behalf of at least 30 word-for-word identical adopters of the basic plan

document or specimen plan, as applicable, unless the mass submitter has already satisfied this requirement in connection with a previous application under this revenue procedure involving another basic plan document or specimen plan, as applicable. After satisfying the 30 word-for-word identical adopter requirement, the mass submitter may submit additional applications on behalf of other pre-approved plan sponsors that wish to adopt a word-for-word identical plan, or, in the case of a § 403(b) prototype plan, a minor modifier plan. In addition, the mass submitter may then submit requests for opinion or advisory letters for its other § 403(b) prototype or specimen plans, as applicable, regardless of the number of identical adopters of such other plans. Until such time as the application forms are available, Appendix A must be completed, signed, and included with each application that is submitted on behalf of an identical adopter or minor modifier. The applicable user fee, determined under section 6.03 or 6.04 of Rev. Proc. 2013-8, as if the application were for a master and prototype plan or a § 401(a) volume submitter plan, respectively, must also be included with the application.

.05 Sample plan language to be used in drafting § 403(b) pre-approved plans is available from Employee Plans Rulings and Agreements. Such language is not automatically required in § 403(b) pre-approved plans, but should be used as a guide in drafting such plans. To expedite the review of their plans, pre-approved plan sponsors are encouraged to use the Service's sample plan language and to identify if such language is being used in their plan documents. The sample plan language may be downloaded from the Internet at the following address: http://www.irs.gov/pub/irs-tege/403b_lrm0313.pdf.

.06 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 Service of an 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.

.07 The Service may, at its discretion, require any additional information that it deems necessary in connection with its review of a § 403(b) pre-approved plan. If a letter requesting changes to plan documents is sent to the pre-approved plan sponsor or an authorized representative, a response to any questions raised or any material requested 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 be granted for good cause, as determined by the Service.

.08 The Service will return, without further action, plans that are not in substantial compliance with the approval requirements 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 an applicable Code section, contains conflicting provisions, or merely incorporates by reference an applicable Code section. The Service 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 Service within 30 days following the date the pre-approved plan sponsor is notified of the inadequacy.

.09 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 the Service determines that contrary published authority exists, failure to disclose and address the significant contrary authority may result in requests for additional information, which will delay action on the request.

.10 An opinion or advisory letter issued to a pre-approved plan sponsor is not transferable to any other entity. For this purpose, a change of employer identification number is deemed to be a change of entity.

.11 A change only in a pre-approved plan sponsor's name is not deemed to be a change of entity. However, the pre-approved plan sponsor must notify the Service in writing of the change in name and certify that it still meets the conditions for sponsorship described in section 11. No opinion or advisory letter will be issued and no user fee will be required for a mere change in name.

SECTION 18. WITHDRAWAL OF REQUESTS

.01 A pre-approved plan sponsor may withdraw its request for an opinion or advisory letter at any time prior to the issuance of such letter by notifying EP Rulings and Agreements in writing of such withdrawal. The notification is to be sent to the address in section 17.03. The pre-approved plan sponsor must also notify each eligible employer that has adopted the plan that the request has been withdrawn. Such an eligible employer will be deemed to have an individually designed plan.

.02 Even though a request is withdrawn, EP Rulings and Agreements will retain all correspondence and documents associated with that request and will not return them to the pre-approved plan sponsor. EP Rulings and Agreements may furnish its views concerning the approval status of the plan to EP Examinations, which has audit jurisdiction over the returns of the eligible employers that have adopted the plan.

SECTION 19. ABANDONMENT OF SPONSORSHIP OF § 403(b) PLANS

.01 A pre-approved plan sponsor must notify EP Rulings and Agreements in writing of a § 403(b) pre-approved plan that is no longer used by any eligible employer and which the pre-approved plan sponsor no longer intends to offer for adoption. Such written notification is to be sent to the address in section 17.03 and should refer to the file folder number appearing on the latest opinion or advisory letter issued.

.02 A pre-approved plan sponsor that intends to abandon a § 403(b) pre-approved plan that is in use by any adopting eligible employer must inform each adopting eligible employer that the form of the plan has been terminated, that the eligible employer's plan will become an individually designed plan (unless the eligible

employer adopts another § 403(b) pre-approved plan), and that any employer reliance will not continue if there is a change in § 403(b), the regulations, revenue rulings, or other guidance published by the Service. After so informing all adopting eligible employers, the pre-approved plan sponsor must notify EP Rulings and Agreements in accordance with section 19.01.

SECTION 20. REVOCATION

An opinion or advisory letter found to be in error or not in accord with the current views of the Service may be revoked. However, except in rare or unusual circumstances, such revocation will not be applied retroactively if the conditions set forth in sections 13 and 14 of Rev. Proc. 2013-4, 2013-1 I.R.B. 126 (disregarding references therein to §§ 7428 and 7476) are met. For this purpose, opinion and advisory letters will be given the same effect as rulings. Revocation may be effected by a notice to the pre-approved plan sponsor to which the letter was originally issued or by publication in the Internal Revenue Bulletin. The pre-approved plan sponsor should then notify each adopting eligible employer of the revocation as soon as possible. The content of the notification to each adopting eligible employer must explain how the revocation affects any reliance an adopting eligible employer has on the applicable opinion or advisory letter.

SECTION 21. RETROACTIVE REMEDIAL AMENDMENT

.01 Effective January 1, 2009, a contract (that is, an annuity contract, custodial account, or retirement income account) does not satisfy the requirements of § 403(b) unless the contract is maintained pursuant to a written plan that, in both form and operation, satisfies the requirements of the 2007 regulations. The transition relief in Notice 2009-3 sets forth conditions under which a § 403(b) plan will not be treated as failing to satisfy the requirements of § 403(b) during the 2009 calendar year. The relief in Notice 2009-3 applies solely with respect to the 2009 calendar year.

.02 This section 21 allows an eligible employer to retroactively correct defects in the form of its written § 403(b) plan (including any defects in documents incorporated by reference into the plan) in order to satisfy the written plan requirement in the 2007 regulations by timely adopting a § 403(b) pre-approved plan or by otherwise timely amending its plan. For this purpose, a defect in the form of a plan is a provision, or the absence of a required provision, that causes the plan to fail to satisfy the requirements of § 403(b). Under this remedial amendment provision, an eligible employer must amend its plan to the extent necessary to correct any form defects retroactive to the first day of the plan's remedial amendment period. For this purpose, "the first day of the plan's remedial amendment period" means the later of January 1, 2010, or the effective date of the plan.

.03 The form of a plan will be treated as satisfying the requirements of the 2007 regulations as of the first day of the plan's remedial amendment period if (1) on or before such day, the eligible employer adopts a written plan that is intended to satisfy the requirements of § 403(b), and (2) on or before the last day of the remedial

amendment period, the employer amends the plan, including any investment arrangements and any other documents incorporated by reference into the plan, to the extent necessary to correct any form defects retroactive to the first day of the remedial amendment period. The latter requirement is automatically satisfied (except to the extent any documents incorporated by reference into the plan must be amended) if the employer retroactively adopts a § 403(b) pre-approved plan with an opinion or advisory letter on or before the last day of the remedial amendment period. (An eligible employer that timely amends its plan is not required, but may nevertheless choose, to amend its plan retroactive to January 1, 2009. However, for purposes of Notice 2009-3 and whether the Service will treat the eligible employer's § 403(b) plan as satisfying the requirements of § 403(b) during the 2009 calendar year, only the plan that was adopted on or before December 31, 2009 and in effect on that date, will be taken into account.)

.04 For purposes of this section 21, a § 403(b) pre-approved plan with an opinion or advisory letter means a plan for which an opinion or advisory letter is issued pursuant to a timely filed application under this revenue procedure. An application for an opinion or advisory letter under this revenue procedure is timely filed if (a) the application is filed with the Service by April 30, 2014, or (b) for word-for-word identical adopters or minor modifiers of mass submitter plans, the opinion or advisory letter application for the mass submitter plan is filed with the Service April 30, 2014, irrespective of when the opinion or advisory letter application for the identical adopter or minor modifier plan is filed.

.05 The Service will announce, in subsequent guidance, the date that will be the last day of the remedial amendment period for all eligible employers for purposes of this section 21. The guidance will be published in conjunction with the issuance of opinion and advisory letters pursuant to timely filed applications under this revenue procedure. The Service expects that the announced date will provide every eligible employer a period in excess of one year from the date of the announcement during which to either adopt a pre-approved § 403(b) plan with an opinion or advisory letter or otherwise amend its plan. Persons wishing to comment on the expected subsequent guidance should submit comments in writing by October 28, 2013. Written comments may be sent to CC:PA:LPD:PR (Rev. Proc. 2013-22), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, D.C. 20044. Comments may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Rev. Proc.2013-22), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, D.C. Alternatively, comments may be submitted via the Internet to notice.comments@irs.counsel.treas.gov (Rev. Proc.2013-22).

.06 For purposes of this section 21, a "written plan that is intended to satisfy the requirements of § 403(b)" includes both a new plan that is intended to satisfy those requirements and an existing plan that has been amended with the intent of satisfying those requirements, including a plan that is based on the model plan language in Rev. Proc. 2007-71 and a plan that is an adoption of a § 403(b) pre-approved plan that has been timely submitted for an opinion or advisory letter under this revenue procedure.

SECTION 22. EFFECT ON OTHER DOCUMENTS

.01 The definition of “opinion letter” in section 3.05 of Rev. Proc. 2013-4 is modified to provide that an opinion letter also includes a written statement issued by Employee Plans Rulings and Agreements to a prototype plan sponsor as to the acceptability, for purposes of § 403(b), of the form of a § 403(b) prototype plan. See Rev. Proc. 2013-22.

.02 The definition of “advisory letter” in section 3.11 of Rev. Proc. 2013-4 is modified to provide that an advisory letter also includes a written statement issued by Employee Plans Rulings and Agreements to a volume submitter practitioner as to the acceptability, for purposes of § 403(b), of the form of a § 403(b) specimen plan. See Rev. Proc. 2011-49 and Rev. Proc. 2013-22.

.03 Rev. Proc. 2013-8 is modified to provide that the user fee for an application for an opinion or advisory letter for a § 403(b) pre-approved plan is the fee that would apply under section 6.03 or 6.04 of that revenue procedure if the application were for an opinion letter for a § 401(k) prototype plan or an advisory letter for a § 401(a) volume submitter plan.

SECTION 23. EFFECTIVE DATE

This revenue procedure is effective April 29, 2013.

SECTION 24. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have 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 1545–1520.

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 are in sections 9.03(3), 12, 16, 17, 18.01, 19, 20, and 21. This information is required to obtain advance approval from the Service of the form of prototype and similar plans. Employers will adopt these preapproved plans to satisfy requirements of 26 U.S.C. 403(b). This information will be used to enable the Service to make determinations that the form of a written plan satisfies the requirements of 26 U.S.C. 403(b) and is entitled to favorable tax treatment. The collections of information are voluntary, to obtain a benefit. The likely respondents are insurance companies, other financial institutions, law, actuarial and consulting firms, employee benefit practitioners, and nonprofit institutions.

The estimated total annual reporting and/or recordkeeping burden is 26,471 hours.

The estimated annual burden per respondent/recordkeeper varies from ½ to 2,000 hours depending on individual circumstances, with an estimated average of 3.56 hours. The estimated number of respondents and/or recordkeepers is 7444.

The estimated annual frequency of responses is on occasion.

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 authors of this revenue procedure are Angelique Carrington and James P. Flannery of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the Employee Plans taxpayer assistance answering service at 1-877-829-5500 (a toll-free number) or e-mail Ms. Carrington or Mr. Flannery at RetirementPlanQuestions@irs.gov.

APPENDIX

Application for Approval of § 403(b) Pre-approved Plan

1. Enter amount of user fee submitted: \$

2. Name of applicant:

a. EIN:

b. Address:

c. Phone:

3. Person to contact:

a. Phone:

b. Email address:

c. Power of attorney attached?

4. Type of applicant (check one):

a. Prototype sponsor

b. Prototype mass submitter

c. Volume submitter practitioner

d. Volume submitter mass submitter

e. Identical adopter of mass submitter plan

f. Minor modifier of mass submitter prototype plan

5. Form of plan (check one);

a. Prototype plan

b. Volume submitter specimen plan without adoption agreement

c. Volume submitter specimen plan with adoption agreement

6. If the plan is a prototype plan, indicate whether the plan is a (check one):

a. Standardized plan

b. Nonstandardized plan

7.a. Prototype plan basic plan document number (Each of the prototype sponsor's or prototype mass submitter's basic plan documents must be assigned a 2-digit number, starting with 01. Enter the number you have assigned to the basic plan document that is associated with the adoption agreement for which this application is filed.):

7.b. Prototype plan adoption agreement number (Each different adoption agreement associated with a single basic plan document must be assigned a 3-digit number, beginning with 001. Enter the number you have assigned to the adoption agreement for which this application is filed.):

7.c. Volume submitter specimen plan number (Each of the volume submitter practitioner's or volume submitter mass submitter's specimen plans must be assigned a 2-digit number, starting with 01. Enter the number you have assigned to the specimen plan for which this application is filed.):

7.d. Volume submitter plan adoption agreement number, if applicable (Each different adoption agreement associated with a single specimen plan must be assigned a 3-digit number, beginning with 001. Enter the number you have assigned to the adoption agreement for which this application is filed.):

8. If 4.e. or 4.f. is checked, complete the following information for the mass submitter's plan on which this application is based, to the extent the information is available when this application is filed:

a. Name of mass submitter:

b. File folder number:

c. Letter serial number:

d. Date of letter:

e. Basic plan document number or specimen plan number (if b, c, and d not available):

f. Adoption agreement number, if applicable (if b, c, and d not available)

9. Investment arrangement(s) permitted under the prototype or specimen plan:

a. Annuity contracts issued by an insurance company

b. Custodial accounts

c. Retirement income account

10. Type(s) of contributions permitted under the prototype or specimen plan:

a. Elective deferrals (other than Roth)

b. Roth elective deferrals

c. After-tax employee contributions

d. Matching contributions

e. Other nonelective employer contributions

11. Are the following documents included with the application:

a. Basic plan document or specimen plan?

b. Adoption agreement (if the application is for a prototype plan or for a specimen plan that uses an adoption agreement)?

12. If 4.a. or 4.c. is checked, do you expect at least 30 eligible employers to adopt your § 403(b) prototype plan basic plan documents(s) or volume submitter specimen plan(s)?

13. If 4.b. or 4.d. is checked, are applications on behalf of at least 30 prototype sponsors or volume submitters who are sponsoring the identical basic plan document or specimen plan included with this application?

14. If the answer to 13. is "no," enter the number of the basic plan document or specimen plan for which the requirement described in 13. is met:

15. Applicant's signature under penalties of perjury (required if 4a, b, c, or d checked):

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

Signature:

Title:

Date:

16. Prototype sponsor's or volume submitter's and mass submitter's signatures under penalties of perjury (required if 4e or 4f checked):

Under penalties of perjury, I declare that the prototype sponsor or volume submitter practitioner identified in line 2 of this application has adopted a prototype plan or a specimen plan that is identical to the mass submitter plan identified in line 7 or, in the case of a prototype plan, is a minor modifier of the mass submitter plan identified in line 7.

Prototype sponsor's or volume submitter's signature:

Title:

Date:

Mass submitter's signature:

Title:

Date: