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

Rev. Proc. 2000–20

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SECTION 1. PURPOSE

.01 This revenue procedure revises and combines the Service's master and prototype (M&P) and regional prototype plan programs into a unified program for the pre-approval of pension, profit-sharing, and annuity plans. This revenue procedure opens this unified program, on April 7, 2000, for mass submitter plans and May 8, 2000**,** for non-mass submitter plans, to allow sponsors to obtain opinion letters relating to the qualification of their plans which take into account all of the changes in the qualification requirements made by the following:

1 The Uruguay Round Agreements Act, Pub. L. 103–465 (GATT);

2 The Small Business Job Protection Act of 1996, Pub. L. 104–188 (SBJPA) (including § 414(u) of the Internal Revenue Code (Code) and the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103–353 (USERRA));

3 The Taxpayer Relief Act of 1997, Pub. L. 105–34 (TRA '97); and

4 The Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206 (RRA).

These acts are hereinafter referred to collectively as GUST.

.02 This revenue procedure also opens the Service's volume submitter program on March 8, 2000, to allow practitioners to obtain GUST advisory letters for their volume submitter specimen plans.

.03 At the present time, employers may not obtain determination letters that consider all of the requirements of GUST. However, the Service expects to allow employers to obtain complete GUST letters in the near future.

SECTION 2. BACKGROUND AND GENERAL INFORMATION

.01 Rev. Proc. 89–9, 1989–1 C.B. 780, as modified by Rev. Proc. 90–21, 1990–1 C.B. 499, Rev. Proc. 91–66, 1991–2 C.B. 870, Rev. Proc. 92–41, 1992–21 I.R.B. 23, Rev. Proc. 93–9, 1993–1 C.B. 474, Rev. Proc. 93–10, 1993–1 C.B. 476, Rev. Proc. 93–12, 1993–1 C.B. 479, Rev. Proc. 94–13, 1994–1 C.B. 566, and Rev. Proc. 95–12, 1995–1 C.B. 508, sets forth the procedures of the Service on the issuance of opinion letters regarding the acceptability of the form of M&P plans.

.02 Rev. Proc. 89–13, 1989–1 C.B. 801, as modified by Rev. Proc. 90–21, Rev. Proc. 91–66, Rev. Proc. 92–41, Rev. Proc. 93–9, Rev. Proc. 93–10, Rev. Proc. 93–12, Rev. Proc. 94–13, Rev. Proc. 95–12, and Rev. Proc. 95–42, 1995–2 C.B. 411, sets forth the procedures of the Service on the issuance of notification letters regarding the acceptability of the form of regional prototype plans.

.03 Rev. Proc. 93–10 modified both Rev. Proc. 89–9 and Rev. Proc. 89–13 to provide for nonstandardized safe harbor plans.

.04 Rev. Proc. 97–41, 1997–2 C.B. 489, as modified by Rev. Proc. 98–14, 1998–4 I.R.B. 22, and Rev. Proc. 99–23, 1999–16 I.R.B. 5, provided a remedial amendment period under § 401(b) for amending plans for certain changes in the plan qualification requirements made by GUST. The GUST remedial amendment period ends on the last day of the first plan year beginning on or after January 1, 2000.

.05 Rev. Proc. 98–14, as modified by Rev. Proc. 98–53, 1998–53 I.R.B. 9, allowed employers, sponsors of M&P and regional prototype plans, and volume submitter practitioners to apply for determination, opinion, notification, and advisory letters that take into account most of the recent changes in law affecting plan qualification, but excluding changes under SBJPA that are effective after 1998 (that is, the safe harbors in § 401(k)(12) and § 401(m)(11) for satisfying the nondiscrimination requirements of §§ 401(k) and 401(m), and the repeal of the combined plan limitations under § 415(e)).

.06 Announcement 99–50, 1999–19 I.R.B. 1, announced that the Service was temporarily discontinuing acceptance of applications for opinion and notification letters for M&P and regional prototype plans until further notice.

.07 Rev. Proc. 2000–6, 2000–1 I.R.B. 187, contains the Service's general procedures for employee plan determination letter requests and requests for advisory letters

for volume submitter specimen plans.

.08 Rev. Proc. 2000–8, 2000–1 I.R.B. 230, contains the Service's procedures regarding the payment of user fees for determination letter and similar requests.

SECTION 3. OVERVIEW OF THE REVENUE PROCEDURE

.01 In General - The Service believes that it is no longer necessary or practical for it to maintain separate prototype plan approval programs for the institutional sponsoring organizations, such as banks and insurance companies, that were eligible to sponsor M&P plans under Rev. Proc. 89–9, and the practitioner sponsors that were eligible to sponsor regional prototype plans under Rev. Proc. 89–13. Therefore, this revenue procedure revises and combines Rev. Proc. 89–9, Rev. Proc. 89–13, and Rev. Proc. 93–10 to establish a unified program that will be available to both institutional and practitioner sponsors that seek approval of master or prototype plans. Under this unified procedure, sponsors may request opinion letters that take into account all the requirements of GUST, including the requirements of SBJPA that are effective in plan years beginning on or after January 1, 1999.

.02 Organization of Revenue Procedure - This revenue procedure generally is patterned after and follows the organization of Rev. Proc. 89–9.

.03 Modifications to Rev. Proc. 89–9 and Rev. Proc. 89–13 Incorporated – Since Rev. Proc. 89–9 and Rev. Proc. 89–13 were published, they have been modified several times. Among the significant modifications were changes to the requirements for standardized plans that were needed to reflect the regulations under §§ 401(a)(4) and 410(b). In general, this revenue procedure incorporates these modifications.

.04 Unified Program - Under Rev. Proc. 89–9 and Rev. Proc. 89–13, different requirements applied to M&P plans and regional prototype plans. Under the unified program in this revenue procedure, one set of requirements and procedures will apply to all sponsors. In general, this revenue procedure provides that any options that were available to sponsors or employers under either Rev. Proc. 89–9 or Rev. Proc. 89–13 will now be available to all sponsors or employers under the new program. For example, under Rev. Proc. 89–9, M&P plan sponsors were allowed to sponsor paired defined benefit and defined contribution plans, while under Rev. Proc. 89–13, regional prototype plan sponsors could sponsor paired defined contribution plans but not defined benefit plans that were paired with a defined contribution plan. Under this revenue procedure, all sponsors may sponsor paired defined benefit and defined contribution plans.

.05 Retention of M&P Terminology - Because sponsors will continue to be eligible to sponsor both master plans and prototype plans, plans that may be sponsored under this revenue procedure are referred to as M&P plans. Where appropriate, references in this revenue procedure to M&P plans include plans that were regional prototype plans under Rev. Proc. 89–13. Likewise, where appropriate, references in this revenue procedure to opinion letters include notification letters that were issued under Rev. Proc. 89–13.

.06 New Sponsor Definition - Under Rev. Proc. 89–9, sponsoring organization was defined to include banks, insurance companies, and certain other institutions or associations. Rev. Proc. 89–9, as modified by Rev. Proc. 90–21, also included restrictions and additional requirements regarding the types of M&P plans that could be sponsored by trade or professional associations. Under Rev. Proc. 89–13, sponsor was defined as any person with an established place of business in the United States which could establish that at least 30 employers would adopt its approved regional prototype plan. In general, this revenue procedure defines sponsor using the definition in Rev. Proc. 89–13. Any person that would be eligible to sponsor a plan under Rev. Proc. 89–9 or Rev. Proc. 89–13 will be eligible to sponsor plans under this revenue procedure, provided at least 30 employers are reasonably expected to adopt a basic plan document of the sponsor within the 12-month period following its approval. In addition, any person with an established place of business in the United States may sponsor an M&P plan as a word-for-word identical adopter or minor modifier adopter of an M&P plan of a mass submitter, regardless of the number of employers that are expected to adopt the plan. As a result of this new sponsor definition, the restrictions and additional requirements that formerly applied to M&P plans sponsored by trade or professional associations have been eliminated.

.07 Sponsor Responsibilities - This revenue procedure provides that by filing an application for an opinion letter, or by having an application filed on its behalf by a mass submitter, a sponsor agrees to comply with the requirements that apply to sponsors under the procedure. For example, under this procedure, sponsors must make reasonable and diligent efforts to ensure that adopting employers amend their plans when necessary. Failure to comply with these requirements may result in the loss of eligibility to sponsor M&P plans and the revocation of opinion letters that have been issued to the sponsor. This revenue procedure simplifies the record keeping requirements that applied to regional prototype plan sponsors under Rev. Proc. 89–13 and applies these simplified requirements to all sponsors. Under this revenue procedure, every sponsor will be required to maintain or have maintained on its behalf, and to provide to the Service when requested, a list of the employers that have adopted its plan, but sponsors will not have to provide the annual notices that were required by Rev. Proc. 89–13. Finally, this revenue procedure provides that in cases where a sponsor reasonably concludes that an employer's M&P plan may no longer be a qualified plan and the sponsor does not or cannot submit a request to correct the qualification failure under the Service's Employee Plans Compliance Resolution System (EPCRS), it is incumbent on the sponsor to notify the employer that the plan may no longer be qualified, advise the employer that adverse tax consequences may result from loss of the plan's qualified status, and inform the employer about the availability of EPCRS.

.08 New Mass Submitter Definition - Both Rev. Proc. 89–9 and Rev. Proc. 89–13 provided procedures for simplified processing and expedited approval of mass submitter plans. Under Rev. Proc. 89–9, a mass submitter was defined as any person that submitted applications on behalf of at least 10 sponsoring organizations that were adopting the identical plan. Under Rev. Proc. 89–13, a mass submitter was defined as any person that could establish that at least 50 unaffiliated sponsors would adopt the identical plan.

In general, this revenue procedure requires that at least 30 unaffiliated adopting sponsors adopt a basic plan document of the mass submitter, but it also provides a grandfather rule so that any person that received an opinion letter as a mass submitter under Rev. Proc. 89–9 will generally qualify as a mass submitter under this revenue procedure.

.09 Changes to General M&P Plan Requirements - This revenue procedure makes several changes and clarifications to the requirements that apply to all M&P plans. Significant among these are the following:

1 Rev. Proc. 89–9 and Rev. Proc. 89–13 prohibited the issuance of opinion and notification letters for plans that contain or may contain multi-tiered benefit structures. This prohibition has been reformulated as a general requirement that the allocation or benefit formula in a nonstandardized M&P plan must satisfy the following uniformity requirements of the regulations under § 401(a)(4) pertaining to safe harbor plans. In the case of a nonstandardized defined contribution plan, the allocation formula must be a uniform allocation formula, within the meaning of § 1.401(a)(4)–2(b)(2) of the regulations, or a uniform points allocation formula, within the meaning of § 1.401(a)(4)–2(b)(3)(i)(A). In the case of a nonstandardized defined benefit plan, the benefit formula must satisfy each of the uniformity requirements of § 1.401(a)(4)–3(b)(2). In addition, each nonstandardized plan must give the employer the option to select total compensation as the compensation to be used in determining allocations or benefits and each nonstandardized defined benefit plan must automatically or by option allow the adopting employer to satisfy one of the design-based safe harbors described in § 1.401(a)(4)–3(b)(3), (4), and (5). (Of course, standardized plans and nonstandardized safe harbor plans continue to be required to satisfy design-based safe harbors described in the regulations under § 401(a)(4).) Thus, for example, an M&P plan, other than a uniform points defined contribution plan, may provide for disparity in the rates of employer contributions allocated to participants' accounts provided the plan satisfies § 401(l) in form. Exceptions to the uniformity requirements are provided for Davis-Bacon plans, plans that would fail to satisfy the requirement only because of the plans' top-heavy provisions, and plans that have continued to apply certain limitations under the Code that were repealed by GUST.

2 The procedure allows plans that include provisions designed to satisfy the safe harbor requirements of § 401(k)(12) to provide that the safe harbor matching or nonelective contribution requirement will be satisfied in another plan. However, this option is not available in standardized plans, other than paired defined contribution plans whose terms satisfy the requirements of Notice 98–52, 1998–46 I.R.B. 16, as modified by Notice 2000–3, 2000–4 I.R.B. 413.

3 The procedure clarifies the circumstances under which an adopting employer of an M&P plan must sign a new adoption agreement and provides that this requirement may be satisfied by an electronic signature.

.10 Changes to Standardized Plan Requirements and Employer Reliance - This revenue procedure makes several changes and clarifications with respect to employer reliance and to the requirements that apply to standardized plans. Significant among these are the following:

1 The procedure provides an exception from the requirement that a standardized plan benefit all nonexcludable employees of the employer. This exception will allow the employer to avail itself of the rule in § 410(b)(6)(C), relating to the minimum coverage requirements for a plan in the transition period following a merger, acquisition, or similar transaction;

2 The procedure provides that an employer may rely on an opinion letter for a standardized defined contribution plan even though the employer has maintained another defined contribution plan(s) covering some of the same participants, provided certain conditions are met; and

3 The procedure provides that an employer may rely on an opinion letter for a standardized defined contribution plan that is first effective on or after the effective date of the repeal of § 415(e) even though the employer has maintained a defined benefit plan(s) covering some of the same participants, provided the defined benefit plan(s) has been terminated prior to the effective date of the standardized defined contribution plan.

.11 Provisions Related to GUST - Several provisions in this revenue procedure relate specifically to the restatement of plans for GUST. They provide that:

1 Sponsors may submit requests for opinion letters that take into account all of the requirements of GUST beginning May 8, 2000. Prior to that time, the Service will not accept requests for opinion letters. However, mass submitters and national sponsors may request opinion letters that take into account all of the requirements of GUST beginning April 7, 2000. The Service will begin issuing advisory letters for volume submitter specimen plans which take into account all of the requirements of GUST beginning March 8, 2000;

2 In general, all M&P adoption agreements must contain elective provisions (with or without default provisions) that will allow adopting employers to conform the terms of their M&P plans to the manner in which the employers' plans were operated during the transition period between the earliest effective date under GUST and when the employers adopt their GUST-restated plans. These elective provisions may be contained in a separate "snap-off" section of the adoption agreement. The M&P plan sponsor may remove this snap-off section from the adoption agreements it provides to adopting employers that are not using the M&P plan to retroactively restate a plan for GUST;

3 In general, M&P plans must be restated for GUST and employers must sign new adoption agreements, in part so that they may conform their adoption agreement choices to the operation of their plans during the GUST transition period;

4 An M&P plan, including a standardized plan, may give an employer the option to elect to continue to apply the family aggregation rules of § 401(a)(17)(A) and § 414(q)(6) (both as in effect for plan years beginning before January 1, 1997) in plan years beginning after December 31, 1996, to the extent such election conforms to the plan's operation. Likewise, an M&P plan, including a standardized plan, may give an employer the option to elect to continue to apply the combined plan limit of § 415(e) (as in effect for limitation years beginning before January 1, 2000) in limitation years beginning after December 31, 1999, to the extent such

election conforms to the plan's operation. An M&P plan may not allow an employer to elect to continue to apply the pre-GUST family aggregation rules or the combined plan limit of § 415(e) in years beginning on or after the date the employer adopts its GUST-restated plan. An employer that makes either of these elections in a standardized plan will not be able to rely on the opinion letter without a determination letter with respect to the qualification of its plan for the years to which the election applies; and

5 An opinion letter will not be issued for an M&P plan that permits, in any plan year beginning on or after the date the employer adopts its GUST-restated plan, the use of a testing method (that is, prior year or current year) with respect to the ACP test under the plan that is different than the testing method with respect to the ADP test under the plan. This restriction does not apply with respect to plan years beginning before the date the employer adopts its GUST-restated plan.

.12 Remedial Amendment Period - This revenue procedure includes a procedure for extending the remedial amendment period for a plan so that employers will have sufficient time after the Service issues an opinion letter to adopt the approved M&P plan, provided the M&P plan is submitted for an opinion letter under this procedure by December 31, 2000. This procedure also applies to volume submitter specimen plans that are submitted by December 31, 2000, for advisory letters that take into account all of the requirements of GUST.

.13 Other Changes - This revenue procedure provides for reduced user fees for applications for advisory letters for volume submitter specimen plans in cases where at least 30 word-for-word identical specimen plans will be submitted.

SECTION 4. DEFINITIONS

.01 Master Plan - A "master plan" is a plan (including a plan covering self-employed individuals) that is made available by a sponsor (see section 4.09) for adoption by employers and for which a single funding medium (for example, a trust or custodial account) is established, as part of the plan, for the joint use of all adopting employers. A master plan consists of a basic plan document, an adoption agreement (see sections 4.03 and 4.04), and, unless included in the basic plan document, a trust or custodial account document (see section 4.05).

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

.03 Basic Plan Document - A "basic plan document" is the portion of the plan containing all the non-elective provisions applicable to all adopting employers. No options (including blanks to be completed) may be provided in the basic plan document, except as provided in section 16.031 of this revenue procedure regarding flexible plans.

.04 Adoption Agreement - An "adoption agreement" is the portion of the plan containing all the options that may be selected by an adopting employer. (But see section 4.05.)

.05 Trust or Custodial Account Document (*Note: This definition does not apply if the basic plan document includes a trust or custodial account agreement the provisions of which apply to all adopting employers.*) - A "trust or custodial account document" is the portion of an M&P plan that contains the trust agreement or custodial account agreement and includes provisions covering such matters as the powers and duties of trustees, investment authority, and the kinds of investments that may be made. Except as provided in section 5.10 and below, all provisions of the trust or custodial account document must be applicable to all adopting employers and no options (including blanks to be completed) may be provided in the trust or custodial account document. With respect to prototype plans, a sponsor or mass submitter may provide up to five separate trust or custodial account documents that are intended for use with any single basic plan document. Thus, for example, several employers that adopt a sponsor's standardized M&P plan may have plans with different trust or custodial account documents. In addition, a sponsor or mass submitter may provide a trust or custodial account document, designated for use only by adopters of nonstandardized plans or nonstandardized safe harbor plans, which provides for blanks to be completed with respect to administrative provisions of the trust or custodial account agreement. Finally, an M&P plan may provide for the use of any other trust or custodial account document that has been approved by the Service for use with the plan as a qualified trust or as a custodial account treated as a qualified trust. Any trust or custodial account document (including one to be used by adopters of standardized plans) may provide for blanks to be completed that merely enable the adopting employer to specify the names of the plan, employer, trustee or custodian, plan administrator and other fiduciaries, the trust year, and the name of any pooled trust in which the plan's trust will participate.

.06 Opinion Letter - An "opinion letter" is a written statement issued by the Service to a sponsor or mass submitter under this revenue procedure (or, where appropriate in the context, to a sponsoring organization under Rev. Proc. 89–9) as to the acceptability of the form of an M&P plan and any related trust or custodial account under §§ 401(a), 403(a), and 501(a).

.07 Notification Letter - A "notification letter" is a written statement issued by the Service to a regional prototype plan sponsor or mass submitter under Rev. Proc. 89–13 as to the acceptability of the form of an M&P plan and any related trust or custodial account under §§ 401(a), 403(a), and 501(a).

.08 TRA '86 Opinion or Notification Letter - A "TRA '86 opinion or notification letter" is a favorable opinion or notification letter issued by the Service on or after January 4, 1990, under Rev. Proc. 89–9 or Rev. Proc. 89–13, which considers the effect of the Tax Reform Act of 1986, Pub. L. 99–514 (TRA '86).

.09 Sponsor - A "sponsor" is any person that (1) has an established place of business in the United States where it is accessible during every business day and (2) represents to the Service that it has at least 30 employer-clients each of which is reasonably expected to adopt the sponsor's basic plan document and one or

more of the adoption agreements associated with that basic plan document within the 12-month period following the issuance of opinion letters under this revenue procedure.

A sponsor may submit any number of adoption agreements with the basic plan document provided at least 30 employers are reasonably expected to adopt the same basic plan document within the 12-month period following the issuance of opinion letters. After representing to the Service that at least 30 employers are reasonably expected to adopt a basic plan document, the sponsor may submit other basic plan documents and adoption agreements, regardless of the number of employers that are expected to adopt such other plans. The Service reserves the right at any time to request from the sponsor a list of the sponsor's clients that have adopted or are expected to adopt the sponsor's M&P plans, including the clients' business addresses and employer identification numbers.

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

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

.10 Mass Submitter - A "mass submitter" is any person that (1) has an established place of business in the United States where it is accessible during every business day and (2) submits applications on behalf of at least 30 unaffiliated sponsors each of which is sponsoring, on a word-for-word identical basis, the same basic plan document and one or more of the adoption agreements associated with that basic plan document. A flexible plan (as defined in section 16.031) which is adopted by a sponsor will be considered a word-for-word identical plan. A mass submitter may submit an application on its own behalf as one of the 30 unaffiliated sponsors. For purposes of this definition, affiliation is determined under § 414(b) and (c). Additionally, the following will be considered to be affiliated: any law, accounting, consulting firm, etc., with its partners, members, associates, etc. Once the mass submitter has submitted applications on behalf of 30 unaffiliated sponsors with respect to any basic plan document, it will be treated as a mass submitter with respect to all the other basic plan documents and associated adoption agreements for which it requests opinion letters as a mass submitter under section 16.01, regardless of the number of identical adopters of such other plans.

Notwithstanding the above, any person that received a favorable TRA '86 opinion letter for a plan as a mass submitter under Rev. Proc. 89–9 will continue to be treated as a mass submitter if it submits applications on behalf of at least 10 sponsors (regardless of affiliation) each of which is sponsoring, on a word-for-word identical basis, the same basic plan document and one or more of the adoption agreements associated with that basic plan document. Once the mass submitter has submitted applications on behalf of 10 sponsors with respect to any basic plan document, it will be treated as a mass submitter with respect to all the other basic plan documents and associated adoption agreements for which it requests opinion letters as a mass submitter under section 16.01, regardless of the number of identical adopters of such other plans.

.11 National Sponsor - A "national sponsor" is a sponsor that has either (a) 30 or more adopting employers in each of 30 or more states (treating, for this purpose, the District of Columbia as a state) or (b) 3000 or more adopting employers. The determination as to whether there are 3000 or more adopting employers or 30 or more adopting employers in each of 30 or more states may be made on any one date during the 12 month period ending on the date that is 60 days after the effective date of this revenue procedure. For this purpose, an adopting employer is any employer that has adopted any plan of the sponsor that has a TRA '86 opinion or notification letter.

.12 Standardized Plan - A "standardized plan" is an M&P plan that meets the following requirements:

1 The provisions governing eligibility and participation are such that the plan by its terms must benefit all employees described in section 5.16 (regardless of whether any employer is treated as operating separate lines of business under § 414(r)) except those that may be excluded under § 410(a)(1) or (b)(3). The adoption agreement may provide options as to whether some or all of the employees described in § 410(a)(1) or (b)(3) are to be excluded, provided that the criteria for excluding employees described in § 410(a)(1) applies uniformly to all employees. A standardized plan generally may not deny an accrual or allocation to an employee eligible to participate merely because the employee is not an active employee on the last day of the plan year or has failed to complete a specified number of hours of service during the year. However, the plan may deny an allocation or accrual to an employee who is eligible to participate if the employee terminates service during the plan year with not more than 500 hours of service and is not an active employee on the last day of the plan year.

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

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

4 Unless the plan is a target benefit plan or a § 401(k) and\or § 401(m) plan, the plan must, by its terms, satisfy one of the design based safe harbors described in § 1.401(a)(4)–2(b)(2) (taking into account § 1.401(a)(4)–2(b)(4)) or § 1.401(a)(4)–3(b)(3), (4), or (5) (taking into account § 1.401(a)(4)–3(b)(6)). (See sections 5.18 and 8.03 for rules regarding § 401(k) and § 401(m) plans and target benefit plans.)

Notwithstanding this requirement, a standardized plan may give an employer the option to elect to continue to apply the family aggregation rules of § 401(a)(17)(A) and § 414(q)(6) (both as in effect for plan years beginning before January 1, 1997) in plan years beginning after December 31, 1996, to the extent such election conforms to the plan's operation. Likewise, a standardized plan may give an employer the option to elect to continue to apply the combined plan limit of § 415(e) (as in effect for limitation years beginning before January 1, 2000) in limitation years beginning after December 31, 1999, to the extent such election conforms to the plan's operation. However, a standardized plan may not give an employer the option to elect to continue to apply the pre-GUST family aggregation rules or the combined plan limit of § 415(e) in years beginning on or after the date the employer adopts its GUST-restated plan. In addition, a plan may not continue to apply the combined plan limit of § 415(e) to the extent such application would cause the plan to fail to satisfy § 401(a) (see Q&A 8 of Notice 99–44, 1999–35 I.R.B. 326). An employer that makes either of these elections will not be able to rely on the opinion letter without a determination letter with respect to the qualification of its plan for the years to which the election applies.

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

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

A plan will not fail to satisfy the coverage requirement of subsection .121 merely because the plan provides, either as the result of an elective provision or by default in the absence of an election to the contrary, that individuals who become employees, within the meaning of section 5.16, as the result of a "§ 410(b)(6)(C) transaction" will be excluded from eligibility to participate in the plan during the period beginning on the date of the transaction and ending on the last day of the first plan year beginning after the date of the transaction. A "§ 410(b)(6)(C) transaction" is an asset or stock acquisition, merger, or other similar transaction involving a change in the employer of the employees of a trade or business.

.13 Paired Plans - "Paired plans" are either a combination of two or more defined contribution standardized plans or a combination of one or more defined contribution standardized plans and one defined benefit standardized plan (for example, a money purchase pension plan, a profit-sharing plan and a unit benefit or flat benefit pension plan), so designed that if any single plan, or combination of plans, is adopted by an employer, each plan by itself, or the plans together, will meet the nondiscrimination rules set forth in § 401(a)(4), the contribution and benefit limitations set forth in § 415, and the top-heavy provisions set forth in § 416. Paired plans must have the same sponsor. In addition, only one of the paired plans that an employer adopts may provide for disparity in contributions or benefits that is permitted under § 401(l). If one of the paired plans is a defined benefit plan that includes a final pay limitation as described in § 401(a)(5)(D), then the paired defined contribution plan(s) may not provide for disparity in contributions.

.14 Nonstandardized Safe Harbor Plan - A "nonstandardized safe harbor plan" is an M&P plan that would be a standardized plan except that the plan:

1 is not required, by its terms, to benefit all nonexcludable employees and may, in the case of a defined contribution plan, condition allocations on employment on the last day of the plan year and/or the completion of up to 1000 hours of service during the plan year;

2 may use a § 414(s) definition of compensation for determining contributions or benefits that must be tested for nondiscrimination under § 1.414(s)–1(d); and

3 may provide past service credit that fails to meet the safe harbor in § 1.401(a)(4)–5(a)(3).

The opinion letter issued for the plan will state that the plan is a nonstandardized safe harbor plan.

.15 Nonstandardized Plan - A "nonstandardized plan" is an M&P plan that is neither a standardized plan nor a nonstandardized safe harbor plan.

.16 Volume Submitter Plan, Specimen Plan, and Advisory Letter - See section 9 of Rev. Proc. 2000–6.

SECTION 5. PROVISIONS REQUIRED IN EVERY M&P PLAN

.01 Sponsor Amendments - M&P plans must provide a procedure for sponsor amendment, so that changes in the Code, regulations, revenue rulings, other statements published by the Internal Revenue Service, or corrections of prior approved plans may be applied to all employers who have adopted the plan. Sponsors must make reasonable and dilligent efforts to ensure that adopting employers of the sponsor's M&P plan have actually received and are aware of all plan amendments and that such employers complete and sign new adoption agreements when necessary. See section 5.14. Failure to comply with this requirement may result in the loss of eligibility to sponsor M&P plans and the revocation of opinion letters that have been issued to the sponsor.

.02 Employer Amendments - An employer that amends any provision of an approved M&P plan including its adoption agreement (other than to change the choice of options, if the plan permits or contemplates such a change) or an employer that chooses to discontinue participation in a plan as amended by its sponsor and does not substitute another approved M&P plan is considered to have adopted an individually designed plan. However, this rule does not apply in the case of amendments permitted under section 5.07 and 5.11 and model amendments published by the Service which specifically provide that their adoption by an adopter of an M&P plan will not cause such plan to be treated as individually designed. An employer that amends an M&P plan because of a waiver of the minimum funding requirement under § 412(d) will also be considered to have an individually designed plan. The procedures stated in Rev. Proc. 2000–6 relating to the issuance of determination letters for individually designed plans will then apply to the plan as adopted by the employer.

.03 Uniform Allocation or Benefit Formula in Nonstandardized Plan - In general, the allocation or benefit formula in a nonstandardized M&P plan must satisfy the following uniformity requirements of the regulations under § 401(a)(4) pertaining to safe harbor plans. In the case of a nonstandardized defined contribution plan, the allocation formula must be a uniform allocation formula, within the meaning of § 1.401(a)(4)–2(b)(2), or a uniform points allocation formula, within the meaning of §

1.401(a)(4)–2(b)(3)(i)(A) (in each case taking into account § 1.401((a)(4)–2(b)(4)). In the case of a nonstandardized defined benefit plan, the benefit formula must satisfy each of the uniformity requirements of § 1.401(a)(4)–3(b)(2) (taking into account § 1.401(a)(4)–3(b)(6), except the requirement to satisfy §1.401(a)(4)–13(c)). (See sections 4.12, 4.14, and 8.03 for requirements that apply to standardized plans, nonstandardized safe harbor plans, and target benefit plans, respectively. See subsections .04 and .05 for additional requirements that apply to nonstandardized plans.) Thus, an M&P plan generally may not provide different allocation rates or different benefit formulas for different employees, such as two percent of compensation for salaried employees and one percent for hourly employees. However, an M&P plan, other than a uniform points defined contribution plan, may provide for disparity in the rates of employer contributions allocated to participants' accounts or in the rates of employer-provided benefits provided the plan satisfies § 401(l) in form. The uniformity requirements described in this paragraph do not apply to plans under which the amount of contributions or benefits is determined pursuant to requirements of the Davis-Bacon Act, 40 U.S.C. 276(a). In addition, the uniformity requirements do not apply to the extent that failure to satisfy the requirements results from the plan's top-heavy provisions or from the continued application under the plan of the pre-GUST family aggregation rules or the combined plan limit of § 415(e). However, an M&P plan may not continue to apply the pre-GUST family aggregation rules or the combined plan limit of § 415(e) in years beginning on or after the date the employer adopts its GUST-restated plan. In addition, a plan may not continue to apply the combined plan limit of § 415(e) to the extent such application would cause the plan to fail to satisfy § 401(a) (see Q&A 8 of Notice 99–44, 1999–35 I.R.B. 326).

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

.05 Automatic or Optional Safe Harbor Provisions in Nonstandardized Defined Benefit Plans - Each nonstandardized M&P defined benefit plan must automatically or by option allow the adopting employer to satisfy one of the design-based safe harbors described in § 1.401(a)(4)–3(b)(3), (4), and (5) (taking into account § 1.401(a)(4)–3(b)(6)).

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

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

.08 Defined Contribution § 415 Aggregation - Plan language must be incorporated that aggregates all defined contribution M&P plans to satisfy § 415(c) and (f). Sample language provided in the Listing of Required Modifications may be obtained by writing to the Internal Revenue Service, Employee Plans Rulings and Agreements, Washington, D.C. 20224, Attention T:EP:RA:T:ICU. Requests for sample language may also be faxed to (202) 622-6199 (not a toll-free call). As soon as possible after February 7, 2000, the sample language will also be available on the Internet at the following address: **http://www.irs.gov**. The Listing of Required Modifications can be found under "Tax Info for Business."

.09 Top-heavy Requirements - Except to the extent described in section 7.03, relating to paired plans, each plan must either provide that all the additional requirements applicable to top-heavy plans (described in § 416) apply at all times or provide that such requirements apply automatically if the plan is top-heavy regardless of how the adoption agreement is completed. In any case where the latter option is chosen, all the requirements for determining whether the plan is top-heavy must be included in the plan. (See Questions T-35 and T-36 of § 1.416-1.)

.10 Additional Top-Heavy Minimums to Satisfy § 415(e) - Each plan must provide automatically or by optional provisions, with respect to years beginning before January 1, 2000, the additional minimums described in § 416(h)(2)(A).

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

ment merely involves the specification of the names of the plan, employer, trustee or custodian, plan administrator and other fiduciaries, the trust year, or the name of any pooled trust in which the plan's trust will participate.

.12 Effective Dates of M&P Plan Provisions Relating to GUST Changes - During the transition period between the effective dates of GUST and the date plans are amended for GUST, plans have in some cases been permitted, and in some cases required, to be operated in a manner that is inconsistent with the plans' terms but consistent with changes in the qualification requirements made by GUST. When the plans are amended for GUST, they must be amended retroactively and the retroactive amendments must conform to how the plans have been operated during the transition period. In order for a GUST-approved M&P plan to be available to be adopted by an employer to retroactively restate the employer's plan for GUST, the M&P plan must be able to accommodate whatever choices and elections have been made in the operation of the employer's plan during the transition period. For example, an employer with a § 401(k) plan may use either the current-year or the prior-year ADP testing method. During the transition period, an employer may have used the current-year method in 1997, the prior-year method in 1998, and the current-year method again in 1999 and 2000. If the employer adopts a GUST-approved M&P plan to retroactively restate the employer's plan for GUST, the terms of the M&P plan, as adopted by the employer, must reflect these specific year-by-year changes in the ADP testing method. This requirement will not be satisfied by provisions that state, for example, that they are effective as of the date that they have been made effective in operation where the actual date(s) is not specified in the plan. This requirement also will not be satisfied through incorporation by reference of documents outside the basic plan document and adoption agreement. In general, therefore, M&P adoption agreements must contain elective provisions (with or without default provisions) that will allow adopting employers to conform the terms of their M&P plans to the manner in which the employers' plans were operated during the transition period. These elective provisions may be contained in a separate "snap-off" section of the adoption agreement. The M&P plan sponsor may remove this snap-off section from the adoption agreements it provides to adopting employers that are not using the M&P plan to retroactively restate a plan for GUST.

.13 Provisions Required in Adoption Agreements Regarding Reliance - In order to avoid unnecessary confusion as to the scope of an opinion letter, sponsors must include in the adoption agreement of all M&P plans (other than standardized plans and paired plans), in close proximity to the signature blank, a statement that adopting employers may not rely on an opinion letter issued by the Service with respect to the qualification of that plan and should apply to Employee Plans Determinations for a determination letter in order to obtain reliance. Standardized plans and paired plans must also include a similar statement in the adoption agreement that the adopting employer may not rely on the opinion letter issued by the Service but must apply for a determination letter to have reliance under the circumstances described in section 6.

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

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

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

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

.18 Additional Requirements for Plans That Include a CODA - An M&P plan may include a cash or deferred arrangement (CODA) only if the plan is a profit-sharing plan or a rural cooperative plan, as defined in § 401(k)(7), and the CODA is a qualified CODA, as defined in the regulations under § 401(k). In addition, the plan must satisfy the following requirements:

1 The plan may not incorporate the ADP test under § 401(k)(3) or the ACP test under § 401(m)(2) by reference;

2 The plan must use the same testing method (either current year or prior year) for both the ADP test under § 401(k)(3) and the ACP test under § 401(m)(2) in any plan year beginning on or after the date the employer adopts its GUST-restated M&P plan;

3 If the CODA provides for hardship distributions, it must adopt the safe harbor standards in the regulations under § 401(k);

4 The CODA may not be integrated with social security;

5 The plan must describe the method or methods for correcting contributions in excess of those allowed under the ADP or ACP test and for correcting multiple use of the alternative limitation (within the meaning of § 401(m)(9)), including the plan to be corrected; and

6 A plan that uses the safe harbor methods in §§ 401(k)(12) and 401(m)(11) (for plan years beginning after December 31, 1998) must satisfy the nonelective or matching contribution ("safe harbor contribution") requirement using one of the following options. First, the plan may provide that the safe harbor contributions will be made under the plan. Second, the plan may allow the employer to elect in the adoption agreement whether the safe harbor contributions will be made under the plan or under another specified defined contribution plan that satisfies the requirements of sections IX. and XI. of Notice 98–52, as modified by Notice 2000–3. However, the latter option is not available in standardized plans, other than paired defined contribution plans whose terms satisfy the requirements of sections IX. and XI. of Notice 98–52, as modified by Notice 2000–3. See section 7.04.

The requirements in 2 and 5 of this subsection .18 do not apply to a plan that does not use the ADP test under § 401(k)(3) and the ACP test under § 401(m)(2), but uses only the alternative ("SIMPLE") method of satisfying the nondiscrimination tests in §§ 401(k)(11) and 401(m)(10) (for plan years beginning after December 31, 1996) or the safe harbor methods in §§ 401(k)(12) and 401(m)(11) (for plan years beginning after December 31, 1998).

.19 Other requirements - In addition to any other substantive requirements, M&P plans must comply with the requirements of all revenue rulings, notices, legislation, and regulations, including:

1 Notice 97–45, relating to the definition of highly compensated employee under § 414(q);

2 Notice 97–75 and § 1.411(d)–4, Q&A 10, relating to the minimum distribution requirements of § 401(a)(9);

3 Notices 97–2, 98–1, 98–52, and 2000–3, Rev. Rul. 98–30, and Rev. Proc. 97–9, relating to the requirements for qualified cash or deferred arrangements under § 401(k), including SIMPLE § 401(k) plans and § 401(k) plan safe harbors;

4 Rev. Proc. 98–14 and Rev. Proc. 98–42, relating to the repeal of the family aggregation rules under former § 414(q)(6);

5 Rev. Rul. 94–76 and Rev. Proc. 96–55, relating to transfers and rollovers from money purchase pension plans to profit-sharing plans;

6 Rev. Rul. 98–1 and Notice 99–44, relating to the limitations of § 415;

7 Rev. Proc. 96–49, relating to the requirements of USERRA and § 414(u);

8 Section 1.417(e)–1(d), relating to the determination of present value and amounts of certain benefits; and

9 Notice 99–5, relating to the definition of eligible rollover distribution in § 402(c)(4) as amended by RRA.

SECTION 6. STANDARDIZED PLANS - EMPLOYER RELIANCE

.01 Reliance - An employer adopting a standardized plan or paired plans may rely on its opinion letter, except as provided in subsections .02, .03, and .04 below.

.02 Non-Reliance by Employer Maintaining More than One Plan - Except in the case of a combination of paired plans or as otherwise provided in this subsection, an employer may not rely on an opinion letter for a standardized plan, without obtaining a determination letter, if the employer maintains at any time, or has maintained at any time, another plan, including a standardized plan, that was qualified or determined to be qualified covering some of the same participants. For this purpose, a plan that has been properly replaced by the adoption of a standardized plan is not considered another plan. The plan that has been replaced and the standardized plan must be of the same type (e.g., both money purchase pension plans) in order for the employer to be able to rely on the standardized plan without obtaining a determination letter. In addition, an employer that adopts a standardized defined contribution plan will not be considered to have maintained another plan merely because the employer has maintained another defined contribution plan(s), provided such other plan(s) has been terminated prior to the effective date of the standardized plan and no annual additions have been credited to the account of any participant under such other plan(s) as of any date within a limitation year of the standardized plan. Likewise, an employer that adopts a standardized defined contribution plan that is first effective on or after the effective date of the repeal of § 415(e) will not be considered to have maintained another plan merely because the employer has maintained a defined benefit plan(s), provided the defined benefit plan(s) has been terminated prior to the effective date of the standardized defined contribution plan.

.03 Reliance by Employer Adopting a Standardized Defined Benefit Plan - An employer that has adopted a standardized defined benefit plan may rely on an opinion letter with respect to the requirements of § 401(a)(26) only if the plan satisfies the requirements of § 401(a)(26) with respect to its prior benefit structure or is deemed to satisfy § 401(a)(26) under the regulations. However, an employer may request a determination letter if the employer wishes to have reliance as to whether the plan satisfies § 401(a)(26) with respect to its prior benefit structure.

.04 No Automatic Reliance on Certain Issues - An employer that adopts a standardized plan may not rely on an opinion letter with respect to: (a) whether the timing of any amendment to the plan (or series of amendments) satisfies the nondiscrimination requirements of § 1.401(a)(4)–5(a), except with respect to plan amendments granting past service that meet the safe harbor described in § 1.401(a)(4)–5(a)(3) and are not part of a pattern of amendments that significantly discriminates in favor of highly compensated employees; or (b) whether the plan satisfies the effective availability requirement of § 1.401(a)(4)–4(c) with respect to any benefit, right, or feature. An employer that adopts a standardized plan as an amendment to a plan other than a standardized plan may not rely on an opinion letter with respect to whether a benefit, right, or feature that is prospectively eliminated satisfies the current availability requirements of § 1.401(a)–4 of the regulations. Such an employer may request a determination letter if the employer wishes to have reliance as to whether the prospectively eliminated benefit, right, or feature satisfies the current availability re-

quirements. A standardized plan may give an employer the option to elect to continue to apply the pre-GUST family aggregation rules in years beginning after December 31, 1996, or the combined plan limit of § 415(e) in years beginning after December 31, 1999, to the extent such election(s) conforms to the plan's operation. However, an employer that elects to continue to apply the pre-GUST family aggregation rules or the combined plan limit of § 415(e) will not be able to rely on the opinion letter without a determination letter with respect to the qualification of its plan for the years to which the election applies.

.05 Effect of Termination of Paired Plan - If an employer maintains paired plans, the termination of one of the paired plans will not adversely affect the employer's ability to rely on the opinion letter with respect to the other paired plan(s).

.06 Sharing Basic Plan Document By Standardized, Nonstandardized, and Nonstandardized Safe Harbor Plans - A sponsor may establish a basic plan document that applies to a standardized plan, a nonstandardized plan, and a nonstandardized safe harbor plan. Such plans may differ only by the different adoption agreements. For example, the adoption agreement(s) for the nonstandardized plan and/or the nonstandardized safe harbor plan may have additional coverage options.

SECTION 7. ADDITIONAL REQUIREMENTS FOR PAIRED PLANS

.01 Limits of § 415(e) Must Be Provided in Defined Benefit Plan Only - For limitation years beginning before January 1, 2000, the benefits under a defined benefit plan in a combination of paired plans must be limited by the requirements of § 415(e), relating to the aggregation of defined benefit and defined contribution plans. Adjustments to satisfy the requirements of § 415(e) may only be provided in the defined benefit plan with respect to benefits thereunder.

.02 Section 416(h) Adjustment to § 415(e) Limits - For limitation years beginning before January 1, 2000, paired plans that include a defined benefit plan must compute the denominators of defined benefit and defined contribution fractions in a manner satisfying § 416(h)(1) unless the requirements of § 416(h)(2) (each as in effect for limitation years beginning before January 1, 2000) are satisfied. Paired plans providing the unreduced § 415(e) limits must provide, regardless of how the adoption agreement is completed, the additional top-heavy minimums described in § 416(h)(2)(A) and provide that the unreduced § 415(e) limits will not apply if the plan is super top-heavy as described in Question T-33 of § 1.416–1. In testing for super top-heavy, all the requirements of questions T-35 and T-36 of § 1.416–1 must be included in the plan.

.03 Coordination of Minimum Benefits and Contributions Under Top-Heavy Plans / Uniformity Requirements - Because paired plans are standardized plans that must continue to satisfy the uniform benefit or allocation formula requirements of § 1.401(a)(4)–2 and –3 when the plans are top-heavy, the plans must include provisions that comply with one of the following options:

1 each of the paired plans must provide the top-heavy minimum contribution or benefit (as applicable) without regard to whether a participant is covered under the other paired plan(s); or

2 any participant who benefits under any one of the paired plans must automatically benefit under the other paired plan(s).

If the second option is used, either each of the paired plans must provide the top-heavy minimum contribution or benefit (as applicable) or the paired plans may designate one of the plans to provide the top-heavy minimum contribution or benefit. That is, either the defined benefit plan must provide a 2% minimum benefit or the defined contribution plan must provide a 5% minimum contribution, or both plans may provide the top-heavy minimum. Also, if the second option is used and one of the paired plans has been designated to provide the top-heavy minimums, the plans must further provide that in the event the identical employees do not benefit under each paired plan, the plans will default to the first option (i.e., each plan provides the top-heavy minimum). In years beginning before January 1, 2000, if the unreduced § 415(e) limit is used, the 2% minimum benefit and the 5% minimum contribution are increased to 3% and 7 1/2%, respectively. If the paired plans designate one of the plans to provide the top-heavy minimum contribution or benefit, then, in the event of the termination of such plan, the remaining plan must provide the top-heavy minimum.

.04 Satisfaction of Safe Harbor Contribution Requirement in Paired Defined Contribution Plans that Include a § 401(k) Safe Harbor - In the case of paired defined contribution plans, if one of the plans uses the safe harbor method in § 401(k)(12) (for plan years beginning after December 31, 1998), the safe harbor contribution requirement must be satisfied using one of the following options. First, the paired plans may provide that the safe harbor contributions will be made under the plan that includes the CODA. Second, the paired plans may provide that the safe harbor contributions will be made under the other plan. However, the paired plans may provide for the latter option only if the terms of the paired plans will automatically satisfy the requirements of sections IX. and XI. of Notice 98–52, as modified by Notice 2000–3. If the paired plans provide that the safe harbor contributions will be made under the plan that does not include the CODA, then, in the event of the termination of such plan, the plan that includes the CODA must provide the safe harbor contributions.

.05 Pairing Provisions Must be in the Basic Plan Document - In the case of paired plans, all provisions necessary to coordinate the plans (other than the reliance statement required under section 5.13) must be set forth in the basic plan document and not in the adoption agreement. Paired plans may allow the employer to elect in the adoption agreement which of the two options described in subsection .03 and which of the two options described in subsection .04, if applicable, will apply to the employer's plans.

.06 Paired Plans Limited to Two Different Basic Plan Documents - While the sponsor is not limited in the number of sets of paired plans it may adopt, each set must be limited to two different basic plan documents: one for defined benefit plans and one for defined contribution plans. The pairing of defined contribution plans requires only one basic plan document such as a profit-sharing plan and a money

purchase plan containing the identical basic plan document and two different adoption agreements. A sponsor may provide a pairing of defined benefit and defined contribution plans in such a manner that with two different basic plan documents and three adoption agreements, an adopting employer may adopt a profit-sharing plan, a money purchase plan, and a defined benefit plan.

SECTION 8. OPINION LETTERS - SCOPE

.01 General Limits on Opinion Letters - Opinion letters will be issued only to sponsors or mass submitters and do not constitute rulings or determinations as to either the qualification of the plans as adopted by particular employers, or, in the case of prototype plans, the exempt status of related trusts or custodial accounts.

.02 Nonapplicability of the Procedure to IRAs and SEPs - Opinion letters will not be issued under this revenue procedure for prototype plans intended to meet the requirements for individual savings programs or simplified employee pension programs under § 408 (see Rev. Proc. 87–50, 1987–2 C.B. 647, Rev. Proc. 97–29, 1997–1 C.B. 698, and Rev. Proc. 98–59, 1998–50 I.R.B. 8).

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

1 Multiemployer plans or multiple employer plans, within the meaning of § 413(b) and § 413(c) respectively;

2 Plans that have been negotiated pursuant to a collective bargaining agreement and submitted to the Service as a plan maintained pursuant to a collective bargaining agreement. This does not preclude an M&P plan from covering employees of the employer who are included in a unit covered by a collective bargaining agreement or the adoption of an M&P plan pursuant to such agreement as a single employer plan which covers only employees of the employer;

3 Stock bonus plans;

4 Employee stock ownership plans;

5 Pooled fund arrangements contemplated by Rev. Rul. 81–100, 1981–1 C.B. 326;

6 Annuity contracts under § 403(b);

7 Defined contribution plans (other than target benefit plans) under which the test for nondiscrimination under § 401(a)(4) is made by reference to benefits rather than contributions;

8 Cash balance or similar plans or defined benefit plans under which the test for nondiscrimination under § 401(a)(4) is made by reference to contributions rather than benefits;

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

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

11 Plans that provide for the disparity permitted under § 401(l), other than plans which use a definition of compensation that includes all compensation within the meaning of § 415(c)(3) and excludes all other compensation, or that otherwise satisfies § 414(s) under § 1.414(s)–(c);

12 Defined benefit plans that provide for employee contributions not allocated to separate accounts, other than plans that provide the minimum benefit described in § 1.401(a)(4)–6(b)(3)(ii);

13 Plans that would not satisfy the qualification requirements except as a governmental plan as described in § 414(d);

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

15 Plans under which the § 415 limitations are incorporated by reference;

16 Plans that do not contain a § 414(q) definition of highly compensated employee or under which the definition is incorporated by reference;

17 Fully-insured § 412(i) plans, other than plans that, by their terms, satisfy the safe harbor for § 412(i) plans in § 1.401(a)(4)–3(b)(5);

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

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

.05 Nontransferability of Opinion Letters - An opinion letter issued to a 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.

SECTION 9. OPINION LETTERS - INSTRUCTIONS TO SPONSORS

.01 Employee Plans Rulings and Agreements Issues Opinion Letters - Employee Plans Rulings and Agreements will, upon the request of a sponsor, issue an opinion letter as to the acceptability of the form of the sponsor's M&P plan and any related trust or custodial account under §§ 401(a), 403(a), and 501(a). Review of the sponsor's application may be assigned to a field office**.**

.02 Forms and Address for Requesting Opinion Letters - A request for an opinion letter relating to an M&P plan must be submitted on the current version of Form 4461, Application for Approval of Master or Prototype Defined Contribution Plan, Form 4461-A, Application for Approval of Master or Prototype Defined Benefit Plan, or Form 4461-B, Application for Approval of Master or Prototype Plan Mass Submitter Adopting Sponsor, as appropriate. As soon as possible after February 7, 2000, these forms will be available for downloading from the Internet at the following address: **http://www.irs.gov**. All information on the first page of the application must be typed. The request, including the required user fee, is to be sent to the Internal Revenue Service, Employee Plans Rulings and Agreements, Attention:

T:EP:RA:T:ICU, P.O. Box 14073, Ben Franklin Station, Washington, D.C. 20044.

.03 Effect of Failure to Disclose Material Fact or to Accurately Provide Information - The Service may determine, based on the application form, the extent of review of the M&P plan. A failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance which would otherwise be obtained through issuance by the Service of a favorable opinion 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.

.04 Expediting Review of Substantially Identical Plans - The Service reserves the right to review applications in any order which will expedite the processing of opinion letter applications. To expedite the review of substantially identical plans which are not described in section 16, relating to mass submitter plans, the Service encourages plan drafters and sponsors to include with each opinion letter application where it is appropriate a cover letter setting forth the following information:

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

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

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

4 A certification, made under penalty of perjury by the plan drafter, that the information described in 3 is true and complete.

If the sponsor or plan drafter is aware that a lead plan or any substantially identical plan has been assigned for review to a tax law specialist, the cover letter should also indicate the name of the tax law specialist, if possible. To the extent feasible, lead plans and substantially identical plans should be submitted together. The Service will regard the information and certification described in 3 and 4 above as a material representation for purposes of issuing an opinion letter.

.05 Separate Applications Required for Different Categories of M&P Plans / Use of Same Basic Plan Document by Multiple Plans - An M&P plan shall not contain any combination of profit-sharing, money purchase (other than target benefit), target benefit, non-integrated defined benefit, or integrated defined benefit plan features. However, separate defined contribution plans may have the same basic plan document and separate defined benefit plans may have the same basic plan document, but the provisions of the basic plan document must be identical for all plans using that document (that is, no elective or optional features). For example, a sponsor may submit six plans with respect to a given defined benefit basic plan document: integrated standardized, nonstandardized, and nonstandardized safe harbor plans; and nonintegrated standardized, nonstandardized, and nonstandardized safe harbor plans. A sponsor may also use one defined contribution basic plan document for a money purchase plan, a target benefit plan, and a profit-sharing plan. One basic plan document may not be used with respect to both defined benefit and defined contribution plans. A separate adoption agreement and completed application form must be submitted with respect to each defined benefit plan and each defined contribution plan. In the case of a simultaneous submission of plans using the same basic plan document, only one copy of the basic plan document need be provided. If the requests are not simultaneous, the sponsor must submit a copy of the basic plan document with each submission and include a cover letter identifying the original submission. The number of such basic plan document must remain the same as in the prior submission. Paired plans (as defined in section 4.13) must be submitted simultaneously.

.06 Sample Language - A Listing of Required Modifications (LRM) containing sample language to be used in drafting M&P plans is available from Employee Plans Rulings and Agreements. Such language is not automatically required in M&P plans but should be used as a guide in drafting such plans. An LRM may be obtained by writing to the Internal Revenue Service, Employee Plans Rulings and Agreements, Washington, D.C. 20224, Attention T:EP:RA:T:ICU. To expedite the review of their plans, sponsors are encouraged to use LRM language and to identify where such language is being used in their plan documents. Requests for LRMs may be faxed to (202) 622-6199 (not a toll-free call). As soon as possible after February 7, 2000, the LRMs will also be accessible on the Internet at the following address: **http://www.irs.gov**. The LRMs can be found under "Tax Info for Business."

.07 Additional Information May Be Requested - The Service may, at its discretion, require any additional information that it deems necessary. If a letter, requesting changes to plan documents, is sent to the plan's sponsor or authorized representative, the changes must be received no later than 30 days from the date of the letter. If the changes are not received within 30 days, the application may be considered withdrawn. An extension of the 30 day time limit will only be granted for good cause.

.08 Inadequate Submissions - The Service will return, without further action, plans that are not in substantial compliance with the qualification 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 or merely incorporates qualification requirements by reference to the 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 sponsor is notified of such inadequacy.

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

.10 Nonidentification of Questionable Issues May Cause Delay - If the plan document submitted as part of an opinion letter request contains a provision that gives rise to an issue for which contrary published authorities exist, failure to disclose and address significant contrary authorities may result in requests for additional

information, which will delay action on the request.

.11 Material Furnished to Employee Plans Determinations - Each mass submitter and each sponsor of a non-mass submitter plan must furnish a copy of the approved M&P plan and the Internal Revenue Service opinion letter to Employee Plans Determinations at the following address:

Internal Revenue Service
Employee Plans Determinations
P.O. Box 2508
Cincinnati, OH 45201
Attn: EP Determinations
VSC Coordinator
Room 4106

In addition, each mass submitter must submit a list to Employee Plans Determinations of all sponsors that have adopted a word-for-word identical plan of the mass submitter and a copy of any plan which contains minor modifications. Each mass submitter and sponsor of a non-mass submitter plan must also furnish Employee Plans Determinations with a copy of all amendments subsequently approved as to form by the Service. Copies of word-for-word identical plans of mass submitters, as described in section 4.10 of this revenue procedure, need not be submitted to Employee Plans Determinations.

SECTION 10. AMENDMENTS

.01 Opinion Letters for Sponsor Amendments - A sponsor may amend or restate its previously approved plan (including any related trust or custodial account) and EP Rulings and Agreements will entertain a request for a written opinion as to the acceptability, for purposes of §§ 401(a), 403(a), and 501(a), of the form of the plan as amended. If the sponsor is amending its plan, it must, except as provided in section 16.02 and 16.04, submit a Form 4461 or Form 4461-A, as applicable, to EP Rulings and Agreements, together with a copy of the amendment(s), a cover letter summarizing the changes to the plan effected by such amendment(s), and a copy of the plan which is being amended. As soon as possible after February 7, 2000, Form 4461 and Form 4461-A will be available for downloading from the Internet at the following address: **http:/www.irs.gov**. If the sponsor is restating its plan, it must, except as provided in sections 16.02 and 16.04, submit the restated plan, with the changes highlighted, along with a Form 4461 or 4461-A, as applicable. (The plan and application may be returned to the sponsor if the changes have not been highlighted.) No more than four consecutive amendments may be submitted without restating the plan. In addition, the Service may, at its discretion, require plan restatement at any time that it deems necessary to adequately review a plan. See section 18.05 regarding required restatement of M&P plans for GUST.

.02 No Opinion Letters for Certain Amendments - An M&P plan will not lose its qualified status and, except as provided in subsection .024 below, no opinion letter will be issued merely because amendments are made which solely cover the following:

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

2 Amendments to conform a plan to requirements of § 503 of ERISA, relating to claims procedures.

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

4 Amendments that merely reflect a change of a sponsor's name. However, the 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 4.09. No opinion letter will be issued and no user fee will be required for a mere change in name. However, if the sponsor wants a new opinion letter, it will have to submit a new Form 4461, 4461-A or 4461-B and pay the appropriate user fee. (Also see section 8.05 regarding changes in employer identification numbers.)

SECTION 11. DETERMINATION LETTERS AND INSTRUCTIONS TO ADOPTING EMPLOYERS

Except as provided in section 6, approval by the Service of the form of an M&P plan does not constitute a determination that an employer that adopts the plan will have a qualified plan. Therefore, such an adopting employer should request a determination letter in accordance with the procedures set forth in section 8 of Rev. Proc. 2000–6.

SECTION 12. APPROVED PLANS - MAINTENANCE OF APPROVED STATUS

.01 Revocation of Opinion Letter by the Service - An opinion 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 section 13.05 of Rev. Proc. 2000–4 are met. For this purpose, such opinion letters will be given the same effect as rulings. Revocation may be effected by a notice to the sponsor to which the letter was originally issued, or by a regulation, revenue ruling or other statement published in the Internal Revenue Bulletin. The sponsor should then notify each adopting employer of the revocation as soon as possible.

.02 Subsequent Required Amendments - An approved M&P plan must be amended by the sponsor and, if necessary, the employer, to retain its approved status if any provisions therein fail to meet the requirements of law, regulations, or other issuances and guidelines affecting qualification that become effective subsequent to the issuance of an opinion letter. Failure to so amend could result in the loss of a plan's qualified status. Sponsors are required to make reasonable and diligent efforts to ensure that each employer which, to the best of the sponsor's knowledge, continues to maintain the plan as an M&P plan amends its plan when necessary. Failure to comply with this or any other requirement imposed on sponsors by this revenue procedure may result in the loss of eligibility to sponsor M&P plans and the revocation of opinion letters that have been issued to the sponsor.

.03 Amendments Following Revenue Rulings - If an approved M&P plan is required to be amended to retain its approved status as a result of publication by the Service of a revenue ruling, notice or similar statement in the Internal Revenue Bulletin (I.R.B.), then, unless specifically stated otherwise in the revenue ruling, etc., the time by which the sponsor must amend its M&P plan to conform to the re-

quirements of the revenue ruling, etc. and request a new opinion letter shall be the end of the one-year period after its publication in the I.R.B., and with respect to any adopting employer's plan the effective date of such amendment shall be the first day of the first plan year beginning within such one-year period.

.04 Loss of Qualified Status - If a sponsor reasonably concludes that an employer's M&P plan may no longer be a qualified plan and the sponsor does not or cannot submit a request to correct the qualification failure under EPCRS, it is incumbent on the sponsor to notify the employer that the plan may no longer be qualified, advise the employer that adverse tax consequences may result from loss of the plan's qualified status, and inform the employer about the availability of EPCRS. See Rev. Proc. 98–22, 1998–12 I.R.B. 11.

SECTION 13. WITHDRAWAL OF REQUESTS

.01 Notification and Effect - A sponsor may withdraw its request for an opinion letter at any time prior to the issuance of such letter by notifying EP Rulings and Agreements in writing of such withdrawal. The sponsor must also notify each employer who adopted the plan that the request has been withdrawn. Such an employer will be deemed to have an individually designed plan.

.02 Service Retains Information - 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 sponsor. EP Rulings and Agreements may furnish its views concerning the qualified status of the plan to EP Examinations, which has audit jurisdiction over the returns of any employers that have adopted the plan.

SECTION 14. ABANDONED PLANS

.01 Notification to the Service - A sponsor should notify EP Rulings and Agreements in writing of an approved M&P plan that is no longer used by any employer and which the sponsor no longer intends to offer for adoption. Such written notification should be filed with EP Rulings and Agreements, Washington, D.C. 20224, Attention: T:EP:RA:T:ICU and should refer to the file folder number appearing on the latest opinion letter issued.

.02 Notification to Employers - A sponsor that intends to abandon an approved M&P plan that is in use by any adopting employer must inform each adopting employer that the form of the plan has been terminated, that the employer's plan will become an individually designed plan (unless the employer adopts another approved M&P plan), and that any employer with a determination letter may continue to rely on such letter (or if the plan is standardized, may continue to rely as if it had received a determination letter) on the date the form of the plan is terminated but only until a change in law or other change in the qualification requirements. After so informing all adopting employers, the sponsor should notify EP Rulings and Agreements in accordance with subsection .01 above.

SECTION 15. RECORD KEEPING REQUIREMENTS

.01 Filing of Opinion Letter Application Constitutes Agreement to Comply with Record Keeping Requirements - By submitting an application for an opinion letter under this revenue procedure (or by having an application filed on its behalf by a mass submitter), an M&P plan sponsor agrees, as provided in section 4.09, to comply with the requirements imposed on the sponsor by this revenue procedure, including the record keeping requirements of this section. Failure to comply with the requirements imposed on the sponsor by this revenue procedure may result in the loss of eligibility to sponsor M&P plans and the revocation of opinion letters that have been issued to the sponsor.

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

SECTION 16. MASS SUBMITTERS

.01 Opinion Letters Issued to Mass Submitters - EP Rulings and Agreements will, upon request by a mass submitter, as defined in section 4.10, issue an opinion letter as to the acceptability of the form of the mass submitter's M&P plan and any related trust or custodial account under §§ 401(a), 403(a), and 501(a). With respect to its plan, the mass submitter must submit a completed Form 4461 or 4461-A, as applicable, to EP Rulings and Agreements. As soon as possible after February 7, 2000, these forms will be available for downloading from the Internet at the following address: **http://www.irs.gov**. The first page of the Form 4461 or 4461- A must be typed. The application must include a copy of the plan (adoption agreement and basic plan document) and any separate trust or custodial account document(s). In the case of an initial submission of a basic plan document under this revenue procedure, the mass submitter's application must also be accompanied by applications for opinion letters filed on behalf of the requisite number of identical adopters (as determined under section 4.10), unless the mass submitter has already satisfied this requirement in connection with a previous application under this revenue procedure involving another basic plan document The application must also include the required user fee. A mass submitter may submit an application on its own behalf as one of the requisite number of adopting sponsors. After satisfying the requisite number of adopting sponsors requirement, the mass submitter may submit additional applications on behalf of other sponsors that wish to adopt a word-for-word identical plan or a plan that contains minor modifications from the mass submitter plan, as provided in section 16.032. In addition, the mass submitter may then submit requests for opinion letters under this section 16.01 for its other plans, regardless of the number of identical adopters of such other plans.

.02 Reduced Procedural Requirements for Sponsors That Use Mass Submitter Plans - A sponsor of an M&P plan of a mass submitter must obtain an opinion letter. For initial qualification, or where the

sponsor's plan includes minor modifications, the mass submitter on behalf of the sponsor must submit to EP Rulings and Agreements a completed Form 4461-B which contains a declaration by the mass submitter under penalty of perjury that the sponsor has adopted an M&P plan that is word-for-word identical, within the meaning of this section, to a plan of the mass submitter, or an M&P plan that is a minor modification of the mass submitter's plan. As soon as possible after February 7, 2000, Form 4461-B will be available for downloading from the Internet at the following address: **http://www.irs.gov**. Form 4461-B must be typed. If the mass submitter's plan has been approved by the Service, the sponsor's request for an opinion letter must identify the letter serial number and date of the opinion letter issued to the mass submitter with respect to that plan. If the sponsor has previously received a letter with respect to a plan that is identical to the mass submitter's plan, the procedures described in sections 16.04 and 18.03, as applicable, should be followed. If the sponsor is sponsoring a word-for-word identical plan (including a flexible plan), a copy of the plan need not be submitted. If the mass submitter submits a plan with minor modifications, it must comply with the requirements of section 16.032. The application submitted on behalf of the sponsor must include the required user fee. Upon receipt of the request for an opinion letter, described above, the Service will, as soon as clerically feasible, issue an opinion letter to the sponsor.

.03 Definitions -

1 Flexible Plan -

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

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

(i) Investment Provisions - A mass submitter may offer a variety of investment provisions in its plan for sponsors to include or delete from their version of the plan. However, the plan as adopted by the sponsor must provide some method for investing trust assets. Investment provisions are those provisions that describe the plan's methods of investing the trust or custodial funds, including provisions such as the availability of loans and investments in insurance contracts or other funding media, and self-directed investments. (Also see sections 4.05 and 5.11 regarding flexibility permitted in trust or custodial account documents.)

(ii) Administrative Provisions - A mass submitter may offer a variety of administrative provisions in its plan for sponsors to include or delete from their version of the plan. However, the plan as adopted by the sponsor must describe how the plan will be administered. Administrative provisions are those provisions that describe the administration of the plan, including the powers, duties, and responsibilities of a plan's custodian, trustee, administrator, employer, and other fiduciaries. Administrative provisions include the allocation of responsibilities among fiduciaries, the resignation or replacement of fiduciaries, claims procedures under the plan, and record keeping requirements. However, procedural provisions that are required for plan qualification are not administrative provisions under this section. For example, provisions that provide for the notice to participants required by § 417 and record keeping required by regulations under §§

401(k) and (m) are not administrative provisions for purposes of this revenue procedure, and may not be optional provisions.

(iii) Cash or Deferred Arrangement - A mass submitter may include a self-contained cash or deferred arrangement (as defined in § 401(k)) for sponsors to include or delete.

(c) Addition of Optional Provisions by the Mass Submitter - A mass submitter may add additional optional provisions to its plan after a favorable opinion letter is issued. Generally, the addition of such optional provisions will not be treated as a plan amendment for purposes of this revenue procedure, Rev. Proc. 2000–6, and Rev. Proc. 2000–8, and sponsors and adopting employers will not be required to obtain new opinion and determination letters in order to preserve reliance. (However, the addition of a cash or deferred arrangement or any change to the language of the adoption agreement subsequent to the issuance of an opinion letter will be treated as a plan amendment to the mass submitter's plan and the requirements of subsection .04 will then apply.) The mass submitter must submit such additional optional provisions to the Service, along with a completed Form 4461 or 4461-A, as applicable, and a check or money order in the amount specified in section 6.04(6) of Rev. Proc. 2000–8. No opinion letter will be issued to the mass submitter or any adopting sponsor with respect to the addition of these optional provisions. Instead, an advisory letter will be issued to the mass submitter notifying it that the addition of such optional provisions will not affect the status of favorable opinion and determination letters issued to sponsors and adopting employers.

(d) Notification to Employer - If a mass submitter adds optional provisions, as described in (c), above, all adopting sponsors who wish to include the additional optional provisions must furnish each adopting employer with a copy of the plan which includes such additional provisions in accordance with section 9.09. If a sponsor decides to include or delete an optional provision after it initially adopted the plan, it must also furnish each adopting employer with a copy of the new plan in accordance with section 9.09. However, if such inclusion or deletion results in a change to the language of the adoption agreement, such change will be treated as a plan amendment and the sponsor and its adopting employers may not continue to rely on previously issued opinion or determination letters.

2 Minor Modification - A "minor modification" is a minor change to an otherwise word-for-word identical plan of the mass submitter which does not require an in-depth technical review. For example, a change from 5 year 100% vesting to 3 year 100% vesting is a minor modification. On the other hand, a change in the method of accrual of benefits in a defined benefit plan would not be considered a minor modification. A minor modification must be submitted by the mass submitter on behalf of the sponsor that will adopt the modified plan. Such submissions will be reviewed on an expedited basis and opinion letters will be issued to the sponsor as soon as possible. However, the Service reserves the right to determine if such changes are actually minor. If it is determined that the changes are extensive or require an in-depth technical review, the plan will not be entitled to expedited review but will be treated as a non-mass submitter plan. (In such event, the Service will notify the mass submitter in writing of its determination. Within 30 days following the date of such communication, either the mass submitter may revise the plan so that the modifications are minor and resubmit the revised plan, or the sponsor may submit an additional user fee in an amount equal to the difference between a non-mass submitter plan application user fee and a minor modifier application user fee. If, after such 30 day period neither action has been taken, the application may be considered withdrawn.) To qualify for the expeditious review, the mass submitter must submit a completed Form 4461-B. Such form must be typed. In addition, the mass submitter must submit a copy of the mass submitter's plan with the minor modifications highlighted, as well as a statement indicating the location and effect of each change. The mass submitter must certify under penalty of perjury that the plan of the sponsor, except for the delineated changes, is word-for-word identical, within the meaning of this section, to the plan for which the mass submitter received a favorable opinion letter. If a mass submitter fails to identify each modification, such failure will be considered a material misrepresentation and an employer may not rely on any opinion or determination letter that may be issued with respect to the plan. If a mass submitter repeatedly fails to identify such modifications, the Service may deny permission to that mass submitter to submit additional minor modifications.

.04 Amendments of Mass Submitter Plans - Any plan submitted by a mass submitter must include language designating the mass submitter as agent for the sponsor for purposes of making plan amendments (see section 12.02). Any sponsor that does not wish to make the amendments made by a mass submitter may switch to another mass submitter or may submit an application for an opinion letter on its own behalf. If the mass submitter makes any change to the plan, other than the addition of optional provisions pursuant to section 16.031(c), an amendment described in section 10.02, or a model amendment published by the Service, it must comply with the requirements of section 10.01 of this revenue procedure. In addition, prior to submitting an amendment to EP Rulings and Agreements, the mass submitter must notify the Service of its intention to amend the plan. Such notification should be submitted, in writing, to EP Rulings and Agreements, Washington, D.C. 20224, Attention: T:EP:RA:T:ICU. The Service will then mail a list to the mass submitter showing all sponsors that have adopted plans that are identical to the mass submitter's plans, as well as the specific plans adopted by each sponsor. The mass submitter must then submit the amended plan to EP Rulings and Agreements for approval, along with a list identifying all adopting sponsors' plans that will be amended, a user fee form for each such sponsor, and the appropriate user fee required under section 6.04 of Rev. Proc. 2000–8. All sponsors that have adopted the mass submitter's plan, are identified on the list submitted to the Service, and for which a user fee has been submitted, will be considered to have made such amendments and will be issued opinion letters. In the case of minor modifier plans, separate Form 4461–B applications must be filed along with copies of the

plans as amended, user fee forms, and the user fee required by section 6.04 of Rev. Proc. 2000–8 for minor modifier applications. Copies of the amended plan must be sent to adopting employers and EP Determinations in accordance with section 9.11. Any adopting sponsor that is not included on the list submitted to the Service (or in the case of a minor modifier, for which a Form 4461-B application has not been filed) or which notifies the Service of its desire not to adopt such amendment will no longer participate as a mass submitter plan but must apply for an opinion letter on its own behalf to retain its status as an M&P plan.

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

SECTION 17. USER FEES

.01 User Fees for Applications Filed Under This Revenue Procedure - Section 6.04 of Rev. Proc. 2000–8 sets forth the user fees for applications for opinion and advisory letters for M&P plans. The user fees in section 6.04 of Rev. Proc. 2000–8 apply to all applications for opinion and advisory letters for M&P plans that are filed under this revenue procedure.

.02 Reduced User Fees for Submission of Identical Volume Submitter Specimen Plans - Section 6.07 of Rev. Proc. 2000–8 sets forth the user fees for applications for advisory letters for volume submitter plans. Rev. Proc. 2000–8 is modified to provide reduced user fees for advisory letters in cases involving the submission of at least 30 identical volume submitter specimen plans under the following procedures:

1 A practitioner must submit an application for an advisory letter for a specimen plan (herafter referred to as the lead specimen plan). The application must include the plan and trust and all the other information required by section 9.07 of Rev. Proc. 2000–6. However, the cover letter for the application need not include a certification that at least 30 employers are expected to adopt similar plans; instead, the cover letter must state that at least 30 practitioners are submitting applications for advisory letters for identical specimen plans and must certify that each such plan is word-for-word identical to the lead specimen plan. The cover letter must provide the name, address, and EIN of each of the practitioners.

2 The application for the lead specimen plan must include a user fee in the amount of $3,000.

3 The application for the lead specimen plan must be accompanied by separate advisory letter applications filed by each of the practitioners listed in the cover letter for the lead specimen plan. The separate application should consist of a letter stating that the practitioner is requesting an advisory letter for a specimen plan that is word-for-word identical to the lead specimen plan and that the practitioner will maintain, and furnish to the Service on request, a list of adopting employers. The practitioner does not need to indicate that at least 30 employers are expected to adopt the plan. The practitioner should not submit a copy of the plan.

4 A user fee in the amount of $100 must be paid for each separate advisory letter application.

5 An application for an advisory letter for a specimen plan that has been filed under the general procedures in section 9.07 of Rev. Proc. 2000–6 can be amended at any time, even after the issuance of an advisory letter, to designate the plan as a lead specimen plan by payment of the required additional user fee and submission of the other information and fees described above.

6 After the initial submission of advisory letter applications by at least 30 practitioners, applications may be filed by other practitioners who will sponsor the word-for-word identical plan. The application must include the practitioner's agreement to maintain, and furnish to the Service on request, a list of adopting employers; a certification by the sponsor of the lead specimen plan that the practitioner's plan is word-for-word identical to the lead specimen plan; and a user fee in the amount of $100. A copy of the plan should not be submitted.

7 All of the above applications are to be sent to the address in section 9.07(1) of Rev. Proc. 2000–6.

SECTION 18. OPENING OF COMPLETE GUST PROGRAM FOR M&P PLANS AND VOLUME SUBMITTER SPECIMEN PLANS; OTHER PROCEDURES RELATED TO GUST

.01 Opening of Complete GUST Program for M&P Plans / Delayed Submissions - Applications for opinion letters for M&P plans that are filed on or after May 8, 2000, will be reviewed taking into account all requirements of GUST, including those that are effective in plan years beginning after December 31, 1998, as well as the requirements of this revenue procedure. In Announcement 99–50, the Service announced that as of May 10, 1999, it was temporarily discontinuing the acceptance of applications for opinion and notification letters for M&P and regional prototype plans. Effective May 10, 1999, therefore, and until May 8, 2000, no applications for the approval of M&P plans (other than those plans submitted pursuant to subsection .02) may be submitted. Any application received on or after May 10, 1999, and prior to May 8, 2000 (other than those submitted pursuant to subsection .02) will be returned.

.02 Early Submission Period for Mass Submitters and National Sponsors - Mass submitters (as defined in section 4.10) and national sponsors (as defined in section 4.11) may submit applications for approval of M&P plans beginning April 7, 2000, and will not be subject to the delayed submission requirement of subsection .01. In the case of a national sponsor, each application submitted during this early submission period must be accompanied by the sponsor's certification, made under penalty of perjury, that it maintains a list of adopting employers which establishes that the sponsor is a national sponsor as defined in section 4.11. The Service reserves the right to request a copy of such list in order to verify that these requirements have been met.

.03 Service to Mail Lists of Identical Adopters to Mass Submitters Approved Under Rev. Proc. 89–9 and Rev. Proc. 89–13 - Within 30 days after the effective date of this revenue procedure, the Service will mail to each person that was approved as a mass submitter under Rev. Proc. 89–9 or Rev. Proc. 89–13 a list of those sponsors that have previously adopted plans that are word-for-word identical to the mass submitter's plans along with such plans' file folder numbers. Mass submitters should use these

lists, in accordance with the instructions provided with such lists, in applying for opinion letters under this procedure with respect to these sponsors' plans. These instructions will allow mass submitters to submit applications for opinion letters on behalf of the identical adopters without filing Form 4461-B.

.04 Treatment of In-Process Applications - As provided in Announcement 99–50, the Service will continue to process all M&P and regional prototype plan applications submitted before May 10, 1999, in accordance with the provisions of Rev. Procs. 89–9, 89–13, 98–14, and 98–53. Any letter issued to such a plan will not consider this revenue procedure or certain provisions of GUST that are effective after 1998. Alternatively, sponsors may withdraw any pending pre-May 10, 1999-application relating to an M&P or regional prototype plan. In this case, the user fee will not be refunded. However, if a new application pertaining to the same plan is subsequently filed on or before December 31, 2000, the user fee for the new application will be waived. The sponsor should indicate on the face of the application form that the user fee is being waived pursuant to Announcement 99–50 and this revenue procedure.

.05 Required Restatement of M&P Plans - M&P plans must be restated the first time they are submitted for GUST opinion letters under this revenue procedure. Amendments or working copies of plans in a restated format, in lieu of actual plan restatement, will not be accepted. However, restatement will not be required if the M&P plan was restated in connection with an application for an opinion letter under Rev. Proc. 98–14 and the plan received a favorable letter. Except as provided in section 16.04, the sponsor must highlight in the restated plan all changes that have been made to the last approved version of the plan.

.06 Completion of New Adoption Agreements for M&P Plans - Employers must complete new adoption agreements when M&P plans are restated for GUST. Part of the reason for this requirement is that employers must conform their adoption agreement choices to the operation of their plans during the GUST transition period. Except as provided in section 6, employers must also request new determination letters in order to have reliance as to the qualified status of their M&P plans.

.07 Opening of Complete GUST Program for Volume Submitter Specimen Plans - The Service will begin to issue advisory letters for volume submitter specimen plans that take into account all of the requirements of GUST beginning March 8, 2000.

SECTION 19. REMEDIAL AMENDMENT PERIOD

.01 Purpose - The purpose of this section is to ensure that employers will have 12 months after an M&P plan or volume submitter specimen plan is approved for GUST in which to adopt the approved plan as a timely GUST restatement. Employers will be eligible for this 12-month period if they are prior adopters of an M&P, regional prototype, or volume submitter specimen plan, or if they certify that they intend to restate their plan for GUST using an M&P or volume submitter specimen plan, and the M&P plan sponsor or volume submitter practitioner submits its plan for GUST-approval by December 31, 2000.

.02 Extension of Remedial Amendment Period - If the requirements in subsection .03 are satisfied, the remedial amendment period for an employer's plan will not expire before the time described in subsection .04. For purposes of this section, the remedial amendment period means the remedial amendment period determined under § 1.401(b)–1 and Rev. Proc. 97–41 and Rev. Proc. 98–14, both as modified by Rev. Proc. 99–23. As provided in section 3.05, where it is appropriate in this section (for example, in subsection .031), the term "M&P plan" includes regional prototype plans under Rev. Proc. 89–13, and the term "opinion letter" includes notification letters issued under Rev. Proc. 89–13.

.03 Requirements for Extension - The requirements of this subsection .03 are satisfied if:

1 before the end of the remedial amendment period (determined without regard to the extension provided by this section), the employer adopts an M&P plan or volume submitter specimen plan (regardless of whether such plan has a TRA '86 opinion or advisory letter); or

2 before the end of the remedial amendment period (determined without regard to the extension provided by this section), the employer and an M&P plan sponsor or volume submitter practitioner execute a written certification of the employer's intent to amend or restate its plan by adopting the sponsor's or practitioner's GUST-approved M&P or volume submitter specimen plan; and

3 by December 31, 2000, the sponsor or practitioner submits an application for a complete GUST opinion or advisory letter for the M&P plan or volume submitter specimen plan referred to in 1 or 2 (even if the M&P plan is an identical adoption of a mass submitter plan).

.04 Period of Extension - If the preceding requirements are satisfied, the remedial amendment period for the employer's plan will not expire before the end of the twelfth month beginning after the date on which a GUST opinion or advisory letter is issued for the M&P or volume submitter specimen plan referred to in subsection .03 or the opinion or advisory letter application for the plan is withdrawn. Within this period, the employer must amend or restate its plan by adopting the GUST-approved M&P or volume submitter specimen plan (or another GUST-approved M&P or volume submitter specimen plan, or individually designed GUST amendments) and, if required for reliance, request a determination letter.

.05 Prior Adopters Deemed to Have Adopted Other Plans of Sponsor or Practitioner for Purposes of This Section - An employer that adopts, before the end of the remedial amendment period (determined without regard to the extension provided by this section), any M&P plan or volume submitter specimen plan of a sponsor or practitioner will, for purposes of this section, be deemed to have adopted each other M&P plan or volume submitter specimen plan of that sponsor or practitioner. Likewise, an employer that certifies, before the end of the remedial amendment period (determined without regard to the extension provided by this section), its intent to adopt any M&P plan or volume submitter specimen plan of a sponsor or practitioner will, for purposes of this section, be deemed to have made such a certification with respect to each other M&P plan or volume submitter specimen plan of that sponsor or practitioner.

.06 Certain Employer Amendments Disregarded for Purposes of This Section - An employer that has adopted an

M&P plan or a volume submitter specimen plan may have modified the plan in a such a way that the plan, as adopted by the employer, would not be considered an M&P plan or a volume submitter plan. Nevertheless, for purposes of this section, such a plan will be treated as an M&P or volume submitter plan and will be eligible for the remedial amendment period extension provided by this section. For example, an employer may have adopted an individually designed GUST-related amendment to an M&P plan that would have caused the plan to be considered an individually designed plan under section 5.02 of Rev. Proc. 89–9. Despite the individually designed amendment, the plan will be treated as an M&P plan for purposes of this section.

.07 No Extension Where M&P Plan Sponsor or Volume Submitter Practitioner Fails to Make Timely Request for GUST Opinion or Advisory Letter - If an employer's plan would otherwise be eligible for the extension described in subsection .04, but the M&P sponsor or volume submitter practitioner fails to submit an application for a GUST opinion or advisory letter by December 31, 2000, the remedial amendment period for the employer's plan will not be extended.

.08 Information To Be Submitted with Determination Letter Application - An employer that avails itself of the extension provided by this section must include with its determination letter application either evidence of adoption, before the expiration of the remedial amendment period (determined without regard to this section), of an M&P or volume submitter specimen plan or a copy of the certification described in subsection .032.

.09 Discretionary Extensions - If an M&P sponsor or volume submitter practitioner determines that the extension of the remedial amendment period provided by this section does not allow sufficient time for employers to adopt the sponsor's or practitioner's GUST-approved M&P or volume submitter specimen plan and, if required for reliance, request determination letters, the sponsor or practitioner may request a further extension. At its discretion, the Service may grant such a further extension. Among the factors that the Service will consider in determining whether a further extension will be granted are whether the sponsor or practitioner has taken reasonable steps to ensure that the process of restating employers' plans for GUST is completed as promptly as possible, whether substantial hardship to employers or the sponsor or practitioner would result if such an extension were not granted, whether such an extension is in the best interests of plan participants, and whether the granting of the extension is adverse to the interests of the Government. Requests for a further extension should be addressed to the Commissioner, Tax Exempt and Government Entities Division, P.O. Box 14073, Ben Franklin Station, Washington, D.C. 20224, Attention: T:EP:RA:T:ICU. However, the Service will not accept requests for a further extension before the later of December 31, 2000, or the date of issuance of a GUST opinion or advisory letter with respect to the sponsor's or practitioner's M&P or volume submitter specimen plan.

.10 Required Amendments for Plans with Extended Reliance on TRA '86 Letters - Under Rev. Proc. 89–9, Rev. Proc. 89–13 (both as modified by Rev. Proc. 93–9, 1993–1 C.B. 474), Rev. Proc. 93–39, 1993–2 C.B. 513, Announcement 94–85, 1994–26 I.R.B. 23, and Rev. Proc. 95–12, 1995–1 C.B. 508, plans that were submitted to the Service within certain deadlines for determination, opinion, or notification letters under TRA '86 and received favorable letters were entitled to extended reliance. During the extended reliance period, a plan generally was not required to comply in operation with or be amended for regulations or administrative guidance of general applicability issued after the date of the plan's letter which interpret the qualification requirements in effect when the letter was issued. As modified by Rev. Proc. 99–23, the extended reliance period continued until the earlier of the last day of the last plan year commencing prior to January 1, 2000, or the date established for plan amendment by any legislation effective after the date of the plan's letter. As further provided in Rev. Proc. 99–23, a plan with extended reliance must be amended by the last day of the first plan year beginning on or after January 1, 2000, to the extent necessary to comply with regulations or administrative guidance of general applicability which has been issued since the date of the plan's favorable TRA '86 letter. For this purpose, plan amendments will be deemed to have been adopted on the last day of the first plan year beginning on or after January 1, 2000, if they are in fact adopted after that date but within the plan's remedial amendment period as extended by this section. The amendments must be made effective no later than the first day of the first plan year beginning on or after January 1, 2000. If the plan's remedial amendment period has been extended by this section, the amendments may be made effective earlier than the first day of the plan year in which the amendments are adopted to the extent necessary to comply with this requirement.

SECTION 20. EFFECT ON OTHER DOCUMENTS

.01 The following revenue procedures are superseded: Rev. Procs. 89–9, 89–13, 90–21, 92–41, 93–10, and 95–42.

.02 Section 8.03 through 8.08 of Rev. Proc. 91–66 is superseded. The balance of Rev. Proc. 91–66 was previously superseded; therefore, Rev. Proc. 91–66 is now superseded in full.

.03 Section 4 of Rev. Proc. 93–9 is superseded. The balance of Rev. Proc. 93–9 was previously superseded; therefore, Rev. Proc. 93–9 is now superseded in full.

.04 Section 8.05 of Rev. Proc. 2000–6 is modified as follows:

1 subsection (2) is modified to provide that whether an employer may rely on an opinion letter for a standardized plan without requesting a determination letter will be determined under section 6 of this revenue procedure; and

2 subsection (3) is deleted.

.05 Rev. Proc. 2000–8 is modified as provided in section 17.

.06 Announcement 99–50 is modified.

SECTION 21. EFFECTIVE DATE

This revenue procedure is effective February 7, 2000.

SECTION 22. 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 1545–1674.

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

The collections of information in this revenue procedure are in sections 5.14, 9.11, 12.02, 12.03, 15.02, 17.02, 18.06, 19.02 and 19.09. This information is required in connection with the determination of plan qualification. This information will be used to determine whether a plan is entitled to favorable tax treatment. The collections of information are mandatory. The likely respondents are banks, insurance companies, other financial institutions, law, actuarial and consulting firms, employee benefit practitioners and employers.

The estimated total annual reporting and/or record keeping burden is 408,563 hours.

The estimated annual burden per respondent/record-keeper varies from 10 minutes to 2000 hours, depending on individual circumstances, with an estimated average of 1.53 hours. The estimated number of respondents and/or recordkeepers is 266,530.

The estimated annual frequency of responses (used for reporting requirements only) is once every three years.

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

DRAFTING INFORMATION

The principal author of this revenue procedure is James Flannery of the Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, contact the Employee Plans telephone assistance service between the hours of 1:30 and 3:30 p.m. Eastern time, Monday through Thursday, on (202) 622-6074/75 (These telephone numbers are not toll-free.)