



*Actuarial Systems Corporation*

# PPA Defined Benefit and Cash Balance Plan Documents

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## Agenda

- General requirements under the IRS pre-approved defined benefit plan program
- Plan restatement timing requirements
- Scope of reliance provided by an IRS Advisory Letter
- Impermissible pre-approved defined benefit plan designs
- Responsibilities of a pre-approved defined benefit plan sponsor
- Overview of the ASC pre-approved defined benefit plan documents, including:
  - Volume Submitter Defined Benefit Plan (integrated & non-integrated)
  - Volume Submitter Cash Balance Plan
  - Volume Governmental Defined Benefit Plan (includes Cash Balance provisions)

## General Requirements – Pre-Approved DB Plans

- Qualified plan – form and operation
- Plan document form – written document setting forth the terms of the plan, including eligibility, vesting, benefit determination, benefit distributions and other legal provisions
- Types of plans
  - Defined contribution plans – profit sharing, 401(k), money purchase, target benefit, ESOP
  - Defined benefit plans – traditional, cash balance, fully insured
- Format of plan documents
  - Individually-designed plan (IDP)
  - Pre-approved plan

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## Pre-Approved Plan Documents

- IRS developed the pre-approved plan program after ERISA
- A favored program by IRS, many practitioners and plan sponsors
- Evolved over the years to encourage the use of pre-approved plans over individually-designed plans
- Generally, pre-approved plans use the basic plan document/adoption agreement format
  - Text-based format is acceptable
- Revenue Procedure 2015-36 – Procedures for Cycle 2 (PPA) pre-approved plans
  - “Master & Prototype (M&P)” and “Volume Submitter” plans
  - Major change affecting defined benefit plans– expansion of pre-approved program to include cash balance plans
- Revenue Procedure 2017-41 – Procedures for Cycle 3 pre-approved plans

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## Impact of Revenue Procedure 2016-37

- Significant modification to determination letter program for individually-designed plans
  - 5-year restatement cycle eliminated for IDPs
  - Determination letters only available on initial plan qualification and plan termination
    - IRS may provide exceptions
  - No more interim amendments for IDPs
- Minor changes to pre-approved plan program
- Effective January 1, 2017

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## Determination Letters

- Generally, a determination by the IRS that the form of the plan meets the requirements of Code §401(a)
- Not required as a condition of qualification, but plan sponsor receives reliance that the plan satisfies the applicable qualification requirements
- IRS cannot retroactively go back if form of document fails to meet qualification requirements
  - IRS can require prospective changes

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## RP 2016-37 – Pre-Approved Plans

- No substantial changes to pre-approved plan program
- 6-year cycle remains
- Uniform restatement period for DC and DB plans
- Interim amendments still required by the end of the RAP designated in the regulations!!
- IRS solicited comments

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## RP 2015-36 – Pre-Approved Plans

- M&P (Master & Prototype) Plans
  - Basic plan document (“umbrella document”) and adoption agreement
    - Adoption agreement is the “check the box” and/or “fill-in the blank” document completed by the employer adopting plan
  - “Opinion letter” issued by IRS to sponsoring organization as to the acceptability of the form of the plan
  - Cannot submit for a determination letter using Form 5307

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## RP 2015-36 – Pre-Approved Plans

- Volume submitter plan
  - Specimen plan
    - Basic plan document and adoption agreement
    - Text version with optional provisions
    - Separate BPD for governmental plans
  - Slightly more flexible than M&P plans
  - “Advisory letter” issued by IRS to volume submitter sponsor as to the acceptability of the form of the plan
  - Determination letter request submitted on Form 5307
    - Only allowed if modification to volume submitter document

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## RP 2015-36 – Pre-Approved Plans

- Mass submitter
  - Person with established business in the United States and submits opinion letter applications on behalf of at least 30 sponsoring organizations
  - Provides pre-approved plans for adoption by plan document providers (e.g., TPAs, financial institutes, law firms, and consultants)
  - ASC Institute is a mass submitter

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## RP 2017-41 – Pre-Approved Plans

- Significant changes to pre-approved plan program
- Effective for THIRD restatement cycle
- Revised terminology
  - Elimination of the terms “Master and Prototype (M&P)” and “Volume Submitter Plans” and instead uses the term “Pre-Approved Plans”
  - Organizations that sponsor a Pre-Approved Plan referred to as “Providers”
  - Pre-Approved plans may utilize the basic plan document/ adoption agreement format or a text-based format

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## RP 2017-41 – Highlights

- Providers will receive “opinion letters” on their Pre-Approved Plans
  - The term “advisory letter” is no longer applicable
- Types of plan designs acceptable under the pre-approved plan program is expanded
  - Cash balance plans
  - ESOPs (leveraged, non-leveraged and 401(k))
  - Church plans

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## RP 2017-41 – Highlights

- The IRS will continue to accept determination letters applications (using Form 5307) for Pre-Approved Plans that are modified
- The procedure clarifies that the IRS only considers tax qualification requirements and does not review Title I of ERISA requirements in issuing its opinion letters

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## RP 2017-41 – Highlights

- The IRS will no longer review the trust or custodial provisions of a Pre-Approved Plan and trust and custodial provisions **MUST** be in a document separate from the plan provisions
- The IRS has clarified that electronic signatures are acceptable under the pre-approved plan program

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## Plan Restatement Timing Requirements

- Cycle 1 (EGTRRA) DB restatement cycle ended April 30, 2012
- Cycle 2 (PPA) DB document submissions were required by October 30, 2015 (including cash balance plans)
- Review process and revelations
  - 2012 Cumulative List used in review
- Announcement 2018-05
  - Most Opinion/Advisor Letters issued in March or April 2018
  - Employer restatement period - May 1, 2018 – April 30, 2020
  - Form 5307 submissions under RP 2018-4
  - Extension will be provided for Cycle 3 DB submissions (currently January 31, 2019)
- Cycle 3 DB submissions under Revenue Procedure 2017-41
- Revenue Procedure 2018-21
  - Allows use of actual rate of return for cash balance plan's interest crediting rate

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## Scope of Reliance – Advisory Letter

- An opinion by the IRS that the form of the plan meets the requirements of Code §401(a)
- Volume submitter plans get “Advisory Letters”
- Content of Advisory Letter

[ASC DB VS Advisory Letter](#)

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## Pre-Approved Plan vs. IDP

- What are the advantages and disadvantages of pre-approved plans vs. individually-designed plans?
  - Reliance on approval letters
  - Determination letters only on initial plan qualification and plan termination
  - Pre-approved plans on 6-year cycle with new opinion/advisory letters
  - Employers using “modified” Volume Submitter plans may submit for a determination letter during the 2-year restatement cycle
  - Interim amendments required for pre-approved DB plans
  - Some have a preference for the text-based style for the plan document
  - Need for custom document to memorialize “legacy” benefits or for other reasons
  - Plan design not allowed under the pre-approved program

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## Impermissible Pre-Approved Plan Designs

- Multiemployer plans
- Union plans (i.e., single employer collectively bargained plans)
- Plans described in § 414(k) (relating to a defined benefit plan that provides a benefit derived from employer contributions that is based partly on the balance of the separate account of a participant)
- Church plans described in § 414(e) that have not made the election provided by § 410(d)
  - Modified by Revenue Procedure 2017-41

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## Impermissible Pre-Approved Plan Designs

- Statutory hybrid plans with any of the following features:
  - Any statutory hybrid benefit formula that is not a cash balance formula
  - Provisions that allow for hypothetical interest crediting based on rates of return that are subject to participant choice, or any rate that does not meet the requirements of §1.411(b)(5)-1(d)
  - Provisions that allow a rate used to determine hypothetical interest to be based on actual return on plan assets or a subset of plan assets or the rate of return on certain RICs
    - Modified by Revenue Procedure 2018-21

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## Actual Rate of Return Provision

- Basic Plan Document provision
  - “If elected in the adoption agreement, the Interest Crediting Rate applied to a Participant’s beginning Hypothetical Account Balance for each Interest Credit Period shall be the Actual Rate of Return on the aggregate assets of the Plan for that period, including both positive and negative returns. If the use of Actual Rate of Return is elected in the adoption agreement, plan assets must be diversified so as to minimize the volatility of returns ... The Actual Rate of Return, which includes both realized and unrealized gains and losses, will be calculated as provided in the adoption agreement. Additionally, the employer may elect in the adoption agreement for purposes of the first Plan Year only of the Plan that the Interest Crediting Rate for such Plan Year shall be the fixed rate specified in the adoption agreement and then for all subsequent Plan Years will be the Actual Rate of Return. “

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## Impermissible Pre-Approved Plan Designs

- Statutory hybrid plans with any of the following features: (continued)
  - A conversion amendment, except for plans providing that, after the effective date of the conversion amendment, a participant's accrued benefit is equal to the sum of accruals under the prior formula plus the benefit based on the cash balance formula ("A+B Conversion")
  - Provisions that use the 3-percent accrual rule or the fractional accrual rule to satisfy the accrued benefit requirements under § 411(b)(1)
  - Provisions that provide for funding exclusively through insurance contracts as described in § 412(e)(3)
  - Provisions that provide for offsets of benefits accrued under another plan (the "offsetting plan"), unless certain conditions are satisfied

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## Impermissible Pre-Approved Plan Designs

- Governmental defined benefit plans that include "deferred retirement option plan" (DROP) features, or similar provisions in which a participant earns additional benefits for continued employment post-normal retirement age in the form of credits to a separate account (including a cash balance account or other arrangement) under the same plan
- Plans under which the § 415 limitations are incorporated by reference
- Fully-insured § 412(e)(3) plans, other than non-statutory hybrid plans that by their terms satisfy the safe harbor in § 1.401(a)(4)-3(b)(5)
- Plans that fail to contain a provision reflecting the requirements of § 414(u)
- Plans that include purported fail-safe provisions for § 401(a)(4) or the average benefit test under § 410(b)

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## Impermissible Pre-Approved Plan Designs

- Plans that include blanks or fill-in provisions for the employer to complete, unless the provisions have parameters that preclude the employer from completing the provisions in a manner that could violate the qualification requirements
- Plans designed to satisfy the provisions of § 105
- Plans that include § 401(h) accounts
- Eligible combined plans within the meaning of § 414(x)(2)
- Variable annuity plans and plans that provide for accruals that are determined in whole or in part based on the value of or rate of return on identified assets, including plan assets
- Any other type of plan design that IRS decides to decline

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## Duties of Pre-Approved Plan Sponsor

- Pre-approved plan sponsor (provider)
  - The entity that applies to the IRS to get a favorable opinion or advisory letter for the pre- approved plan stating that the plan document meets the rules under Code §401(a)
- Duties of the pre-approved plan sponsor (provider)
  - Maintain a written record of adopting employer names, business addresses and EIN and provide the list to the IRS upon written request
  - Continue to maintain the plan in an approved status
    - Timely amend the plan to reflect changes in the tax laws
    - Apply for a new opinion or advisory letter when required
    - Provide copies of the plan, amendments, and any opinion or advisory letters to each adopting employer (electronic media acceptable)
    - Comply with all required notice procedures

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## Duties of Pre-Approved Plan Sponsor

- Duties of the plan sponsor
  - Have procedures for notifying adopting employers of plan amendments and restatements (e.g., required interim amendments)
  - Inform adopting employers that failure to timely adopt the necessary plan amendments or restatements or failure to operate the plan consistent with such changes could have adverse tax consequences
  - Inform adopting employer if plan sponsor believes the plan is no longer qualified
  - Report to the IRS in writing if a plan is no longer used by any eligible employer and that it is no longer available for adoption

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## Overview of ASC DB Plan Documents

- Volume Submitter Non-Governmental Defined Benefit Plans
  - Non-integrated
  - Integrated
  - Cash Balance
- Volume Submitter Governmental Defined Benefit Plan
  - Includes cash balance plan features

[PPA DB/CB Basic Plan Document](#)

[PPA DB Nonintegrated Adoption Agreement](#)

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Thank you for attending!

