

**ASC**  
*Actuarial Systems Corporation*

# Cycle 3 ASC Defined Contribution Plan Documents

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## Agenda

- General requirements under the IRS pre-approved defined contribution plan program
- Plan restatement timing requirements
- Scope of reliance provided by an IRS Opinion Letter
- Responsibilities of a pre-approved defined contribution plan Provider
- Overview of the ASC pre-approved Cycle 3 defined contribution plan documents
- Fixing nonamenders
- ASC Cycle 3 Nonstandardized Profit Sharing/401(k) Plan
  - Basic Plan Document
  - Adoption Agreement



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## General Requirements – Pre-Approved DC 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
- 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, effective January 1, 2017
  - 5-year restatement cycle eliminated for IDPs
  - Determination letters only available on initial plan qualification and plan termination
    - IRS has provided a few exceptions
  - No more interim amendments for IDPs
- Minor changes to pre-approved plan program

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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
- Subsequently IRS issued Revenue Procedure 2017-41



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## RP 2017-41 – Pre-Approved Plans

- Significant changes to pre-approved plan program
- Effective for THIRD restatement cycle
- 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
- 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”



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## RP 2017-41 – Highlights

- Providers 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 are expanded
  - 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
- 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) DC restatement cycle ended April 30, 2010
- Cycle 2 (PPA) DC restatement cycle ended April 30, 2016
- Cycle 3 submitted by December 31, 2018
  - 2017 Cumulative List used in review
- IRS Announcement 2020-7
  - Most Opinion Letters issued around June 30, 2020
  - Employer restatement period ends July 31, 2022
  - Form 5307 submissions accepted until July 31, 2022

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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 generally only on initial plan qualification and plan termination
  - Pre-Approved Plans on 6-year cycle with new opinion letters
  - Employers using “modified” Pre-Approved Plans may submit for a determination letter during the 2-year restatement cycle
  - Interim amendments required for Pre-Approved 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 Plan program

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## Impermissible Pre-Approved DC Plan Designs

- Multiemployer plans
- Single-employer collectively bargained plans
  - Collectively-bargained employees may participate in a Pre-Approved Plan
- Stock bonus plan other than ESOPs
- ESOPs that are a combination stock bonus and money purchase plan
- ESOPs that hold preferred stock
- Certain pooled fund arrangements

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## Impermissible Pre-Approved DC Plan Designs

- Non-safe harbor target benefit plans
- Plans under which the §415 limitations are incorporated by reference
- Plans under which ADP and ACP test provisions are incorporated by reference
- Standardized 401(k) plans that provide for non-safe harbor hardship distributions
- Nonstandardized 401(k) plans that provide for non-safe harbor hardship distributions, unless plan contains nondiscriminatory and objective criteria
- Plans that fail to contain a provision reflecting the requirements of §414(u)

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## Impermissible Pre-Approved DC Plan Designs

- Plans that include purported fail-safe provisions for §401(a)(4) or the average benefit test under §410(b)
  - Fail-safe provisions using ratio percentage test allowed
- 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 (accident and health plans)
- Eligible combined plans within the meaning of §414(x)(2) (combined defined benefit and 401(k) plans)
- Any other type of plan design that IRS decides to decline

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## Duties of Pre-Approved Plan Provider

- Pre-Approved Plan Provider
  - The entity that applies to the IRS to get a favorable Opinion Letter for the pre-approved plan stating that the plan document meets the rules under Code §401(a)
- Duties of the Pre-Approved Plan 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 Letter when required
      - Certification that interim amendments were timely adopted
    - Provide copies of the plan, amendments, and Opinion Letter to each adopting employer (electronic media acceptable)
    - Provide direct contact information
    - Comply with all required notice procedures

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## Duties of Pre-Approved Plan Provider

- Duties of the Pre-Approved Plan Provider
  - 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 consist with such changes could have adverse tax consequences
  - Inform adopting employer if plan Provider 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
- By applying for an Opinion Letter, the Provider agrees to comply with these duties
  - Failure of Provider to meet its duties may result in the loss of eligibility to offer Pre-approved Plans and the revocation of Opinion Letters that have been issued to the Provider

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## Nonamender Plans

- Generally, a Pre-Approved Plan adopting employer that missed the April 30, 2016 (Cycle 2 or PPA) restatement deadline must correct by submitting a nonamender VCP application to the IRS
  - VCP Submission Kit
    - <https://www.irs.gov/retirement-plans/vcp-submission-kit-failure-to-adopt-a-new-pre-approved-defined-contribution-plan-by-the-april-30-2016-deadline>
    - Forms 14568 and 14568-B
    - Signed copy of PPA plan document
    - Signed copy of pre-PPA plan document
    - Form 2848

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## Nonamender Plans

- Correcting certain plan document failures under Self-Correction Program (SCP)
  - Plan document failures are considered a significant failure that must be corrected within the two-year correction period
  - Plan must have a favorable letter
  - SCP is not available to correct a failure to timely adopt an initial 401(a) plan document
  - Corrective amendments to resolve demographic failures that were not timely adopted are not eligible for SCP and must be resolved under VCP or Audit CAP
  - The late adoption of discretionary amendments is not considered a plan document failure

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## Overview of ASC DC Pre-Approved Plan Documents

- General Defined Contribution Plans (BPD #01)
  - Nonstandardized Profit Sharing/401(k) Plan (AA #01-001)
  - Nonstandardized Profit Sharing/401(k) Plan – Collapsible (AA #01-002)
  - Standardized Profit Sharing/401(k) Plan (AA #01-003)
  - Standardized Profit Sharing/401(k) Plan – Collapsible (AA #01-004)
  - Nonstandardized Money Purchase Pension Plan (AA #01-005)
- Owners-Only Profit Sharing/401(k) Plan (BPD #02 - AA #001)

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## Overview of ASC DC Pre-Approved Plan Documents

- Governmental Defined Contribution Plans (BPD #03)
  - Nonstandardized Profit Sharing/401(k) Plan (AA #03-001)
  - Nonstandardized Money Purchase Pension Plan (AA #03-002)
- Employee Stock Ownership Plan (BPD #04 - AA #001)
- Church Defined Contribution Plans (BPD #05)
  - Nonstandardized Profit Sharing/401(k) Plan (AA #05-001)
  - Nonstandardized Money Purchase Pension Plan (AA #05-002)

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## Scope of Reliance – Opinion Letter

- An opinion by the IRS that the form of the Pre-Approved Plan meets the requirements of Code §401(a)
- All Pre-Approved Plans receive “Opinion Letters”
- Content of Opinion Letter
  - [Opinion Letter](#)

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## Nonstandardized Profit Sharing/401(k) Plan

- By far, the most utilized ASC Pre-Approved Plan
- Most similar to the Cycle 2 (PPA) Volume Submitter Profit Sharing/401(k) Plan
- Governmental or Church employers will use separate documents
- [BPD #01 - compare](#)
- [AA #01-001 - compare](#)

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# Thank you for attending!

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