

# A CURRENT ROADMAP TO PRE-APPROVED DEFINED CONTRIBUTION PLANS



BY SUSAN D. DIEHL, QPA

Pre-approved DC plans were designed to make implementation easier and more efficient. Here's how two such programs, the Master & Prototype and the Volume Submitter, are supposed to work.

Dating as far back as the early 1960s, the Internal Revenue Service (IRS) offered different versions of pre-approved plans. The employee plan universe has seen prototype plans for corporations and self-employeds, pattern plans, field prototype, mass submitter prototypes, volume submitter plans, and regional prototype plans. The two that currently remain are the Master &

Prototype (M&P) and the Volume Submitter (VS) programs.

During the past 20 years, the use of M&P and VS plans has increased dramatically. The IRS estimates that at least 94 percent of all qualified retirement plans are pre-approved plans. Undoubtedly this has been the IRS's goal since such pre-approved plan programs were invented to provide a more efficient approach. Rather than the IRS reviewing thousands of individually written plan documents, a pre-approved system allows the IRS to conduct its reviews quickly and efficiently and issue Listing of Required Modifications (LRMs) with sample plan language that will meet IRS scrutiny upon review.

Each restatement period since the 1960s has provided more flexibility by adding types of plans to the pre-approved plans program and adding to permissible provisions that were at one time only allowed in custom plans.

This article focuses on Revenue Procedure 2011-49, which goes yet another step in the process of “closing the gap” between M&P and VS plans. It discusses changes to the M&P and VS plans, and summarizes the differences and similarities between them. At the end of this article is a comparison chart summarizing such similarities and differences.

For more information on the history of pre-approved plans and some statistics on the types of plans go to: [www.irs.gov/pub/irs-tege/tege\\_act\\_rpt6.pdf](http://www.irs.gov/pub/irs-tege/tege_act_rpt6.pdf) for a copy of the report presented to the IRS from the Employee Plans subcommittee of the Advisory Committee for TEGE (ACT). This report of recommendations was presented to the IRS in 2007 and served as a guideline to some of the changes we've seen over the past few years.

## BASIC DEFINITIONS

A “master plan” is a plan for which a single funding medium (*e.g.*, a trust or custodial account) is established as part of the plan and all employers use the same funding medium. In

some cases, financial institutions use this type of plan to restrict the investments to only their products but this isn't a very common feature in qualified plans. In addition to a trust, a master plan consists of a basic plan document and an adoption agreement. A trust may be integrated into the plan document.

A “prototype plan” is a plan comprising the same components except that a separate funding medium is established for each adopting employer and there are usually no restrictions on the type of investment products that can be a part of the plan.

An “M&P sponsor” is a U.S. business accessible during business days and has at least 30 employer-clients, each of which is reasonably expected to adopt the sponsor's basic plan document word-for-word. “Substantially identical” plans may receive expedited review, even if they're not mass submitter plans. M&P plans can be in standardized and non-standardized form.

A “standardized plan” has more required provisions in the plan and adoption agreement and fewer changes are permitted. A standardized plan has limited exclusions and is required to use total compensation. In other words, the adoption agreement cannot exclude bonuses, overtime, or other amounts, and the exclusions are limited to the “statutory exclusions” under section 410(b) of the Code.

A “nonstandardized plan” goes beyond the basic provisions. With the increase in the allowable provisions, however, testing of the benefits, rights, and features is required to ensure that the plan remains appropriately nondiscriminatory (*e.g.*, coverage, employer allocations, etc.). Unlike a standardized plan, these plans may use exclusions from compensation and are allowed further exclusions from eligibility (such as the last-day rule or the requirement of 1,000 hours of service).

A “VS plan,” which consists of a plan document and a trust or custodial

account and may include an adoption agreement, is a specimen plan of a VS practitioner (*i.e.*, a sample plan of a VS practitioner rather than the actual plan of an employer) that its employer-clients will adopt on an identical basis or substantially identical basis. From the time VS plans were introduced there were differences that made one attractive over the other, depending on the type of clients that the VS practitioner entertained.

A “VS practitioner” is a U.S. business accessible during business days with at least 30 employer-clients, each of which is reasonably expected to adopt a plan that is substantially similar to the VS practitioner's specimen plan. This requirement is reduced for a specimen money purchase pension plan if a practitioner has at least one other type of specimen plan that satisfies the 30 employer-client mandate. A VS practitioner may submit any number of specimen plans for advisory letters, provided the 30-employer (or 10, if applicable) requirement is separately met on each specimen plan.

A “VS mass submitter” is a U.S. business, accessible during business days, that submits advisory letter applications on behalf of at least 30 unaffiliated practitioners, each of which is sponsoring, on a word-for-word identical basis, the same specimen plan.

## DIFFERENCES BETWEEN M&P AND VS PLANS

Revenue Procedure 2011-49, in addition to laying out the foundation for the drafting of the M&P and VS plans, also clarifies what can and cannot be done with pre-approved plans.

1. VS plans, but not M&P plans, can include governmental plan provisions, using a standalone plan document.
2. M&P sponsors may submit under the “minor modifier” rules, under which a plan sponsor may modify a mass submitter's plan to accommodate minor changes from a word-for-word adoption. Adopters of volume submitter plans may make minor modifications to the

volume submitter specimen plan without submitting as a “minor modifier” or as an individually designed plan.

3. VS plans aren't required to have an adoption agreement; the plan can be submitted as a single integrated plan document. M&P plans must have an adoption agreement. Both must have trust provisions or a separate trust document.
4. Flexible provisions continue to be permitted in M&P plans. This feature permits the prototype's sponsor to remove certain sections because they don't apply or because the financial institution offering the plan doesn't offer the provision. If the prototype's sponsor doesn't offer

loans, for example, then the section in the plan and the adoption agreement that refers to loans is removed and generally replaced with “reserved.” M&P plans can have as many as six administrative flexible provisions and six investment flexible provisions.

5. The relevant parties are different: Under M&P plans the parties are the adopting employer, the sponsor of the M&P plan, and the M&P mass submitter, if applicable. Each of these is involved at a different level in the process.

The IRS issues opinion letters to mass submitters and/ or sponsors of M&P plans that

have been submitted to the IRS for approval. The sponsor then makes its plan(s) available for employers to adopt.

The parties in a VS plan are the adopting employers, practitioners, and mass submitters, if applicable. Where the IRS has issued advisory letters to VS practitioners on the acceptability of the form of the specimen plans, that practitioner will then be able to offer its plan or plans to employers for adoption.

Below are two charts. The first outlines the responsibilities of the VSP and PS; the second outlines the similarities and differences between the M&P and the VS plans. **PC**



*Susan D. Diehl, ERPA, QPA, is president of PenServ Plan Services, Inc. in Horsham, Pa.*

## ROAD MAINTENANCE

Responsibilities of the VS Practitioner and the Prototype Sponsor

ACT	VS PRACTITIONER (VSP)	PROTOTYPE SPONSOR (PS)
Furnish each employer with copy of plan, copies of all subsequent amendments, and opinion letter	Yes	Yes
Ensure that employers complete and sign new AAs when necessary	Required	Same as VSP
PS/VSP abandons the plan	Employer notification that the form of the plan has been terminated, and that the employer's plan will become an IDP (unless the employer adopts another pre-approved plan)	Same as VSP
VSP/PS must maintain a list of the employers that have adopted or are expected to adopt the VSP/PS plans, including the employers' business addresses and employer identification numbers.	Maintenance of this list for all employers who have adopted all plans within the preceding three years	Same as VSP
A PS/VSP must notify the Service if an approved plan is no longer used by any employer and the sponsor no longer intends to offer the plan for adoption.	Notification must be made in writing to the EP Rulings and Agreements	Same as VSP
If the VSP's plan permits the VSP to amend the plan on behalf of employers	VSP also agrees to comply with any requirements imposed on sponsors of M&P plans by this procedure	N/A
Failure to comply with these requirements	Result may be the loss of eligibility to sponsor specimen plans and the revocation of advisory letters that have been issued to the VSP.	Same as VSP
Filing of opinion letter application constitutes agreement to comply with recordkeeping requirements	Applies	Applies
Loss of qualified status of the employer's plan	If a PS or VSP reasonably concludes that an employer's plan may no longer be a qualified plan and the PS or VSP does not or cannot submit a request to correct the qualification failure under EPCRS, it is incumbent on the PS or VSP to notify the employer: <ul style="list-style-type: none"> <li>• That the plan may no longer be qualified;</li> <li>• That adverse tax consequences may result from loss of the plan's qualified status; and</li> <li>• Of the availability of EPCRS.</li> </ul>	Same as VSP

More information on these responsibilities and the results of the EPCU project on the above information may be found on the IRS website at: [www.irs.gov/retirement/article/0,,id=182053,00.html](http://www.irs.gov/retirement/article/0,,id=182053,00.html)

## THE PAVED ROAD

	REVENUE PROCEDURE 2011-49	M&P	VS
	Plan document	Yes	Yes
	Trust	Yes (separate doc. or incorporated into plan doc.); For prototype plans maximum of 10 separate trusts plus one that can be a part of the document. (additional fees apply for trusts exceeding 10)	Yes (separate doc. or incorporated into plan doc.)
	Trust amended by employer	Employer may amend administrative provisions of the trust and it will not be considered an IDP and only for a nonstandardized plan.  Standardized Plans may only amend the following in a trust document: <ul style="list-style-type: none"> <li>• names of the plan,</li> <li>• employer,</li> <li>• trustee or custodian,</li> <li>• plan administrator and other fiduciaries,</li> <li>• the trust year, or</li> <li>• the name of any pooled trust</li> </ul>	Same as VSP
	Adoption Agreement ("AA")	Yes	Optional
	Mass Submitter	Yes	Yes
	Electronic signature on AA	Yes, new for PPA Submission	Yes, new for PPA Submission
	IRS approval letter	Opinion letter	Advisory letter
Additional Plan Types That May Be Submitted	Multiple Employer Plans	Yes, new for PPA Submission	Yes, new for PPA Submission
	Multiemployer/Union	No	No
	Stock bonus plans	No	No
	Plans under §414(k)	No	No
	Governmental Plans	No	Yes, but not Governmental plans that include "DROP" provisions or similar provisions
	Church Plans	No	Yes but not Church plans under § 414(e) that have not made the election provided by § 410(d)
	Plans that incorporate by reference 415, ADP and ACP tests	No	No
	Hardship distributions that do not satisfy the safe harbor	No	No
	Plans not containing 414(u) requirements	No	No
	Plans with 401(h) accounts	No	No
	Plans under 414(x) (DBK)	No	No
	Stand-alone governmental plans	No. May be handled in Adoption Agreement but plan must have all provisions	Yes, but see restriction above
Multiple Employer plans	Yes, new for PPA Submissions	Yes, new for PPA Submissions	
Minimums required by plan submitter	Yes, mass submitter: minimum 30 unaffiliated sponsors required	Yes, for practitioner: minimum 30 employer-clients; for mass submitter: minimum 30 unaffiliated practitioners (exceptions apply)	
Reliance on opinion/advisory letter	Yes, subject to restrictions	Yes, subject to restrictions	
Amendments to plans by sponsor on behalf of employer	Yes	Yes, new for PPA Submissions	
Flexible provisions	Yes, up to 6 administrative and 6 investment related provisions	No, not permitted	
Minor modifiers	Yes, after the original 30 "word-for-word," modifiers may be added	No	
Non-applicability	IRAs (including traditional, Roth, SEPS, and Simple IRAs) and section 403(b) plans	403(b) plans (see Rev. Proc. 98-59)	
Standardized/Nonstandardized versions of Adoption Agreements	Yes	No. However practitioner or employer may amend the document and submit on 5307 without the plan becoming an IDP	