



The Benefits of Adopting a Pre-Approved Plan

Amanda J. Dernovshek, Julie L. Hamlet and Mindi M. Johnson

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What is a pre-approved plan?

An employer that sponsors a qualified plan (including a 401(k) plan) may choose between adopting an individually designed plan or a pre-approved plan. A pre-approved plan is a plan document that has been submitted by a third party (the "Document Provider") to the IRS for approval before it is adopted by an employer. The Document Provider is often a legal or financial organization, such as a law firm, third party administrator, or insurance company. Over the last several years, the IRS has made efforts to encourage employers to use pre-approved plans in order to promote compliance and administrative simplicity.

What are the benefits of a pre-approved plan?

A pre-approved plan offers many advantages to an adopting employer. The most notable advantage is the adopting employer's ability to rely on the Document Provider's IRS opinion letter. The opinion letter is a written statement issued by the IRS to the Document Provider that indicates whether the plan document satisfies the requirements for favorable tax treatment. Because many compliance issues can arise with the use of an un-approved plan document, having an opinion letter upon which to rely is a great benefit to any adopting employer. Additionally, the IRS has implemented a system of six-year remedial amendment cycles for pre-approved plans. This system allows a Document Provider to apply for a new opinion letter every six years to ensure ongoing compliance with changing IRS requirements.

This benefit offered by a pre-approved plan was amplified when the IRS revised its opinion letter program for individually designed plans. Prior to February 1, 2017, sponsors of individually designed plans could submit opinion letter applications to the IRS every five years. However, the IRS recently eliminated the five-year remedial amendment cycle for individually designed plans. Therefore, an individually designed plan sponsor may now only submit an opinion letter application if it is seeking an initial favorable opinion letter, in the context of a plan

AUTHORS/ CONTRIBUTORS

Amanda J. Dernovshek

Julie LaVille Hamlet

Mindi M. Johnson

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termination, or in other limited circumstances. Therefore, an individually designed plan can no longer obtain assurance from the IRS of its qualified status on an ongoing basis.

In addition, Document Providers will typically adopt compliance amendments as needed to comply with relevant law. Using a pre-approved plan document with a Document Provider who will provide these services can drastically ease the burden of ongoing document compliance.

Additionally, using a pre-approved plan is often simpler and more cost-efficient for an adopting employer. Many pre-approved plans are formatted as a basic plan document, which is identical for all adopting employers, and an adoption agreement that allows each plan sponsor to choose from a variety of plan design options. Using a pre-approved plan can also save an adopting employer money. When working with a provider, the time required to adopt a pre-approved plan is typically less than when designing an individually designed plan, and therefore the cost is less as well.

For the reasons above, using a pre-approved plan can be very beneficial for many employers of all different sizes.

Other Considerations

Unlike an individually designed document, a pre-approved document will typically limit a plan sponsor's design choices to certain standard options. An adopting employer may be able to obtain IRS approval of certain modifications to the pre-approved document if the modifications are not substantial. However, an employer who wishes to adopt substantial changes to the pre-approved document cannot rely on the Document Provider's opinion letter. Therefore, a pre-approved document may not be the best fit for a plan sponsor with unique plan design needs.

What is required to adopt a pre-approved plan?

A plan sponsor who is interested in establishing a new plan on a pre-approved plan document or converting its existing individually designed plan to a pre-approved document should first find a Document Provider whose pre-approved document is ideal for the company and its current situation. The pre-approved plan adoption process consists of reviewing and tailoring many documents, including a basic plan document, trust agreement, adoption agreement, and governing board resolutions. Plan sponsors are also required to distribute a summary plan description to plan participants. Finding a Document Provider who will assist with each step of the pre-approved plan adoption process will be helpful.

Foster Swift is a Document Provider that offers a pre-approved 401(k) and profit sharing plan document that was recently approved by the IRS. If you are interested in adopting the Foster Swift pre-approved document, converting your individually designed plan to the Foster Swift pre-approved plan, or if you have any questions about adopting a pre-approved document, please contact one of the authors of this article:

- Amanda J. Dernovshek...517.371.8259...adernovshek@fosterswift.com
- Julie L. Hamlet...616.796.2515...jhamlet@fosterswift.com



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- Mindi M. Johnson...616.726.2252...mjohnson@fosterswift.com