

# Qualified Retirement Plan Standardized Adoption Agreement

Individual 401(k)  
Profit Sharing Plan

## Key Information When Establishing a Qualified Retirement Plan

In addition to completing, signing, and dating your qualified retirement plan's adoption agreement, there are a few other key items to be aware of.

### Obtain a Fidelity Bond

In general, every plan fiduciary, administrator, officer, or employee who handles funds or other property of the plan must be bonded for at least 10 percent of the amount the individual handles. The minimum bond amount, irrespective of plan asset value, is \$1,000. The maximum amount required is \$500,000 (\$1,000,000 for a plan that holds employer securities). You can obtain a fidelity bond from your insurance agent. The bond should be in the plan's name (*not* the company's name).

### Obtain a Determination Letter for a Normal Retirement Age Less than Age 62 (*for Money Purchase Pension Plans Only*)

If you are establishing or restating a money purchase pension plan and you have designated an age less than 62 but greater than 54 as the normal retirement age (NRA), the plan document's opinion letter does not cover the plan's definition of NRA. You must submit for a determination letter if you would like reliance that your plan's definition of NRA meets the government's requirement that the NRA is reasonable for your industry. If you have designated an age less than age 55, you will not be able to use this prototype plan document.

### Provide the Summary Plan Description to Employees (*for Employers with Employees*)

The summary plan description (SPD) is a comprehensive, easily understood explanation of qualified retirement plan provisions. You must complete the SPD using your completed adoption agreement as a guide. If you have employees and did not receive an SPD to complete, contact your prototype plan document sponsor.

### Who must you provide an SPD to?

The Department of Labor (DOL) requires employers to provide an SPD to all eligible employees. Employers also must provide an SPD to each beneficiary receiving benefits from the plan on account of death or as an alternate payee pursuant to a qualified domestic relations order (QDRO).

### When do you need to provide the SPD?

Employers must provide an SPD to 1) all eligible employees within 120 days of the plan's establishment, 2) any new employee within 90 days after such employee becomes eligible to participate in the plan, and 3) all eligible employees no later than 120 days following the end of the plan year in which the plan was amended.

### What additional documentation may be needed?

Complete any applicable attachments and provide a copy to each employee. These items may include notices required for regulations (e.g., notices for QDIA, EACA/QACA, and safe harbor 401(k) contributions). If you did not receive any of these items, contact your prototype plan sponsor. If your plan covers non-English speaking participants, you may be required to include an additional note with the SPD. This note must explain, in the participants' non-English languages, that they can obtain additional assistance from you in understanding their rights and obligations under the plan. The DOL has provided a sample statement (shown below) that you may include in the SPD. The statement must be in the participant's non-English language.

*This booklet contains a summary in English of your plan rights and benefits under Employer A Pension Plan. If you have difficulty understanding any part of this booklet, contact Mr. John Doe, the plan administrator, at his office in Room 123, 456 Main St., Anywhere City, State 20001. Office hours are from 8:30 A.M. to 5:00 P.M. Monday through Friday. You may also call the plan administrator's office at (202) 555-2345 for assistance.*

# Individual 401(k) Profit Sharing Plan Standardized Adoption Agreement

## EMPLOYER INFORMATION

Name of Adopting Employer \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Adopting Employer's Federal Tax Identification Number \_\_\_\_\_

Adopting Employer's Tax Year End (specify month and day) \_\_\_\_\_

Type of Business (select one)  Sole Proprietorship  Partnership  C Corporation  S Corporation  LLC  
 Other (Specify a legal entity recognized under federal income tax laws.) \_\_\_\_\_

Name of Plan \_\_\_\_\_

Plan Sequence Number \_\_\_\_\_ Trust Identification Number (if applicable) \_\_\_\_\_ Account Number \_\_\_\_\_

**Related Employers** – If the Adopting Employer is part of a controlled group of corporations (as defined in Code section 414(b) as modified by Code section 415(h)), a group of commonly controlled trades or businesses (as defined in Code section 414(c) as modified by Code section 415(h)) or an affiliated service group (as defined in Code section 414(m)) of which the Adopting Employer is a part, or any other entity required to be aggregated with the Adopting Employer pursuant to Code section 414(o), then all Related Employers of the Adopting Employer will participate in this Plan.

## SECTION ONE: EFFECTIVE DATES

Complete Part A or B

### Part A. New Plan Effective Date

This is the initial adoption of a 401(k) profit sharing plan by the Adopting Employer.

The Effective Date of this Plan is \_\_\_\_\_. (Must be on or after January 1, 2007.)

If different from the Effective Date above, Elective Deferrals can be made under this Plan effective (select one):

**Option 1:**  The next payroll date coinciding with or following the later of the date this Adoption Agreement is signed or the Effective Date.

**Option 2:**  \_\_\_\_\_ (Must be on or after the later of the date this Adoption Agreement is signed or the Effective Date.)

**NOTE:** If no option is selected, Option 1 will apply.

**NOTE:** The Effective Date is usually the first day of the Plan Year in which this Adoption Agreement is signed and may not be earlier than such date. Elective Deferrals, however, cannot be made available before the later of the date this Adoption Agreement is signed or the date specified above for Elective Deferrals.

### Part B. Existing Plan Amendment or Restatement Date

This is an amendment or restatement of an existing qualified plan.

The Initial Plan Document was effective on \_\_\_\_\_.

This Plan is a frozen Plan effective on \_\_\_\_\_.

If this Plan is a frozen Plan, no Employer Contributions may be made to the Plan with respect to Compensation earned on or after the Effective Date that the Plan is frozen. In addition, no additional contributions (e.g., rollover, transfer) may be accepted by the Plan on or after the date that the Plan is frozen. Depending on the facts and circumstances surrounding the freezing of the Plan, other Plan provisions may be affected (e.g., availability of loans.)

The Effective Date of this amendment or restatement is \_\_\_\_\_. (Must be on or after January 1, 2007.)

**NOTE:** Specifying an amendment or restatement Effective Date as any day other than the first day of the Plan Year following the Plan Year in which this Adoption Agreement is signed may result in a reduction or elimination of accrued benefits, violating Code section 411(d)(6). Notwithstanding the foregoing, Effective Dates for certain items (e.g., PPA and other legislative and regulatory guidance) are governed by the terms specified in the Basic Plan Document.

**SECTION TWO: ELIGIBILITY**  
*Complete Parts A and B*

**Part A. Age and Eligibility Service**

1. **Age Requirement.** An Employee will be eligible to become a Participant in the Plan for purposes of becoming a Contributing Participant (and thus eligible to make Elective Deferrals) or receiving an allocation of any Employer Profit Sharing Contributions, as applicable, made pursuant to Section Three of the Adoption Agreement, after attaining the following age \_\_\_\_ (*not more than 21*).

**NOTE:** *If no age is specified, there will be no age requirement.*

2. **Eligibility Service Requirement.** An Employee will be eligible to become a Participant in the Plan for purposes of becoming a Contributing Participant (and thus eligible to make Elective Deferrals) or receiving an allocation of any Employer Profit Sharing Contributions, as applicable, made pursuant to Section Three of the Adoption Agreement (*select one*).

**Option 1:**  No eligibility service required.

**Option 2:**  After completing \_\_\_\_ consecutive Months of Eligibility Service (*not more than 12*) beginning on the Employee's date of hire.

**Option 3:**  After completing \_\_\_\_ Years of Eligibility Service (*enter 0 or 1*).

**NOTE:** *If no option is selected, Option 1 will apply.*

**Part B. Employees Employed as of a Specified Date**

Will an Employee listed below (other than an Employee who is part of an excluded class of Employees) and employed on \_\_\_\_\_ (*specify a month, day, and year*) who has not otherwise met the age and eligibility service requirements be considered to have met those requirements and be eligible to become a Participant in the Plan for purposes of becoming a Contributing Participant (and thus eligible to make Elective Deferrals) or receiving an allocation of any Employer Profit Sharing Contributions, as applicable, made pursuant to Section Three of the Adoption Agreement (*select one*)?

**Option 1:**  Yes.

Employees subject to the waiver (*define classifications and prior employers*):  
\_\_\_\_\_  
\_\_\_\_\_

**Option 2:**  Not applicable.

**NOTE:** *If no option is selected, Option 2 will apply. If Option 1 is selected but no date is specified, no additional age and eligibility service waivers will apply. If Option 1 is selected but no Employees are specified, all Employees employed on the specified date will be subject to the waiver. This age and eligibility service waiver may be used either when this Plan is adopted or when the Plan is subsequently amended (e.g., to add one or more types of contributions, to add a previously excluded group of Employees).*

**SECTION THREE: CONTRIBUTIONS**  
*Complete Parts A and B*

**Part A. Elective Deferrals**

**Authorization of Elective Deferrals**

Will Elective Deferrals be permitted under this Plan (*select one*)?

**Option 1:**  Yes. (*Complete the following.*)

Will Roth Elective Deferrals be permitted under this Plan in addition to Pre-Tax Elective Deferrals?

**Suboption (a):**  Yes.

**Suboption (b):**  No.

**NOTE:** *If no suboption is selected, Suboption (a) will apply.*

**Option 2:**  No.

**NOTE:** *If no option is selected, Option 1 will apply. A Contributing Participant's combined Pre-Tax and Roth Elective Deferrals during their taxable year will not exceed the limit contained in Code section 402(g) in effect at the beginning of such taxable year.*

**Part B. Employer Profit Sharing Contributions**

Employer Profit Sharing Contributions, if any, will be allocated to all Qualifying Participants pursuant to the pro rata allocation formula described in Plan Section 3.04(B)(1).

**SECTION FOUR: VESTING AND FORFEITURES**  
*There are no elections required for Section Four.*

**There are no elections required for Section 4. Refer to the Basic Plan Document for information regarding this Section.**

**SECTION FIVE: DISTRIBUTIONS AND LOANS**

**Loans**

Will a Participant be entitled to request a loan pursuant to Plan Section 5.14 (*select one*)?

**Option 1:**  Yes.

**Option 2:**  No.

**NOTE:** *If no option is selected, Option 2 will apply.*

**SECTION SIX: DEFINITIONS**

*There are no elections required for Section Six.*

**There are no elections required for Section 6. Refer to the Basic Plan Document for information regarding this Section.**

**SECTION SEVEN: MISCELLANEOUS**

**Life Insurance**

Will life insurance investments be permitted under the Plan (*select one*)?

**Option 1:**  Yes.

**Option 2:**  No.

**NOTE:** *If no option is selected, Option 2 will apply.*

**SECTION EIGHT: TRUSTEE AND CUSTODIAN**  
*Complete Parts A and B (as applicable)*

**Part A. Trustee**

**1. Trustee Appointment**

**a. Trustee (Select one.)**

**Option 1:**  Financial Organization as Trustee.

**Option 2:**  Individual Trustee.

**Option 3:**  Not applicable, a Trustee is not required to be named for this Plan (*select one*).

**Suboption (a):**  Plan assets are invested solely in annuity contracts or insurance policies provided by an Insurer.

Name of Insurer \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_

**Suboption (b):**  This Plan is exempt from the trust requirements under ERISA section 403 (e.g., the Plan covers one or more self-employed individuals as defined in Code section 401(c)(1)).

**NOTE:** *If Suboption (b) is selected, a Custodian must be named in Part B below.*

**b. Type of Trustee**

Will the Trustee of this Plan be a Directed or Discretionary Trustee (*select one*)?

**Option 1:**  Directed Trustee.

**Option 2:**  Discretionary Trustee.

**Option 3:**  Not applicable, Option 3 was selected in Part 1(a) above.

**c. Trustee Signature**

**NOTE:** *If you are an individual Trustee and no Limited Trustee is named in Part A, item 3 below you will also be deemed to be a Limited Trustee.*

Name of Trustee \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

*(type or print name if different from name of Trustee above)*

Signature \_\_\_\_\_

**2. Trust Agreement**

If a Trustee is designated in Part A, item 1 above, which trust agreement will apply to the Plan (*select one*)?

**Option 1:**  Trust provisions contained in Plan Section Eight.

**Option 2:**  Separate executed trust agreement attached hereto.

**NOTE:** *If no option is selected, Option 1 will apply. If Option 2 is selected, the attached trust agreement must be on file with the IRS for use by the Prototype Document Sponsor listed in Section Nine below. If Option 2 is selected and a Limited Trustee is named below, the separate trust agreement will not replace Plan Section 8.09.*

**3. Limited Trustee**

The Limited Trustee appointed solely for the purposes of ensuring the timely collection and deposit of Employer Contributions will be:

**Option 1:**  The individual Trustee named above.

**Option 2:**  The party named below.

Name of Limited Trustee \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_  
*(type or print name if different from name of Limited Trustee above)*

Signature \_\_\_\_\_

**NOTE:** A Trustee, including a Limited Trustee, must be an individual or corporation. A corporate Trustee must be a bank, trust company, broker, dealer, or clearing agency as defined in Labor Regulation section 2550.403(a)-1(b).

**Part B. Custodian** (Both a Custodian and Trustee may be appointed for the Plan. This Part B must be completed if the Plan is exempt from the Trustee requirements under ERISA section 403 and neither a Trustee nor an Insurer is appointed in Part A, item 1 above.)

**1. Custodian Appointment**

Financial Organization \_\_\_\_\_

Address \_\_\_\_\_

Name *(type or print)* \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_

**2. Custodial Agreement**

If a Custodian is designated in Part B, item 1 above, which custodial agreement will apply to the Plan *(select one)*?

**Option 1:**  Custodial provisions contained in Plan Section Eight.

**Option 2:**  Separate executed custodial agreement attached hereto.

**NOTE:** If no option is selected, Option 1 will apply. If Option 2 is selected and the separate custodial agreement is being used in place of a trust agreement under Code section 401(f), the attached custodial agreement must be on file with the IRS for use by the Prototype Document Sponsor listed in Section Nine below.

**SECTION NINE: EMPLOYER SIGNATURE**

**Prototype Document Sponsor**

Name of Prototype Document Sponsor \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Check the applicable box if there is an attachment(s) that applies to this Plan other than a separate trust or custodial agreement.

Protected Benefits and Prior Plan Document Provisions Attachment.

Other Plan Information Attachment. *(If this box is checked, please describe the attachment(s).)*

**Authorized Employer Signature**

**I am an authorized representative of the Adopting Employer named above and I state the following:**

- 1. I acknowledge that I have relied upon my own advisors regarding the completion of this Adoption Agreement and the legal tax implications of adopting this Plan;**
- 2. I understand that my failure to properly complete this Adoption Agreement may result in disqualification of the Plan;**
- 3. I understand that the Prototype Document Sponsor will inform me of any amendments made to the Plan and will notify me should it discontinue or abandon the Plan; and**
- 4. I have received a copy of this Adoption Agreement, the corresponding Basic Plan Document and, if applicable, any separate trust or custodial agreement used in lieu of the trust or custodial agreement contained in the Basic Plan Document.**

Signature of Adopting Employer \_\_\_\_\_ Date Signed \_\_\_\_\_

Type Name \_\_\_\_\_ Title \_\_\_\_\_

**NOTE:** *The Adopting Employer may rely on an opinion letter issued by the Internal Revenue Service as evidence that the Plan is qualified under Code section 401 except to the extent provided in Revenue Procedure 2011-49. An Employer who has ever maintained or who later adopts any plan (including a welfare benefit fund, as defined in Code section 419(e), which provides post-retirement medical benefits allocated to separate accounts for key employees, as defined in Code section 419A(d)(3), or an individual medical account, as defined in Code section 415(l)(2) in addition to this Plan may not rely on the opinion letter issued by the Internal Revenue Service with respect to the requirements of Code sections 415 and 416.*

*If the Employer who adopts or maintains multiple plans wishes to obtain reliance with respect to the requirements of Code sections 415 and 416, application for a determination letter must be made to Employee Plans Determinations of the Internal Revenue Service. The Employer may not rely on the opinion letter in certain other circumstances, which are specified in the opinion letter issued with respect to the Plan or in Revenue Procedure 2011-49. This Adoption Agreement may be used only in conjunction with Basic Plan Document #04.*



# PROTECTED BENEFITS AND PRIOR PLAN DOCUMENT PROVISIONS ATTACHMENT

*This attachment may be used by an Adopting Employer to document protected benefits and other Prior Plan Document provisions that apply to some or all of the assets of the Adopting Employer's Plan.*

## ADOPTING EMPLOYER PLAN INFORMATION

Name of Adopting Employer \_\_\_\_\_

Name of Plan \_\_\_\_\_

Plan Sequence Number \_\_\_\_\_ Trust Identification Number (if applicable) \_\_\_\_\_ Account Number \_\_\_\_\_

## PROTECTED BENEFITS AND PRIOR PLAN DOCUMENT PROVISIONS

### Provision 1:

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Source of Provision (e.g., plan name and sequence number, good faith amendment):

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### Provision 2:

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Source of Provision (e.g., plan name and sequence number, good faith amendment):

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### Provision 3:

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Source of Provision (e.g., plan name and sequence number, good faith amendment):

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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Plan Description: Prototype Standardized Profit Sharing Plan With CODA  
FFN: 312D7962704-001 Case: 201203316 EIN: 13-2967453  
Letter Serial No: J297558a  
Date of Submission: 04/02/2012

APEX CLEARING CORPORATION  
1700 PACIFIC AVENUE, SUITE 1400  
DALLAS, TX 75201

Contact Person:  
Janell Hayes  
Telephone Number:  
513-263-3602  
In Reference To: TEGE:EP:7521  
Date: 03/31/2014

Dear Applicant:

In our opinion, the form of the plan identified above is acceptable under section 401 of the Internal Revenue Code for use by employers for the benefit of their employees. This opinion relates only to the acceptability of the form of the plan under the Internal Revenue Code. It is not an opinion of the effect of other Federal or local statutes.

You must furnish a copy of this letter, a copy of the approved plan, and copies of any subsequent amendments to each employer who adopts this plan. Effective on or after 10/31/2011, interim amendments adopted by the sponsor on behalf of employers must provide the date of adoption by the sponsor.

This letter considers the changes in qualification requirements contained in the 2010 Cumulative List of Notice 2010-90, 2010-52 I.R.B. 909.

Our opinion on the acceptability of the form of the plan is not a ruling or determination as to whether an employer's plan qualifies under Code section 401(a). The employer can generally rely on the letter as described in Rev. Proc. 2011-49, 2011-44 I.R.B. 608, provided the terms of the plan are followed in operation.

Our opinion does not apply for purposes of Code section 401(a)(10)(B) and section 401(a)(16) if an employer ever maintained another qualified plan for one or more employees who are covered by this plan. For this purpose, the employer 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 this plan and no annual additions have been credited to the account of any participant under such other plan(s) as of any date within the limitation year of this plan. Also, for this purpose, an employer is considered as maintaining another plan, to the extent that the employer maintains a welfare benefit fund defined in Code section 419(e), which provides postretirement medical benefits allocated to separate accounts for key employees as defined in Code section 419A(d)(3), or an individual medical account as defined in Code section 415(l)(2), which is part of a pension or annuity plan maintained by the employer, or a simplified employee pension plan.

An employer that adopts this plan may not rely on this opinion letter with respect to: (1) whether any amendment or series of amendments to the plan satisfies the nondiscrimination requirements of section 1.401(a)(4)-5(a) of the regulations, except with respect to plan amendments granting past service that meet the safe harbor described in section 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 (2) whether the plan satisfies the

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effective availability requirement of section 1.401(a)(4)-4(c) of the regulations with respect to any benefit, right or feature.

An employer that adopts this plan as an amendment to a plan other than a standardized plan may not rely on this opinion letter with respect to whether a benefit, right or other feature that is prospectively eliminated satisfies the current availability requirements of section 1.401(a)(4)-4 of the regulations.

Our opinion does not apply for purposes of the requirement of section 1.401(a)-1(b)(2) of the regulations applicable to a money purchase plan or target benefit plan where the normal retirement age under the employer's plan is lower than age 62.

This is not a ruling or determination with respect to any language in the plan that reflects Section 3 of the Defense of Marriage Act, Pub. L. 104-199, 110 Stat. 2419 (DOMA) or U.S. v. Windsor, 133 S. Ct. 2675 (2013), which invalidated that section.

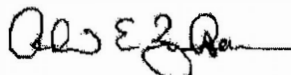
The employer may request a determination (1) as to whether the plan, considered with all related qualified plans and, if appropriate, welfare benefit funds, individual medical benefit accounts, and simplified employee pension plans, satisfies the requirements of Code section 401(a)(16) as to limitations on benefits and contributions in Code section 415 and the requirements of Code section 401(a)(10)(B) as to the top-heavy plan requirements in Code section 416; (2) with respect to whether a money purchase or target benefit plan's normal retirement age which is earlier than age 62 satisfies the requirements of section 401(a)-1(b)(2) of the Income Tax Regulations; (3) that the plan is a multiple employer plan; (4) whether there has been a partial termination; and (5) to comply with published procedures of the Service (e.g. minimum funding waiver request). The employer may request a determination letter in these circumstances by filing an application with Employee Plans Determinations on Form 5300, without restating for the Cumulative List in effect when the application is filed.

If you, the master or prototype sponsor, have any questions concerning the IRS processing of this case, please call the above telephone number. This number is only for use of the sponsor. Individual participants and/or adopting employers with questions concerning the plan should contact the master or prototype sponsor. The plan's adoption agreement must include the sponsor's address and telephone number for inquiries by adopting employers.

If you write to the IRS regarding this plan, please provide your telephone number and the most convenient time for us to call in case we need more information. Whether you call or write, please refer to the Letter Serial Number and File Folder Number shown in the heading of this letter.

You should keep this letter as a permanent record. Please notify us if you modify or discontinue sponsorship of this plan.

Sincerely Yours,



Andrew E. Zuckerman  
Director, Employee Plans Rulings and Agreements