

Standardized vs. Non-Standardized Adoption Agreements

A **Standardized Adoption Agreement** may only include choices that cannot cause the plan to fail the minimum coverage requirements of Internal Revenue Code (Code) Section 410(b) and the nondiscrimination requirements of Code Section 401(a)(4). Thus, if an employer operates the plan in accordance with the provisions of the plan, then the employer has automatic reliance on both the terms of the plan and the operational coverage and nondiscrimination requirements. Accordingly, determination letters for these plans are not routinely requested.

A **Non-Standardized Adoption Agreement** provides more flexibility than a Standardized Adoption Agreement. An employer using a Non-Standardized Adoption Agreement generally has reliance that the terms of the plan satisfy the Code, and will only have automatic reliance as to the operational coverage and nondiscrimination requirements if elections are made that ensure that the requirements will always be met. However, employers typically do not want to select those options (otherwise a Standardized Adoption Agreement would be used).

Non-Standardized Adoption Agreement provisions that are not available in Standardized Adoption Agreements include:

- The ability to exclude classes of employees (beyond just union employees or non-resident aliens) including employees of other members of a controlled group of corporations or affiliated service group.
- The ability to require that, in order to share in allocations, participants be employed on the last of a plan year or complete a year of service during a plan year (a Standardized plan must benefit all participants except those terminating employment with less than 501 hours of service completed for the plan year).
- The ability to exclude items from the definition of compensation such as commissions, bonuses or overtime (a Standardized plan must generally use total compensation).
- The ability to have non-uniform allocation methods (such as cross-testing or different contribution rates for different members of a controlled group or affiliated service group).