

CHANGES TO DB LRM – 08/2007

- ***LRM #14, Definition of Normal Retirement Age, on pages 17 – 19 of the 6/2007 revision of the DB LRM, is revised as follows (changes are underlined):***

14. Document Provision:

Statement of Requirement: **Definition of normal retirement age, IRC §411(a)(8); Regs . §1.401(a)-1(b)(2); §1.411(a)-7(b)(1); §1.411(d)-4, Q&A-12; Notice 2007-69, 2007-35 I.R.B.**

Sample Plan Language:

Normal retirement age is the age selected in the adoption agreement. If the employer enforces a mandatory retirement age, the normal retirement age is the lesser of that mandatory age or the age specified in the adoption agreement.

Sample Adoption Agreement Language:

For each participant normal retirement age is: (select A. or B.)

A.

age ____ (not to exceed 65).

If the age selected is less than 55 or less than the earliest retirement age that is reasonably representative of the typical retirement age for the industry in which the plan participants work, then, effective as of the date specified below, the normal retirement age shall be changed to the following later age:

age ____ (not less than 55). (The age selected must not be earlier than the earliest retirement age that is reasonably representative of the typical retirement age for the industry in which the plan participants work. Age 62 or older automatically meets this requirement.)

If the second box under A. is also checked, the effective date of the change to the normal retirement age is _____. (Specify a date between May 22, 2007, and the first day of the first plan year beginning after June 30, 2008.)

B.

the later of:

(i) age ____ (not to exceed 65), or

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(ii) the _____ (not to exceed 5th) anniversary of the participation commencement date. If, for plan years beginning before January 1, 1988, normal retirement age was determined with reference to the anniversary of the participation commencement date (more than 5 but not to exceed 10 years), the anniversary date for participants who first commenced participation under the plan before the first plan year beginning on or after January 1, 1988, shall be the earlier of (A) the tenth anniversary of the date the participant commenced participation in the plan (or such anniversary as had been elected by the employer, if less than 10) or (B) the fifth anniversary of the first day of the first plan year beginning on or after January 1, 1988. The participation commencement date is the first day of the first plan year in which the participant commenced participation in the plan.

If the age selected in B.(i) is less than 55 or less than the earliest retirement age that is reasonably representative of the typical retirement age for the industry in which the plan participants work, then, effective as of the date specified below, the normal retirement age shall be changed to the following later age:

() the later of:

(i) age _____ (not less than 55). (The age selected must not be earlier than the earliest retirement age that is reasonably representative of the typical retirement age for the industry in which the plan participants work. Age 62 or older automatically meets this requirement.), or

(ii) the _____ (not to exceed 5th) anniversary of the participation commencement date. If, for plan years beginning before January 1, 1988, normal retirement age was determined with reference to the anniversary of the participation commencement date (more than 5 but not to exceed 10 years), the anniversary date for participants who first commenced participation under the plan before the first plan year beginning on or after January 1, 1988, shall be the earlier of (A) the tenth anniversary of the date the participant commenced participation in the plan (or such anniversary as had been elected by the employer, if less than 10) or (B) the fifth anniversary of the first day of the first plan year beginning on or after January 1, 1988. The participation commencement date is the first day of the first plan year in which the participant commenced participation in the plan.

If the second box under B. is also checked, the effective date of the change to the normal retirement age is _____ . (Specify a date between May 22, 2007, and the first day of the first plan year beginning after June 30, 2008.)

(Note to Reviewer: Under the provisions of regulations §1.401(a)-1(b)(2), a plan's normal retirement age (NRA) cannot be earlier than what is reasonably representative of the typical retirement age for the industry in which the participants work. An NRA of 62 or older is deemed to satisfy this requirement. An NRA under 55 is presumed not to satisfy this

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requirement unless the Commissioner determines that the facts and circumstances show otherwise. Whether an NRA between 55 and 62 satisfies this requirement depends on facts and circumstances.

A plan amendment that raises the plan's NRA pursuant to §1.401(a)-1(b)(2) does not violate §411(d)(6) merely because it eliminates the right to an in-service distribution prior to the amended NRA, provided the plan amendment is adopted after May 21, 2007, and within the plan's remedial amendment period under §1.401(b)-1 with respect to the requirements of §1.401(a)-1(b)(2) and (3). This relief does not apply to other requirements such as those of §§411(a)(9), 411(a)(10), 411(d)(6) (except as noted), and 4980F.)

- *LRM #35, Accrual limitations based upon age not permitted, on page 64, is revised to delete all following the first Note to Reviewer. The revised LRM #35 follows:*

35. Document Provision:

Statement of Requirement: **Accrual limitations based upon age not permitted, IRC §411(b)(1)(H) .**

(Note to reviewer: The sponsor must delete any plan provision that discontinues the accrual of benefits or reduces the rate of accruals solely on account of the participant's attainment of any specified age.)

- *LRM #40, Limitation on benefits, is revised to delete the last three sentences in the Note to Reviewer following section 4 on page 68 and to remove the reference to post-NRA accruals and LRM #35 in the Note to Reviewer following section 6.9(b)(ii)(II)(B) on page 84. The revised Notes to Reviewers follow:*

Following section 4 on page 68 –

(Note to Reviewer: Section 1.415(c)-2(f) of the Income Tax Regulations requires that the definition of compensation used in applying the limitations of § 415 not reflect compensation for a year that is in excess of the limitation of § 401(a)(17) that applies to that year. See section 6.7 of this LRM #40. Plan provisions will not be treated as failing to satisfy the requirements of the last sentence of the preceding paragraph merely because, under provisions of the plan adopted and in effect before April 5, 2007, the plan's definition of compensation used for purposes of the

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limitations of § 415(b)(1)(B) reflects compensation for a year in excess of the limitation of § 401(a)(17) that applies to that year.)

Following section 6.9(b)((ii)(II)(B) on page 84 -

(Note to Reviewer: If the plan permits an employer to select a normal retirement age (NRA) less than 65, the plan's provisions regarding actuarial increases for deferred benefits must be coordinated with the age adjustments in section 6.9(b) to ensure that the plan does not violate § 401(a). Such a violation may be avoided if the plan provides for payment of benefits at NRA, despite continued employment, or if the plan already provides for the suspension of benefits in accordance with § 411((a)(3)(B). See Q&A-4 of Rev. Rul. 2001-51 and LRMs #42 - section 4, and #55.)

- ***In LRM #54, Direct Rollovers, the last Note to Reviewer, on page 129, is revised to provide that a defined benefit M&P plan may accept rollover contributions. The revised Note to Reviewer follows:***

(Note to Reviewer: An plan that is described in § 414(k), relating to a defined benefit plan where the benefit is based partly on the balance of the participant's separate account, may not be an M&P plan. (However, this rule will not be applied to prohibit an M&P plan's acceptance of rollover contributions.) In addition, a defined benefit M&P plan may not provide for employee contributions, effective for years beginning after the date the plan is restated for EGTRRA. Accordingly, an M&P defined benefit plan may not include a deemed IRA under § 408(q).