Defined Contribution Listing of Required Modifications and Information Package (LRM)

To Sponsors of Master or Prototype Plans:

This information package contains samples of plan provisions that have been found to satisfy certain specific requirements of the Internal Revenue Code, taking into account changes in the plan qualification requirements, regulations, revenue rulings, and other guidance in the 2010 Cumulative List of Changes in Plan Qualification Requirements (Notice 2010-90, 2010-52 I.R.B. 909). Such language may or may not be acceptable in different plans depending on the context in which used. We have prepared this package to assist sponsors who are drafting or redrafting plans to conform to applicable law and regulations, and we hope that it will be a key factor in enabling us to process and approve master and prototype plans more quickly.

Name of Sponsor:

Type of Plan: ( ) Profit-sharing ( ) Money Purchase

( ) Target Benefit ( ) 401(k)

Form of Plan: ( ) Master Plan ( ) Prototype Plan

Underlined material reflects changes to the August, 2005 version of this LRM.

10/2011

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PART I - ALL PLANS

DEFINITIONS

1. Document Provision:

Statement of Requirement: Definition of year of service, Code §410(a)(3)(A), §411(a)(5)(A).

Sample Plan Language: A year of service is a 12-consecutive month period (computation period) during which the employee completes at least 1,000 hours of service.

(Note to reviewer: Computation periods may vary for eligibility and vesting purposes. See LRMs #19, and #20.)

2. Document Provision:

Statement of Requirement: Definition of break in service, DOL Regs. §2530.200b-4(a)(1).

Sample Plan Language: Break in service will mean a 12-consecutive month period (computation period) during which the participant does not complete more than 500 hours of service with the employer.

(Note to reviewer: Computation periods may vary for eligibility and vesting purposes. See LRMs #19, #20 and #52.)

3. Document Provision:

Statement of Requirement: Definition of hour of service, DOL Regs. §2530.200b-2, §2530.200b-3; Code §410(a)(5)(E), §411(a)(6)(E);

Sample Plan Language:

Hour of service means:

(1) Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer. These hours will be credited to the employee for the computation period in which the duties are performed; and

(2) Each hour for which an employee is paid, or entitled to payment, by the employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including

disability), layoff, jury duty, military duty or leave of absence. No more than 501 hours of service will be credited under this paragraph for any single continuous period (whether or not such period occurs in a single computation period). Hours under this paragraph will be calculated and credited pursuant to § 2530.200b-2 of the Department of Labor Regulations which is incorporated herein by this reference; and

(3) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the employer. The same hours of service will not be credited both under paragraph (1) or paragraph (2), as the case may be, and under this paragraph (3). These hours will be credited to the employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made.

Hours of service will be credited for employment with other members of an affiliated service group (under § 414(m)), a controlled group of corporations (under § 414(b)), or a group of trades or businesses under common control (under § 414(c)) of which the adopting employer is a member, and any other entity required to be aggregated with the employer pursuant to § 414(o).

Hours of service will also be credited for any individual considered an employee for purposes of this plan under § 414(n) or § 414(o).

Solely for purposes of determining whether a break in service, as defined in section _____, for participation and vesting purposes has occurred in a computation period, an individual who is absent from work for maternity or paternity reasons shall receive credit for the hours of service which would otherwise have been credited to such individual but for such absence, or in any case in which such hours cannot be determined, 8 hours of service per day of such absence. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of a birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement. The hours of service credited under this paragraph shall be credited (1) in the computation period in which the absence begins if the crediting is necessary to prevent a break in service in that period, or (2) in all other cases, in the following computation period.

(Optional: Service will be determined on the basis of the method selected in the adoption agreement.**)**

Sample Adoption Agreement Language: (If preceding paragraph is used in the plan language)

Service will be determined on the basis of the method selected below. Only one method may be selected. The method selected will be applied to all employees covered under the plan.

( ) On the basis of actual hours for which an employee is paid or entitled to payment.

( ) On the basis of days worked. An employee will be credited with ten (10) hours of service if under section _________ of the plan such employee would be credited with at least one (1) hour of service during the day.

( ) On the basis of weeks worked. An employee will be credited with forty-five (45) hours of service if under section ________ of the plan such employee would be credited with at least one (1) hour of service during the week.

( ) On the basis of semi-monthly payroll periods. An employee will be credited with ninety-five (95) hours of service if under section ________ of the plan such employee would be credited with at least one (1) hour of service during the semi-monthly payroll period.

( ) On the basis of months worked. An employee will be credited with one hundred ninety (190) hours of service if under section _______ of the plan such employee would be credited with at least one (1) hour of service during the month.

(Note to reviewer: The blanks should be filled in with the plan section number that contains the definition of hour of service.)

( ) On the basis of elapsed time, as provided for in section ____ of the plan.

(Note to reviewer: The blank should be filled in with the plan section number corresponding to LRM #4.)

4. Document Provision:

Statement of Requirement: Elapsed time, Regs. §1.410(a)-7, §1.410(a)-9T.

(Note to reviewer: Use of elapsed time eliminates or simplifies several plan provisions that would otherwise be

required if hours of service are counted. The following definitions should replace the otherwise required year of service, break in service, and hour of service definitions.)

For purposes of determining an employee's initial or continued eligibility to participate in the plan or the nonforfeitable interest in the participant's account balance derived from employer contributions, (except for periods of service which may be disregarded on account of the "rule of parity" described in section ______) an employee will receive credit for the aggregate of all time period(s) commencing with the employee's first day of employment or reemployment and ending on the date a break in service begins. The first day of employment or reemployment is the first day the employee performs an hour of service. An employee will also receive credit for any period of severance of less than 12 consecutive months. Fractional periods of a year will be expressed in terms of days.

(Wording in parenthesis applies only in plans which utilize the rule of parity. See LRMs #21 and #57.)

For purposes of this section, hour of service shall mean each hour for which an employee is paid or entitled to payment for the performance of duties for the employer.

Break in service is a period of severance of at least 12 consecutive months.

Period of severance is a continuous period of time during which the employee is not employed by the employer. Such period begins on the date the employee retires, quits or is discharged, or if earlier, the 12 month anniversary of the date on which the employee was otherwise first absent from service.

In the case of an individual who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a break in service. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

Each employee will share in employer contributions for the period beginning on the date the employee commences participation under the plan and ending on the date on which such employee severs employment with the employer or is no longer a member of an eligible class of employees.

If the employer is a member of an affiliated service group (under § 414(m)), a controlled group of corporations (under § 414(b)), a group of trades or businesses under common control (under § 414(c)) or any other entity required to be aggregated with the employer pursuant to § 414(o), service will be credited for any employment for any period of time for any other member of such group. Service will also be credited for any individual required under § 414(n) or § 414(o) to be considered an employee of any employer aggregated under § 414(b), (c), or (m).

5. Document Provision:

Statement of Requirement: Definition of plan year.

Sample Plan Language: Plan year is the 12-consecutive month period designated by the employer in the adoption agreement.

Sample Adoption Agreement Language:

Plan year will mean:

( ) the 12-consecutive month period which coincides with the limitation year.

( ) the 12-consecutive month period commencing on _______________ and each anniversary thereof.

6. Document Provision:

Statement of Requirement: Definition of compensation Code §414(s), §401(a)(17), §415(c)(3); Regs. §1.401(a)(4)-12, §1.401(a)(17)-1, §1.414(s)-1; Regs. §1.415(c)-2; Notice 2001-37, 2001-1 C.B. 1340; Notice 2001-56, 2001-2 C.B. 277; Notice 2001-57, 2001-2 C.B. 279; <u>Rev. Proc. 2011-49, 2011-44 I.R.B., sec. 4.09(3), 5.03, Notice 2010-15, 2010-6 I.R.B. 390</u>.

Sample Plan Language:

Compensation will mean compensation as that term is defined in section ____ of the plan. For any self-employed individual covered under the plan, compensation will mean earned income. Except as provided elsewhere in this plan, compensation shall include only that compensation which is actually paid to the participant during the determination period, and the determination period shall be the period elected by the employer in the adoption agreement. If the employer makes no election, the determination period shall be the plan year.

(Note to reviewer: The blank should be filled in with the plan section number that corresponds to Option B of the sample adoption agreement language at the end of LRM #31.)

(Note to reviewer: Under certain circumstances other definitions of compensation may be used. However, compensation in standardized plans and plans that provide for permitted disparity, (other than any CODA portion of these plans), target benefit plans, and compensation in determining top-heavy minimums must use one of the definitions provided in section 4.2 of LRM #31. For purposes of the preceding sentence, the safe harbor alternative definition of compensation contained in Regulations § 1.414(s)-1(c)(3) may also be used. A plan will not fail to be a standardized plan if it uses a definition of compensation approved for standardized plans <u>but excludes from that definition differential wage payments under § 3401(h)</u>.

All plans must permit the employer to elect one of the definitions of compensation provided in section 4.2 of LRM #31 in the adoption agreement. See also LRMs #62, #89 and #93.)

Notwithstanding the above, if elected by the employer in the adoption agreement, compensation shall not include any amount which is contributed by the employer pursuant to a salary reduction agreement and which is not includible in the gross income of the employee under § 125, 132(f)(4), 402(e)(3), 402(h)(1)(B) or 403(b) of the Code.

For any plan year beginning after December 31, 2001, the annual compensation of each participant taken into account in determining allocations shall not exceed $200,000, as adjusted for cost-of-living increases in accordance with § 401(a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

If a determination period consists of fewer than 12 months the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12.

If compensation for any prior determination period is taken into account in determining a participant's allocations for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. <u>However, solely for purposes of determining a participant's allocations for plan years beginning after December 31, 2001, the annual compensation limit in effect for determination periods beginning before January 1, 2002 is $200,000.</u>

<u>**(Note to Reviewer: A plan is not required to include the last sentence of the sample plan language. Instead, the plan may apply the rule in the immediately preceding sentence to limit the amount of compensation for determination periods prior to 2002 that may be taken into account in determining a participant's allocations for plan years beginning after December 31, 2001. Thus, for example, the plan may provide that in determining a participant's allocations for plan years beginning after December 31, 2001, compensation for determination periods beginning after December 31, 1993, and before January 1, 2002 is limited to $150,000, as adjusted by the Commissioner. See Notice 2001-56.)**</u>

Sample Adoption Agreement Language:

Compensation shall be determined over the following determination period:

( ) the plan year

( ) (a consecutive 12-month period ending with or within the plan year.) Enter the day and the month this period begins: _______ (day) ______________ (month). For employees whose date of hire is less than 12 months before the end of the 12-month period designated, compensation will be determined over the plan year.

(Note to reviewer: The plan may provide that compensation will be determined over the period of plan participation during the plan year, as provided in § 1.401(a)(4)-12 of the Treasury Regulations (see definition of "plan year compensation").)

Compensation

( ) shall not include employer contributions made pursuant to a salary reduction agreement which are not includible in the gross income of the participant under § 125, 132(f), 402(e)(3), 402(h)(1)(B) or 403(b) of the Code.

7. Document Provision:

Statement of Requirement: Definition of earned income, Code §401(c)(2), §414(s); Regs. §1.414(s)-1.

Sample Plan Language:

Earned income means the net earnings from self-employment in the trade or business with respect to which the plan is established, for which personal services of the individual are a material income-producing factor. Net earnings will be determined without regard to items not included in gross income and the deductions allocable to such items. Net earnings are reduced by contributions by the employer to a qualified plan to the extent deductible under § 404 of the Code.

Net earnings shall be determined with regard to the deduction allowed to the taxpayer by § 164(f) of the Code for taxable years beginning after December 31, 1989.

(Note to reviewer: This definition is not required if the plan is a nonstandardized plan and precludes participation by self-employed individuals.)

8. Document Provision:

Statement of Requirement: Definition of disability, Code §22(e)(3), and imputed compensation, Code §415(c)(3)(C).

Sample Plan Language:

Disability means inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. The permanence and degree of such impairment shall be supported by medical evidence.

If elected by the employer in the adoption agreement, nonforfeitable contributions will be made to the plan on behalf of each disabled participant who is not a highly compensated employee (within the meaning of section _____ of the plan).

(Note to reviewer: The blank should be filled in with the plan section number corresponding to LRM #11.)

Sample Adoption Agreement Language:

Contributions on behalf of disabled participants:

The employer ____ will (check the line if the employer wants this option) ____ will not (check the line if the employer does not want this option) make contributions on behalf of disabled participants on the basis of the compensation each such participant would have received for the limitation year if the participant had been paid at the rate of compensation paid immediately before becoming permanently and totally disabled.

Such imputed compensation for the disabled participant may be taken into account only if the participant is not a highly compensated employee, and contributions made on behalf of such participant will be nonforfeitable when made.

Compensation will mean compensation as that term is defined in section ____ of the plan.

(Note to reviewer: The blank should be filled in with the plan section number that corresponds to the sample adoption agreement language at the end of LRM #31.)

(Note to reviewer: The above provisions are not required if the plan does not offer an employer the option of providing contributions on the basis of imputed compensation. However, a plan which provides for distributions because of disability must define disability in a nondiscriminatory manner).

9. Document Provision:

Statement of Requirement: Definition of employee, Code §414 (b), (c), (m), (n) and (o); Rev. Proc. 2011-49, sec.5.13.

Sample Plan Language:

Employee shall mean any employee of the employer maintaining the plan or of any other employer required to be aggregated with such employer under § 414(b), (c), (m) or (o) of the Code.

The term employee shall also include any leased employee deemed to be an employee of any employer described in the previous paragraph as provided in § 414(n) or (o) of the Code.

10. Document Provision:

Statement of Requirement: Definition of leased employee, Code §414(n), §414(q).

Sample Plan Language:

The term "leased employee" means any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with § 414(n)(6) of the Internal Revenue Code) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient. Contributions or benefits provided a leased employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer.

A leased employee shall not be considered an employee of the recipient if: (i) such employee is covered by a money purchase pension plan providing: (1) a nonintegrated employer contribution rate of at least 10 percent of compensation, as defined in § 415(c)(3) of the Code, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under § 125, § 402(e)(3), § 402(h)(1)(B) or § 403(b) of the Code, (2) immediate participation, and (3) full and immediate vesting; and (ii) leased employees do not constitute more than 20 percent of the recipient's nonhighly compensated work force.

11. Document Provision:

Statement of Requirement: **Definition of highly compensated employee, Code §414(q); Regs. §1.414(q)-1T, Notice 97-45, 1997-2 C.B. 296**

Sample Plan Language:

The term highly compensated employee means any employee who: (1) was a 5-percent owner at any time during the year or the preceding year, or (2) for the preceding year had compensation from the employer in excess of $80,000 and, if the employer so elects, was in the top-paid group for the preceding year. The $80,000 amount is adjusted at the same time and in the same manner as under § 415(d), except that the base period is the calendar quarter ending September 30, 1996.

For this purpose the applicable year of the plan for which a determination is being made is called a determination year and the preceding 12-month period is called a look-back year.

A highly compensated former employee is based on the rules applicable to determining highly compensated employee status as in effect for that determination year, in accordance with Temporary Regulations § 1.414(q)-1T, A-4 and Notice 97-45.

(Note to reviewer: The regulations under § 414(q) provide that the employer may elect to have special rules apply with respect to the determination of who is a highly compensated employee if they are provided for in the plan and they are applied by the employer on a uniform and consistent basis. The definition above does not provide for these special elections, and they are only applicable to the extent they do not conflict with the changes to § 414(q) under the Small Business Job Protection Act of 1996 (SBJPA).

Notice 97-45 provides for additional elections under the amended § 414(q) that may be made. These elections are the top-paid group election and the calendar year data election. Under Notice 97-45 an employer may make a top-paid group election for a determination year. The effect of this election is that an employee (who is not a 5-percent owner at any time during the determination year or the look-back year) with compensation in excess of $80,000 (as adjusted) for the look-back year is a highly compensated employee only if the employee was in the top-paid group for the look-back year. An employer may also make a calendar year data election for a determination year. The effect of this election is that the look-back year is the calendar year beginning with or within the look-back year. The plan may not use this election to determine whether employees are highly compensated employees on account of being 5-percent owners. These elections, once made, apply for all subsequent determination years unless changed by the employer.

An employer making one of the elections is not required also to make the other election. However, if both elections are made, the look-back year in determining the top-paid group must be the calendar year beginning with or within the look-back year. These elections must apply consistently to the determination years of all plans of the employer.

If a qualified plan contains the definition of highly compensated employee and an employer makes or changes either a top-paid group election or a calendar year data election for a determination year, the plan must reflect the choices made. Any retroactive amendments must reflect the choices made in the operation of the plan for each determination year.)

Sample adoption agreement language: (check one or both)

( ) In determining who is a highly compensated employee the employer makes a top-paid group election. The effect of this election is that an employee (who is not a 5-percent owner at any time during the determination year or the look-back year) with compensation in excess of $80,000 (as adjusted) for the look-back year is a highly compensated employee only if the employee was in the top-paid group for the look-back year.

( ) In determining who is a highly compensated employee (other than as a 5-percent owner) the employer makes a calendar year data election. The effect of this election is that the look-back year is the calendar year beginning with or within the look-back year.

12. Document Provision:

Statement of Requirement: Definition of owner-employee, Code §401(c)(3).

Sample Plan Language: Owner-employee means an individual who is a sole proprietor, or who is a partner owning more than 10 percent of either the capital or profits interest of the partnership.

(Note to reviewer: This definition is not required if the plan is a nonstandardized plan and precludes participation by owner-employees.)

13. Document Provision:

Statement of Requirement: Definition of self-employed individual, Code §401(c)(1).

Sample Plan Language:

Self-employed individual means an individual who has earned income for the taxable year from the trade or business for which the plan is established; also, an individual who would have had earned income but for the fact that the trade or business had no net profits for the taxable year.

(Note to reviewer: This definition is not required if the plan is a nonstandardized plan and precludes participation by self-employed individuals.)

14. Document Provision:

Statement of Requirement: <u>Profit-sharing plan –</u> Definition of normal retirement age, Code §411(a)(8); mandatory

retirement age restrictions, Regs. §1.411(a)-7(b)(1).

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:

( ) Age _____ (not to exceed 65)

( ) The later of:

(i) age _____ (not to exceed 65) 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.

14A. Document Provision:

Statement of Requirement: **Money purchase (including target benefit) plan - 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.**

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 first day of the first plan year beginning after June 30, 2008, 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.)

B.

() the later of:

(i) age ____ (not to exceed 65), 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 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 first day of the first plan year beginning after June 30, 2008, 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.

(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 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. The sample adoption agreement language provides that the effective date of an amendment raising the plan's NRA pursuant to §1.401(a)-1(b)(2) is the first day of the first plan year beginning after June 30, 2008, but a plan may provide an election in the adoption agreement that allows the employer to select

<u>any earlier date after May 21, 2007 as the effective date of the amendment.)</u>

15. Document Provision:

Statement of Requirement: Definition of benefiting, Regs. §1.410(b)-3(a).

Sample Plan Language:

A participant is treated as benefiting under the plan for any plan year during which the participant received or is deemed to receive an allocation in accordance with § 1.410(b)-3(a).

16. Document Provision:

Statement of Requirement: Definition of straight life annuity, Regs. §1.401(a)(4)-12.

Sample Plan Language:

Straight life annuity means an annuity payable in equal installments for the life of the participant that terminates upon the participant's death.

<u>MINIMUM PARTICIPATION STANDARDS</u>

17. Document Provision:

Statement of Requirement: Maximum age restrictions not permitted, Code §410(a)(2).

(Note to reviewer: The sponsor must delete any provision which restricts participation based on the attainment of a specified age.)

18. Document Provision:

Statement of Requirement: Provisions for entry into participation, Code §410(a)(4); Regs. §1.410(a)-4(b).

Sample Plan Language:

The employee will participate on the earlier of: (1) the first day of the plan year beginning after the date on which the employee has met the minimum age and service requirements or (2) six months after the date the requirement is met.

(Note to reviewer: If the plan provides for a single annual entry date, the maximum age and service requirements must be reduced by ½ year unless the employee participates on the entry date nearest the date the employee completes the minimum age and service requirements and the entry date is the first day of the plan year.)

19. Document Provision:

Statement of Requirement: Eligibility computation periods, DOL Regs. §2530.202-2(a), §2530.202-2(b).

Sample Plan Language:

For purposes of determining years of service and breaks in service for purposes of eligibility, the initial eligibility computation period is the 12-consecutive month period beginning on the date the employee first performs an hour of service for the employer (employment commencement date).

The succeeding 12-consecutive month periods commence with the first anniversary of the employee's employment commencement date. **(This paragraph is not applicable if the eligibility computation period shifts to the plan year.)**

The succeeding 12-consecutive month periods commence with the first plan year which commences prior to the first anniversary of the employee's employment commencement date regardless of whether the employee is entitled to be credited with 1,000 hours of service during the initial eligibility computation period. An employee who is credited with 1,000 hours of service in both the initial eligibility computation period and the first plan year which commences prior to the first anniversary of the employee's initial eligibility computation period will be credited with two years of service for purposes of eligibility to participate. **(This paragraph is not applicable if succeeding eligibility computation periods commence on the 12-consecutive month anniversary of the employee's employment commencement date.)**

20. Document Provision:

Statement of Requirement: Use of computation periods, DOL Regs. §2530.200b-4(a)(2).

Sample Plan Language:

Years of service and breaks in service will be measured on the same eligibility computation period.

21. Document Provision:

Statement of Requirement: All years of service counted toward eligibility except after certain breaks in service, Code §411(a)(5)(A),(B) & (D); Regs. §1.410(a)-5.

Sample Plan Language:

All years of service with the employer are counted toward eligibility except the following:

If an employee has a 1-year break in service before satisfying the plan's requirement for eligibility, service before such break will not be taken into account.

(Note to reviewer: The above provision is only permitted if the plan provides 100% vesting after an employee completes the Code §410(a)(1)(B)(i) eligibility requirements. See Code §410(a)(5)(B).)

In the case of a participant who does not have any nonforfeitable right to the account balance derived from employer contributions, years of service before a period of consecutive 1-year breaks in service will not be taken into account in computing eligibility service if the number of consecutive 1-year breaks in service in such period equals or exceeds the greater of 5 or the aggregate number of years of service. Such aggregate number of years of service will not include any years of service disregarded under the preceding sentence by reason of prior breaks in service.

If a participant's years of service are disregarded pursuant to the preceding paragraph, such participant will be treated as a new employee for eligibility purposes. If a participant's years of service may not be disregarded pursuant to the preceding paragraph, such participant shall continue to participate in the plan, or, if terminated, shall participate immediately upon reemployment.

(Note to reviewer: For plan language meeting the requirements of the eligibility one year hold-out rule (Code §410(a)(5)(C)), see LRM #22.)

22. Document Provision:

Statement of Requirement: Eligibility break in service, one year hold-out rule, DOL Regs. §2530.200b-4(b)(1); Code §410(a)(5)(C).

(Nonstandardized plans only)

Sample Plan Language:

In the case of any participant who has a 1-year break in service, years of eligibility service before such break will not be taken into account until the employee has completed a year of service after returning to employment.

Such year of service will be measured by the 12-consecutive month period beginning on an employee's reemployment commencement date and, if necessary, subsequent 12-consecutive month periods beginning on anniversaries of the reemployment commencement date. **(This paragraph is not applicable if the plan shifts the eligibility computation period to the plan year.)**

Such year of service will be measured by the 12-consecutive month period beginning on an employee's reemployment commencement date and, if necessary, plan years beginning with the plan year which includes the first anniversary of the reemployment commencement date. **(This paragraph is not applicable if the eligibility computation period is measured with reference to the employment commencement date.)**

The reemployment commencement date is the first day on which the employee is credited with an hour of service for the performance of duties after the first eligibility computation period in which the employee incurs a one year break in service.

If a participant completes a year of service in accordance with this provision, his or her participation will be reinstated as of the reemployment commencement date.

23. Document Provision:

Statement of Requirement: Participation upon return to eligible class, Code §410(a)(4).

Sample Plan Language:

In the event a participant is no longer a member of an eligible class of employees and becomes ineligible to participate but has not incurred a break in service, such employee will participate immediately upon returning to an eligible class of employees. If such participant incurs a break in service, eligibility will be determined under the break in service rules of the plan.

In the event an employee who is not a member of an eligible class of employees becomes a member of an eligible class, such employee will participate immediately if such employee has satisfied the minimum age and service requirements and would have otherwise previously become a participant.

EMPLOYER CONTRIBUTIONS

24. Document Provision:

Statement of Requirement: **Money purchase plan -- definite contribution formula, Regs. §1.401-1(b)(1)(i), §1.401(a)(26)-6(b)(7), §1.410(b)-6(f).**

Sample Adoption Agreement Language:

For each plan year, the employer will contribute for each participant who either completes more than 500 hours of service during the plan year or is employed on the last day of the plan year an amount equal to ________% (not to exceed 25) of such participant's compensation.

(Note to reviewer: A plan that utilizes elapsed time in lieu of counting hours of service may substitute the completion of either 91 consecutive calendar days or 3 consecutive calendar months for 500 hours of service in the above sample language.)

(Note to reviewer: A nonstandardized plan may, as an option, require up to 1,000 hours of service in the sample language above.)

25. Document Provision:

Statement of Requirement: **Profit-sharing plan -- definite allocation formula, Regs. §1.401-1(b)(1)(ii), §1.401(a)(26)-6(b)(7), §1.410(b)-6(f).**

Sample Plan Language:

Employer contributions will be allocated to each participant who either completes more than 500 hours of service during the plan year or who is employed on the last day of the plan year in the ratio that such participant's compensation bears to the compensation of all participants.

(Note to reviewer: A plan that utilizes elapsed time in lieu of counting hours of service may substitute the completion of either 91 consecutive calendar days or 3 consecutive calendar months for 500 hours of service in the above sample language.)

(Note to reviewer: A nonstandardized plan may require, as an option on the adoption agreement, up to 1,000 hours of service.)

(Note to reviewer: See LRM #94 for additional formulas available to nonstandardized plans.)

25A. Document Provision:

Statement of Requirement:
Uniform Points Allocation Formula,
Regs §1.401(a)(4)-2(b)(3)(i)(A);

Sample Adoption Agreement Language:

Each participant will receive_________points for each:

(must select at least age or service)

___ year of age

___ year of service

___ ______ (not to exceed $200) of Compensation

Each participant's allocation shall bear the same relationship to the employer contribution as his or her total points bears to all points awarded.

(Note to reviewer: Pursuant to § 401(a)(27) of the Code, employer contributions to a profit-sharing plan are not limited to an employer's current or accumulated profits; however, if employer contributions are not so limited, the plan must designate whether it is a pension plan (i.e., a target benefit or money purchase plan), or a profit-sharing plan. The plan type must also be designated if the plan is a profit-sharing plan which contains a 401(k) arrangement.)

Target Benefit Plans

(Note to reviewer: Because of the potential for discrimination, target benefit plans in the Master and Prototype (M&P) program must satisfy the safe harbor for target benefit plans contained in Regulations § 1.401(a)(4)-8(b)(3) In general, to be eligible for this safe harbor, a target benefit plan must:

(1) provide that each participant's stated benefit be determined as the straight life annuity commencing at the participant's normal retirement age under a formula that would satisfy the requirements of §1.401(a)(4)-3(b)(4)(i)(C)(1) or (2) (the design-based safe harbors for unit credit and fractional rule defined benefit plans), and each of the uniformity requirements of §1.401(a)(4)-3(b)(2);

(2) determine employer contributions necessary to fund a participant's stated benefit under the individual level premium funding method set forth below;

(3) apply forfeitures under the plan to reduce future employer contributions (see LRM #39);

(4) provide benefits solely from employer contributions and forfeitures; employee contributions (see LRMs #35-38); and any income, expenses, gains and losses allocated to a participant's account;

(5) provide that the stated benefit at normal retirement age accrues ratably over the period ending with the plan year in which the participant is projected to reach normal retirement age and beginning with the latest of: (a) the first plan year in which the participant benefited under the plan, (b) the first plan year taken into account under the stated benefit formula, and (c) any plan year immediately following a plan year in which the plan did not satisfy the target benefit safe harbor in the regulations; and

(6) if permitted disparity is taken into account, contain a stated benefit formula that satisfies the requirements of §1.401(l)-3.

A target benefit plan may limit increases in the stated benefit after normal retirement age consistent with Code § 411(b)(1)(H) (without regard to § 411(b)(1)(H)(iii)), provided that the limitation applies on the same terms to all participants in the plan. Thus, in the case of a target benefit plan with a stated benefit formula expressed as a specific unit of benefit per year of participation up to a maximum number of years of participation, only those participants who at normal retirement age have not earned the maximum number of years of participation under the benefit formula must continue to receive units of benefit for each year of participation earned after normal retirement age. If the number of years of participation a participant can earn under a unit credit target benefit plan is unlimited, the stated benefit of all participants working beyond normal retirement age must continue to increase on a uniform basis after normal retirement age.)

26. Document Provision:

Statement of Requirement: Target benefit plans - stated benefit, plans not providing for permitted disparity, Code §401(a)(4); Regs. §1.401(a)(4)-8(b)(3).

(Note to reviewer: The stated benefit may be expressed only in the form of a straight life annuity without a term certain, refund feature, or survivor benefit.)

Sample Adoption Agreement Language:

Flat Benefit

Each participant's stated benefit is equal to _____% of average annual compensation (reduced pro rata for the participant's years of projected participation less than 25) payable annually as a straight life annuity beginning at normal retirement age.

Unit Credit

Each participant's stated benefit is equal to ______% of average annual compensation multiplied by the participant's years of projected participation, up to a maximum of _______ (no less than 25), payable annually as a straight life annuity beginning at normal retirement age. The first day of the first plan year taken into account under this stated benefit formula will be ________________.

(Note to reviewer: The following language may be used in a target benefit plan that provides for a step in its current stated benefit formula, (e.g., a formula that provides a rate of benefit that changes after a certain specified number of years of participation).)

Each participant's stated benefit will be payable annually as a straight life annuity beginning at normal retirement age, in an amount equal to _____ percent of average annual compensation (R1) per year for the first _____ years of the participant's years of projected participation (y) and _____ percent (R2) of average annual compensation per year for the next _____ years of the participant's years of projected participation (such that the total years of projected participation taken into account under R1 and R2 is not less than 33).

If y is less than 33, R2 will be not less than:

$$\frac{(R1)\ (25-y)}{33 - y}$$

(but in no case less than 0),

and not greater than: $\frac{(R1)\ (44-y)}{33 - y}$.

Sample Plan Language:

For purposes of determining a participant's stated benefit, a participant's years of projected participation under the plan is the sum of (1) and (2), where (1) is the number of years during which the participant benefited under this plan beginning with the latest of: (a) the first plan year in which the participant benefited under the plan, (b) the first plan year taken into account in the stated benefit formula, and (c) any plan year immediately following a plan year in which the plan did not satisfy the safe harbor for target benefit plans in Regulations § 1.401(a)(4)-8(b)(3), and ending with the last day of the current plan year, and (2) is the number of years, if any, subsequent to the current plan year through the end of the plan year in which the participant attains normal retirement age.

For purposes of this definition of years of projected participation, if this plan is a prior safe harbor plan, the plan is deemed to satisfy the safe harbor for target benefit plans in Regulations § 1.401(a)(4)-8(b)(3) and a participant is treated as benefiting under the plan in any plan year beginning prior to January 1, 1994.

A prior safe harbor plan is a plan that (1) was adopted and in effect on September 19, 1991, (2) which on that date contained a stated benefit formula that took into account service prior to that date, and (3) satisfied the applicable nondiscrimination requirements for target benefit plans for those prior years. For purposes of determining whether a plan satisfies the applicable nondiscrimination requirements for target benefit plans for plan years beginning before January 1, 1994, no amendments after September 19, 1991, other than amendments necessary to satisfy § 401(l) of the Code, will be taken into account.

For purposes of this section, average annual compensation means the average of a participant's annual compensation, as defined in section _____ of the plan, over the three-consecutive plan year period ending in the current year or in any prior year that produces the highest average. If the participant has less than three years of participation in this plan, compensation is averaged over the participant's total period of participation.

(Note to reviewer: The plan may provide for a consecutive year period longer than three years, or provide an election in the Adoption Agreement to enable the employer to select the consecutive year period (not less than three years) over which the participant's annual compensation will be averaged.)

(Note to reviewer: For purposes of determining a participant's average annual compensation, all target benefit plans must use one of the definitions of compensation provided in LRM #6.)

(Note to reviewer: In the sample plan language above, the participant's compensation history consists of the participant's entire period of service. However, a participant's compensation history may be limited to a period no shorter than the averaging period, as long as it is continuous and ends in the current plan year. For example, a plan may provide that average annual compensation be determined based on the 5 years which produces the highest average out of the last 10 years. Note also that in determining a participant's compensation history, certain years may be disregarded. See § 1.401(a)(4)-3(e)(2)(ii)(B).)

27. Document Provision.

Statement of Requirement: Target benefit formula -- stated benefit - plans providing for permitted disparity, Code §401(l), §401(a)(4); Regs. §1.401(a)(4)-8(b)(3), §1.401(l)-3.

(Note to reviewer: The stated benefit must be expressed in the form of a straight life annuity without a term certain, refund feature or survivor benefit.)

Sample Plan Language:

Sample Adoption Agreement Language

A. Subject to the overall permitted disparity limit below, each participant's stated benefit under the plan is a straight life annuity commencing at normal retirement age in an amount:

[EXCESS BENEFIT PLANS]

(1) ( ) Unit Credit

Equal to the sum of (a) and (b) below:

(a) _____% (base benefit percentage) times average annual compensation up to the integration level for the plan year times the participant's years of projected participation plus a benefit equal to _____% (excess benefit percentage, not to exceed the base benefit percentage by more than the maximum excess allowance) times average annual compensation in excess of the integration level for the plan year times the participant's years of projected participation. The maximum number of years of projected participation taken into account under this paragraph will be ___________ (may not be less than 25 and may not exceed

35). However, the number of years of projected participation taken into account in the preceding sentence for any participant may not exceed the participant's cumulative permitted disparity limit.

The participant's cumulative permitted disparity limit is equal to 35 minus: (1) the number of years the participant benefited or is treated as having benefited under this plan prior to the participant's first year of projected participation, and (2) the number of years credited to the participant for allocation or accrual purposes under one or more qualified plans or simplified employee pension plans (whether or not terminated) ever maintained by the employer other than years counted in (1) above or counted toward a participant's years of projected participation. For purposes of determining the participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year.

(b) _____% (not to exceed the excess benefit percentage) times average annual compensation for each year of projected participation after the period taken into account under paragraph (a). (If the number of years of projected participation taken into account under paragraph (a) is less than 35 (as modified by the participant's cumulative permitted disparity limit), then for each year of projected participation after the period taken into account under paragraph (a) up to and including the 35th year of participation (as modified by the participant's cumulative permitted disparity limit), this percentage will be equal to the excess benefit percentage.) The maximum number of years of projected participation taken into account under this paragraph will be __________.

The maximum excess allowance is equal to the lesser of: (1) the base benefit percentage or (2) the applicable factor determined from Tables I or II in section B below.

Overall permitted disparity limit: Notwithstanding paragraphs (a) and (b) above, for any plan year this plan benefits any participant who benefits under another qualified plan or simplified employee pension maintained by the employer that provides for permitted disparity (or imputes permitted disparity), the stated benefit for all participants under this plan will be equal to the excess benefit percentage above times the participant's total average annual compensation times the participant's years of projected participation under the plan up to the maximum years of projected participation taken into account in paragraphs (a) and (b).

(2) ( ) Flat Benefit

Equal to _____% times average annual compensation up to the integration level for the plan year (base benefit percentage) plus a benefit equal to _____% (excess benefit percentage) (not to exceed the base benefit percentage by more than the maximum excess allowance) times average annual compensation in excess of the integration level for the plan year.

The maximum excess allowance is equal to the lesser of: (1) the base benefit percentage; or (2) 35 times the applicable factor determined from Tables I or II in section B below.

For a participant with less than 35 years of projected participation, the base benefit percentage and the excess benefit percentage will be reduced by being multiplied by a fraction, the numerator of which is the participant's years of projected participation, and the denominator of which is 35.

Cumulative permitted disparity reduction: If the number of the participant's cumulative permitted disparity years exceeds 35, the excess benefit percentage will be further reduced as provided below. A participant's cumulative permitted disparity years consists of the sum of: (1) the participant's years of projected participation (up to 35), (2) the number of years the participant benefited or is treated as having benefited under this plan prior to the participant's first year of projected participation, and (3) the number of years credited to the participant for allocation or accrual purposes under one or more qualified plans or simplified employee pension plans (whether or not terminated) ever maintained by the employer (other than years counted in (1) or (2) above). For purposes of determining the participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year.

If the cumulative permitted disparity reduction is applicable, the excess benefit percentage will be reduced as follows:

(A) Subtract the participant's base benefit percentage from the participant's excess benefit percentage, (after modification in accordance with the paragraph preceding this cumulative permitted disparity reduction).

(B) Multiply the result determined in (A) by a fraction (not less than 0), the numerator of which is 35 minus the sum of the years in (2) and (3) above, and the denominator of which is 35.

(C) The participant's excess benefit percentage is equal to the sum of the result in (B) and the participant's base benefit percentage, as otherwise modified.

Overall permitted disparity limit: Notwithstanding the above, for any plan year this plan benefits any participant who benefits under another qualified plan or simplified employee pension plan maintained by the employer that provides for permitted disparity (or imputes permitted disparity), the stated benefit for all participants under this plan will be equal to the excess benefit percentage entered into the benefit formula above multiplied by the participant's total average annual compensation under the plan (prorated for years of projected participation less than 35).

[OFFSET PLANS]

(1) ( ) Unit Credit

Equal to the sum of (a) and (b) below:

(a) _____ % (gross benefit percentage) times average annual compensation for the plan year times the participant's years of projected participation offset by _____ % (not to exceed the maximum offset allowance) times final average compensation up to the offset level times the participant's total years of projected participation. The maximum number of years of projected participation taken into account under this paragraph will be ___________ (may not be less than 25 and may not exceed 35). However, the number of years of projected participation taken into account in the preceding sentence for any participant may not exceed the participant's cumulative permitted disparity limit. The participant's cumulative permitted disparity limit is equal to 35 minus: (1) the number of years the participant benefited or is treated as having benefited under this plan prior to the participant's first year of projected participation, and (2) the number of years credited to the participant for allocation or accrual purposes under one or more qualified plans or simplified employee pension plans (whether or not terminated) ever maintained by the employer other than years counted in (1) above or counted toward a participant's years of projected participation. For purposes of determining the participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year.

(b) _____% (not to exceed the gross benefit percentage) times average annual compensation for each year of projected participation after the period set forth in paragraph (a). (If the number of years of projected participation set forth in paragraph (a) is less than 35 (as modified by the participant's cumulative permitted disparity limit), then for each year of projected participation after the period set forth under paragraph (a) up to and including the 35th year of projected participation (as modified by the participant's cumulative permitted disparity limit), this percentage will be equal to the gross benefit percentage.) The maximum number of years of projected participation taken into account under this paragraph will be __________.

The maximum offset allowance will not exceed the lesser of: (1) the applicable factor from Tables I or II in section B below, and (2) one-half of the gross benefit percentage, multiplied by a fraction (not to exceed one), the numerator of which is the participant's average annual compensation, and the denominator of which is the participant's final average compensation up to the offset level.

Overall permitted disparity limit: Notwithstanding the preceding paragraphs (a) and (b), for any plan year this plan benefits any participant who benefits under another qualified plan or simplified employee pension plan maintained by the employer that provides for permitted disparity (or imputes permitted disparity), the stated benefit for all participants under this plan will be equal to the gross benefit percentage above (without regard to the offset) times the participant's total average annual compensation times the participant's years of projected participation under the plan up to the maximum of years of projected participation taken into account in paragraphs (a) and (b).

(2) ( ) Flat Benefit

Equal to _____% times average annual compensation offset by _____ % (not to exceed the maximum offset allowance) times final average compensation up to the offset level.

The maximum offset allowance will not exceed the lesser of: (1) the applicable factor from Tables I or II in section B below, multiplied by 35, and (2) one-half of the gross benefit percentage, multiplied by a fraction (not to exceed one), the numerator of which is the participant's average annual compensation, and the denominator of which is the participant's final average compensation up to the offset level.

For a participant with less than 35 years of projected participation, both the gross benefit percentage and the offset percentage will be reduced by being multiplied by a fraction, the numerator of which is the number of the participant's years of projected participation, and the denominator of which is 35.

Cumulative permitted disparity reduction: If the number of the participant's cumulative permitted disparity years exceeds 35, the gross benefit percentage and the offset will be further reduced as provided below. A participant's cumulative permitted disparity years consists of the sum of: (1) the participant's years of projected participation (up to 35), (2) the number of years the participant benefited or is treated as having benefited under this plan prior to the participant's first year of projected participation, and (3) the number of years credited to the participant for allocation or accrual purposes under one or more qualified plans or simplified employee pension plans (whether or not terminated) ever maintained by the employer (other than years counted in (1) or (2) above). For purposes of determining the participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year.

If the cumulative permitted disparity reduction is applicable, the gross benefit percentage and the offset will be reduced as follows:

(A) The offset will be reduced by multiplying it by a fraction (not less than 0), the numerator of which is 35 minus the sum of the years in (2) and (3) above, and the denominator of which is 35.

(B) The gross benefit percentage will be reduced by the number of percentage points by which the offset was reduced in (A) above.

Overall permitted disparity limit: Notwithstanding the above, for any plan year this plan benefits any participant who benefits under another qualified plan or simplified employee pension plan maintained by the employer that provides for permitted disparity (or imputes permitted disparity), the stated benefit for all participants under this plan will be equal to the gross benefit percentage entered in the benefit formula above (without regard to the offset) multiplied by the participant's total average annual compensation under the plan (prorated for years of projected participation less than 35).

B. The applicable factor is the factor derived from the applicable table(s) below based on the normal retirement age under the plan. If the employer elects as an integration level (or offset level) option _______ or ______ in the Adoption Agreement, Table II will apply. Otherwise, Table I will apply.

(Note to reviewer: The blanks should be filled in with the Adoption Agreement section numbers which correspond to options 4 and 5 of section C of this LRM #27C.)

(Note to reviewer: Regulations § 1.401(l)-3(e) requires an adjustment to the 0.75 factor in the maximum excess or offset allowance with respect to benefits payable prior to a participant's social security retirement age using factors

set forth in the regulations. The tables below incorporate these factors so that the appropriate reduction is reflected in the plan's stated benefit formula. To satisfy the requirements of § 1.401(a)(4)-8(b)(3) for target benefit plans that take into account permitted disparity, the 0.75-percent factor, as otherwise reduced, must be multiplied by a factor of 0.80. Table I below contains the reduction factors from Table IV of Regulations § 1.401(l)-3(e)(3) with respect to benefits commencing before a participant's normal retirement age, multiplied by a factor of 0.80. The use of certain integration (or offset) levels requires an additional reduction to the .75 factor (see, e.g., options 4 and 5 in section C. below). Table II below contains factors that are the product of the factors from Table I below and 0.80. Table II is to be used if the employer selects option 4 or 5 in section C below as an integration level (or offset level).)

Normal Retirement Age	TABLE I	TABLE II
65	0.5200	0.4160
64	0.4856	0.3884
63	0.4504	0.3603
62	0.4160	0.3328
61	0.3816	0.3052
60	0.3464	0.2771
59	0.3296	0.2636
58	0.3120	0.2496
57	0.2944	0.2355
56	0.2776	0.2220
55	0.2600	0.2080

C. The integration level (or offset level) for each plan year for each participant will be an amount equal to:

(1) ( ) such participant's covered compensation for the plan year.

(2) ( ) the greater of $10,000 or one-half of the covered compensation of any individual who attains social security retirement age during the calendar year in which the plan year begins.

(3) ( ) $ ________(a single dollar amount not to exceed the greater of $10,000 or one-half of covered compensation of any individual who attains social security retirement age during the calendar year in which the plan year begins).

(4) ( ) $ _______ (a single dollar amount that exceeds the greater of $10,000 or one-half of covered compensation of any individual who attains social security retirement age during the calendar year in which the plan year begins, but not to exceed the greater of $25,450 or 150% of the covered

compensation of an individual attaining social security retirement age in the current plan year).

(5) ( ) a uniform percentage equal to ______% (greater than 100 percent but not greater than 150 percent of each participant's covered compensation for the current year, and in no event in excess of the taxable wage base).

(Note to reviewer: If option 4 or 5 is selected, the applicable factor must be derived from Table II above.)

(Note to reviewer: An M&P plan may contain integration levels (or offset levels) not specified above that require greater reductions in the 0.75-percent factor. A plan that allows the employer to elect such integration levels must ensure that the maximum excess or offset allowance is appropriately limited. M&P plans may not allow the employer to elect the intermediate amount integration level (or offset level) under § 1.401(l)-3(d)(5).

Sample Plan Language:

D. Definitions

1. A participant's years of projected participation under the plan is the sum of (1) and (2), where (1) is the number of years during which the participant benefited under this plan beginning with the latest of: (a) the first plan year in which the participant benefited under the plan, (b) the first plan year taken into account in the stated benefit formula, and (c) any plan year immediately following a plan year in which the plan did not satisfy the safe harbor for target benefit plans in Regulations § 1.401(a)(4)-8(b)(3), and ending with the last day of the current plan year, and (2) is the number of years if any, subsequent to the current plan year through the end of the plan year in which the participant attains normal retirement age.

For purposes of this definition of years of projected participation, if this plan is a prior safe harbor plan the plan is deemed to satisfy the safe harbor for target benefit plans in Regulations § 1.401(a)(4)-8(b)(3) and a participant is treated as benefiting under the plan in any plan year beginning prior to January 1, 1994.

A prior safe harbor plan is a plan that (1) was adopted and in effect on September 19, 1991, (2) which on that date contained a stated benefit formula that took into account service prior to that date and (3) satisfied the applicable nondiscrimination requirements for target benefit plans for those prior years. For purposes of determining whether a plan satisfies the applicable nondiscrimination requirements for target benefit plans for any period prior to plan years beginning before January 1, 1994, no amendments after

September 19, 1991, other than amendments necessary to satisfy § 401(l) of the Code, will be taken into account.

2. Average annual compensation. Average annual compensation is the average of a participant's annual compensation as defined in section ____ of the plan, over the three-consecutive plan year period ending in either the current year or any prior year that produces the highest average. If the participant has less than three years of participation in this plan, compensation is averaged over the participant's total period of participation.

(Note to reviewer: The blank should be filled in with the plan section number that corresponds to LRM #6.)

(Note to reviewer: The plan may provide for a consecutive year period longer than three years, or provide an election in the adoption agreement to enable the employer to select the consecutive year period (not less than three years) over which the participant's annual compensation will be averaged.)

(Note to reviewer: In the sample plan language above, the participant's compensation history consists of the participant's entire period of service. However, a participant's compensation history may be limited to a period no shorter than the averaging period, as long as it is continuous and ends in the current plan year. For example, a plan may provide that average annual compensation be determined based on the 5 years which produces the highest average out of the last 10 years. Note also that in determining a participant's compensation history, certain years may be disregarded. See § 1.401(a)(4)-3(e)(2)(ii)(B).)

3. Covered compensation. A participant's covered compensation for a plan year is the average (without indexing) of the taxable wage bases in effect for each calendar year during the 35-year period ending with the last day of the calendar year in which the participant attains (or will attain) social security retirement age.

In determining a participant's covered compensation for a plan year, the taxable wage base in effect for the current plan year and any subsequent plan year will be assumed to be the same as the taxable wage base in effect as of the beginning of the plan year for which the determination is being made. Covered compensation will be determined based on the year designated by the employer in section _____ of the adoption agreement.

(Note to reviewer: The blank above should be filled in with the section of the Adoption Agreement that corresponds with

the Sample Adoption Agreement Language immediately following this Definitions section D.)

A participant's covered compensation for a plan year before the 35-year period ending with the last day of the calendar year in which the participant attains social security retirement age is the taxable wage base in effect as of the beginning of the plan year. A participant's covered compensation for a plan year after such 35-year period is the participant's covered compensation for the plan year during which the 35-year period ends.

(Note to reviewer: A plan may also define covered compensation for plan years beginning prior to 1995 as the average (without indexing) of the taxable wage bases for the 35 calendar years ending with the year prior to the calendar year an individual attains social security retirement age.)

4. Taxable wage base. Taxable wage base is the contribution and benefit base in effect under section 230 of the Social Security Act at the beginning of the plan year.

5. Final average compensation. **[OFFSET PLANS ONLY]** A participant's final average compensation is the average of the participant's annual compensation, as defined in section ____ of the plan, from the employer for the three-consecutive year period ending with or within the plan year. If a participant's entire period of employment with the employer is less than three consecutive years, compensation is averaged on an annual basis over the participant's entire period of employment. Compensation for any year in excess of the taxable wage base in effect at the beginning of such year will not be taken into account.

(Note to reviewer: The blank should be filled in with the plan section number that corresponds to LRM #6.)

(Note to reviewer: The plan may provide, or an election may be provided in the Adoption Agreement, that in determining a participant's final average compensation, the plan year in which a participant terminates employment may be disregarded, if such year is disregarded in determining final average compensation for all participants.)

Sample Adoption Agreement Language:

Covered compensation will be determined based on the following year:

[ ] current year.

[ ] _______ year (may be the covered compensation for a plan year earlier than the current plan year, provided the

earlier plan year is the same for all participants and is not earlier than the later of (A) the plan year that begins 5 years before the current plan year, and (B) the plan year beginning in 1989. If the plan year entered is more than five years prior to the current plan year, the participant's covered compensation will be that determined under the covered compensation table for the plan years five years prior to the current plan year).

28. Document Provision:

Statement of Requirement: Target benefit plans - calculation of employer contributions, Code §401(a)(4); Regs. §1.401(a)(4)-8(b)(3).

Sample Plan Language:

For each plan year the employer will contribute for each participant who either completes more than 500 hours of service during the plan year or is employed on the last day of the plan year the annual employer contribution calculated below. The annual employer contribution necessary to fund the stated benefit with respect to a participant will be determined each year as follows:

(Note to reviewer: A nonstandardized plan may require, as an option, up to 1,000 hours of service.)

(Note to reviewer: A plan that utilizes elapsed time in lieu of counting hours of service may substitute the completion of either 91 consecutive calendar days or 3 consecutive calendar months for 500 hours of service in the above sample language.)

Step 1: If the participant has not yet reached normal retirement age, calculate the present value of the stated benefit by multiplying the stated benefit by the factor that is the product of: i) the applicable factor in Table I (if attained (current) age is less than 65) or Table IA (if attained age is greater than or equal to 65), multiplied by (ii) the applicable factor in Table III. If the participant is at or beyond normal retirement age, calculate the present value of the stated benefit by multiplying the stated benefit by the factor in Table IV corresponding to that normal retirement age.

(Note to reviewer: If the plan provides options for normal retirement ages other than those for which factors are provided in Tables III below, the plan must contain the appropriate factors.)

Step 2: Calculate the excess, if any, of the amount determined in Step 1 over the theoretical reserve.

Step 3: Amortize the result in Step 2 by multiplying it by the applicable factor from Table II. For the plan year in which the participant attains normal retirement age and for any subsequent plan year, the applicable factor is 1.0.

For purposes of this section, the theoretical reserve is determined according to (i) and (ii) below:

(i) Initial theoretical reserve. A participant's theoretical reserve as of the last day of the participant's first year of projected participation (year 1) is zero. However, if this plan is a prior safe harbor plan with a stated benefit formula that takes into account plan years prior to the first plan year this plan satisfies the safe harbor in Regulations § 1.401(a)(4)-8(b)(3)(c), the initial theoretical reserve is determined as follows:

(A) Calculate as of the last day of the plan year immediately preceding year 1 the present value of the stated benefit, using the actuarial assumptions, the provisions of the plan, and the participant's compensation as of such date. For a participant who is beyond normal retirement age during year 1, the stated benefit will be determined using the actuarial assumptions, the provisions of the plan, and the participant's compensation as of such date, except that the straight life annuity factor used in that determination will be the factor applicable for the participant's normal retirement age.

(B) Calculate as of the last day of the plan year immediately preceding year 1 the present value of future employer contributions, i.e., the contributions due each plan year using the actuarial assumptions, the provisions of the plan, (disregarding those provisions of the plan providing for the limitations of § 415 of the Code or the minimum contributions under § 416), and the participant's compensation as of such date, beginning with year 1 through the end of the plan year in which the participant attains normal retirement age.

(C) Subtract the amount determined in (B) from the amount determined in (A).

(ii) Accumulate the initial theoretical reserve determined in (i) and the employer contribution (as limited by § 415 of the Code, but without regard to any required minimum contributions under § 416) for each plan year beginning in year 1 up through the last day of the current plan year (excluding contribution(s) (if any) for the current plan year) using the plan's interest assumption in effect for each such year. In any plan year following the plan year in which the participant attains normal retirement age, the accumulation is calculated assuming an interest rate of 0%.

For purposes of determining the level of annual employer contribution necessary to fund the stated benefit, the calculations in (i) and (ii) above will be made as of the last day of each plan year, on the basis of the participant's age on the participant's last birthday, using the interest rate in effect on the last day of the prior plan year.

Sample Adoption Agreement Language:

For purposes of determining the annual employer contribution necessary to fund the stated benefit, the interest rate will be:

(   ) 7.50%

(   ) 8.00%

(   ) 8.50%

TABLE I: Present value factors (See * below)

number of years from attained age to age 65*	interest rate 7.50%	8.00%	8.50%
1	7.868	7.589	7.326
2	7.319	7.027	6.752
3	6.808	6.506	6.223
4	6.333	6.024	5.736
5	5.891	5.578	5.286
6	5.480	5.165	4.872
7	5.098	4.782	4.491
8	4.742	4.428	4.139
9	4.412	4.100	3.815
10	4.104	3.796	3.516
11	3.817	3.515	3.240
12	3.551	3.255	2.986
13	3.303	3.014	2.752
14	3.073	2.790	2.537
15	2.859	2.584	2.338
16	2.659	2.392	2.155
17	2.474	2.215	1.986
18	2.301	2.051	1.831
19	2.140	1.899	1.687
20	1.991	1.758	1.555
21	1.852	1.628	1.433
22	1.723	1.508	1.321
23	1.603	1.396	1.217
24	1.491	1.293	1.122
25	1.387	1.197	1.034
26	1.290	1.108	0.953
27	1.200	1.026	0.878
28	1.116	0.950	0.810
29	1.039	0.880	0.746
30	0.966	0.814	0.688
31	0.899	0.754	0.634
32	0.836	0.698	0.584
33	0.778	0.647	0.538
34	0.723	0.599	0.496
35	0.673	0.554	0.457
36	0.626	0.513	0.422
37	0.582	0.475	0.389
38	0.542	0.440	0.358
39	0.504	0.407	0.330
40	0.469	0.377	0.304
41	0.436	0.349	0.280
42	0.406	0.323	0.258
43	0.377	0.299	0.238
44	0.351	0.277	0.219
45	0.327	0.257	0.202

* If a participant's attained age is at or above 65 but still below the participant's NRA, use Table IA.

Note: These factors are based on the UP-1984 Mortality Table.

TABLE IA: Present value factors for participants below normal retirement age (to be used only when attained age is greater than or equal to 65.)

number of years from age 65 to attained age	interest rate 7.50%	8.00%	8.50%
0	8.458	8.196	7.949
1	9.092	8.852	8.625
2	9.774	9.560	9.358
3	10.507	10.325	10.153
4	11.295	11.151	11.016
5	12.143	12.043	11.953
6	13.053	13.006	12.969
7	14.032	14.047	14.071
8	15.085	15.170	15.267
9	16.216	16.384	16.565
10	17.432	17.695	17.973
11	18.740	19.110	19.500
12	20.145	20.639	21.158
13	21.656	22.290	22.956
14	23.280	24.073	24.907
15	25.026	25.999	27.025

Note: These factors are based on the UP-1984 Mortality Table.

TABLE II: Amortization factors

number of years from attained age to normal retirement age	interest rate		
	7.50%	8.00%	8.50%
1	0.5181	0.5192	0.5204
2	0.3577	0.3593	0.3609
3	0.2777	0.2796	0.2814
4	0.2299	0.2319	0.2339
5	0.1982	0.2003	0.2024
6	0.1756	0.1778	0.1801
7	0.1588	0.1611	0.1634
8	0.1458	0.1482	0.1506
9	0.1355	0.1380	0.1405
10	0.1272	0.1297	0.1323
11	0.1203	0.1229	0.1255
12	0.1145	0.1171	0.1198
13	0.1096	0.1123	0.1151
14	0.1054	0.1082	0.1110
15	0.1018	0.1046	0.1075
16	0.0986	0.1015	0.1044
17	0.0958	0.0988	0.1018
18	0.0934	0.0964	0.0994
19	0.0912	0.0943	0.0974
20	0.0893	0.0924	0.0956
21	0.0876	0.0908	0.0940
22	0.0861	0.0893	0.0925
23	0.0847	0.0879	0.0912
24	0.0835	0.0867	0.0901
25	0.0823	0.0857	0.0890
26	0.0813	0.0847	0.0881
27	0.0804	0.0838	0.0872
28	0.0795	0.0830	0.0865
29	0.0788	0.0822	0.0858
30	0.0781	0.0816	0.0851
31	0.0774	0.0810	0.0846
32	0.0768	0.0804	0.0840
33	0.0763	0.0799	0.0836
34	0.0758	0.0794	0.0831
35	0.0753	0.0790	0.0827
36	0.0749	0.0786	0.0824
37	0.0745	0.0783	0.0820
38	0.0742	0.0779	0.0817
39	0.0739	0.0776	0.0815
40	0.0736	0.0774	0.0812
41	0.0733	0.0771	0.0810
42	0.0730	0.0769	0.0808
43	0.0728	0.0767	0.0806
44	0.0726	0.0765	0.0804
45	0.0724	0.0763	0.0802

TABLE III: Factors to be multiplied by those in Table I.

normal retirement age	interest rate 7.50%	8.00%	8.50%
80	0.206	0.194	0.184
79	0.231	0.219	0.207
78	0.258	0.246	0.234
77	0.289	0.276	0.263
76	0.322	0.309	0.296
75	0.359	0.346	0.333
74	0.400	0.387	0.374
73	0.446	0.432	0.419
72	0.495	0.482	0.469
71	0.549	0.537	0.525
70	0.609	0.597	0.586
69	0.674	0.664	0.653
68	0.745	0.736	0.728
67	0.822	0.816	0.810
66	0.907	0.904	0.900
65	1.000	1.000	1.000
64	1.101	1.106	1.110
63	1.212	1.221	1.231
62	1.332	1.348	1.363
61	1.464	1.486	1.509
60	1.606	1.637	1.669
59	1.761	1.802	1.844
58	1.929	1.982	2.036
57	2.111	2.177	2.246
56	2.309	2.390	2.475
55	2.523	2.622	2.726

NOTE: These factors are based on the UP-1984 Mortality Table.

TABLE IV: Factors for participants who are at or beyond normal retirement age.

normal retirement age	interest rate 7.50%	8.00%	8.50%
80	5.151	5.053	4.959
79	5.370	5.264	5.162
78	5.591	5.476	5.366
77	5.814	5.690	5.572
76	6.039	5.905	5.777
75	6.266	6.122	5.985
74	6.494	6.339	6.192
73	6.721	6.556	6.398
72	6.947	6.771	6.603
71	7.171	6.983	6.804
70	7.392	7.192	7.003
69	7.610	7.399	7.198
68	7.825	7.601	7.389
67	8.037	7.801	7.577
66	8.248	7.999	7.764
65	8.458	8.196	7.949
64	8.666	8.390	8.131
63	8.870	8.581	8.311
62	9.072	8.770	8.485
61	9.270	8.954	8.657
60	9.463	9.133	8.825
59	9.651	9.307	8.986
58	9.834	9.477	9.143
57	10.012	9.641	9.295
56	10.186	9.801	9.442
55	10.354	9.955	9.585

NOTE: These factors are based on the UP-1984 Mortality Table.

29. Document Provision:

Statement of Requirement:

Permitted disparity. Code §401(l),§401(a)(5); Regs §1.401(l)-2, §1.401-1(b)(1)(ii), §1.401(a)(26)-6(b)(7), §1.410(b)-6(f).

Profit-sharing plan:

(Note to reviewer: Pursuant to Code § 401(a)(27), employer contributions to a profit-sharing plan are not limited to an employer's current or accumulated profits; however, if employer contributions are not so limited, the plan must designate whether it is a pension plan (i.e., a target benefit or money purchase plan), or a profit-sharing plan. The plan type must also be designated if the plan is a profit-sharing plan that contains a section 401(k) arrangement.)

Sample Plan Language:

Subject to the overall permitted disparity limits, employer contributions for the plan year plus any forfeitures will be allocated to the account of each participant who either completes more than 500 hours of service during the plan year or who is employed on the last day of the plan year as follows:

STEP ONE: Contributions and forfeitures will be allocated to each participant's account in the ratio that each participant's total compensation bears to all participants' total compensation, but not in excess of 3% of each participant's compensation.

(Note to reviewer: A plan that utilizes elapsed time in lieu of counting hours of service may substitute the completion of either 91 consecutive calendar days or 3 consecutive calendar months for 500 hours of service in the above sample language.)

STEP TWO: Any contributions and forfeitures remaining after the allocation in Step One will be allocated to each participant's account in the ratio that each participant's compensation for the plan year in excess of the integration level bears to the excess compensation of all participants, but not in excess of 3% of each participant's compensation. For purposes of this Step Two, in the case of any participant who has exceeded the cumulative permitted disparity limit described below, such participant's total compensation for the plan year will be taken into account.

STEP THREE: Any contributions and forfeitures remaining after the allocation in Step Two will be allocated to each participant's account in the ratio that the sum of each participant's total compensation and compensation in excess of the integration level bears to the sum of all participants total compensation and compensation in excess of the integration level, but not in excess of the profit-sharing maximum disparity rate. For purposes of this Step Three, in the case of any participant who has exceeded the cumulative permitted disparity limit described below, two times such participant's total compensation for the plan year will be taken into account.

STEP FOUR: Any remaining employer contributions or forfeitures will be allocated to each participant's account in the ratio that each participant's total compensation for the plan year bears to all participants' total compensation for that year.

The integration level shall be equal to the taxable wage base or such lesser amount elected by the employer in the adoption agreement. The taxable wage base is the contribution and benefit base under section 230 of the Social Security Act at the beginning of the plan year.

Overall permitted disparity limits

Annual overall permitted disparity limit: Notwithstanding the preceding paragraphs, for any plan year this plan benefits any participant who benefits under another qualified plan or simplified employee pension, as defined in § 408(k) of the Code, maintained by the employer that provides for permitted disparity (or imputes disparity), employer contributions and forfeitures will be allocated to the account of each participant who either completes more than 500 hours of service during the plan year or who is employed on the last day of the plan year in the ratio that such participant's total compensation bears to the total compensation of all participants.

Cumulative permitted disparity limit: Effective for plan years beginning on or after January 1, 1995, the cumulative permitted disparity limit for a participant is 35 total cumulative permitted disparity years. Total cumulative permitted years means the number of years credited to the participant for allocation or accrual purposes under this plan, any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the employer. For purposes of determining the participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year. If the participant has not benefited under a defined benefit or target benefit plan for any year beginning on or after

January 1, 1994, the participant has no cumulative disparity limit.

Compensation shall mean compensation as defined in section _____ of the plan.

(Note to reviewer: The blank should be filled in with the plan section number which corresponds to LRM #62.)

The maximum profit-sharing disparity rate is equal to the lesser of:

(a) 2.7%

(b) the applicable percentage determined in accordance with the table below:

If the Integration Level

is more than	but not more than	the applicable percentage is:
$0	X*	2.7%
X* of TWB	80% of TWB	1.3%
80% of TWB	Y**	2.4%

*X = the greater of $10,000 or 20 percent of the TWB
**Y = any amount more than 80% of the TWB but less than 100% of the TWB.

If the integration level used is equal to the taxable wage base, the applicable percentage is 2.7%.

(Note to reviewer: The above allocation formula incorporates a 3% top-heavy minimum contribution for all years. However, a plan may provide that steps 1 and 2 above apply only in years in which the plan is top-heavy.)

Sample Adoption Agreement Language:

The integration level is equal to:

( ) Taxable wage base

( ) $_______(a dollar amount less than the taxable wage base)

( ) _______% of TWB (not to exceed 100%)

Money purchase plan

Sample Adoption Agreement Language:

Subject to the overall permitted disparity limits, the employer will contribute for each participant who either completes more than 500 hours of service during the plan year or is employed on the last day of the plan year an amount equal to _________% (base contribution percentage, not less than 3) of each participant's compensation (as defined in section _____ of the plan) for the plan year, up to the integration level plus _________% (excess contribution percentage, not less than 3% and not to exceed the base contribution percentage by more than the lesser of: (1) the base contribution percentage, or (2) the money purchase maximum disparity rate) of such participant's compensation in excess of the integration level. However in the case of any participant who has exceeded the cumulative permitted disparity limit, the employer will contribute for each participant who either completes more than 500 hours of service during the plan year or is employed on the last day of the plan year an amount equal to the excess contribution percentage multiplied by the participant's total compensation.

(Note to reviewer: The above allocation formula incorporates a 3% top-heavy minimum contribution. The second blank should be filled in with the plan section number corresponding to LRM #62.)

Overall permitted disparity limit:

Annual overall permitted disparity limit: Notwithstanding the preceding paragraph, for any plan year this plan benefits any participant who benefits under another qualified plan or simplified employee pension, as defined in § 408(k) of the Code, maintained by the employer that provides for permitted disparity (or imputes disparity), the employer will contribute for each participant who either completes more than 500 hours of service during the plan year or is employed on the last day of the plan year an amount equal to the excess contribution percentage multiplied by the participant's total compensation.

Cumulative permitted disparity limit: Effective for plan years beginning on or after January 1, 1995, the cumulative permitted disparity limit for a participant is 35 total cumulative permitted disparity years. Total cumulative permitted years means the number of years credited to the participant for allocation or accrual purposes under this plan, any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the employer. For purposes of determining the participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year. If the participant has not benefited under a defined benefit or target benefit plan for any year beginning on or after January 1, 1994, the participant has no cumulative disparity limit.

The integration level shall be equal to the taxable wage base or such lesser amount elected by the employer below. The taxable wage base is the contribution and benefit base in effect under section 230 of the Social Security Act at the beginning of the plan year.

The integration level is equal to:

( ) Taxable wage base

( ) $_______ (a dollar amount less than the taxable wage base)

( ) _______% of TWB (not to exceed 100%)

The maximum money purchase disparity rate is equal to the lesser of:

(a) 5.7%

(b) the applicable percentage determined in accordance with the table below.

(i) If the integration level:

is more than	but not more than	the applicable percentage is:
$0	X*	5.7%
X* of TWB	80% of TWB	4.3%
80% of TWB	Y**	5.4%

*X = the greater of $10,000 or 20 percent of the TWB

**Y = any amount more than 80% of the TWB but less than 100% of the TWB.

If the integration level is equal to taxable wage base the applicable percentage is 5.7%.

30. Document Provision:

Statement of Requirement: Accrual limitations based upon age not permitted, Code §411(b)(2).

(Note to reviewer: The sponsor should delete any plan provision which allows an allocation of employer contributions or forfeitures to be discontinued or decreased solely because of the participant's attainment of any age.)

31. Document Provision:

Statement of Requirement: Limitation on allocations, Code §415; Regs. <u>§1.415(a)-1 through 1.415(j)-1; Rev. Proc. 2011-49, sec. 5.07, sec. 6.03(12); Notice 2010-15, 2010-6 I.R.B. 390</u>.

Sample Plan Language:

Article_______ Limitation on Allocations

Section 1. If the participant does not participate in, and has never participated in another qualified plan maintained by the employer or a welfare benefit fund, as defined in § 419(e) of the Code maintained by the employer, or an individual medical account, as defined in § 415(l)(2) of the Code, maintained by the employer, or a simplified employee pension, as defined in § 408(k) of the Code, maintained by the employer, which provides an annual addition as defined in section <u>4.1</u>, the amount of annual additions which may be credited to the participant's account for any limitation year will not exceed the lesser of the maximum permissible amount or any other limitation contained in this plan. If the employer contribution that would otherwise be contributed or allocated to the participant's account would cause the annual additions for the limitation year to exceed the maximum permissible amount, the amount contributed or allocated will be reduced so that the annual additions for the limitation year will equal the maximum permissible amount.

Section 2. This section applies if, in addition to this plan, the participant is covered under another qualified master or prototype defined contribution plan maintained by the employer, a welfare benefit fund maintained by the employer, an individual medical account maintained by the employer, or a simplified employee pension maintained by the employer, that provides an annual addition as defined in section <u>4.1</u>, during any limitation year. The annual additions which may be credited to a participant's account under this plan for any such limitation year will not exceed the maximum permissible amount reduced by the annual additions credited to a participant's account under the other qualified master and prototype defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions for the same limitation year. If the annual additions with respect to the participant under other qualified master and prototype defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions maintained by the employer are less than the maximum permissible amount and the employer contribution that would otherwise be contributed or allocated to the participant's account under this plan would cause the annual additions for the limitation year to exceed this limitation, the amount contributed or allocated will be reduced so that the annual additions under all such plans and funds for the limitation year will equal the maximum permissible amount. If the annual additions with respect to the participant under such other qualified master and prototype defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions in the aggregate are equal to or greater than the maximum permissible amount, no amount will be contributed or allocated to the participant's account under this plan for the limitation year.

Section 3. If the participant is covered under another qualified defined contribution plan maintained by the employer which is not a master or prototype plan, annual additions which may be credited to the participant's account under this plan for any limitation year will be limited in accordance with section as though the other plan were a master or prototype plan unless the employer provides other limitations in section _____ of the adoption agreement.

Section 4. Definitions.

Section 4.1. - Annual additions: The sum of the following amounts credited to a participant's account for the limitation year:

(a) employer contributions;

(b) employee contributions;

(c) forfeitures;

(d) amounts allocated to an individual medical account, as defined in § 415(l)(2) of the Code, which is part of a pension or annuity plan maintained by the employer are treated as annual additions to a defined contribution plan. Also amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in § 419A(d)(3) of the Code, under a welfare benefit fund, as defined in § 419(e) of the Code, maintained by the employer are treated as annual additions to a defined contribution plan; and

(e) allocations under a simplified employee pension.

Section 4.2. Compensation: One of the following as elected by the employer in section _____ of the adoption agreement:

(Note to Reviewer: The blank should be filled in with the section number of the adoption agreement where the employer selects the definition of compensation that will be used for purposes of the plan's § 415 limitations and that corresponds to paragraph B of the sample adoption agreement provisions of this LRM.)

(a) Information required to be reported under §§ 6041, 6051, and 6052 of the Internal Revenue Code (wages, tips, and other compensation as reported on Form W-2). Compensation is defined as wages, within the meaning of § 3401(a), and all other payments of compensation to an employee by the employer (in the course of the employer's trade or business) for which the employer is required to furnish the employee a written statement under §§ 6041(d), 6051(a)(3), and 6052. Compensation shall be determined without regard to any rules under § 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in § 3401(a)(2)).

(b) Section 3401(a) wages. Compensation is defined as wages within the meaning of § 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in § 3401(a)(2)).

(c) 415 safe-harbor compensation. Compensation is defined as wages, salaries, differential wage payments under § 3401(h), and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in § 1.62-2(c)of the Income Tax Regulations), and excluding the following:

(i) Employer contributions (other than elective contributions described in § 402(e)(3), § 408(k)(6), § 408(p)(2)(A)(i), or § 457(b)) to a plan of deferred compensation (including a simplified employee pension described in § 408(k) or a simple retirement account described in § 408(p), and whether or not qualified) to the extent such contributions are not includible in the employee's gross income for the taxable year in which contributed, and any distributions (whether or not includible in gross income when distributed) from a plan of deferred compensation (whether or not qualified), other than, if the employer so elects in section _____ of the adoption agreement, amounts received during the year by an employee pursuant to a nonqualified unfunded deferred compensation plan to the extent includible in gross income;

(Note to Reviewer: The blank should be filled in with the section number of the adoption agreement where the employer may elect to include in compensation distributions from a nonqualified unfunded plan of deferred compensation that are includible in gross income. See paragraph B of the sample adoption agreement provisions of this LRM.)

(ii) Amounts realized from the exercise of a nonstatutory stock option (that is, an option other than a statutory stock option as defined in § 1.421-1(b) of the Income Tax Regulations), or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option;

(iv) Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the employee and are not salary reduction amounts that are described in § 125);

(v) Other items of remuneration that are similar to any of the items listed in (i) through (iv).

For any self-employed individual, compensation shall mean earned income.

Except as provided herein, compensation for a limitation year is the compensation actually paid or made available during such limitation year. If elected by the employer in section _____ of the adoption agreement, compensation for a limitation year shall include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated employees, and no compensation is included in more than one limitation year.

(Note to Reviewer: The blank above should be filled in with the section of the adoption agreement where the employer may elect to include compensation earned in the limitation year but not paid in that limitation year solely because of the timing of pay periods and pay dates. See paragraph C of the sample adoption agreement provisions of this LRM.)

For limitation years beginning on or after July 1, 2007, or such earlier date as the employer specifies in section _____ of the adoption agreement, compensation for a limitation year shall also include compensation paid by the later of 2 ½ months after an employee's severance from employment with the employer maintaining the plan or the end of the limitation year that includes the date of the employee's severance from employment with the employer maintaining the plan, if:

(Note to Reviewer: The blank should be filled in with the section number of the adoption agreement where the employer may specify an effective date that is before the first limitation year beginning on or after July 1, 2007 for including certain post-severance compensation in the plan's definition of compensation. See paragraph D of the sample adoption agreement provisions of this LRM.)

(a) the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or, if the employer so elects in section _____ of the adoption agreement,

(Note to Reviewer: The blank should be filled in with the section number of the adoption agreement where the employer may elect to include in compensation certain post-severance pay for unused accrued leave as well as post-severance payments from a nonqualified unfunded plan of deferred compensation. See paragraph E of the sample adoption agreement provisions of this LRM.)

(b) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued; or

(c) the payment is received by the employee pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

Any payments not described above shall not be considered compensation if paid after severance from employment, even if they are paid by the later of 2 ½ months after the date of severance from employment or the end of the limitation year that includes the date of severance from employment, except, if elected by the employer in section _____ of the adoption agreement, compensation paid to a participant who is permanently and totally disabled, as defined in § 22(e)(3), provided, as elected by the employer in section _____ of the adoption agreement, salary continuation applies to all participants who are permanently and totally disabled for a fixed or determinable period, or the participant was not a highly compensated employee, as defined in § 414(q), immediately before becoming disabled.

Back pay, within the meaning of § 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(Note to Reviewer: The 1st blank should be filled in with the section number of the adoption agreement where the employer may elect to include in compensation certain salary continuation payments to individuals who are permanently and totally disabled. The 2nd blank should be filled in with the section of the adoption agreement where the employer elects whether the inclusion in compensation of salary continuation payments to permanently and totally disabled participants, if applicable, shall apply with respect to all such participants or with respect to all such participants who were not highly compensated employees immediately before becoming disabled. See section F of the sample adoption agreement provisions of this LRM.)

Compensation paid or made available during a limitation year shall include amounts that would otherwise be included in compensation but for an election under § 125(a), § 132(f)(4), §402(e)(3), § 402(h)(1)(B), § 402(k), or § 457(b).

Unless the employer elects otherwise in section _____ of the adoption agreement, compensation shall also include deemed § 125 compensation. Deemed § 125 compensation is an amount that is excludable under § 106 that is not available to a participant in cash in lieu of group health coverage under a § 125 arrangement solely because the participant is unable to certify that he or she has other health coverage. Amounts are deemed § 125 compensation only if the employer does not request or otherwise collect information regarding the participant's other health coverage as part of the enrollment process for the health plan.

(Note to Reviewer: The blank should be filled in with the section number of the adoption agreement where the employer may elect to exclude deemed § 125 compensation from compensation. See paragraph G of the sample adoption agreement provisions of this LRM.)

If elected by the employer in section _____ of the adoption agreement, compensation shall not include amounts paid as compensation to a nonresident alien, as defined in § 7701(b)(1)(B), who is not a participant in the plan to the extent the compensation is excludable from gross income and is not effectively connected with the conduct of a trade or business within the United States.

(Note to Reviewer: This election is provided as a rule of administrative convenience for purposes of determining who is a key employee for purposes of § 416 and who is a highly compensated employee as defined in § 414(q). The blank should be filled in with the section number of the adoption agreement where the employer may elect to exclude non-participant compensation. See paragraph H of the sample adoption agreement provisions of this LRM.))

Section 4.3 Defined contribution dollar limitation: 40,000, as adjusted under § 415(d) of the Code.

Section 4.4 Employer: For purposes of this article, employer shall mean the employer that adopts this plan, and all members of a controlled group of corporations (as defined in § 414(b) of the Code as modified by § 415(h)), all commonly controlled trades or businesses (as defined in § 414(c) as modified by § 415(h)) or affiliated service groups (as defined in § 414(m)) of which the adopting employer is a part, and any other entity required to be aggregated with the employer pursuant to regulations under § 414(o).

Section 4.5. Limitation year: A calendar year, or the 12-consecutive month period elected by the employer in section _____ of the adoption agreement. All qualified plans maintained by the employer must use the same limitation year. If the limitation year is amended to a different 12-consecutive month period, the new limitation year must begin on a date within the limitation year in which the amendment is made.

(Note to Reviewer: The blank should be filled in with the section of the adoption agreement that corresponds to paragraph I of the adoption agreement.)

Section 4.6. Master or prototype plan: A plan the form of which is the subject of a favorable opinion letter from the Internal Revenue Service.

Section 4.7. Maximum Annual Additions

Except for catch up contributions described in Code §414(v), the annual addition that may be contributed or allocated to a participant's account under the plan for any limitation year shall not exceed the lesser of:

(a) $40,000, as adjusted for increases in the cost-of-living under § 415(d) of the Code, or

(b) 100 percent of the participant's compensation for the limitation year.

The compensation limit referred to in (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of § 401(h) or § 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

If a short limitation year is created because of an amendment changing the limitation year to a different 12-consecutive month period, the maximum permissible amount will not exceed the defined contribution dollar limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short limitation year}}{12}$$

<u>If the plan is terminated as of a date other than the last day of the limitation year, the plan is deemed to have been amended to change its limitation year and the maximum permissible amount shall be determined shall be prorated for the resulting short limitation year.</u>

Sample Adoption Agreement Language:

A. If the employer maintains or ever maintained another qualified plan in which any participant in this plan is (or was) a participant or could become a participant, the employer must complete this section.

If the participant is covered under another qualified defined contribution plan maintained by the employer, other than a master or prototype plan:

( ) The provisions of section 2 of Article _______ will apply as if the other plan were a master or prototype plan.

( ) (Provide the method under which the plans will limit total annual additions to the maximum permissible amount, and will properly reduce any excess amounts, in a manner that precludes employer discretion.)

(Note to reviewer: The sponsor should leave space for the adopting employer to provide language which will satisfy the limitation for defined contribution plans in section 415(c) of the Code. Such language must preclude employer discretion.)

B. Compensation shall mean all of each participant's:

( ) Wages, tips, and other compensation as reported on Form W-2

( ) Section 3401(a) wages

( ) 415 safe-harbor compensation

(Note to reviewer: As added by the HEART Act, § 3401(h) provides that a differential wage payment shall be treated as a payment of wages under § 3401(a) for a payment made after December 31, 2008. Also, these payments must be treated as compensation under §415(c)(3) and §1.415-2(d), but they are not required to be treated as compensation for purposes of determining contributions and benefits under a plan. See Notice 2010-15, Q&A-9 for guidance.)

If compensation is defined as 415 safe-harbor compensation, amounts received by an employee pursuant to a nonqualified unfunded deferred compensation plan

( ) shall

( ) shall not

be considered compensation in the year the amounts are actually received. Such amounts may be considered compensation only to the extent includible in gross income.

C. Amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates

( ) shall be included in compensation for the limitation year, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated employees, and no compensation is included in more than one limitation year.

( ) shall not be included in compensation for the limitation year.

D. (Complete this section to apply the plan's rules regarding certain post-severance compensation in limitation years beginning before July 1, 2007.)

The provisions of the plan regarding the inclusion of certain post-severance compensation in the definition of compensation shall apply in limitation years beginning after _____.

E. Compensation

( ) shall

( ) shall not

include amounts paid within 2 ½ months after severance from employment (or the end of the limitation year that includes the date of severance) for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued; and amounts received by an employee pursuant to a nonqualified unfunded deferred compensation plan which would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

F. Compensation shall include post-severance compensation paid to (check one or neither)

( ) any participant who is permanently and totally disabled. (Check this box only if salary continuation applies to all participants who are permanently and totally disabled for a fixed or determinable period.)

( ) any permanently and totally disabled participant who, immediately before becoming so disabled, was not a highly compensated employee.

G. (Complete this section to exclude deemed § 125 compensation from the plan's definition of compensation.)

_____ (Check if this section applies.) Compensation shall not include deemed § 125 compensation.

H. (Complete this section to exclude non-participant compensation.)

_____ (Check if this section applies.) Compensation shall not include amounts paid as compensation to nonresident aliens who do not participate in the plan to the extent the compensation is excludable from gross income and not effectively connected with a U.S. trade or business.

I. The limitation year is the following 12-consecutive month period: ________________________________

(Note to reviewer: Sample plan language previously included in LRM #31, relating to correction of excess annual additions, has been deleted because the correction methods described in §1.415-6(b)(6)(iii) of the regulations as in effect for limitation years beginning before July 1, 2007, were removed in the final regulations published in 2007. However, a plan sponsor may be able to correct excess annual additions through the Employee Plans Compliance Resolution System. See Rev. Proc. 2008-50.)

32. [RESERVED]
33. [RESERVED}

34. Document Provision:

Statement of Requirement: Separate accounts for each employee, Code §414(i).

Sample Plan Language: A separate account will be maintained for each employee to which will be credited the employer contributions and earnings thereon.

EMPLOYEE CONTRIBUTIONS

35. Document Provision:

Statement of Requirement: Contributions subject to ACP test, Code §401(m).

(Note to reviewer: If a plan provides for contributions that are subject to the special nondiscrimination requirements of § 401(m), it must satisfy the applicable provisions in the CODA LRM.)

(Note to reviewer: The following LRM provisions #36 and #37 are required if the plan accepts nondeductible employee contributions or previously permitted but has discontinued such contributions.)

36. Document Provision:

Statement of Requirement: Separate account - nondeductible employee contributions, Code §411(c)(2).

Sample Plan Language: (The plan may use either provision #1 or #2)

Provision #1: A separate account will be maintained for the nondeductible employee contributions of each participant.

Provision #2: The account balance derived from nondeductible employee contributions is the employee's total account balance multiplied by a fraction, the numerator of which is the total amount of nondeductible employee contributions less withdrawals and the denominator of which is the sum of the numerator and the total contributions made by the employer on behalf of the employee less withdrawals. For this purpose, contributions include contributed amounts used to provide ancillary benefits and withdrawals include only amounts distributed to the employee and do not reflect the cost of any death benefits.

37. Document Provision:

Statement of Requirement: Nonforfeitability of employee contributions, Code §411(a)(1).

Sample Plan Language: Employee contributions and earnings thereon will be nonforfeitable at all times.

38. Document Provision:

Statement of Requirement: Deductible voluntary employee contributions, Code §219.

(Note to reviewer: The following provision is required if the plan permitted deductible employee contributions prior to January 1, 1987.)

Sample Plan Language:

The plan administrator will not accept deductible employee contributions which are made for a taxable year beginning after December 31, 1986. Contributions made prior to that date will be maintained in a separate account which will be nonforfeitable at all times. The account will share in the gains and losses under the plan in the same manner as described in section ____ of the plan. No part of the deductible voluntary contribution account will be used to purchase life insurance. Subject to section ______, Joint and survivor annuity requirements (if applicable), the participant may withdraw any part of the deductible voluntary contribution account by making a written application to the plan administrator.

38A. Document Provision:

Statement of Requirement:
Deemed IRAs, Code §408(q).Reg. § 1.408(q)-1

(Note to reviewer: Pursuant to §408(q) of the Code and §1.408(q)-1, a defined contribution plan may allow employees to make voluntary employee contributions to a separate account or annuity established under the plan which, if that account or annuity meets the applicable requirements of §408 or §408A, will be treated as an individual retirement plan. In general, the defined contribution plan and the "deemed IRA" are treated as separate entities with each entity subject to the rules generally applicable to it.

To establish a deemed IRA (whether a traditional IRA or a Roth IRA), the plan must address every applicable point of the IRA LRMs. Thus, a plan with a deemed individual retirement annuity must satisfy the requirements of §408(b). Similarly, a plan with a deemed individual retirement account must satisfy the requirements of §408(a) except for the prohibition in §408(a)(5) which is expressly excepted under §408(q). Accordingly, the assets of a deemed IRA may be commingled for investment purposes with the other assets of the plan. However, the plan must restrict the commingling of deemed IRA assets with non-plan assets.

Deemed individual retirement accounts may be held in separate individual trusts, a single trust separate from a trust maintained by the defined contribution plan, or in a single trust that includes the defined contribution plan. If deemed IRAs are held in a single trust that includes the defined contribution plan, the plan must provide that the trustee must maintain a separate account for each deemed IRA.

Deemed individual retirement annuities may be held under a single annuity contract or under separate annuity contracts. Where a single annuity contract is used, separate accounting for the interest of each participant is required. Also, the contract must be separate from any annuity contract of the plan.)

FORFEITURE PROVISIONS

39. Document Provision:

Statement of Requirement: Treatment and allocation of forfeitures, Code §401(a)(8); Regs. §1.401-1(b)(i) and (ii), §1.401-7(a).

Sample Plan Language: (Target benefit plans must use #1 and other plans may use either #1 or #2)

Provision #1: Any forfeitures occurring will reduce employer contributions for the next plan year.

Provision #2: Forfeitures will be allocated in the ratio that the compensation of each participant bears to that of all participants.

(Note to reviewer: If the plan provides for permitted disparity, the above plan language should provide that forfeitures will be allocated in accordance with the allocation formula of the plan.)

40. Document Provision:

Statement of Requirement: Forfeitures - withdrawal of employee contributions, Code §401(a)(19).

Sample Plan Language: No forfeitures will occur solely as a result of an employee's withdrawal of employee contributions.

41. Document Provision:

Statement of Requirement: Reinstatement of benefit, Regs. §1.411(a)-4(b)(6).

Sample Plan Language: If a benefit is forfeited because the participant or beneficiary cannot be found, such benefit will be reinstated if a claim is made by the participant or beneficiary.

DISTRIBUTION PROVISIONS

42. Document Provision:

Statement of Requirement: Joint and survivor annuity, qualified optional survivor annuity, and preretirement survivor annuity requirements, Code §401(a)(11), 417; Regs. §1.401(a)-20, §1.417(a)(3)-1, §1.417(e)-1, Notice 2007-7, 2007-1 C.B. 395, Notice 2008-30, 2008-1 C.B. 638.

Sample Plan Language:

Article ________. JOINT AND SURVIVOR ANNUITY REQUIREMENTS.

Section 1. The provisions of this article shall apply to any participant who is credited with at least one hour of service with the employer on or after August 23, 1984, and such other participants as provided in section 8.

Section 2. Qualified Joint and Survivor Annuity.

2.1. Unless an optional form of benefit is selected pursuant to a qualified election within the 180-day period (90-day period for plan years beginning before January 1, 2007) ending on the annuity starting date, a married participant's vested account balance will be paid in the form of a qualified joint and survivor annuity and an unmarried participant's vested account balance will be paid in the form of a life annuity. The participant may elect to have such annuity distributed upon attainment of the earliest retirement age under the plan.

Section 3. Qualified Optional Survivor Annuity

3.1 For plan years beginning after December 31, 2007, if a married participant elects to waive the qualified joint and survivor annuity, the participant may elect the qualified optional survivor annuity at any time during the applicable election period.

Section 4. Qualified Preretirement Survivor Annuity.

4.1. Unless an optional form of benefit has been selected within the election period pursuant to a qualified election, if a participant dies before the annuity starting date then the participant's vested account balance shall be applied toward the purchase of an annuity for the life of the surviving spouse. The surviving spouse may elect to have such annuity distributed within a reasonable period after the participant's death.

(Note to reviewer: The above provision does not provide for a forfeiture of any portion of the participant's vested interest. However, upon the death of the participant, the plan may provide for a forfeiture if no less than 50 percent of the vested portion of the participant's employer-derived account balance is used to purchase an annuity for the surviving spouse. Alternatively, the plan may provide that no less than 50 percent of the vested account balance will be used to purchase an annuity for the surviving spouse and the remaining portion shall be paid to other beneficiaries of the participant. However, to the extent that less than 100% of the account balance is paid to the surviving spouse, the plan must provide that the amount of the participant's employee-derived account allocated to the surviving spouse will be in the same proportion as the employee-derived account balance is to the total account balance of the participant.)

Section 5. Definitions.

5.1. Election period: The period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant's death. If a participant separates from service prior to the first day of the plan year in which age 35 is attained, with respect to the account balance as of the date of separation, the election period shall begin on the date of separation.

Pre-age 35 waiver: A participant who will not yet attain age 35 as of the end of any current plan year may make a special qualified election to waive the qualified preretirement survivor annuity for the period beginning on the date of such election and ending on the first day of the plan year in which the participant will attain age 35. Such election shall not be valid unless the participant receives a written explanation of the qualified preretirement survivor annuity in such terms as are comparable to the explanation required under section 6.1. Qualified preretirement survivor annuity coverage will be automatically reinstated as of the first day of the plan year in which the participant attains age 35. Any new waiver on or after such date shall be subject to the full requirements of this article.

5.2. Earliest retirement age: The earliest date on which, under the plan, the participant could elect to receive retirement benefits.

5.3. Qualified election: A waiver of a qualified joint and survivor annuity or a qualified preretirement survivor annuity. Any waiver of a qualified joint and survivor annuity or a qualified preretirement survivor annuity shall not be effective unless: (a) the participant's spouse consents in writing to the election; (b) the election designates a specific beneficiary, including any class of beneficiaries or any contingent beneficiaries, which may not be changed without spousal consent (or the spouse expressly permits designations by the participant without any further spousal consent); (c) the spouse's consent acknowledges the effect of the election; and (d) the spouse's consent is witnessed by a plan representative or notary public. Additionally, a participant's waiver of the qualified joint and survivor annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the spouse expressly permits designations by the participant without any further spousal consent). If it is established to the satisfaction of a plan representative that there is no spouse or that the spouse cannot be located, a waiver will be deemed a qualified election.

Any consent by a spouse obtained under this provision (or establishment that the consent of a spouse may not be obtained) shall be effective only with respect to such spouse. A consent that permits designations by the participant without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific beneficiary, and a specific form of benefit where applicable, and that the spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a participant without the consent of the spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the participant has received notice as provided in section 6 below.

5.4. Qualified joint and survivor annuity: An immediate annuity for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent and not more than 100 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse and which is the amount of benefit which can be purchased with the participant's vested account balance. The percentage of the survivor annuity under the plan shall be 50% (unless a different percentage is elected by the employer in the adoption agreement).

(Note to reviewer: If the language in parenthesis is used, a provision should be added to the adoption agreement to enable the employer to elect the percentage (not less than 50%, not more than 100%) of the survivor annuity.)

5.5 Qualified Optional Survivor Annuity: An immediate annuity for the life of the participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the participant and the spouse and which is the amount of benefit which can be purchased with the participant’s vested account balance. If the percentage of the survivor annuity is less than 75%, the applicable percentage is 75%. If the percentage of the survivor annuity is greater than or equal to 75%, the applicable percentage is 50%.

5.6. Spouse (surviving spouse): The spouse or surviving spouse of the participant, provided that a former spouse will be treated as the spouse or surviving spouse and a current spouse will not be treated as the spouse or surviving spouse to the extent provided under a qualified domestic relations order as described in § 414(p) of the Code.

5.7. Annuity starting date: The first day of the first period for which an amount is paid as an annuity or any other form.

5.8. Vested account balance: The aggregate value of the participant's vested account balances derived from employer and employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the participant's life. The provisions of this article shall apply to a participant who is vested in amounts attributable to employer contributions, employee contributions (or both) at the time of death or distribution.

Section 6. Notice Requirements.

6.1. In the case of a qualified joint and survivor annuity, the plan administrator shall no less than 30 days and no more than 180 days (90 days for notices given in plan years beginning before January 1, 2007) prior to the annuity starting date provide each participant a written explanation of: (i) the terms and conditions of a qualified joint and survivor annuity and the qualified optional survivor annuity; (ii) the participant's right to make and the effect of an election to waive the qualified joint and survivor annuity form of benefit; (iii) the rights of a participant's spouse; and(iv) the right to make, and the effect of, a revocation of a previous election to waive the qualified joint and survivor annuity. The written explanation shall comply with the requirements of § 1.417(a)(3)-1 of the Income Tax Regulations.

The annuity starting date for a distribution in a form other than a qualified joint and survivor annuity may be less than 30 days after receipt of the written explanation described in the preceding paragraph provided: (a) the participant has been provided with information that clearly indicates that the participant has at least 30 days to consider whether to waive the qualified joint and survivor annuity and elect (with spousal consent) to a form of distribution other than a qualified joint and survivor annuity; (b) the participant is permitted to revoke any affirmative distribution election at least until the annuity starting date or, if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the qualified joint and survivor annuity is provided to the participant; and (c) the annuity starting date is a date after the date that the written explanation was provided to the participant.

(Note to Reviewer: The plan may provide that for distributions on or after December 31, 1996, the annuity starting date may be a date prior to the date the written explanation is provided to the participant if the distribution does not commence until at least 30 days after such written explanation is provided, subject to the waiver of the 30-day period as provided for in the above paragraph.)

6.2. In the case of a qualified preretirement survivor annuity as described in section 4 of this article, the plan administrator shall provide each participant within the applicable period for such participant a written explanation of the qualified preretirement survivor annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements of section 6.1 applicable to a qualified joint and survivor annuity. <u>The written explanation shall comply with the requirements of **§** 1.417(a)(3)-1 of the Income Tax Regulations.</u>

The applicable period for a participant is whichever of the following periods ends last: (i) the period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35; (ii) a reasonable period ending after the individual becomes a participant; (iii) a reasonable period ending after section 6.3 ceases to apply to the participant; (iv) a reasonable period ending after this article first applies to the participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation from service in the case of a participant who separates from service before attaining age 35.

For purposes of applying the preceding paragraph, a reasonable period ending after the enumerated events described in (ii), (iii) and (iv) is the end of the two-year period beginning one year prior to the date the applicable event occurs, and ending one year after that date. In the case of a participant who separates from service before the plan year in which age 35 is attained, notice shall be provided within the two-year period beginning one year prior to separation and ending one year after separation. If such a participant thereafter returns to employment with the employer, the applicable period for such participant shall be redetermined.

6.3. Notwithstanding the other requirements of this section 6, the respective notices prescribed by this section need not be given to a participant if (1) the plan "fully subsidizes" the costs of a qualified joint and survivor annuity or qualified preretirement survivor annuity, and (2) the plan does not allow the participant to waive the qualified joint and survivor annuity or qualified preretirement survivor annuity and does not allow a married participant to designate a nonspouse beneficiary. For purposes of this section 6.3, a plan fully subsidizes the costs of a benefit if no increase in cost, or decrease in benefits to the participant may result from the participant's failure to elect another benefit.

Section 7. Safe harbor rules.

7.1. This section shall apply to a participant in a profit-sharing plan, and to any distribution, made on or after the first day of the first plan year beginning after December 31, 1988, from or under a separate account attributable solely to accumulated deductible employee contributions, as defined in § 72(o)(5)(B) of the Code, and maintained on behalf of a participant in a money purchase pension plan, (including a target benefit plan) if the following conditions are satisfied: (1) the participant does not or cannot elect payments in the form of a life annuity; and (2) on the death of a participant, the participant's vested account balance will be paid to the participant's surviving spouse, but if there is no surviving spouse, or if the surviving spouse has consented in a manner conforming to a qualified election, then to the participant's designated beneficiary. The surviving spouse may elect to have distribution of the vested account balance commence within the 90-day period following the date of the participant's death. The account balance shall be adjusted for gains or losses occurring after the participant's death in accordance with the provisions of the plan governing the adjustment of account balances for other types of distributions. This section 6 shall not be operative with respect to a participant in a profit-sharing plan if the plan is a direct or indirect transferee of a defined benefit plan, money purchase plan, a target benefit plan, stock bonus, or profit-sharing plan which is subject to the survivor annuity requirements of § 401(a)(11) and § 417 of the Code. If this section 7 is operative, then the provisions of this article, other than section 8, shall be inoperative.

7.2. The participant may waive the spousal death benefit described in this section at any time provided that no such waiver shall be effective unless it satisfies the conditions of section 5.3 (other than the notification requirement referred to therein) that would apply to the participant's waiver of the qualified preretirement survivor annuity.

7.3 For purposes of this section 7, vested account balance shall mean, in the case of a money purchase pension plan or a target benefit plan, the participant's separate account balance attributable solely to accumulated deductible employee contributions within the meaning of § 72(o)(5)(B) of the Code. In the case of a profit-sharing plan, vested account balance shall have the same meaning as provided in section 5.7.

(Note to reviewer: Profit-sharing plans satisfying all of the requirements of LRM section 7.1 for a participant such that the plan is not required to provide a qualified joint and survivor annuity for the participant, but that do provide such annuity (even if the annuity is the normal

form), may replace the qualified joint and survivor annuity with payment in a single-sum distribution form that is otherwise identical to such annuity in accordance with the requirements under Regulations § 1.411(d)-4 Q&A 2(e).)

Section 8. Transitional Rules.

8.1. Any living participant not receiving benefits on August 23, 1984, who would otherwise not receive the benefits prescribed by the previous sections of this article must be given the opportunity to elect to have the prior sections of this article apply if such participant is credited with at least one hour of service under this plan or a predecessor plan in a plan year beginning on or after January 1, 1976, and such participant had at least 10 years of vesting service when he or she separated from service.

8.2. Any living participant not receiving benefits on August 23, 1984, who was credited with at least one hour of service under this plan or a predecessor plan on or after September 2, 1974, and who is not otherwise credited with any service in a plan year beginning on or after January 1, 1976, must be given the opportunity to have his or her benefits paid in accordance with section 7.4 of this article.

8.3. The respective opportunities to elect (as described in sections 8.1 and 8.2 above) must be afforded to the appropriate participants during the period commencing on August 23, 1984, and ending on the date benefits would otherwise commence to said participants.

8.4. Any participant who has elected pursuant to section 8.2 of this article and any participant who does not elect under section 8.1 or who meets the requirements of section 8.1 except that such participant does not have at least 10 years of vesting service when he or she separates from service, shall have his or her benefits distributed in accordance with all of the following requirements if benefits would have been payable in the form of a life annuity:

(a) Automatic joint and survivor annuity. If benefits in the form of a life annuity become payable to a married participant who:

(1) begins to receive payments under the plan on or after normal retirement age; or

(2) dies on or after normal retirement age while still working for the employer; or

(3) begins to receive payments on or after the qualified early retirement age; or

(4) separates from service on or after attaining normal retirement age (or the qualified early retirement age) and after satisfying the eligibility requirements for the payment of benefits under the plan and thereafter dies before beginning to receive such benefits;

then such benefits will be received under this plan in the form of a qualified joint and survivor annuity, unless the participant has elected otherwise during the election period. The election period must begin at least 6 months before the participant attains qualified early retirement age and end not more than 90 days before the commencement of benefits. Any election hereunder will be in writing and may be changed by the participant at any time.

(b) Election of early survivor annuity. A participant who is employed after attaining the qualified early retirement age will be given the opportunity to elect, during the election period, to have a survivor annuity payable on death. If the participant elects the survivor annuity, payments under such annuity must not be less than the payments which would have been made to the spouse under the qualified joint and survivor annuity if the participant had retired on the day before his or her death. Any election under this provision will be in writing and may be changed by the participant at any time. The election period begins on the later of (1) the 90th day before the participant attains the qualified early retirement age, or (2) the date on which participation begins, and ends on the date the participant terminates employment.

(c) For purposes of this section 8.4:

(1) Qualified early retirement age is the latest of:

(i) the earliest date, under the plan, on which the participant may elect to receive retirement benefits,

(ii) the first day of the 120th month beginning before the participant reaches normal retirement age, or

(iii) the date the participant begins participation.

(2) Qualified joint and survivor annuity is an annuity for the life of the participant with a survivor annuity for the life of the spouse as described in section 5.4 of this article.

43. Document Provision:

Statement of Requirement: Vesting on distribution before break in service, cash-outs;

Regs. §1.411(a)-6(c)(1)(ii), §1.411(a)-7(d)(4) and (5); Code §411(a)(11 Code § 401(a)(31)(B));Notice 2001-57;; Notice 2005-5, 2005-3 I.R.B. 337.

(Note to reviewer: If the plan permits distribution of the account balance derived from employer contributions at a time when the participant may increase the nonforfeitable percentage in such account, it must use provision #1 or #2. Provision #1 provides for immediate forfeiture of nonvested amounts upon distribution of the employee's entire vested account balance on termination of service. Provision #2 applies if the plan provides for delayed forfeiture. Profit-sharing plans which provide for in-service distributions must include provision #2.)

Provision #1

If an employee terminates service, and the value of the employee's vested account balance derived from employer and employee contributions is not greater than $5000 (or such <u>lesser amount as selected by the employer in the adoption</u> agreement), the employee will receive a distribution of the value of the entire vested portion of such account balance and the nonvested portion will be treated as a forfeiture. If an employee would have received a distribution under the preceding sentence but for the fact that the employee's vested account balance exceeded $5,000 (or such lesser amount as selected by the employer in the adoption agreement) when the employee terminated service and if at a later time such account balance is reduced such that it is not greater than $5,000 (or such lesser amount as selected by the employer in the adoption agreement), the employee will receive a distribution of such account balance and the nonvested portion will be treated as a forfeiture. For purposes of this section, if the value of an employee's vested account balance is zero, the employee shall be deemed to have received a distribution of such vested account balance. A participant's vested account balance shall not include: (1) accumulated deductible employee contributions within the meaning of § 72(o)(5)(B) of the Code for plan years beginning prior to January 1, 1989, and (2) if elected by the employer in the adoption agreement, the portion of the account balance that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of § 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of the Code.

If an employee terminates service, and elects, in accordance with the requirements of section ______, to receive the value of the employee's vested account balance, the nonvested portion will be treated as a forfeiture. If the employee elects to have distributed less than the entire vested portion of the account balance derived from employer contributions, the part of the nonvested portion that will be treated as a forfeiture is the total nonvested portion multiplied by a fraction, the numerator of which is the amount of the distribution attributable to employer contributions and the denominator of which is the total value of the vested employer derived account balance.

(Note to reviewer: The blank should be filled in with the plan section number which corresponds to LRM #44.)

If an employee receives or is deemed to receive a distribution pursuant to this section and the employee resumes employment covered under this plan, the employee's employer-derived account balance will be restored to the amount on the date of distribution if the employee repays to the plan the full amount of the distribution attributable to employer contributions before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the date the participant incurs 5 consecutive 1-year breaks in service following the date of the distribution. If an employee is deemed to receive a distribution pursuant to this section, and the employee resumes employment covered under this plan before the date the participant incurs 5 consecutive 1-year breaks in service, upon the reemployment of such employee, the employer-derived account balance of the employee will be restored to the amount on the date of such deemed distribution.

Provision #2

If a distribution is made at a time when a participant has a nonforfeitable right to less than 100 percent of the account balance derived from employer contributions and the participant may increase the nonforfeitable percentage in the account:

(1) A separate account will be established for the participant's interest in the plan as of the time of the distribution, and

(2) At any relevant time the participant's nonforfeitable portion of the separate account will be equal to an amount ("X") determined by the formula:

$$X=P(AB + (R \times D)) - (R \times D)$$

For purposes of applying the formula: P is the nonforfeitable percentage at the relevant time, AB is the account balance at the relevant time, D is the amount of the distribution, and R is the ratio of the account balance at the relevant time to the account balance after distribution.

(Adoption agreement provisions)

Treatment of Rollovers in Application of Involuntary Cash-out provisions:

A. (_______)__Enter an amount from 0 to $5000, which will be the value of the employee's vested account balance for purposes of the plans involuntary cash-out rules.

B. The employer:

( ) elects to exclude rollover contributions in determining the value of the participant's nonforfeitable account balance for purposes of the plan's involuntary cash-out rules.

C. If the employer has elected to exclude rollover contributions, the election shall apply with respect to distributions made after:

______________(Enter a date no earlier than December 31, 2001.)

with respect to participants who separated from service after:

______________(Enter date. The date may be earlier than December 31, 2001.)

44. Document Provision:

Statement of Requirement: Restrictions on immediate distributions, Code §411(a)(11), §417(e)(2); Regs. §1.411(a)-11, §1.417(e)-1, §1.401(a)-20; Rev. Proc. 93-47, 1993-2 C.B. 385; Rev. Rul. 2004-10, 2004-1 C.B. 484, <u>Notice 2007-7, 2007-1 C.B. 395, Prop. Regs. § 1.411(a)-11</u>

Section 1. General Rule

If payment in the form of a qualified joint and survivor annuity is required with respect to a participant and either the value of a participant's vested account balance derived from employer and employee contributions exceeds $5,000 or there are remaining payments to be made with respect to a particular distribution option that previously commenced, and the account balance is immediately distributable, the participant must consent to any distribution of such account balance.

If payment in the form of a qualified joint and survivor annuity is not required with respect to a participant and the value of a participant's vested account balance derived from employer and employee contributions exceeds $5,000, and the account balance is immediately distributable, the participant must consent to any distribution of such account balance.

The consent of the participant and the participant's spouse shall be obtained in writing within the <u>180</u>-day period <u>(90-day period for plan years beginning before January 1, 2007)</u> ending on the annuity starting date. The annuity starting date is the first day of the first period for which an amount is paid as an annuity or any other form. The plan administrator shall notify the participant and the participant's spouse of the right to defer any distribution until the participant's account balance is no longer immediately distributable <u>and, for plan years beginning after December 31, 2006, the consequences of failing to defer any distribution</u>. Such notification shall include a general description of the material features, an explanation of the optional forms of benefit available under the plan in a manner that would satisfy the notice requirements of § 417(a)(3), <u>and a description of the consequences of failing to defer a distribution,</u> and shall be provided no less than 30 days and no more than <u>180</u> days <u>(90-day period for plan years beginning before January 1, 2007)</u> prior to the annuity starting date. However, distribution may commence less than 30 days after the notice described in the preceding sentence is given, provided the distribution is one to which § 401(a)(11) and 417 of the Internal Revenue Code do not apply, the plan administrator clearly informs the participant that the participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and the participant, after receiving the notice, affirmatively elects a distribution.

Notwithstanding the foregoing, only the participant need consent to the commencement of a distribution in the form of a qualified joint and survivor annuity while the account balance is immediately distributable. (Furthermore, if payment in the form of a qualified joint and survivor annuity is not required with respect to the participant pursuant to section _____ of the plan, only the participant need consent to the distribution of an account balance that is immediately distributable). Neither the consent of the participant nor the participant's spouse shall be required to the extent that a distribution is required to satisfy § 401(a)(9) or § 415 of the Code. In addition, upon termination of this plan if the plan does not offer an annuity option (purchased from a commercial provider) and if the employer or any entity within the same controlled group as the employer does not maintain another defined contribution plan (other than an employee stock ownership plan as defined in § 4975(e)(7) of the Code), the participant's account balance will, without the participant's consent, be distributed to the participant. However, if any entity within the same controlled group as the employer maintains another defined contribution plan (other than an employee stock ownership plan as defined in § 4975(e)(7) of the Code then the participant's account balance will be transferred, without the participant's consent, to the other plan if the participant does not consent to an immediate distribution.

(Note to reviewer: The above language in parenthesis, beginning with furthermore, is applicable only if the plan provides the safe harbor requirements of section 7 of LRM #42.)

An account balance is immediately distributable if any part of the account balance could be distributed to the participant (or surviving spouse) before the participant attains or would have attained if not deceased) the later of normal retirement age or age 62.

Section 2. For purposes of determining the applicability of the foregoing consent requirements to distributions made before the first day of the first plan year beginning after December 31, 1988, the participant's vested account balance shall not include amounts attributable to accumulated deductible employee contributions within the meaning of § 72(o)(5)(B) of the Code.

(Note to reviewer: A defined contribution plan that is making distributions to a former employee or surviving spouse may charge reasonable plan administrative expenses to the account of that former employee or surviving spouse, but only if the administrative expenses are on a pro rata basis, i.e. the expenses are based on the amount in each account of a former employee or surviving spouse receiving benefits from the defined contribution plan, (or another reasonable basis that complies with the requirements of Title I of ERISA). However, the allocation of plan expenses still must meet the nondiscrimination rules of § 401(a)(4).)

44A. Document Provision:

Statement of Requirement: Money purchase (including target benefit) plans - restriction on in-service distributions, Code §401(a)(36); §1.401-1(b)(1)(i) & (ii).

Sample Plan Language:

<u>A participant's benefit under the plan may not be distributed before the participant attains age 62 or, if earlier, the participant separates from employment, attains normal retirement age under the plan, dies, or becomes disabled, or upon termination of the plan.</u>

45. Document Provision:

Statement of Requirement: **Commencement of benefits, Code §401(a)(14); Regs. §1.411(a)-11(c)(7).**

Sample Plan Language:

Unless the participant elects otherwise, distribution of benefits will begin no later than the 60th day after the latest of the close of the plan year in which:

(1) the participant attains age 65 (or normal retirement age, if earlier);

(2) occurs the 10th anniversary of the year in which the participant commenced participation in the plan; or,

(3) the participant terminates service with the employer.

Notwithstanding the foregoing, the failure of a participant and spouse to consent to a distribution while a benefit is immediately distributable, within the meaning of section _____ of the plan, shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section.

(Note to reviewer: The blank should be filled in with the section number corresponding to LRM #44.)

46. Document Provision:

Statement of Requirement: **Early retirement with age and service requirement, Code §401(a)(14).**

Sample Plan Language:

If a participant separates from service before satisfying the age requirement for early retirement, but has satisfied the service requirement, the participant will be entitled to elect an early retirement benefit upon satisfaction of such age requirement.

47. Document Provision:

Statement of Requirement: Nontransferability of annuities, Code §401(g).

Sample Plan Language:

Any annuity contract distributed herefrom must be nontransferable.

48. Document Provision:

Statement of Requirement: Conflicts with annuity contracts, Regs. §1.401(a)-20, Q&A-2.

The terms of any annuity contract purchased and distributed by the plan to a participant or spouse shall comply with the requirements of this plan.

49. Document Provision:

Statement of Requirement: Timing and modes of distribution, IRC § 401(a)(9); Regs. § 1.401(a)(9); Regs. § 1.411(d)-4, Q&A-10, Announcement 97-24, 1997-11 I.R.B. 24, Notice 97-75, 1997-2 C.B. 337; Rev. Proc. 2002-29, 2002-1 C.B. 1176; Rev. Proc. 2002-73, 2002-2 C.B. 932; Notice 2009-82, 2009-2 C.B. 491.

Sample Plan Language:

Article ____. REQUIRED MINIMUM DISTRIBUTIONS

Section 1. General Rules.

1.1. Subject to Article ___, Joint and Survivor Annuity Requirements, the requirements of this article shall apply to any distribution of a participant's interest and will take precedence over any inconsistent provisions of this plan.

1.2. All distributions required under this article shall be determined and made in accordance with the regulations under § 401(a)(9) and the minimum distribution incidental benefit requirement of § 401(a)(9)(G) of the Code.

1.3 Limits on Distribution Periods. As of the first distribution calendar year, distributions to a participant, if not made in a single-sum, may only be made over one of the following periods:

(a) the life of the participant,

(b) the joint lives of the participant and a designated beneficiary,

(c) a period certain not extending beyond the life expectancy of the participant, or

(d) a period certain not extending beyond the joint life and last survivor expectancy of the participant and a designated beneficiary.

Section 2. Time and Manner of Distribution.

2.1 Required Beginning Date. The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date.

2.2 Death of Participant Before Distributions Begin. If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(a) If the participant's surviving spouse is the participant's sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later.

(b) If the participant's surviving spouse is not the participant's sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.

(c) If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(d) If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse are required to begin, this section 2.2, other than section 2.2(a), will apply as if the surviving spouse were the participant.

For purposes of this section 2.2 and section 4, unless section 2.2(d) applies, distributions are considered to begin on the participant's required beginning date. If section 2.2(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under section 2.2(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the participant before the participant's required beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse under section 2.2(a)), the date distributions are considered to begin is the date distributions actually commence.

2.3 Forms of Distribution. Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single-sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with sections 3 and 4 of this article. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of § 401(a)(9) of the Code and the regulations.

Section 3. Required Minimum Distributions During Participant's Lifetime.

3.1 Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(a) the quotient obtained by dividing the participant's account balance by the distribution period in the Uniform Lifetime Table set forth in § 1.401(a)(9)-9, Q&A-2, of the regulations, using the participant's age as of the participant's birthday in the distribution calendar year; or

(b) if the participant's sole designated beneficiary for the distribution calendar year is the participant's spouse, the quotient obtained by dividing the participant's account balance by the number in the Joint and Last Survivor Table set forth in § 1.401(a)(9)-9, Q&A-3, of the regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the distribution calendar year.

3.2 Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this section 3 beginning with the first distribution calendar year and continuing up to, and including, the distribution calendar year that includes the participant’s date of death.

Section 4. Required Minimum Distributions After Participant’s Death.

4.1 Death On or After Date Distributions Begin.

(a) Participant Survived by Designated Beneficiary. If the participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant’s death is the quotient obtained by dividing the participant’s account balance by the longer of the remaining life expectancy of the participant or the remaining life expectancy of the participant’s designated beneficiary, determined as follows:

(1) The participant’s remaining life expectancy is calculated using the age of the participant in the year of death, reduced by one for each subsequent year.

(2) If the participant’s surviving spouse is the participant’s sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the participant’s death using the surviving spouse’s age as of the spouse’s birthday in that year. For distribution calendar years after the year of the surviving spouse’s death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse’s birthday in the calendar year of the spouse’s death, reduced by one for each subsequent calendar year.

(3) If the participant’s surviving spouse is not the participant’s sole designated beneficiary, the designated beneficiary’s remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the participant’s death, reduced by one for each subsequent year.

(b) No Designated Beneficiary. If the participant dies on or after the date distributions begin and there is no designated beneficiary as of the September 30 of the year after the year of the participant’s death, the minimum amount that will be distributed for each distribution calendar year after the year of the participant’s death is the quotient obtained by dividing the participant’s account balance by the participant’s remaining life expectancy calculated using the age of the participant in the year of death, reduced by one for each subsequent year.

4.2 Death Before Date Distributions Begin.

(a) Participant Survived by Designated Beneficiary. Except as provided in the adoption agreement, if the participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the remaining life expectancy of the participant's designated beneficiary, determined as provided in section 4.1.

(b) No Designated Beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(c) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the participant dies before the date distributions begin, the participant's surviving spouse is the participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under section 2.2(a), this section 4.2 will apply as if the surviving spouse were the participant.

Section 5. Definitions

5.1 Designated beneficiary. The individual who is designated by the participant (or the participant's surviving spouse) as the beneficiary of the participant's interest under the plan and who is the designated beneficiary under § 401(a)(9) of the Code and § 1.401(a)(9)-4 of the regulations.

5.2 Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under section 2.2. The required minimum distribution for the participant's first distribution calendar year will be made on or before the participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

5.3 Life expectancy. Life expectancy as computed by use of the Single Life Table in § 1.401(a)(9)-9, Q&A-1, of the regulations.

5.4 Participant's account balance. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

5.5 Required Beginning Date: One of the following, as selected by the employer in the adoption agreement.

(1) The required beginning date of a participant is April 1 of the calendar year following the calendar year in which the participant attains age 70½.

(2) The required beginning date of a participant is April 1 of the calendar year following the calendar year in which the participant attains age 70½, except that benefit distributions to a participant (other than a 5-percent owner) with respect to benefits accrued after the later of the adoption or effective date of an amendment to the plan that implements the changes to the required beginning date of this paragraph must commence by April 1 of the calendar year following the later of the calendar year in which the participant attains age 70½ or the calendar year in which the participant retires.

(3) The required beginning date of a participant is April 1 of the calendar year following the later of the calendar year in which the participant attains age 70½ or the calendar year in which the participant retires, except that benefit distributions to a 5-percent owner must commence by April 1 of the calendar year following the calendar year in which the participant attains age 70½.

(a) If elected by the employer in the adoption agreement, any participant (other than a 5-percent owner) attaining age 70½ in years after 1995 may elect by April 1 of the calendar year following the calendar year in which the participant attained age 70½ (or by December 31, 1997 in the case of a participant attaining age 70½ in 1996), to defer distributions until April 1 of the calendar year following the calendar year in which the participant retires. If no such election is made, the participant will begin receiving distributions by April 1 of the calendar year following the year in which the participant attained age 70½.

(b) If elected by the employer in the adoption agreement, any participant (other than a 5-percent owner) attaining age 70½ in years prior to 1997 may elect to stop distributions and recommence by April 1 of the calendar year following the year in which the participant retires. To satisfy the Joint and Survivor Annuity Requirements described in Article ____, the requirements in Notice 97-75, Q&A-8, must be satisfied for any participant who elects to stop distributions. There is either (as elected by the employer in the adoption agreement)

(i) a new annuity starting date upon recommencement, or
(ii) no new annuity starting date upon recommencement.

5.6 5-percent owner. A participant is treated as a 5-percent owner for purposes of this section 5 if such participant is a 5-percent owner as defined in § 416 of the Code at any time during the plan year ending with or within the calendar year in which such owner attains age 70½.

Once distributions have begun to a 5-percent owner under this section 5, they must continue to be distributed, even if the participant ceases to be a 5-percent owner in a subsequent year.

Section 6. TEFRA Section 242(b)(2) Elections

6.1. Notwithstanding the other requirements of this article and subject to the requirements of Article _____, Joint and Survivor Annuity Requirements, distribution on behalf of any employee, including a 5-percent owner, who has made a designation under § 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (a "section 242(b)(2) election") may be made in accordance with all of the following requirements (regardless of when such distribution commences):

(a) The distribution by the plan is one which would not have disqualified such plan under § 401(a)(9) of the Internal Revenue Code as in effect prior to amendment by the Deficit Reduction Act of 1984.

(b) The distribution is in accordance with a method of distribution designated by the employee whose interest in the plan is being distributed or, if the employee is deceased, by a beneficiary of such employee.

(c) Such designation was in writing, was signed by the employee or the beneficiary, and was made before January 1, 1984.

(d) The employee had accrued a benefit under the plan as of December 31, 1983.

(e) The method of distribution designated by the employee or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the employee's death, the beneficiaries of the employee listed in order of priority.

6.2. A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the employee.

6.3. For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the employee, or the beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections 6.1(a) and (e).

6.4. If a designation is revoked, any subsequent distribution must satisfy the requirements of § 401(a)(9) of the Code and the regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy § 401(a)(9) of the Code and the regulations thereunder, but for the section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

6.5. In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in § 1.401(a)(9)-8, Q&A-14 and Q&A-15, shall apply.

Section 7. 2009 Required Minimum Distributions

7.1 Default to continue 2009 required minimum distributions. If elected by the employer in the adoption agreement, notwithstanding section _____ of the plan, a participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Code ("2009 required minimum distributions"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 required minimum distributions or (2) one or more payments in a series of substantially equal distributions (that include the 2009 required minimum distributions) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant's designated beneficiary, or for a period of at least 10 years ("Extended 2009 required minimum distributions"), will receive those distributions for 2009 unless the participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding section _____ of the plan, and solely for purposes of applying the direct rollover provisions of the plan, certain additional distributions in 2009, as chosen by the employer in the adoption agreement, will be treated as eligible rollover distributions.

(Note to Reviewer: The first blank should contain the section of the plan corresponding to the preceding sections of this LRM # 49 (and the section of the plan dealing with other distributions, if applicable) and the second blank should contain the section of the plan corresponding to LRM # 51.)

7.2 Default to discontinue 2009 required minimum distributions. If elected by the employer in the adoption agreement, notwithstanding section _____ of the plan, a participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Code ("2009 required minimum distributions"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 required minimum distributions or (2) one or more payments in a series of substantially equal distributions (that include the 2009 required minimum distributions) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant's designated beneficiary, or for a period of at least 10 years ("Extended 2009 required minimum

<u>distributions"), will not receive those distributions for 2009 unless the participant or beneficiary chooses to receive such distributions. Participants and beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence. In addition, notwithstanding section _____ of the plan, and solely for purposes of applying the direct rollover provisions of the plan, certain additional distributions in 2009, as chosen by the employer in the adoption agreement, will be treated as eligible rollover distributions.</u>

<u>**(Note to Reviewer: The first blank should contain the section of the plan corresponding to the preceding sections of this LRM # 49 (and the section of the plan dealing with other distributions, if applicable) and the second blank should contain the section of the plan corresponding to LRM # 51.)**</u>

Sample Adoption Agreement Language

(Check and complete sections 1 and 2 below if you wish to modify the rules in sections 2.2 and 4.2 of Article___ of the plan.)

Section 1. Election to Apply 5-Year Rule to Distributions to Designated Beneficiaries.

( ) If the participant dies before distributions are required to begin and there is a designated beneficiary, distributions to the designated beneficiary are not required to begin by the date specified in section 2.2 of Article _____of the plan, but the participant's entire interest will be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the participant's death. If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to either the participant or the surviving spouse begin, this election will apply as if the surviving spouse were the participant.

Section 2. Election to Allow Participants or Beneficiaries to Elect 5-Year Rule.

( ) Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in sections 2.2 and 4.2 of Article ______of the plan applies to distributions after the death of a participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distributions would be required to begin under section 2.2 of Article _____of the plan, or by September 30 of the calendar year which contains the fifth anniversary of the participant's (or, if applicable, surviving spouse's) death. If neither the participant nor beneficiary makes an election under this paragraph, distributions will be made in accordance with sections 2.2 and 4.2 of Article ___of the plan and, if applicable, the elections in section 1 above.

Section 3. Required Beginning Date

The required beginning date of a participant is (select one):

1. ( ) April 1 of the calendar year following the calendar year in which the participant attains age 70½.

2. ( ) April 1 of the calendar year following the calendar year in which the participant attains age 70½, except that benefit distributions to a participant (other than a 5-percent owner) with respect to benefits accrued after _____**(insert the later of the adoption or effective date of an amendment to the plan that implements the changes to the required beginning date of this paragraph)** must commence by April 1 of the calendar year following the later of the calendar year in which the participant attains age 70½ or the calendar year in which the participant retires.

3. ( ) April 1 of the calendar year following the later of the calendar year in which the participant attains age 70½ or the calendar year in which the participant retires, except that benefit distributions to a 5-percent owner must commence by April 1 of the calendar year following the calendar year in which the participant attains age 70½.

A. (Note: Option 3. above may only be elected if (i) it corresponds to an amendment previously made to the plan pursuant to § 1.411(d)-4, Q&A-10(b), of the regulations or (ii) it does not eliminate an age 70½ distribution option, as described in the preceding regulation, because either (A) the plan is a new plan or (B) option 3(a) below is checked or the plan already offers a pre-retirement distribution option at least as generous as 3(a).)

(a)( ) Any participant (other than a 5-percent owner) attaining age 70½ in years after 1995 may elect by April 1 of the calendar year following the year in which the participant attained age 70½ (or by December 31, 1997 in the case of a participant attaining age 70½ in 1996), to defer distributions until April 1 of the calendar year following the calendar year in which the participant retires. If no such election is made the participant will begin receiving distributions by April 1 of the calendar year following the calendar year in which the participant attained age 70½.

B. (Note: Option 3(b) below may only be elected if it corresponds to an amendment previously made to the plan pursuant to Q&As-7 and -8 in Notice 97-75.)

(b) ( ) Any participant (other than a 5-percent owner) attaining age 70½ in years prior to 1997 may elect to stop distributions and recommence by April 1 of the calendar year following the calendar year in which the participant retires. There is **(select only one)**

( ) a new annuity starting date upon recommencement
( ) no new annuity starting date upon recommencement.

Section 4. 2009 Required Minimum Distributions

4.1 Default for 2009 Required Minimum Distributions: (Check a. or b.)

a. ( ) Default to continue 2009 required minimum distributions

b. ( ) Default to discontinue 2009 required minimum distributions

Default to continue 2009 Required Minimum Distributions

4.2 Direct Rollovers:

For purposes of the direct rollover provisions of the plan, the following will also be treated as eligible rollover distributions in 2009: (Check one or none.)

a. ( ) 2009 required minimum distributions and Extended 2009 required minimum distributions (both as defined in the plan).

b. ( ) 2009 required minimum distributions (as defined in the plan) but only if paid with an additional amount that is an eligible rollover distribution without regard to section 401(a)(9)(H).

50. Document Provision:

Statement of Requirement: **Optional forms of benefit must be stated in the plan Code §401(a)(4), §411(d)(6);**

Regs.§1.401(a)(4)-4, §1.411(d)-4; Notice 97-75, 1997-2 C.B. 337. Rev. Proc. 2011-49, sec. 4.09(5).

Sample Plan Language:

The optional forms of benefit provided by this plan are as follows:

(Note to reviewer: The availability of each optional form of benefit must not be subject to employer discretion.

In addition, each optional form of benefit provided under a standardized plan (other than any that have been prospectively eliminated) must be currently available to all employees benefiting under the plan. This is the case regardless of whether a particular form of benefit is the actuarial equivalent of any other optional form of benefit under the plan. Note: § 411(d)(6) prevents a plan from being amended to eliminate or restrict optional forms of benefits and any other "§ 411(d)(6) protected benefits" with respect to benefits attributable to service before the amendment except as expressly provided under Regulations §1.411(d)-4. (See LRM 60)).

(Note to reviewer: An employer that decides to eliminate the availability of a preretirement optional form of benefit (defined in LRM 49) for a participant (other than a 5 percent owner) who attains age 70½ after a specified year has relief from the applicable sections of 401(a)(4) under Notice 97-75. An optional form of benefit available to a 5 percent owner at age 70½ and retirement and to other participants only at retirement will be treated as the same optional form of benefit for purposes of testing the nondiscriminatory availability of benefits, rights, and features. Additional relief is provided as stated in Notice 97-75.)

51. Document Provision:

Statement of Requirement: Direct Rollovers, Code §402(c), §401(a)(31); Regs. §1.401(a)(31)-1, §1.401(k)-1(f), §1.402(c)-2; Notice 2005-5, 2005-1 C.B. 337; C. Notice 2007-7, 2007-1 C.B. 395; Notice 2008-30, 2008-1, C.B. 638; Notice 2009-68, 2009-39 I.R.B. 423; Notice 2009-75, 2009-39 I.R.B. 436; Notice 2010-84, 2010-51 I.R.B. 872.

Sample Plan Language:

Article _____: Direct Rollovers

Section 1.Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this part, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover, provided the portion is equal to at least $500. If an eligible rollover distribution is less than $500, a distributee may not make the election described in the preceding sentence to roll over only a portion of the eligible rollover distribution.

(Note to reviewer: For plan years beginning after December 31, 2009, a plan is required to offer a direct rollover of a distribution to a nonspouse beneficiary. For earlier plan years, a plan was permitted but not required to offer a direct rollover of a distribution made after December 31, 2006, to a nonspouse beneficiary.)

Section 1.1. In-Plan Roth Rollovers.

If elected by the employer in the adoption agreement, an eligible rollover distribution made after September 27, 2010, from a participant's account under the plan other than a designated Roth account may be transferred to the participant's designated Roth account under the plan. The plan will maintain such records as are necessary for the proper reporting of in-plan Roth rollovers.

Section 2.Definitions

Section 2.1. Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under § 401(a)(9) of the Internal Revenue Code; any hardship distribution; and any other distribution(s) that is reasonably expected to total less than $200 during a year. For purposes of the $200 rule, a distribution from a designated Roth account and a distribution from other accounts under the plan are treated as made under separate plans.

Any portion of a distribution that consists of after-tax employee contributions which are not includible in gross income may be transferred only to (1) a traditional individual retirement account or annuity described in § 408(a) or (b) of the Code (a "traditional IRA") <u>or a Roth individual retirement account or annuity described in § 408A of the Code (a "Roth IRA");</u> or (2) to a qualified plan or an annuity contract described in § 401(a) and § 403(b) of the Code, respectively, that agrees to separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(Note to reviewer: If an employer has chosen a required beginning date under § 401(a)(9) of the Code, described in LRM #49, section 5.5(1) (April 1 of the calendar year following the calendar year in which the participant reaches age 70 ½), the statutory required beginning date (described in LRM # 49, 5.5 (3)) applies for other purposes, including the participant's required beginning date for purposes of an eligible rollover distribution under § 402(c).)

Section 2.2. Eligible retirement plan: An eligible retirement plan is an eligible plan under § 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, a traditional IRA, <u>a Roth IRA,</u> an annuity plan described in § 403(a) of the Code, an annuity contract described in § 403(b) of the Code, or a qualified plan described in § 401(a) of the Code, that accepts the distributee's eligible rollover distribution. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in § 414(p) of the Code.

If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account, an eligible retirement plan with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual.

Section 2.3 Distributee: A distributee includes an employee or former employee. The employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in § 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. <u>For distributions after December 31, 2006, a distributee includes the</u>

employee's or former employee's nonspouse designated beneficiary, in which case, the distribution can only be transferred to a traditional or Roth IRA established on behalf of the nonspouse designated beneficiary for the purpose of receiving the distribution.

Section 2.4. Direct Rollover: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

Section 3. Automatic Rollovers:

In the event of a mandatory distribution greater than $1,000 in accordance with the provisions of section _____, if the participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover or to receive the distribution directly in accordance with section(s) _____, then the plan administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the plan administrator. For purposes of determining whether a mandatory distribution is greater than $1,000, the portion of the participant's distribution attributable to any rollover contribution is included.

(Note to Reviewer: The first blank should be filled in with the plan section number which corresponds to mandatory distributions. The second blank should be filled in with the plan section number which corresponds to employee elections. The automatic rollover requirements of § 401(a)(31)(B) apply to mandatory distributions made on or after March 28, 2005.)

Section 4. Rollovers from other plans

If provided by the employer in the adoption agreement, the plan will accept participant rollover contributions and/or direct rollovers of the types of contributions and from the types of plans specified in the adoption agreement.

(Adoption Agreement Provisions)

Direct Rollovers:

The plan will accept a direct rollover of an eligible rollover distribution from: (Check each that applies or none.)

( ) a qualified plan described in § 401(a) or 403(a) of the Code, excluding after-tax employee contributions.

( ) an annuity contract described in § 403(b) of the Code.

( ) an eligible plan under § 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(Choose one)

( ) Including after-tax employee contributions from the plans or contracts checked above.

( ) Excluding after-tax employee contributions from the plan or contracts checked above.

(Choose one)

( ) Including distributions from designated Roth accounts from the applicable plans or contracts checked above.

( ) Excluding distributions from designated Roth accounts from the applicable plans or contracts checked above.

In-Plan Roth Rollovers

( ) If checked, the plan will permit participants to make in-plan Roth rollovers.

Participant Rollover Contributions from Other Plans:

The plan will accept a participant contribution of an eligible rollover distribution from: (Check each that applies or none).

( ) a qualified plan described in § 401(a) or 403(a) of the Code, excluding after-tax employee contributions.

( ) an annuity contract described in § 403(b) of the Code, excluding after-tax employee contributions.

( ) an eligible plan under § 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

Participant Rollover Contributions from IRAs:

The Plan: (Choose one.)

( ) will

( ) will not

accept a participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in § 408(a) or (b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.

VESTING PROVISIONS

52. Document Provision:

Statement of Requirement: **Designation of vesting computation period, Code §411(a)(5)(A); DOL Regs. §2530.200b-4.**

Sample Plan Language:

Provision #1

For purposes of computing an employee's nonforfeitable right to the account balance derived from employer contributions, years of service and breaks in service will be measured by the plan year.

Provision #2

For purposes of determining years of service and breaks in service for purposes of computing an employee's nonforfeitable right to the account balance derived from employer contributions, the 12-consecutive month period will commence on the date the employee first performs an hour of service and each subsequent 12-consecutive month period will commence on the anniversary of such date.

53. Document Provision:

Statement of Requirement: **Full vesting upon attainment of normal retirement age, Code §411(a).**

Sample Plan Language:

Notwithstanding the vesting schedule elected by the employer in section ______ of the adoption agreement, an employee's right to his or her account balance must be nonforfeitable upon the attainment of normal retirement age.

54. Document Provision:

Statement of Requirement: **Optional vesting schedules must be at least as favorable as the applicable minimum vesting schedules, Code §411(a)(2), §416(b)(1).**

(Note to reviewer: If the plan provides vesting schedules other than those given in the Code (411(a)(2) for regular schedules; 416(b)(1) for top-heavy schedules (see LRM #64), the optional schedules must be at least as favorable as the statutory schedules. For plan years beginning after December 31, 2006, the vesting schedules under 411(a)(2) and 416(b)(1) are the same.)

55. Document Provision:

Statement of Requirement: Crediting years of service - vesting, Code §411(a)(4).

Sample Adoption Agreement Language:

All of an employee's years of service with the employer are counted to determine the nonforfeitable percentage in the employee's account balance derived from employer contributions except:

( ) Years of service before age 18;

( ) Years of service during a period for which the employee made no mandatory contributions;

( ) Years of service before the employer maintained this plan or a predecessor plan;

( ) Years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970;

( ) Years of service before the effective date of ERISA if such service would have been disregarded under the break in service rules of the prior plan in effect from time to time before such date. For this purpose, break in service rules are rules which result in the loss of prior vesting or benefit accruals, or which deny an employee eligibility to participate, by reason of separation or failure to complete a required period of service within a specified period of time.

56. Document Provision:

Statement of Requirement: Vesting break in service - 1-year holdout, Code §411(a)(6)(B).

Sample Plan Language:

In the case of a participant who has incurred a 1-year break in service, years of service before such break will not be taken into account until the participant has completed a year of service after such break in service.

57. Document Provision:

Statement of Requirement: Vesting break in service - rule of parity, Code §411(a)(6)(D).

Sample Plan Language:

In the case of a participant who has 5 or more consecutive 1-year breaks in service, the participant's pre-break service will count in vesting of the employer-derived accrued benefit only if either:

(i) such participant has any nonforfeitable interest in the accrued benefit attributable to employer contributions at the time of separation from service, or

(ii) upon returning to service the number of consecutive 1-year breaks in service is less than the number of years of service.

58. Document Provision:

Statement of Requirement: Vesting for pre-break and post-break account Code §411(a)(6)(C); Regs. §1.411(b)-1(e)(2).

Sample Plan Language:

In the case of a participant who has 5 consecutive 1-year breaks in service, all years of service after such breaks in service will be disregarded for the purpose of vesting the employer-derived account balance that accrued before such breaks, but both pre-break and post-break service will count for the purposes of vesting the employer-derived account balance that accrues after such breaks. Both accounts will share in the earnings and losses of the fund.

In the case of a participant who does not have 5 consecutive 1-year breaks in service, both the pre-break and post-break service will count in vesting both the pre-break and post-break employer-derived account balance.

(Note to reviewer: If the plan also uses the rule of parity [LRM #57], then in lieu of LRM #57 and the above provision, the plan should use the following alternate provisions.)

In the case of a participant who has 5 or more consecutive 1-year breaks in service all service after such breaks in service will be disregarded for the purpose of vesting the employer-derived account balance that accrued before such breaks in service. Such participant's pre-break service will count in vesting the post-break employer-derived account balance only if either:

(i) such participant has any nonforfeitable interest in the account balance attributable to employer contributions at the time of separation from service; or

(ii) upon returning to service the number of consecutive 1-year breaks in service is less than the number of years of service.

Separate accounts will be maintained for the participant's pre-break and post-break employer-derived account balance. Both accounts will share in the earnings and losses of the fund.

59. Document Provision:

Statement of Requirement: **Amendment of vesting schedule, Code §411(a)(10); Regs. §1.411(a)-8(c)(1), §1.411(a)-8T.**

Sample Plan Language:

If the plan's vesting schedule is amended, or the plan is amended in any way that directly or indirectly affects the computation of the participant's nonforfeitable percentage or if the plan is deemed amended by an automatic change to or from a top-heavy vesting schedule, each participant with at least 3 years of service with the employer may elect, within a reasonable period after the adoption of the amendment or change, to have the nonforfeitable percentage computed under the plan without regard to such amendment or change. For participants who do not have at least 1 hour of service in any plan year beginning after December 31, 1988, the preceding sentence shall be applied by substituting "5 years of service" for "3 years of service" where such language appears.

The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of:

(1) 60 days after the amendment is adopted;

(2) 60 days after the amendment becomes effective; or

(3) 60 days after the participant is issued written notice of the amendment by the employer or plan administrator.

60. Document Provision:

Statement of Requirement: **Amendments affecting vested and/or accrued benefits,**

Code §411(a)(10)(A), §411(d)(6).Regs.§1.411(d)-4, Q&A-2(e), <u>Rev. Proc. 2011-49, sec.5.05</u>.

Sample Plan Language:

No amendment to the plan shall be effective to the extent that it has the effect of decreasing a participant's accrued benefit. This <u>includes a</u> plan amendment that decreases a participant’s accrued benefit, or otherwise places greater restrictions or conditions on a participant’s rights to section 411(d)(6) protected benefits, even if the amendment merely adds a restriction or condition that is permitted under the vesting rules in section 411(a)(3) through (11). Notwithstanding the preceding sentence, a participant's account balance may be reduced to the extent permitted under § 412(d)(2) of the Code <u>or to the extent permitted under sections 1.411(d)-3 and 1.411(d)-4 of the regulations</u>. For purposes of this paragraph, a plan amendment which has the effect of
decreasing a participant's account balance, with respect to benefits attributable to service before the amendment, shall be treated as reducing an accrued benefit. Furthermore, if the vesting schedule of a plan is amended, in the case of an employee who is a participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such employee's employer-derived accrued benefit will not be less than the percentage computed under the plan without regard to such amendment.

No amendment to the plan shall be effective to eliminate or restrict an optional form of benefit. The preceding sentence shall not apply to a plan amendment that eliminates or restricts the ability of a participant to receive payment of his or her account balance under a particular optional form of benefit if the amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit being eliminated or restricted. For this purpose, a single-sum distribution form is otherwise identical only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the participant) except with respect to the timing of payments after commencement.

(Note to reviewer: Plan amendments may also provide exceptions from the general prohibition against the elimination or restriction of optional forms of benefit for in-kind distributions and elective transfers as specified under Regulations § 1.411(d)-4 Q&A 2 and 3.)

(Note to Reviewer: Plans may provide for an exception from

the general prohibition against the elimination or restriction of optional forms for certain elective transfers. If a plan provides for the elimination or restriction of optional forms for elective transfers made on or after January 1, 2002, the plan must also provide that where the participant is eligible to receive an immediate distribution of the participant's entire nonforfeitable accrued benefit in a single-sum distribution that would consist entirely of an eligible rollover distribution under §401(a)(31), such transfer will be accomplished as a direct rollover under 401(a)(31). See LRM 51 and Reg. §1.411(d)-4, Q&A3(a)(4)&(c)(1)(ii).)

TOP-HEAVY PROVISIONS

A plan that is designed to operate as if it were always top-heavy (deemed top-heavy plan) need not contain the following paragraph or the provisions of LRM #61. A deemed top-heavy plan contains a single benefit structure that satisfies the requirements of § 416(b) and (c) for each plan year without regard to whether the plan is top-heavy.

Sample Plan Language:

If the plan is top-heavy in any plan year the provisions of section(s)_____________ will supersede any conflicting provisions in the plan or adoption agreement.

61. Document Provision: Statement of Requirement:

Top-heavy definitions, Code §416. Notice 2001-56; Notice 2001-57

Sample Plan Language:

(i) Key employee: Any employee or former employee (including any deceased employee) who at any time during the plan year that includes the determination date is an officer of the employer having an annual compensation greater than $130,000 (as adjusted under § 416(i)(1) of the Code for plan years beginning after December 31, 2002),a 5-percent owner of the employer, or a 1-percent owner of the employer having an annual compensation of more than $150,000. In determining whether a plan is top-heavy for plan years beginning before January 1, 2002, key employee means any employee or former employee (including any deceased employee) who at any time during the 5-year period ending on the determination date, is an officer of the employer having an annual compensation that exceeds 50 percent of the dollar limitation under § 415(b)(1)(A), an owner (or considered an owner under § 318) of one of the ten largest interests in the employer if such individual's compensation exceeds 100 percent of the dollar limitation under § 415(c)(1)(A), a 5-percent owner of the employer, or a 1-percent owner of the employer who has an annual compensation of more than $150,000. For purposes of this paragraph (i), annual compensation means compensation within the meaning of _______ of the adoption agreement.

(Note to reviewer: The blank should be filled in with the section of the adoption agreement that corresponds to section B of the sample adoption agreement language at the end of LRM #31. Insure that the definition of compensation includes any elective deferral (as defined in Code section 402(g)(3)) and any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of sections 125 (including deemed section 125 compensation if elected in the adoption agreement), 132(f)(4) or 457.)

The determination of who is a key employee will be made in accordance with § 416(i)(1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.

(ii) Top-heavy plan: This plan is top-heavy if any of the following conditions exists:

(a) If the top-heavy ratio for this plan exceeds 60 percent and this plan is not part of any required aggregation group or permissive aggregation group of plans.

(b) If this plan is a part of a required aggregation group of plans but not part of a permissive aggregation group and the top-heavy ratio for the group of plans exceeds 60 percent.

(c) If this plan is a part of a required aggregation group and part of a permissive aggregation group of plans and the top-heavy ratio for the permissive aggregation group exceeds 60 percent.

(iii) Top-heavy ratio:

(a) If the employer maintains one or more defined contribution plans (including any Simplified Employee Pension Plan) and the employer has not maintained any defined benefit plan which during the 5-year period ending on the determination date(s) has or has had accrued benefits, the top-heavy ratio for this plan alone or for the required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the account balances of all key employees as of the determination date(s) (including any part of any account balance distributed in the 1-year period ending on the determination date(s)) (5-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability and in determining whether the plan is top-heavy for plan years beginning before January 1, 2002), and the denominator of which is the sum of all account balances (including any part of any account balance distributed in the 1-year period ending on the determination date(s)) (5-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability and in determining whether the plan is top-heavy for plan years beginning before January 1, 2002), both computed in accordance with § 416 of the Code and the regulations thereunder. Both the numerator and denominator of the top-heavy ratio are increased to reflect any contribution not actually made as of the determination date, but which is required to be taken into account on that date under § 416 of the Code and the regulations thereunder.

(b) If the employer maintains one or more defined contribution plans (including any Simplified Employee Pension Plan) and the employer maintains or has maintained one or more defined benefit plans which during the 5-year period ending on the determination date(s) has or has had any accrued benefits, the top-heavy ratio for any required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of account balances under the aggregated defined contribution plan or plans for all key employees, determined in accordance with (a) above, and the present value of accrued benefits under the aggregated defined benefit plan or plans for all key employees as of the determination date(s), and the denominator of which is the sum of the account balances under the aggregated defined contribution plan or plans for all participants, determined in accordance with (a) above, and the present value of accrued benefits under the defined benefit plan or plans for all participants as of the determination date(s), all determined in accordance with § 416 of the Code and the regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and denominator of the top-heavy ratio are increased for any distribution of an accrued benefit made in the 1-year period ending on the determination date (5-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability and in determining whether the plan is top-heavy for plan years beginning before January 1, 2002).

(c) For purposes of (a) and (b) above the value of account balances and the present value of accrued benefits will be determined as of the most recent valuation date that falls within or ends with the 12-month period ending on the determination date, except as provided in § 416 of the Code and the regulations thereunder for the first and second plan years of a defined benefit plan. The account balances and accrued benefits of a participant (1) who is not a key employee but who was a key employee in a prior year, or (2) who has not been credited with at least one hour of service with any employer maintaining the plan at any time during the 1-year period (5-year period in determining whether the plan is top-heavy for plan years beginning before January 1, 2002) ending on the determination date will be disregarded. The calculation of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with § 416 of the Code and the regulations thereunder. Deductible employee contributions will not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans the value of account balances and accrued benefits will be calculated with reference to the determination dates that fall within the same calendar year.

The accrued benefit of a participant other than a key employee shall be determined under (a) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the employer, or (b) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of § 411(b)(1)(C) of the Code.

(iv) Permissive aggregation group: The required aggregation group of plans plus any other plan or plans of the employer which, when considered as a group with the required aggregation group, would continue to satisfy the requirements of § 401(a)(4) and 410 of the Code.

(v) Required aggregation group: (1) Each qualified plan of the employer in which at least one key employee participates or participated at any time during the plan year containing the determination date or any of the four preceding plan years (regardless of whether the plan has terminated), and (2) any other qualified plan of the employer which enables a plan described in (1) to meet the requirements of § 401(a)(4) or 410 of the Code.

(vi) Determination date: For any plan year subsequent to the first plan year, the last day of the preceding plan year. For the first plan year of the plan, the last day of that year.

(vii) Valuation date: The date elected by the employer in section ______ of the adoption agreement as of which account balances or accrued benefits are valued for purposes of calculating the top-heavy ratio.

62. Document Provision:

Statement of Requirement:
Minimum allocation, Code §416(c).

Sample Plan Language:

(1) Except as otherwise provided in (3) and (4) below, the employer contributions and forfeitures allocated on behalf of any participant who is not a key employee shall not be less than the lesser of three percent of such participant's compensation or in the case where the employer has no defined benefit plan which designates this plan to satisfy § 401 of the Code, the largest percentage of employer contributions and forfeitures, as a percentage of key employee's compensation, as limited by § 401(a)(17) of the Code, allocated on behalf of any key employee for that year. The minimum allocation is determined without regard to any Social Security contribution. This minimum allocation shall be made even though, under other plan provisions, the participant would not otherwise be entitled to receive an allocation, or would have received a lesser allocation for the year because of (i) the participant's failure to complete 1,000 hours of service (or any equivalent provided in the plan), or (ii) the participant's failure to make mandatory employee contributions to the plan, or (iii) compensation less than a stated amount.

(2) For purposes of computing the minimum allocation, compensation shall mean compensation as defined in section _____ of the adoption agreement as limited by § 401(a)(17) of the Code.

(Note to reviewer: The blank shall be filled in with the section of the adoption agreement that corresponds to section B of the sample adoption agreement language at the end of LRM #31. Insure that the definition of compensation includes any elective deferral (as defined in Code section 402(g)(3)) and any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of sections 125 (including deemed section 125 compensation if elected in the adoption agreement), 132(f)(4) or 457.)

(3) The provision in (1) above shall not apply to any participant who was not employed by the employer on the last day of the plan year.

(4) The provision in (1) above shall not apply to any participant to the extent the participant is covered under any other plan or plans of the employer, the employer has provided in section ______ of the adoption agreement that the minimum allocation or benefit requirement applicable to top-heavy plans will be met in the other plan or plans<u>, and the participant receives the minimum allocation or benefit under such plan or plans</u>.

Sample Adoption Agreement Language on Minimum Benefits for Employees Also Covered Under Another Plan:

Complete if the top-heavy minimum benefit requirement is met in another plan.

Name of the other plan:___________

Minimum benefit that will be provided under such other plan_____________________________________

Employees who will receive the minimum benefit under such other plan____
____

(Note to reviewer: Provision (4) above may cause the plan to fail to satisfy the uniformity requirement of Regulations § 1.401(a)(4)-2(b)(2)(ii) for plans using a design- based safe harbor, even though all other requirements of the safe harbor are met.)

Sample Adoption Agreement Language:

For purposes of minimum top-heavy allocations, contributions and forfeitures equal to _____% of each non-key employee's compensation will be allocated to the employee's account when the plan is top-heavy.

63. Document Provision:

Statement of Requirement: Nonforfeitability of minimum allocation, Code §416(c).

Sample Plan Language:

The minimum allocation required (to the extent required to be nonforfeitable under § 416(b)) may not be forfeited under § 411(a)(3)(B) or 411(a)(3)(D).

64. Document Provision:

Statement of Requirement: Minimum vesting schedules, Code §416(b).

Sample Plan Language:

For any plan year in which this plan is top-heavy, one of the minimum vesting schedules as elected by the employer in the adoption agreement will automatically apply to the plan. The minimum vesting schedule applies to all benefits within the meaning of § 411(a)(7) of the Code except those attributable to employee contributions, including benefits accrued before the effective date of § 416 and benefits accrued before the plan became top-heavy. Further, no decrease in a participant's nonforfeitable percentage may occur in the event the plan's status as top-heavy changes for any plan year. However, this section does not apply to the account balances of any employee who does not have an hour of service after the plan has initially become top-heavy and such employee's account balance attributable to employer contributions and forfeitures will be determined without regard to this section.

Sample Adoption Agreement Language:

The nonforfeitable interest of each employee in his or her account balance attributable to employer contributions shall be determined on the basis of the following:

( ) 100% vesting after _____ (not to exceed 3 years) of service.

( ) ______% (not less than 20) vesting after 2 years of service.

( ) _______% (not less than 40) vesting after 3 years of service.

( ) _______% (not less than 60) vesting after 4 years of service.

( ) _______% (not less than 80) vesting after 5 years of service.

( ) 100% vesting after 6 years of service.

If the vesting schedule under the plans shifts in or out of the above schedule for any plan year because of the plan's top-heavy status, such shift is an amendment to the vesting schedule and the election in section _______ of the plan applies.

(Note to reviewer: The blank should be filled in with the section number which corresponds to LRM #59.)

<u>DEATH BENEFITS</u>

65. Document Provision:

Statement of Requirement: Incidental insurance provisions, Rev. Rul. 61-164, 1961-2 C.B. 99.

Sample Plan Language:

(a) Ordinary life - For purposes of these incidental insurance provisions, ordinary life insurance contracts are contracts with both nondecreasing death benefits and nonincreasing premiums. If such contracts are purchased, less than ½ of the aggregate employer contributions allocated to any participant will be used to pay the premiums attributable to them.

(b) Term and universal life - No more than ¼ of the aggregate employer contributions allocated to any participant will be used to pay the premiums on term life insurance contracts, universal life insurance contracts, and all other life insurance contracts which are not ordinary life.

(c) Combination - The sum of ½ of the ordinary life insurance premiums and all other life insurance premiums will not exceed ¼ of the aggregate employer contributions allocated to any participant.

(Note to reviewer: If the above limitations are met, the pre-retirement death benefit may consist of the proceeds of such insurance contracts plus the participant's account balance.)

66. Document Provision:

Statement of Requirement: Distribution of insurance contracts, Rev. Rul. 60-84, 1960-1 C.B. 159.

Sample Plan Language:

Subject to Article _____, Joint and Survivor Annuity Requirements, the contracts on a participant's life will be converted to cash or an annuity or distributed to the participant upon commencement of benefits.

67. Document Provision:

Statement of Requirement: Conflict with insurance contracts, Regs. §1.401-1(a)(3)(iii), §1.72-16.

Sample Plan Language:

The trustee, if the plan is trusteed, or custodian, if the plan has a custodial account, shall apply for and will be the owner of any insurance contract purchased under the terms of this plan. The insurance contract(s) must provide that proceeds will be payable to the trustee (or custodian, if applicable), however the trustee (or custodian) shall be required to pay over all proceeds of the contract(s) to the participant's designated beneficiary in accordance with the distribution provisions of this plan. A participant's spouse will be the designated beneficiary of the proceeds in all circumstances unless a qualified election has been made in accordance with section ____, Joint and Survivor Annuity

Requirements, if applicable. Under no circumstances shall the trust (or custodial account) retain any part of the proceeds. In the event of any conflict between the terms of this plan and the terms of any insurance contract purchased hereunder, the plan provisions shall control.

(Note to reviewer: The above language is designed to meet the joint and survivor annuity requirements of § 401(a)(11) of the Code. A plan may use different language provided that such language always guarantees that a participant's spouse will receive at least one-half of the vested account balance (including any proceeds from insurance contracts) as a survivor annuity, or in the case of a profit-sharing plan which is not subject to the survivor annuity requirements of § 401(a)(11), the entire vested account balance (including insurance proceeds).)

INVESTMENT PROVISIONS

68. Document Provision:

Statement of Requirement: Annual valuation of assets; allocation of trust earnings and losses, Rev. Rul. 80-155.

Sample Plan Language:

The assets of the plan will be valued annually at fair market value as of the last day of the plan year. On such date, the earnings and losses of the plan will be allocated to each participant's account in the ratio that such account balance bears to all account balances.

69. Document Provision:

Statement of Requirement: Treatment of insurance dividends or credits, Regs. §1.404(a)-8.

Sample Plan Language:

Trusteed plans or custodial accounts - Any dividends or credits earned on insurance contracts will be allocated to the participant's account derived from employer contributions for whose benefit the contract is held.

70. Document Provision:

Statement of Requirement: Earmarked investments,

Sample Plan Language: (Plan may use either #1 or #2)

Provision #1: Each participant will direct the plan as to the type of investment to be purchased with the participant's account.

Provision #2: Each employee will have a ratable interest in all assets under the plan.

70A. Document Provision:

Statement of Requirement: Diversification Requirements for Certain Defined Contribution Plans, Code §401(a)(35), Regs. §1.401(a)(35)-1.

(Note to Reviewer: This Article is not required for the following plans: (1) a plan sponsored by a non-stock corporation; (2) a plan which does not provide for any investments in securities; (3) a plan which does provide for investments in securities, but only if these securities are held indirectly as part of a broader fund that is a regulated investment company described in Code § 851(a), a common or collective trust fund or pooled investment fund maintained by a bank or trust company supervised by a State or a Federal agency, a pooled investment fund of an insurance company that is qualified to do business in a State, or an investment fund managed by an investment manager within the meaning of § 3(38) of ERISA for a multiemployer plan, all as further described in Regulations § 1.401(a)(35)-1(f)(2)(iv)(B)(3)(ii); and (4) a plan which is a one-participant retirement plan as defined in Code § 401(a)(35)(E)(iv). The Article is required in an M&P defined contribution plan unless the terms of the M&P plan ensure that only plans described in these four categories may adopt the plan.)

Sample Plan Language:

Article ____. Diversification Requirements for Elective Deferrals, Employee Contributions, and Employer Nonelective Contributions Invested in Employer Securities

Section 1. The provisions of this Article apply only if the Plan holds any publicly traded employer security, except as described in Section 1.1. For purposes of this Article, a publicly traded security is a security which is traded on a national securities exchange that is registered under section 6 of the Securities Exchange Act of 1935 or which is traded on a foreign national securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority and the security is deemed by the Securities and Exchange Commission as having a "ready market" under SEC Rule 15c3-1 (17 CFR 240.15c3).

Section 1.1. If the Employer, or any member of a controlled group of corporations (as described in Treasury regulations section 1.401(a)(35)-1(f)(2)(iv)(A)) which includes the Employer, has issued a class of stock which is a publicly traded employer security, and the Plan holds employer securities which are not publicly traded employer securities, then the Plan shall be treated as holding publicly traded employer securities.

(Note to Reviewer: See Treasury regulations § 1.401(a)(35)-1(f)(2)(iv)(B) for exceptions for certain plans.)

Section 1.2. With respect to a participant (including for purposes of this section an alternate payee who has an account under the Plan or a deceased participant's beneficiary), if any portion of the participant's account under the Plan attributable to elective deferrals (as described in section 402(g)(3)(A) of the Code), employee contributions, or rollover contributions is invested in publicly traded employer securities, then the participant must be offered the opportunity to elect to divest those employer securities and reinvest an equivalent amount in other investment options as described in Section 1.4.

Section 1.3. With respect to a participant who has completed at least three years of vesting service (including for purposes of this section an alternate payee who has an account under the plan with respect to such participant or a deceased participant's beneficiary), if a portion of the participant's account attributable to employer nonelective contributions is invested in publicly traded employer securities, then the participant must be offered the opportunity to elect to divest those employer securities and reinvest an equivalent amount in other investment options as described in Section 1.4.

(Note to Reviewer: For a plan that uses the elapsed time method of crediting service for vesting purposes (or a plan that provides for immediate vesting without using a vesting computation period or the elapsed time method of determining vesting), a participant completes three years of vesting service on the day immediately preceding the third anniversary of the participant's date of hire. See Treasury regulations § 1.401(a)(35)-1(c)(3).)

(Note to Reviewer: Plans may include the following transitional rule for Section 1.3 when an account consists of publicly traded employer securities acquired in a plan year beginning before January 1, 2007. See Treasury regulations section 1.401(a)(35)-1(g)(3)(ii).)

Section 1.3(a). Transitional Rule: If the pan holds publicly traded employer securities acquired in a plan year beginning before January 1, 2007, Section 1.3 applies only

to the applicable percentage of the number of shares of those securities. The applicable percentage is 33% for the first plan year to which Code section 401(a)(35) applies, 66% for the second plan year, and 100% for all subsequent plan years. If the Plan holds more than one class of securities, this transitional rule applies separately with respect to each class. This transitional rule does not apply to a participant who has attained age 55 and who has completed at least 3 years of vesting service before the first day of the first plan year beginning after December 31, 2005.)

Section 1.4. At least three investment options (other than employer securities) must be offered to participants described in Sections 1.2 and 1.3. Each investment option must be diversified and have materially different risk and return characteristics. Periodic reasonable divestment and reinvestment opportunities must be provided at least quarterly. Except as provided in sections 1.401(a)(35)-1(e)(2) and (3) of the Treasury Regulations, restrictions (either direct or indirect) or conditions will not be imposed on the investment of publicly traded employer securities if such restrictions or conditions are not imposed on the investment of other plan assets.

AMENDMENT AND TERMINATION

71. Document Provision:

Statement of Requirement: Sponsor's power to amend, Rev. Proc. 2011-49, sec.5.01.

Sample Plan Language:

The sponsor may amend any part of the plan. However, for purposes of reliance on an opinion or determination letter, the sponsor will no longer have the authority to amend the plan on behalf of the employer as of the date (1) the employer amends the plan to incorporate a type of plan described in section 6.03 of Rev. Proc. 2011-49 that is not permitted under the M&P program, or (2) the Internal Revenue Service notifies the employer, in accordance with section 24.03 of Rev. Proc. 2011-49, that the plan is an individually designed plan due to the nature and extent of employer amendments to the plan.

For purposes of sponsor amendments, the mass submitter shall be recognized as the agent of the sponsor. If the sponsor does not adopt the amendments made by the mass submitter, it will no longer be identical to or a minor modifier of the mass submitter plan.

72. Document Provision:

Statement of Requirement: Amendment by adopting employer,

Rev. Proc. 2011-49, sec.5.02.

Sample Plan Language:

The employer may (1) change the choice of options in the adoption agreement; (2) specify or change the effective date of a provision as permitted under the plan; (3) add overriding language in the adoption agreement when such language is necessary to satisfy § 415 or § 416 of the Code because of the required aggregation of multiple plans; (4) amend administrative provisions of the trust or custodial account document in the case of a nonstandardized plan and make more limited amendments in the case of a standardized plan, such as an amendment to change the name of the plan, employer, trustee or custodian, plan administrator and other fiduciaries, the trust year, and the name of any pooled trust in which the plan’s trust will participate; and (5) adopt sample or model plan amendments published by the Internal Revenue Service which provide that their adoption will not cause the plan to be treated as individually designed. An employer that amends the plan for any other reason, including a waiver of the minimum funding requirement under § 412(d) of the Code, will no longer participate in this master or prototype plan and will be considered to have an individually designed plan.

(Note to reviewer: The above provision, limiting the ability of the adopting employer to amend the plan, would not preclude the employer, in cases where the employer is switching from an individually designed plan or from one prototype plan to another, from attaching to the plan a list of the section "411(d)(6) protected benefits" that must be preserved. (see LRM #60). Such a list would not be considered an amendment to the plan.)

73. Document Provision:

Statement of Requirement: Vesting - plan termination, Code §411(d)(3)(A).

Sample Plan Language: In the event of the termination or partial termination of the plan the account balance of each affected participant will be nonforfeitable.

(Note to reviewer: See Rev. Rul. 2007-43, 2007-2 C.B. 45, for guidance as to when a partial termination has occurred.)

74. Document Provision:

Statement of Requirement: Vesting - complete discontinuance of contributions, Code §411(d)(3)(B).

Sample Plan Language: In the event of a complete discontinuance of contributions under the plan, the account balance of each affected participant will be nonforfeitable.

(Note to reviewer: The above provision is only required in profit-sharing plans.)

75. Document Provision:

Statement of Requirement: Plan merger - maintenance of benefit, Code §401(a)(12), §414(l); Regs. §1.414(l)-1.

Sample Plan Language:

In the event of a merger or consolidation with, or transfer of assets or liabilities to any other plan, each participant will receive a benefit immediately after such merger, etc. (if the plan then terminated) which is at least equal to the benefit the participant was entitled to immediately before such merger, etc. (if the plan had terminated).

MISCELLANEOUS PLAN PROVISIONS

76. Document Provision:

Statement of Requirement: Inalienability of benefits, Code §401(a)(13), §414(p).

Sample Plan Language:

No benefit or interest available hereunder will be subject to assignment or alienation, either voluntarily or involuntarily. The preceding sentence shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, unless such order is determined to be a qualified domestic relations order, as defined in § 414(p) of the Code, or any domestic relations order entered before January 1, 1985.

(Note to reviewer: The sample provision requires the plan administrator to comply with a domestic relations order entered before January 1, 1985, regardless of whether payment of benefits pursuant to the order has commenced as of such date. The plan may provide instead that a domestic relations order entered before January 1, 1985, will be treated as a qualified domestic relations order if payment of benefits pursuant to the order has commenced as of such date, and may be treated as a qualified domestic relations order if payment of benefits has not commenced as of such

date, even though the order does not satisfy the requirements of § 414(p).)

77. Document Provision:

Statement of Requirement: Loans to participants,
Code § 72(p), §401(a)(13),
§4975(d)(1),4975(f)(6)
§417(f)(5);
Regs. §1.401(a)-20, Q&A 24;
§1.72(p)-1
DOL Regs. §2550.408(b)-1,
Rev. Proc. 96-49, 1996-2 C.B. 369.Notice 2001-57

(Note to reviewer: A plan may provide for loans to participants or beneficiaries if it complies with the requirements of § 4975(d)(1) of the Code.)

Sample Plan Language:

(1) Loans shall be made available to all participants and beneficiaries on a reasonably equivalent basis.

(2) Loans shall not be made available to highly compensated employees (as defined in section _____ of the plan) in an amount greater than the amount made available to other employees.

(Note to reviewer: The blank should be filled in with the plan section number corresponding to LRM #11.)

(3) Loans must be adequately secured and bear a reasonable interest rate.

(4) No participant loan shall exceed the present value of the participant's vested accrued benefit.

(5) A participant must obtain the consent of his or her spouse, if any, to use of the account balance as security for the loan. Spousal consent shall be obtained no earlier than the beginning of the <u>180</u>-day period <u>(90-day period for plan years beginning before January 1, 2007)</u> that ends on the date on which the loan is to be so secured. The consent must be in writing, must acknowledge the effect of the loan, and must be witnessed by a plan representative or notary public. Such consent shall thereafter be binding with respect to the consenting spouse or any subsequent spouse with respect to that loan. A new consent shall be required if the account balance is used for renegotiation, extension, renewal, or other revision of the loan.

(6) In the event of default, foreclosure on the note and attachment of security will not occur until a distributable event occurs in the plan.

(7) For plan loans made before January 1, 2002, no loans will be made to any shareholder-employee or owner-employee. For purposes of this requirement, a shareholder-employee means an employee or officer of an electing small business (Subchapter S) corporation who owns (or is considered as owning within the meaning of § 318(a)(1) of the Code), on any day during the taxable year of such corporation, more than 5% of the outstanding stock of the corporation.

(8) Loan repayments will be suspended under this plan as permitted under §414(u)(4) of the Internal Revenue Code.

If a valid spousal consent has been obtained in accordance with (5), then, notwithstanding any other provision of this plan, the portion of the participant's vested account balance used as a security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account for purposes of determining the amount of the account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than 100% of the participant's vested account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, then the account balance shall be adjusted by first reducing the vested account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.

(Note to reviewer: No spousal consent is required for the use of the account balance as security for a plan loan to the participant under a profit-sharing plan not subject to the joint and survivor and preretirement survivor annuity rules under §§401(a)(11) and 417.)

(Note to reviewer: Section 72(p) of the Code provides that certain plan loans are treated as distributions. Compliance with § 72(p) is not required for plan qualification. Therefore, any plan provision dealing with § 72(p) will not be considered with respect to the issuance of a favorable opinion letter. However, some qualification requirements could be affected when § 72(p) is not satisfied. In order to assist sponsors in drafting provisions to comply with § 72(p), the following language is provided.)

Sample Plan Language:

No loan to any participant or beneficiary can be made to the extent that such loan when added to the outstanding balance of all other loans to the participant or beneficiary would exceed the lesser of (a) $50,000 reduced by the excess (if any) of the highest outstanding balance of loans during the one year period ending on the day before the loan is made, over the outstanding balance of loans from the plan on the date the loan is made, or (b) one-half the present value of the nonforfeitable accrued benefit of the participant or, if greater, the total accrued benefit up to $10,000. For the purpose of the above limitation, all loans from all plans of the employer and other members of a group of employers described in § 414(b), 414(c), and 414(m) of the Code are aggregated. Furthermore, any loan shall by its terms require that repayment (principal and interest) be amortized in level payments, not less frequently than quarterly, over a period not extending beyond five years from the date of the loan, unless such loan is used to acquire a dwelling unit which within a reasonable time (determined at the time the loan is made) will be used as the principal residence of the participant. An assignment or pledge of any portion of the participant's interest in the plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the plan, will be treated as a loan under this paragraph.

78. Document Provision:

Statement of Requirement: Exclusive benefit, Code §401(a)(2); Rev. Rul. 91-4, 1991-1 C.B. 57.

Sample Plan Language:

The corpus or income of the trust may not be diverted to or used for other than the exclusive benefit of the participants or their beneficiaries.

(Note to reviewer: All nontrusteed plans (plans designated as funded only with insurance contracts) must use LRM #79 in lieu of LRM #78. All other plans, including trusts or custodial accounts, must include the above language.)

(Note to reviewer: The sample plan language below may be used without violating the exclusive benefit rule.)

Any contribution made by the employer because of a mistake of fact must be returned to the employer within one year of the contribution.

In the event the deduction of a contribution made by the employer is disallowed under § 404 of the Code, such contribution (to the extent disallowed) must be returned to the employer within one year of the disallowance of the deduction.

In the event that the Commissioner of Internal Revenue determines that the plan is not initially qualified under the Internal Revenue Code, any contribution made incident to that initial qualification by the employer must be returned to the employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the employer's return for the taxable year in which the plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

79. Document Provision:

Statement of Requirement: Treatment of insurance dividends and other credits, fully insured plans, Regs. §1.404(a)-8; Rev. Rul. 60-33, 1960-1 C.B. 152.

(Note to reviewer: All nontrusteed plans (plans designated as funded only with insurance contracts) must include this provision in lieu of LRM #78.)

Sample Plan Language:

No contract will be purchased under the plan unless such contract or a separate definite written agreement between the employer and the insurer provides that: (1) no value under contracts providing benefits under the plan or credits determined by the insurer (on account of dividends, earnings, or other experience rating credits, or surrender or cancellation credits) with respect to such contracts may be paid or returned to the employer or diverted to or used for other than the exclusive benefit of the participants or their beneficiaries. However, any contribution made by the employer because of a mistake of fact must be returned to the employer within one year of the contribution.

If this plan is funded by individual contracts that provide a participant's benefit under the plan, such individual contracts shall constitute the participant's account balance.__If this plan is funded by group contracts, under the group annuity or group insurance contract, premiums or other consideration received by the insurance company must be allocated to participants' accounts under the plan.

80. Document Provision:

Statement of Requirement: Failure of qualification.

Sample Plan Language: If the employer's plan fails to attain or retain qualification, such plan will no longer participate in this master/prototype plan and will be considered an individually designed plan.

81. Document Provision:

Statement of Requirement: Master trust, Rev. Proc. 2011-49, sec. 4.01

(Note to reviewer: A master plan may only have a single funding medium for use by all adopting employers.)

82. Document Provision:

Statement of Requirement: Master trust - disqualification of plan, Rev. Rul. 71-461, 1971-2 C.B. 227.

Sample Plan Language: If the employer's plan fails to attain or retain qualification, the funds of such plan will be removed from the master trust as soon as administratively feasible.

83. Document Provision:

Statement of Requirement: Crediting service with predecessor employer, Code §414(a).

Sample Plan Language: If the employer maintains the plan of a predecessor employer, service with such employer will be treated as service for the employer.

84. Document Provision:

Statement of Requirement: Waiver of minimum funding standards, Rev. Rul. 78-223, 1978-1 C.B. 125; Rev. Proc. 2011-49, sec.5.02, Rev. Proc. 2004-15, 2004-7 I.R.B. 490

(Note to reviewer: An employer that amends an M&P plan because of a waiver of the minimum funding requirement under § 412(d) of the Code will be considered to be individually designed and may no longer participate in this master or prototype plan. All prior waiver language should be deleted from the plan.)

85. Document Provision:

Statement of Requirement: Additional adoption agreement

requirements, <u>Rev. Proc. 2011-49, sec. 5.10, sec. 5.11, sec. 5.12.</u>

(Note to reviewer: Each adoption agreement must contain language which complies with the following requirements:

(1) The adoption agreement must include the name, address and telephone number of the sponsor or the sponsor's authorized representative.

(2) The adoption agreement must contain a statement <u>describing the limitations on employer reliance on an opinion letter without a determination letter</u> and that the failure to properly fill out the adoption agreement may result in disqualification of the plan.

(3) The adoption agreement must contain a statement that the sponsor will inform the adopting employer of any amendments made to the plan or of the discontinuance or abandonment of the plan.

(4) The adoption agreement must contain a dated employer signature line.)

86. Document Provision:

Statement of Requirement: USERRA - Military Service Credit, <u>Code §§ 401(a)(37)</u> and 414(u), Rev. Proc. 96-49, <u>Notice 2010-15.</u>

Sample Plan Language:

Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with §414(u) of the Internal Revenue Code. <u>In addition, the survivors of any participant who dies on or after January 1, 2007, while performing qualified military service, are entitled to any additional benefits (other than contributions relating to the period of qualified military service, but including vesting service credit for such period and any ancillary life insurance or other survivor benefits) that would have been provided under the plan had the participant resumed employment on the day preceding the participant's death and then terminated employment on account of death.</u>

(Note to reviewer: As added by the HEART Act, for deaths and disabilities occurring after January 1, 2007, § 414(u)(9) provides that an employer may, for benefit accrual purposes, treat an individual who dies or becomes disabled while performing qualified military service as if that individual had resumed employment in accordance with USERRA reemployment rights on the day preceding the death or disability and then terminated employment on the actual date of death or disability. Any benefit accruals or contributions under § 414(u)(9) must be provided to all such individuals performing qualified military service with respect to the employer (and other employers aggregated with the employer under section § 414(b), (c), (m) and (o)) on terms that are reasonably equivalent. The sample language does not provide for contributions allowed under § 414(u)(9) but may be modified to do so or to allow the employer to elect in the adoption agreement that contributions will be provided under the plan with respect to all such deceased and/or disabled individuals. Vesting service credit is required to be provided for the period of a deceased individual's qualified military service if the individual dies while performing such service. See Notice 2010-15, Q&A 3. The sample language may also be modified to provide vesting service credit for the period of a disabled individual's qualified military service if the individual becomes disabled while performing such service.)

86A. Document Provision:

Statement of Requirement: **Multiple employer plans, Code §413(c); Regs. §1.413(c)**

(Note to reviewer: An M&P plan, including a standardized plan, may allow for the plan to be adopted as a multiple employer plan, that is, to be adopted as a non-collectively bargained single plan benefitting the employees of two or more employers who are not treated as a single employer under §414(b), (c), (m), or (o). To do this, the plan must include, as an addendum to the adoption agreement, a participation agreement to be signed by any employer that adopts the plan, other than the "lead" employer that signs the adoption agreement. The participation agreement must provide that the participating employer agrees to be bound by the terms of the plan and trust as adopted by the lead employer, including any amendments thereto and any elections made by the lead employer, except to the extent the participation agreement allows for, and the participating employer makes, separate elections with respect to its employees.

The exclusive benefit requirement is applied to a multiple employer plan by treating all employees of all participating employers as if they were the employees of the same employer. In addition, the minimum participation requirements of §410(a) and the minimum vesting requirements of §411 are applied as if all participating employers were a single employer, and service for any employer counts as service for all.

The limitations of §415 (annual additions), §402(g) (elective deferrals), and §414(v) (catch-up contributions) are applied to the plan as a whole, rather than on an employer-by-employer basis. Likewise, if a participant is both a 5% owner and an employee of any participating employer in the year the employee reaches age 70 ½, then the employee's required beginning date is April 1 of the following year.

On the other hand, the minimum coverage requirements of §410(b), the nondiscrimination requirements of §401(a)(4), the determination of top-heavy status and minimum contributions under §416, and the ADP and ACP tests of §§401(k) and 401(m), as well as the determination of highly compensated employees under §414(q), are applied separately, on an employer-by employer basis.)

Sample plan language:

If elected by the employer in the adoption agreement, the plan may also be adopted, by other employers that are not aggregated with the employer under §414(b),(c), (m), or (o) of the Code. Such employers shall adopt the plan by executing a separate participation agreement. In this case, the adopting employer and each participating employer acknowledge that the plan is a multiple employer plan subject to the rules of §413(c) and the regulations thereunder which are herein incorporated by reference, specific annual reporting requirements, and different procedures for obtaining determination letters from the Internal Revenue Service regarding the qualified status of the plan.

For purposes of plan participation and vesting, the adopting employer and all participating employers shall be considered a single employer. An employee's service includes all service with the adopting employer or any participating employer (or with any employer aggregated with the adopting or participating employer under §414(b), (c), (m), or (o)). An employee who discontinues service with a participating employer but then resumes service with another participating employer shall not be considered to have severed employment.

Except to the extent that the participation agreement allows, and the participating employer makes, separate elections with respect to its employees, the participating employer shall be bound by the terms of the plan and trust, including amendments thereto and any elections made by the adopting employer.

The limitation under the plan relating to the requirements of §§415, 402(g), and 414(v) of the Code shall be applied to the plan as a whole. The requirements of §§410(b), 401(a)(4), 401(k)(3)(A)(ii), 401(m)(2)(A), 414(q), and 416 shall be applied separately to each participating employer. For purposes of determining a participant's required beginning date for minimum required distributions, a participant shall be considered a 5% owner in a year in which the participant is both a 5% owner and an employee of a participating employer.

Sample adoption agreement language:

Does the adopting employer elect to allow the plan to be adopted by other unrelated employers as a multiple employer plan? (check one)

_____Yes

_____No

Participation agreement:

The participation agreement must identify the participating employer and the covered employees and provide for the

participating employer’s signature. The participation agreement may, but is not required to, provide separate elections with respect to the employees of the adopting employer. In the case of a standardized plan, any elections available to a participating employer must be limited to the elections available to the adopting employer. Thus, the minimum coverage requirements of §410(b) and the nondiscrimination requirements of §401(a)(4) must be satisfied with respect to the employees of the participating employer regardless of what elections are made in the participation agreement.

PART II - STANDARDIZED PLANS

87. Document Provision:

Statement of Requirement:
Coverage, Rev. Proc. 2011-49, sec.4.09(1).

Sample Adoption Agreement Language:

Each employee will be eligible to participate in this plan in accordance with section ________, except the following:

( ) Employees who have not attained the age of _________ (cannot exceed 21).

( ) Employees who have not completed _________ year(s) of service (cannot exceed 1 year unless the plan provides a nonforfeitable right to 100% of the participant's account balance derived from employer contributions after not more than 2 years of service in which case up to 2 years is permissible. If the year(s) of service selected is or includes a fractional year, an employee will not be required to complete any specified number of hours of service to receive credit for such fractional year.)

( ) Employees included in a unit of employees covered by a collective bargaining agreement between the employer and employee representatives, if retirement benefits were the subject of good faith bargaining and if two percent or less of the employees who are covered pursuant to that agreement are professionals as defined in Regulations § 1.410(b)-9. For this purpose, the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers, or executives of the employer.

( ) Employees who are nonresident aliens (within the meaning of § 7701(b)(1)(B)) and who receive no earned income (within the meaning of § 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of § 861(a)(3)).

( ) Employees who became employees as the result of a "§ 410(b)(6)(C) transaction". These employees will be excluded during the period beginning on the date of the transaction and ending on the last day of the first plan year beginning after the date of the transaction. A "§ 410(b)(6)(C)" transaction" is an asset or stock acquisition, merger, or similar transaction involving a change in the employer of the employees of a trade or business.

(Note to reviewer: The first blank should be filled in with the section number that corresponds to LRM #18.) If the plan provides for a single annual entry date reduce each of the limits contained in the sample provision above by ½ year (i.e. change age 21 to 20½, 1 year to ½ year and 2 years to 1½ years). This reduction can be avoided if the employee enters the plan on the entry date nearest the date the employee completes the eligibility requirement and the entry date is the first day of the plan year.)

88. Document Provision:

Statement of Requirement: Eligibility requirements not more favorable for highly compensated, Regs. §1.401(a)(4)-4; Rev. Proc. 2011-49, sec. 4.09(2).

(Note to reviewer: In addition, all optional forms of benefit, ancillary benefits and other rights and features provided under the plan must be made available to all participants.)

89. Document Provision:

Statement of Requirement: Contribution formula, Regs. §1.401(a)(4)-2(b)(2); Rev. Proc. 2011-49, sec.4.09(3).

(Note to reviewer: Standardized plans must satisfy the safe harbor contained in Regs. §1.401(a)(4)-2(b)(2). Therefore, except for employer matching contributions or contributions made under a cash or deferred arrangement as defined in § 401(k) of the Code, a standardized plan must provide that contributions, forfeitures, and/or benefits must be a uniform percentage of compensation, excluding compensation in excess of the limitation under § 401(a)(17) (see LRM #6 for the definition of compensation.) However, a plan may allow for permitted disparity pursuant to Code § 401(l) and the regulations thereunder. See LRM #29 for sample language.)

90. Document Provision:

Statement of Requirement: Reliance on opinion letter, Rev. Proc. 2011-49, sec. 5.10.

(Note to reviewer: This sample language, or a similar provision, must appear in all standardized plans in close proximity to the employer's signature line.)

Sample Adoption Agreement Language:

The adopting employer may rely on an opinion letter issued by the Internal Revenue Service as evidence that the plan is qualified under § 401 of the Internal Revenue Code except to the extent provided in Rev. Proc. 2011-49.

An employer who has ever maintained or who later adopts any plan (including a welfare benefit fund, as defined in § 419(e) of the Code, which provides post-retirement medical benefits allocated to separate accounts for key employees, as defined in § 419A(d)(3) of the Code, or an individual medical account, as defined in § 415(l)(2) of the Code) in addition to this plan may not rely on the opinion letter issued by the Internal Revenue Service with respect to the requirements of § 415 and 416.

If the employer who adopts or maintains multiple plans wishes to obtain reliance with respect to the requirements of § 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 Rev. Proc. 2011-49.

This adoption agreement may be used only in conjunction with basic plan document #_____.

PART III- NONSTANDARDIZED PLAN PROVISIONS

91. Document Provision:

Statement of Requirement: **Minimum age and service, Code §410(a)(1)(A); Regs. §1.410(a)-3(a).**

Sample Adoption Agreement Language:

Each employee will be eligible to participate in the plan upon meeting the following eligibility requirements:

(1) Attained the age of ____ (cannot exceed 21)

(2) Completed ____ year(s) of service

(Cannot exceed 1 year, unless the plan provides a nonforfeitable right to 100% of the participant's account balance after not more than 2 years of service in which case up to 2 years is permitted. If the year(s) of service selected is or includes a fractional year, an employee will not be required to complete any specified number of hours of service to receive credit for such fractional year.)

(Note to reviewer: If the plan provides for a single annual entry date reduce each of the limits contained in the sample provision above by ½ year (i.e. change age 21 to 20½, 1 year to ½ year and 2 years to 1½ years). This reduction can be avoided if the employee enters the plan on the entry date nearest the date the employee completes the eligibility requirement and the entry date is the first day of the plan year.)

(Note to reviewer: A nonstandardized plan may exclude additional categories of employees from participation; however, the plan must satisfy on a continuing basis the coverage tests of §410(b) <u>and</u> the nondiscrimination tests of §401(a)(4).)

92. Document Provision:

Statement of Requirement: Reliance on opinion letter, <u>Rev. Proc.2011-49, sec.5.10, sec. 19.02, sec. 19.03</u>.

(Note to reviewer: This sample language, or a similar provision, must appear in all nonstandardized plans in close proximity to the employer's signature line.)

Sample Adoption Agreement Language:

The adopting employer may rely on an opinion letter issued by the Internal Revenue Service as evidence that the plan is qualified under § 401 of the Internal Revenue Code only to the extent provided in <u>Rev. Proc. 2011-49</u>.

The employer may not rely on the opinion letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the opinion letter issued with respect to the plan and in <u>Rev. Proc. 2011-49</u>.

In order to have reliance in such circumstances or with respect to such qualification requirements, application for a determination letter must be made to Employee Plans Determinations of the Internal Revenue Service.

This adoption agreement may be used only in conjunction with basic plan document # ______.

93. Document Provision:

Statement of Requirement: Election of total compensation <u>Rev. Proc. 2011-49, sec.5.03.</u>

(Note to reviewer: The plan and/or adoption agreement must allow the employer the option to select total compensation as the compensation to be used in determining benefits. See LRM #6 for the acceptable definitions of compensation.)

94. Document Provision:

Statement of Requirement: Profit-sharing plan – Cross-tested allocation formula,

Regs. §1.401(a)(4)-8(b), §1.410(b)-6(f), <u>Rev. Proc. 2011-49, sec. 5.04</u>.

Sample Plan Language:

<u>As elected by the employer in the adoption agreement, the employer will determine the total amount of contributions for each plan year and either (1) allocate such total amount to participant groups (the "Participant Group Allocation method"), or (2) allocate such total amount using age weighted allocation rates (the "Age Weighted Allocation Method"). Employer contributions will be allocated to each eligible employee.</u>

<u>Participant Group Allocation Method. If the employer has elected the Participant Group Allocation Method in the adoption agreement, then, for purposes of determining the amount of employer contributions to be allocated to employees' accounts, each eligible employee of the employer will be included in a participant allocation group, as provided in the adoption agreement.</u>

<u>The employer will specify in written instructions to the plan administrator or trustee, by no later than the due date of the employer's tax return for the year to which the employer's contribution relates, the portion of such contribution to be allocated to each participant allocation group. The employer contributions allocated to each participant allocation group will be allocated among the employees in that group in the ratio that each employee's compensation, as defined in section _____ of the plan, bears to the total compensation of all employees in the group. In the event that an eligible employee is included in more than one participant allocation group, the participant's share of</u>

the employer contribution allocated to each such group will be based on the participant's compensation for the part of the year the participant was in the group.

(Note to reviewer: The blank should be filled in with the plan section number that corresponds to Option B in the Sample Adoption Agreement language in LRM #31.)

Age Weighted Allocation Method. If the Age Weighted Allocation Method is elected in the adoption agreement, the total employer contribution will be allocated to each eligible employee such that the equivalent benefit accrual rate for each participant is identical. The equivalent benefit accrual rate is the annual annuity commencing at the participant's testing age, expressed as a percentage of the participant's compensation as defined in section _____ of the plan which is provided from the allocation of employer contributions and forfeitures for the plan year, using standardized actuarial assumptions that satisfy §1.401(a)(4)-12 of the Income Tax Regulations. The employee's testing age is the later of normal retirement age, or the employee's current age.

(Note to reviewer: The blank should be filled in with the plan section number that corresponds to Option B in the Sample Adoption Agreement language in LRM #31.)

Minimum allocation gateway. Any allocation of contributions under either the Participant Group Allocation Method or the Age Weighted Allocation Method must satisfy the minimum allocation gateway:

Each eligible NHCE must have an allocation rate that is not less than the lesser of 5%, or one-third of the allocation rate of the HCE with the highest allocation rate. An allocation rate is the amount of contributions allocated to an employee for a year, expressed as a percentage of compensation, as defined in section ______ of the plan.

(Note to reviewer: The blank should be filled in with the plan section number that corresponds to Option B in the Sample Adoption Agreement language in LRM #31.)

(Note to reviewer: There are other gateways that may be used in order for a defined contribution plan to cross-test using equivalent benefits under §1.401(a)(4)-8(b). The plan may provide for a different gateway other than the minimum allocation gateway (for instance, the broadly available allocation rate requirement of Regulations § 1.401(a)(4)-8(b)(1)(iii) or the gradual age or service based allocation rate requirement of § 1.401(a)(4)-8(b)(1)(iv)); however, sample language for other gateways is not provided herein. If a sponsor wishes to use other gateways, it is important to ensure that the benefits provided under the plan remain definitely determinable. In order for plan benefits to remain definitely determinable, the plan document should specify which gateway is used. The plan document could allow adopting employers to elect between different gateways, but in order to provide definitely determinable benefits it is not sufficient for the plan document merely to specify that one of the gateway requirements will be satisfied.)

(Note to reviewer: No §401(a)(4) failsafe language is allowed. The plan must pass nondiscrimination testing based on Income Tax Regulations §1.401(a)(4)-1 through §1.401(a)(4)-13.)

Sample Adoption Agreement Language:

( ) Employer contributions will be allocated under the following method (select one)

A. ( ) Participant Group Allocation

Each eligible employee is assigned to a participant allocation group, as follows:

(Describe the objective criteria for determining the make-up of each participant allocation group. Criteria may not be subject to employer discretion, which would cause the plan to fail to have a definite allocation formula.

In the case of self-employed individuals (i.e., sole proprietorships or partnerships), the requirements of §1.401(k)-1(a)(6) continue to apply, and the allocation method, including the determination of participant allocation groups, should not be such that a cash or deferred election is created for a self-employed individual as a result of application of the allocation method.

The plan's eligibility provisions and participant allocation groups may not be structured to limit participation to only the shortest service and lowest paid NHCEs while excluding the other NHCEs.)

____
____
____
____

B. ( ) Age Weighted Allocation

The following assumptions will be used to calculate the equivalent benefit accrual rate:

Pre-retirement Mortality _____________

Post-retirement Mortality ____________

Pre-retirement Interest ______________

Post-retirement Interest ______________

(Note to reviewer: Standard interest rate and standard mortality table assumptions in accordance with 1.401(a)(4)-12 must be used when testing the plan for satisfaction of nondiscrimination requirements. A table of age-weighted factors (that comply with the previous sentence) may also be used.)