

**Defined Benefit Listing of Required Modifications and Information Package  
(LRM)  
CASH BALANCE SUPPLEMENT**

**To Sponsors of Master or Prototype Plans:**

**This information package amends and supplements the initial LRM information package issued for defined benefit plans on April 2013 (“Initial DB LRM”), for the purpose of enabling cash balance non-standardized submissions. Both information packages contain sample plan provisions that satisfy certain specific requirements of the Internal Revenue Code (“IRC” or “Code”), taking into account changes in the plan qualification requirements and guidance listed in the 2012 Cumulative List of Changes in Plan Qualification Requirements (Notice 2012-76, 2012-52 I.R.B. 775). These LRMs are intended to be used in conjunction with the general Defined Benefit LRMs, substituting or adding the language from the cash balance LRMs where appropriate for a cash balance feature. Such language may or may not be acceptable in different plans depending on the context in which used.**

**In this package,**

- LRMs labeled CB (such as “26CB”) denote supplemental LRMs that replace the initial DB LRM for purposes of a cash balance feature, and**
- LRMs labeled without CB (such as “42”) denote initial DB LRMs with modifications applicable to cash balance features.**

**This package also identifies provisions of the Initial DB LRM that cannot be used for purposes of cash balance features. All other provisions in the Initial DB LRM remain in effect, unless otherwise noted under this or other guidance.**

**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.**

**Note that a plan containing a cash balance feature will not be approved as a standardized plan.**

**Name of Sponsor:**

**Type of Plan:**

- ( ) Cash balance formula only**
- ( ) Cash balance combined with traditional formula**

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

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The following provisions in the initial April 2013 defined benefit LRM are modified as follows for purposes of cash balance features:

**Part I – All Plans**

- 6** Restrictions on definitions of compensation for plans with permitted disparity and standardized plan designs do not apply.
  
- 22** A cash balance formula cannot be included in a standardized defined benefit plan at this time. The general requirement that all nonstandardized plans provide for plan language that satisfies one of the design-based safe harbors in Reg. § 1.401(a)(4)-3(b)(3), (4) or (5) does not apply to a plan that contains only a cash balance formula.
  
- 23–25** Plans that provide for a conversion from a traditional defined benefit plan to a cash balance formula (within the meaning of Reg. § 1.411(b)(5)-1(c)(4)) will not be approved under opinion letters at this time, unless they use the formula without wear-away in LRM #23 and/or the conversion language in LRM #26CB. Therefore, references to formulas with wear-away or extended wear-away do not apply to such conversions.  
  
Also, all references to IRC § 412(e)(3) plans or insurance contract plans and to accrual rules other than the 133 1/3% rule do not apply.
  
- 27–27E** Cash balance formulas that provide for integrated cash balance credits are not eligible for the safe harbor rules for defined benefit plans under IRC § 401(l). Accordingly, the provisions related to permitted disparity limits, adjustment factors, etc., are not applicable to cash balance formulas. However, some of the definitions may be useful for integrated cash balance formulas.
  
- 29** For a participant with less than a full year of participation, partial Principal Credits can be granted in the same manner as partial accruals described in this LRM.
  
- 35** With respect to cash balance formulas, whether the rate of accruals is reduced solely on account of the participant's age may be determined with respect to whether the participant's Hypothetical Account Balance would be equal to or greater than that of any similarly situated, younger individual who is or could be a participant, as provided in IRC § 411(b)(5).
  
- 40** The benefit limits under IRC § 415 do not require the Hypothetical Account Balance to be limited prior to the participant's annuity starting date. However, a lump sum or

other form of payment of a type subject to IRC § 417(e)(3) is limited using the rules for a form of benefit subject to IRC § 417(e)(3) (see section 6.1(b) of LRM #40) even if the payment itself is exempt from the minimum present value requirements because of the application of IRC § 411(a)(13).

For adjustments to the defined benefit dollar limitation for benefit commencement before age 62 if the plan has an immediately commencing straight life annuity payable at age 62 (see section 6.9(b)(i)(II)(B) of LRM #40), the immediately commencing straight life annuity under the plan at age 62 should reflect interest projected at the Interest Crediting Rate in effect as of the date of determination.

- 46 The requirement to apply the applicable mortality and interest rates under IRC § 417(e)(3) for distributions associated with retroactive annuity starting dates does not apply to benefits payable with respect to a cash balance formula (see section 6.4 of LRM #40).
- 86 Fully insured cash balance plans will not be approved under opinion letters. Therefore, this LRM applies only in the context of insurance contracts purchased upon termination of the plan.

The following provisions of the initial April 2013 defined benefit LRM do not apply to cash balance features:

- 28 Fully insured cash balance plans will not be approved under opinion letters.
- 32 Fully insured cash balance plans will not be approved under opinion letters.
- 87 Fully insured cash balance plans will not be approved under opinion letters.

#### Part II – Standardized Plans

- 90–92 Standardized cash balance plans will not be approved under opinion letters.

#### Part III – Non-standardized Plan Provisions

- 106 The adoption agreement for a plan containing only a cash balance formula is not required to include a safe-harbor formula or fresh-start rules.

## 26CB. Document provision

Statement of Requirement: Current benefit formulas – Cash balance plan, IRC § 401(a)(4); Reg. §§ 1.401(a)(4)-3(b)(4), 1.401(a)(4)-12; Notice 96-8, 1996-1 C.B. 359; Final Regulations T.D. 9505, 2010-2 C.B.755; and T.D. 9693, 2014-41 I.R.B. 596.

### 26.1 Normal Retirement Benefit

Each participant will receive a benefit payable at normal retirement age equal to the lifetime annuity in the normal form of payment described in section \_\_\_\_ that is the Actuarial Equivalent of his or her Hypothetical Account Balance as of normal retirement age.

**(Note to reviewer: The blank above should be filled in with the plan section that corresponds to LRM #31.)**

### 26.2 Establishment of Hypothetical Account Balance.

A Hypothetical Account Balance shall be established and maintained for each Participant. Additions to and reductions in the Hypothetical Account Balance shall be made in accordance with the provisions set forth below. This Hypothetical Account Balance shall be a hypothetical account for bookkeeping purposes only and neither the maintenance nor the adding of credits thereto shall be construed as an allocation of assets of the Plan to, or a segregation of such assets in, any such Hypothetical Account Balance, or otherwise creating a right for any individual to receive specific assets of the Plan. Benefits provided under the Plan shall be paid from the general assets of the Trust in the amounts, in the forms, and at the times provided, under the terms of the Plan.

When applying any statutory or Plan limitation and/or minimum benefit that is expressed in terms of an annuity to the benefit derived from the Hypothetical Account Balance, the limit shall be applied to the annuity derived from the Hypothetical Account Balance that is payable at the time and in the form corresponding to the Plan limitation or minimum benefit, determined under the terms of the Plan.

### 26.3 Principal Credits

At the end of each Principal Credit Period in which a Participant has earned a Year of Participation in accordance with section \_\_\_\_ of the Plan, a Principal Credit amount as set forth in the Adoption Agreement shall be determined as of the last day of the Principal Credit Period and credited to such Participant's Hypothetical Account Balance, whether or not the Participant remains an Employee as of that date. For purposes of determining the Principal Credit

Period, if a Plan Year begins on the first day of a calendar month, a Plan Month is any calendar month. If the Plan Year begins on a day other than the first day of a calendar month, each Plan Month begins on the day of the calendar month that corresponds to the date of the calendar month that is the first day of the Plan Year. Thus, for example, if the first day of a Plan Year is January 15, then a Plan Month starts on the 15th of each calendar month. However, if a calendar month does not contain a day that corresponds to the day of the calendar month which is the first day of the Plan Year (for example, if a calendar month has only 30 days and the first day of the Plan Year is the 31st day of a calendar month), then the first day of the Plan Month that begins during that calendar month is the last day of that calendar month. A Plan Quarter is a three-month period beginning on the first day of the first, fourth, seventh or tenth plan month.

**(Note to reviewer: The blank in the paragraph above should be filled in with the section of the plan corresponding to LRM #29.)**

If the Principal Credit is based on a dollar amount (as opposed to a percentage of Compensation) and if elected in section \_\_\_\_ of the Adoption Agreement, the dollar amount of the Principal Credit for a Participant for the Plan Year is adjusted as described in section \_\_\_\_ of the Plan.

**(Note to reviewer: The first blank in the paragraph above should be filled in with the section of the Adoption Agreement corresponding to section 26CB.I.A.3 of the sample adoption agreement language, and the second blank should be filled in with the section of the plan corresponding to LRM #29.)**

#### 26.4 Interest Credits

At the end of each Interest Credit Period as designated in section \_\_\_\_ of the Adoption Agreement, an Interest Credit shall be credited to the Hypothetical Account Balance. The Interest Credit shall be calculated by multiplying the balance in the Participant's Hypothetical Account Balance at the beginning of the Interest Credit Period by the Interest Crediting Rate applicable for such Interest Credit Period, based upon the stability period and the lookback month that applies for the Interest Credit Period. The Interest Crediting Rate applicable for an Interest Credit Period shall be the rate specified in the Adoption Agreement. No Interest Credits shall accrue to any portion of the Hypothetical Account Balance after the annuity starting date that applies to that portion.

**(Note to Reviewer: The blank above should be filled in with the section of the Adoption Agreement that corresponds to section 26CB.I.B.1 of the sample adoption agreement language.)**

If a Plan provides for the crediting of interest more frequently than annually (for example, daily, monthly or quarterly), then the Plan must determine each periodic

interest credit using an Interest Crediting Rate that is no greater than a pro rata portion of the applicable annual Interest Crediting Rate, as specified in section \_\_\_\_ of the Adoption Agreement. However, a Plan that credits interest daily is not treated as providing an above market rate of return merely because the Plan determines each daily Interest Credit using a daily Interest Crediting Rate that is 1/360 of the applicable annual Interest Crediting Rate. For purposes of determining the Interest Credit Period, a Plan Month and Plan Quarter are determined in the same manner as for the Principal Credit Period.

**(Note to reviewer: The first blank above should be filled in with the section number of the Adoption Agreement corresponding to section 26CB.I.B.3 of the sample adoption agreement language.)**

If a cumulative floor is selected under section \_\_\_\_ of the Adoption Agreement, a Participant's Hypothetical Account Balance as of the annuity starting date as of which the distribution of the Participant's entire remaining vested benefit under the cash balance formula commences is equal to the greater of (a) the Hypothetical Account Balance determined using the actual Interest Crediting Rate(s) that applied during the guarantee period, or (b) the Hypothetical Account Balance determined as if the plan had used a fixed annual Interest Crediting Rate equal to the rate selected in section \_\_\_\_ of the Adoption Agreement for the guarantee period. For this purpose, the guarantee period is the period beginning on the date selected in section \_\_\_\_ of the Adoption Agreement and ending on the annuity starting date as of which the distribution of the Participant's entire remaining vested benefit under the cash balance formula commences, and the cumulative floor is applied taking the value of any previous distributions into account. The annual rate selected for the cumulative floor cannot be greater than 3 percent.

**(Note to reviewer: the blanks above should be filled in with the section of the Adoption Agreement corresponding to section 26CB.I.B.5 of the sample adoption agreement language.)**

#### 26.5 Preservation of Capital

For annuity starting dates on or after the date specified in section \_\_\_\_ of the Adoption Agreement, the Participant's Hypothetical Account Balance as of the Participant's annuity starting date shall be no less than the sum of the Principal Credits to such Participant's Hypothetical Account Balance, reduced to reflect the value of any prior distributions. This requirement applies only as of an annuity starting date as of which a distribution of the Participant's entire remaining vested benefit under the plan commences.

**(Note to reviewer: The blank above should be filled in with the section of the Adoption Agreement corresponding to section 26CB.I.B.6 of the sample adoption agreement language.)**

## 26.6 Interest Credit after Plan Termination

For Interest Credit Periods after the termination of the Plan, the Interest Crediting Rate used to determine accrued benefits under the Plan shall be equal to the average of the Interest Crediting Rates used under the Plan during the 5-year period ending on the date of Plan termination.

**(Note to reviewer: The blank above should be filled in with the section of the Adoption Agreement corresponding to section 26CB.I.B.4.k of the sample adoption agreement language.)**

## 26.7 Conversion amendment

If any Conversion Amendment (as defined below) is adopted, then the Accrued Benefit of a Participant affected by such amendment shall not be less than the sum of:

- (1) The Participant's Prior Accrued Benefit, equal to the Participant's Accrued Benefit for Years of Service before the Effective Date of the Conversion Amendment, determined under the pre-amendment terms of the Plan, plus
- (2) The Participant's Accrued Benefit for Years of Service after the Effective Date of the Conversion Amendment, determined under the terms of the Plan after the Effective Date of the Conversion Amendment. For this purpose, the Effective Date of the Conversion Amendment is the date indicated in section \_\_\_\_ of the Adoption Agreement, as modified by the definition of Conversion Amendment in this paragraph 26.7.

**(Note to reviewer: The blank above should be filled in with the section of the Adoption Agreement that corresponds to section 26CB.II of the sample adoption agreement language.)**

For purposes of determining the Participant's Prior Accrued Benefit under clause (1) of the preceding paragraph, such Participant's Accrued Benefit shall be credited with the amount of any early retirement benefit or retirement-type subsidy for the Plan Year in which the participant retires if, as of such time, the Participant has met the age, service or other requirement under the Plan for entitlement to such benefit or subsidy.

Conversion Amendment – Under Reg. § 1.411(b)-1(c)(4), whether an amendment is a Conversion Amendment with respect to a participant is determined on a participant-by-participant basis. An amendment (including multiple amendments) is a Conversion Amendment with respect to a participant if it meets two criteria: (1) The amendment reduces or eliminates the benefits that, but for the amendment, the participant would have accrued after the effective date of the amendment under a benefit formula that is not a cash balance



formula and under which the participant was accruing benefits prior to the amendment; and (2) After the effective date of the amendment, all or a portion of the participant's benefit accruals under the plan are determined under a cash balance formula.

Notwithstanding any other provisions in the plan, in accordance with IRC § 411(d)(6), the terms of the Conversion Amendment will apply on the later of the date such amendment is adopted or effective.

Sample Adoption Agreement Language:

## 26CB.I. ESTABLISHMENT OF HYPOTHETICAL CASH BALANCE ACCOUNT

### A. Principal Credits

1. Principal Credits shall be allocated at the end of each Principal Credit Period, which is:

- Each Plan Year
- Each Plan Quarter
- Each Plan Month
- Each calendar year
- Each calendar quarter
- Each calendar month

2. Principal Credits shall be determined as follows:

Any schedule of Principal Credits must comply with the 133 1/3% rule under IRC § 411(b)(1)(B) , taking into account the minimum Interest Credits guaranteed under the options chosen in section \_\_\_ of the Adoption Agreement. For this purpose, a plan for which the Interest Credit could be negative is permitted to assume that the Interest Credits for the current and future years will be equal to zero.

Any schedule of graded Principal Credits designed by an adopting employer via completing blanks in the Adoption Agreement (even where parameters have been included) will not afford the employer reliance from the opinion letter that such schedule satisfies the 133 1/3% accrual rule of IRC 411(b)(1)(B). An adopting employer will have reliance with respect to the 133 1/3% accrual rule of IRC 411(b)(1)(B) if the schedule of graded Principal Credits used by the employer was specified and reviewed by the Service during the opinion letter process.

**(Note to reviewer: The blank should be filled in with the section number of the Adoption Agreement corresponding to section 26CB.I.B.4 of the sample adoption agreement language.**

- a.  Each Participant's Hypothetical Account Balance will be credited with \_\_\_\_\_% (percentage) of Compensation earned by the Participant during each Principal Credit Period.
- b.  Each Participant's Hypothetical Account Balance will be credited with \$\_\_\_\_\_ (dollars) for each Principal Credit Period.
- c.  Each Participant's Hypothetical Account Balance will be credited with the greater of:  
 \_\_\_\_\_% (percentage) of Compensation or  
 \$\_\_\_\_\_ (dollars)  
 for each Principal Credit Period.
- d.  Each participant's Hypothetical Account Balance will be credited with the lesser of:  
 \_\_\_\_\_% (percentage) of Compensation or  
 \$\_\_\_\_\_ (dollars)  
 for each Principal Credit Period.
- e.  Schedule of graded Principal Credits  
 Each Participant's Hypothetical Account Balance will be credited with an amount for each Principal Credit Period, determined in accordance with the following table:

For range based on: <input type="checkbox"/> Age <input type="checkbox"/> Credited Service <input type="checkbox"/> Age plus Credited Service	The Principal Credit is shown below, determined as: <input type="checkbox"/> A dollar amount <input type="checkbox"/> A percentage of Compensation earned by the participant during the Principal Credit Period
Under _____	_____
From _____ to _____	_____
From _____ to _____	_____
_____ and over	_____

Note: The IRS does not provide reliance on the opinion letter with respect to whether this formula meets the accrual rule requirements under IRC § 411(b).

**(Note to reviewer: The above caveat only applies to a schedule following the above general format that includes blanks for the adopting employer to fill in. If the Principal Credits are specified in the schedule and have been reviewed by the Service during the opinion letter process, the caveat should be deleted.)**

*[Example: For a plan that provides Principal Credits equal to 3% of Compensation for the first 10 years of Credited Service, 3.5% for 11-20 years of Credited Service, and 4% thereafter, the table would be completed as shown below:*

<i>For range based on:  <input type="checkbox"/> Age  <input checked="" type="checkbox"/> Credited Service  <input type="checkbox"/> Age plus Credited Service</i>	<i>The Principal Credit is shown below, determined as:  <input type="checkbox"/> A dollar amount  <input checked="" type="checkbox"/> A percentage of Compensation earned by the participant during the Principal Credit Period</i>
<i>From <u>  0  </u> to <u> 10 </u> Years</i>	<i><u>  3.0%  </u></i>
<i>From <u> 11 </u> to <u> 20 </u> Years</i>	<i><u>  3.5%  </u></i>
<i><u>21 years and over</u></i>	<i><u>  4.0%  </u></i>

**(Note to reviewer: If not enough spaces are provided above, a schedule following the above general format may be specified as an addendum to the Adoption Agreement.)**

- f.  Participant groups  
 Each Participant group shall receive the following amount for each Principal Credit Period. Define the objective criteria for determining the make-up of each Participant group. Neither the objective criteria nor the formulas for each Participant group may be subject to employer discretion, which would cause the Plan to fail to provide a definitely determinable benefit.
- i. Group One: Defined as: \_\_\_\_\_.  
 [insert formula for Group One]
- ii. Group Two: Defined as: \_\_\_\_\_.  
 [Insert formula for Group Two]

**(Note to reviewer: Additional groups may be specified as an addendum to the Adoption Agreement.)**

### 3. Adjustment of Principal Credit

Any Principal Credit for a Principal Credit Period that is determined as a dollar amount (and not as a percentage of Compensation)

- Is  
 Is not

Reduced as described in section \_\_\_\_ of the plan if the Participant does not earn the full amount of Credited Service during the Principal Credit Period.

**(Note to reviewer: The blank should be filled in with the section number of the plan corresponding to LRM #29.)**

B. Interest Credits

1. Interest Credits shall be allocated at the end of each Interest Credit Period, which is:
  - Each Plan Year
  - Each Plan Quarter
  - Each Plan Month
  - Each calendar year
  - Each calendar quarter
  - Each calendar month
  - Each day
  
2. If a Participant's annuity starting date occurs before the end of an Interest Credit Period, the Interest Credit for the partial Interest Credit Period:
  - Will be zero.
  - Will be determined on a pro rata basis, reflecting the portion of the Interest Credit Period before the Participant's annuity starting date.
  
3. If interest is credited more frequently than annually, Interest Credits for the Interest Credit Period are determined:
  - If credited monthly, the annual rate divided by  12, or  the rate determined as if interest were compounded twelve times each year.
  
  - If credited quarterly, the annual rate divided by  4, or  the rate determined as if interest were compounded four times each year.
  
  - If credited daily the annual rate divided by  365,  360, or  the rate determined as if interest were compounded daily.
  
4. The annual Interest Crediting Rate is as follows:
  - a. The discount rate on 3-month Treasury Bills plus \_\_\_\_\_ [ 0 to 175 basis points] with an annual floor of \_\_\_\_\_ percent [floor may not exceed 5%]
  
  - b. The discount on \_\_\_\_\_-month Treasury Bills [specify duration, not to exceed 12 months]  
plus \_\_\_\_\_ [0 to 150] basis points  
with an annual floor of \_\_\_\_\_ percent [floor may not exceed 5%]
  
  - c. The yield on 1-year Treasury Constant Maturities  
plus \_\_\_\_\_ [ 0 to 100 basis points]  
with an annual floor of \_\_\_\_\_ percent [floor may not exceed 5%]

- [ ] d. The yield on \_\_\_\_-year Treasury Bonds [specify duration, not to exceed 3 years]  
plus \_\_\_\_\_ [0 to 50] basis points  
with an annual floor of \_\_\_\_\_ percent [floor may not exceed 5%]
- [ ] e. The yield on \_\_\_\_-year Treasury Bonds [specify duration, not to exceed 7 years],  
plus \_\_\_\_\_ [0 to 25] basis points  
with an annual floor of \_\_\_\_\_ percent [floor may not exceed 5%]
- [ ] f. The yield on \_\_\_\_-year Treasury Bonds [specify duration, not to exceed 30 years], with an annual floor of \_\_\_\_\_ percent [floor may not exceed 5%]
- [ ] g. The third segment rate described below, with an annual floor of \_\_\_\_\_ percent [floor may not exceed 4%]
- [ ] h. The second segment rate described below, with an annual floor of \_\_\_\_\_ percent [floor may not exceed 4%]
- [ ] i. The first segment rate below with an annual floor of \_\_\_\_\_ percent [floor may not exceed 4%]

**If g, h, or i is chosen, complete the following:**

i. The segment rate chosen shall be:

- [ ] The segment rate defined under IRC § 430(h)(2)(C),
  - [ ] Reflecting
  - [ ] Not reflecting
 the adjustment for 25-year average interest rates under IRC § 430(h)(2)(C)(iv)
- [ ] The segment rate defined under IRC § 417(e)(3)(D).

ii. The segment rate is determined as of the:

- ( ) first
- ( ) second
- ( ) third
- ( ) fourth
- ( ) fifth

calendar month preceding the first day of the:

- ( ) Plan Year
- ( ) Interest Credit Period.

- [ ] j. The cost-of-living increase determined equal to the percentage change in the \_\_\_\_\_ from the preceding year,

plus \_\_\_\_ basis points [basis points cannot exceed 300]  
minus \_\_\_\_ basis points  
with an annual floor of \_\_\_\_\_ percent [floor may not exceed 5% and may not be less than zero]

**(Note to reviewer: the blank above should be completed with a description of a Consumer Price Index. The description must contain enough detail so that the Plan is definitely determinable, and must be consistent with the description of cost-of-living increases in Reg. § 1.401(a)(9)-6, Q&A-14(b).)**

k. Annual fixed rate of \_\_\_\_\_ percent interest [must not exceed 6 percent annually]

l. The lesser of the following rates:

\_\_\_\_\_,  
or

\_\_\_\_\_:

Describe rates in enough detail so that the plan will provide a definitely determinable benefit. At least one of the rates must be a rate described in section \_\_\_\_ of the Adoption Agreement. However, to qualify for the pre-approved program, the rate cannot be based on the actual return on plan assets or a subset of plan assets (as described in Reg. § 1.411(b)(5)-1(d)(5)(ii)) or the rate of return on a RIC (as described in Reg. § 1.411(b)(5)-1(d)(5)(iv)).

**(Note to reviewer: The last blank above should be filled in with the section of the Adoption Agreement corresponding to section 26CB.I.B.4 of the sample adoption agreement language.)**

5. Cumulative Floor. As of the annuity starting date as of which a distribution of a Participant's entire remaining vested benefit under the cash balance formula commences, the Participant's Hypothetical Account Balance is the greater of (a) the Hypothetical Account balance determined using the actual Interest Crediting Rate(s) that applied during the guarantee period, and (b) the Hypothetical Account Balance determined as if the plan had used a fixed annual Interest Crediting Rate equal to \_\_\_\_% [specify rate no greater than 3 percent] for the Guarantee Period. For this purpose, the Guarantee Period is the period beginning on \_\_\_\_\_ and ending on the annuity starting date as of which a distribution of the Participant's entire remaining vested benefit under the cash balance formula commences, and the cumulative floor is applied taking the value of any previous distributions into account.

**(Note to reviewer: The last blank above should be filled in with the section of the Adoption Agreement that corresponds to section I.B.4 of the sample adoption agreement language.)**

6. Preservation of Capital: Notwithstanding the above, the Interest Crediting Rate will not result in a Participant's Hypothetical Account Balance as of an annuity starting date that is less than the sum of the Principal Credits that were credited to the Participant's Hypothetical Account Balance, less the value of any earlier distributions. This provision applies only as of the annuity starting date as of which a distribution of the Participant's entire remaining vested benefit under the plan commences.

[ ] This requirement applies only to distributions made on or after \_\_\_\_\_  
[Insert date, no later than June 29, 2005, or the date the Plan became a cash balance plan, if later.]

## 26CB.II. CONVERSION AMENDMENT

[ ] If the Plan has been amended to convert the benefit formula from a non-cash balance formula to a cash balance formula as described in section \_\_\_\_ of the Plan document, enter the Conversion Amendment Effective Date: \_\_\_\_\_.  
[This date is the effective date of a Plan amendment that reduces or eliminates future benefits that Participants would have accrued under a non-cash-balance formula, and provides for them to begin accruing benefits under a cash balance formula, instead.]

Note that if a Participant transfers from another plan or otherwise becomes covered by the cash balance formula in this Plan, and experiences a reduction in future benefits that would have accrued under a non-cash-balance formula, the Conversion Amendment Effective Date for that individual is the effective date of the change described in this paragraph, if that is later than the date specified above. ]

\* \* \*

## 31CB Document Provision

Statement of Requirement: Formula to determine accrued benefit, IRC §§ 411(a)(7), 411(b); Reg. §§ 1.401(a)-1(b)(1), 1.411(a)-7(a)(1), 1.411(b)-1.

Sample Plan Language:

Accrued Benefit, as of any determination date (on or prior to the Normal Retirement Age), means a lifetime annuity in the normal form of benefits as described in section \_\_\_\_ of the Plan commencing at a Participant's Normal Retirement Age, calculated by projecting the Participant's Hypothetical Account Balance to Normal Retirement Age with interest at the Interest Crediting Rate in effect at the date of determination, and converting the projected account to an Actuarial Equivalent benefit payable in the normal form at Normal Retirement Age.

**(Note to reviewer: The blank above should be filled in with the section number of the plan corresponding to LRM #41.)**

A Participant's Accrued Benefit shall not be considered to be reduced in violation of IRC § 411(d)(6) merely because the Participant's Accrued Benefit fluctuates with the Interest Crediting Rate or the interest and mortality rates used to determine the actuarially equivalent benefit under the Plan.

\* \* \*

#### **42. Document Provision:**

<b>Statement of Requirement:</b>	<b>Definite benefit, IRC §§ 401(a)(25), 411(a)(11), 417(e)(3); Reg. §§ 1.401-1(b)(l)(i), 1.411(a)-(11)(d), 1.417(e)-1(d), 1.430(h)(3)-1; Rev. Rul. 79-90, 1979-1 C.B. 155; Rev. Rul. 2007-67, 2007-48 I.R.B. 1047.</b>
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#### **Sample Plan Language:**

Section 1. Except to the extent a Participant's benefits are suspended in accordance with the suspension of benefits rules in section \_\_\_\_ of the Plan, the amount of any form of benefit under the terms of this Plan will be the Actuarial Equivalent of the Participant's Accrued Benefit in the normal form commencing at Normal Retirement Age. However, in the case of benefits payable with respect to a cash balance formula, the amount of any form of benefit under the terms of this Plan will be the Actuarial Equivalent of the Participant's Hypothetical Account Balance as of the Participant's annuity starting date, unless otherwise elected in section \_\_\_\_ of the Adoption Agreement. Notwithstanding the previous sentence, in the case of a Participant who retires after Normal Retirement Date (to the extent the Participant's benefits are not suspended as described earlier in this paragraph), the benefit will be no less than the Actuarial Equivalent of the Participant's Accrued Benefit.

**(Note to reviewer: The first blank in the preceding paragraph should be filled in with the section number of the plan corresponding to LRM #55. The**



**second blank should be filled in with the section number of the Adoption Agreement corresponding to section A of the sample adoption agreement language below.)**

Actuarial Equivalence will be determined on the basis of the interest rate and mortality table specified in the Adoption Agreement. In the case of a Plan that provides for the disparity permitted under IRC § 401(l), if benefits commence to a Participant at an age other than Normal Retirement Age, the Participant's benefit will be adjusted in accordance with section \_\_\_\_\_ of the Plan.

**(Note to reviewer: The blank should be filled in with the plan section number corresponding to LRM #27B. References to permitted disparity under IRC § 401(l) and the adjustments under LRM #27B do not apply to cash balance formulas.)**

Notwithstanding the preceding paragraph, for purposes of determining the amount of a distribution in a form other than an annual benefit that is nondecreasing for the life of the Participant or, in the case of a qualified pre-retirement survivor, the life of the Participant's spouse; or that decreases during the life of the Participant merely because of the death of the surviving annuitant (but only if the reduction is to a level not below 50% of the annual benefit payable before the death of the surviving annuitant) or merely because of the cessation or reduction of Social Security supplements or qualified disability payments, actuarial equivalence will be determined on the basis of the applicable mortality table and applicable interest rate under IRC § 417(e), if it produces a benefit greater than that determined under the preceding paragraph. This paragraph shall not apply with respect to benefits attributable to a cash balance formula, except to the extent elected in section \_\_\_\_\_ of the Adoption Agreement.

**(Note to reviewer: The blank above should be filled in with the section of the Adoption Agreement corresponding to section A of the sample adoption agreement language below.)**

The preceding two paragraphs will not apply to the extent they would cause the Plan to fail to satisfy the requirements of section \_\_\_\_\_ or \_\_\_\_\_ of the Plan.

**(Note to reviewer: The blanks above should be filled in with the plan section numbers corresponding to LRM #40 and LRM #103.)**

Section 2. For Plan Years beginning before January 1, 2008, the applicable interest rate is the rate of interest on 30-year Treasury securities as specified by the Commissioner for the lookback month for the stability period specified in the Adoption Agreement. For Plan Years beginning on or after January 1, 2008, the applicable interest rate is defined as the adjusted first, second and third segment rates described in IRC § 417(e)(3), as specified by the Commissioner for the lookback month for the stability period specified in the Adoption Agreement. For

this purpose, the segment rates are the spot segment rates that would be determined for the applicable month under IRC § 430(h)(2)(C) without the 24-month averaging under IRC § 430(h)(2)(D), and determined without regard to the adjustment for the 25-year average segment rates provided in IRC § 430(h)(2)(C)(iv). For distributions with annuity starting dates occurring during plan years beginning on or after January 1, 2008, and before January 1, 2012, these segment rates are adjusted by blending with the rate of interest for 30-year Treasury securities under the transition percentages specified in IRC § 417(e)(3)(D)(iii).

The lookback month applicable to the stability period is the first, second, third, fourth, or fifth calendar month preceding the first day of the stability period, as specified in section \_\_\_\_\_ of the Adoption Agreement. The stability period is the successive period of one calendar month, one plan quarter, one calendar quarter, one plan year, or one calendar year, as specified in section \_\_\_\_\_ of the Adoption Agreement, which contains the annuity starting date for the distribution and for which the applicable interest rate remains constant.

Notwithstanding the election by the employer in section \_\_\_\_\_ of the Adoption Agreement, a Plan amendment that changes the date for determining the applicable interest rate (including an indirect change as a result of a change in Plan Year), shall not be given effect with respect to any distribution during the period ending one year after the later of the amendment's effective date or adoption date, if, during such period and as a result of such amendment, the Participant's distribution would be reduced.

**(Note to reviewer: The blanks above should be filled in with the corresponding Adoption Agreement section numbers at the end of this LRM #42.)**

Section 3. For Plan Years beginning before January 1, 2008, the IRC § 417 applicable mortality table is set forth in Rev. Rul. 2001-62, 2001-53 I.R.B. 632. For Plan Years beginning on or after January 1, 2008, the IRC § 417 applicable mortality table is the applicable mortality table specified for the calendar year in which the stability period specified in the adoption agreement begins. The applicable mortality tables are set forth in Reg. § 1.430(h)(3)-1 and related guidance.

However, for purposes of applying the limitation on benefits in section \_\_\_\_ of the plan, the applicable mortality table in Reg. § 1.430(h)(3)-1 is not effective (and Rev. Rul. 2001-62 continues to apply) for years beginning before January 1, 2009, unless an earlier date is elected by the employer in the Adoption Agreement.

**(Note to reviewer: The blank above should be filled in with the plan section number corresponding to LRM #40.)**

Section 4. If as a result of actuarial increases to the benefit of a participant who delays commencement of benefits beyond normal retirement age, the Accrued Benefit of such participant would exceed the limitations under section \_\_\_\_\_ of the plan for the Limitation Year, immediately before the actuarial increase to the participant's benefit that would cause such participant's benefit to exceed the limitations of section \_\_\_\_\_ of the plan, payment of benefits to such participant will be suspended in accordance with section \_\_\_\_\_ of the plan, if applicable; otherwise, distribution of the participant's benefit will commence.

**(Note to reviewer: The first two blanks in the preceding paragraph should be filled in with the section number of the plan corresponding to the IRC § 415 limitations in LRM #40. The third blank in the preceding paragraph should be filled in with the section number of the plan corresponding to the suspension of benefit rules in LRM #55.)**

**(Note to reviewer: The sponsor may include language that provides for a reduction to the post-normal retirement age benefit accrual otherwise required under IRC § 411(b)(1)(H) to the extent permitted under section 1.411(b)-2(b)(4) of the Proposed Regulations. But see LRM #51 for special rules on the interaction of certain actuarial increases with IRC § 411(b)(1)(H).)**

**Sample Adoption Agreement Language:**

A. Except as provided in section \_\_\_\_\_ of the plan, actuarial equivalence will be determined based on the following interest and mortality assumptions:

**(Note to reviewer: The blank above should be filled in with the plan section number corresponding to LRM #42.)**

1. Interest rate: \_\_\_\_\_% (must be between 7 ½% & 8 ½% if the plan provides for permitted disparity under IRC § 401(l))

Mortality table (must be standard mortality table as described in Reg. § 1.401(a)(4)-12 if the plan provides for permitted disparity under IRC § 401(l)):

Pre-retirement: \_\_\_\_\_

Post-retirement: \_\_\_\_\_

2. With respect to benefits determined under a cash balance formula, Actuarial Equivalence will be applied to:

The Participant's Hypothetical Account Balance

The Participant's Accrued Benefit in the normal form commencing at Normal Retirement Age

3. With respect to benefits determined under a cash balance formula, lump sum payments and other benefits payable in a form that would normally be subject to the minimum present value requirements of IRC § 417(e)(3)

Will

Will not

be determined using the applicable mortality table and applicable interest rate under IRC § 417(e), if this produces a benefit greater than the benefit determined using the actuarial equivalence assumptions specified in item 1 above.

**(Note to Reviewer: The following optional provision allows the adopting employer to indicate, in a manner that satisfies the definitely determinable benefits requirement of Reg. § 1.401-1(b)(1)(i), that actuarial equivalence will be determined with reference to a specified insurance or annuity contract. This option is not available for plans with a cash balance formula.)**

(Instead of specifying the interest and mortality assumptions, the plan may determine actuarial equivalence by reference to a specified insurance or annuity contract. However, if the plan provides for permitted disparity under IRC § 401(l), the plan may determine actuarial equivalence by reference to a specified insurance or annuity contract only if the interest and mortality assumptions under the contract are a standard interest rate (i.e., between 7 ½% and 8 ½%) and a standard mortality table under Reg. § 1.401(a)(4)-12.

To provide that actuarial equivalence under the plan will be determined by reference to a specified insurance or annuity contract, leave the preceding interest rate and mortality table elections blank and enter information about the contract below.)

The interest and mortality assumptions specified in the following insurance or annuity contract:

Contract name/number: \_\_\_\_\_

Company that issued the contract: \_\_\_\_\_

Date of issuance: \_\_\_\_\_

If the insurance or annuity contract specifies different interest and mortality assumptions for different purposes under the contract, the assumptions that will be used to determine actuarial equivalence under the plan are those assumptions specified under the contract for purposes of determining:

\_\_\_\_\_ (e.g., the amount of benefits payable in different forms under the contract or the cash surrender value of the contract).

Any change in the insurance or annuity contract, including the substitution of a different contract, that results in a change in the interest and mortality assumptions used to determine actuarial equivalence under the plan shall be treated as an amendment of the plan for purposes of section \_\_\_\_\_ of the plan.

**(Note to reviewer: The blank above should be filled in with the plan section number corresponding to LRM #66.)**

B. For purposes of the time for determining the applicable interest rate, the stability period under the plan is:

- one calendar month
- one Plan Quarter
- one calendar quarter
- one Plan Year
- one calendar year

C. The lookback month, relating to the stability period under the plan, is the:

- first
- second
- third
- fourth
- fifth

calendar month preceding the first day of the stability period.

D. For purposes of applying the limitation on benefits under section \_\_\_\_ of the plan, the applicable mortality table in Reg. § 1.430(h)(3)-1 is effective for benefits with annuity starting dates occurring during the first year beginning on or after January 1, 2009, unless an earlier date is elected below:

Effective date: \_\_\_\_\_ (Date must fall within a year beginning on or after January 1, 2008, and on or before January 1, 2009.)

Sections B through D must be filled in even if the plan contains only a cash balance formula for which benefits are not determined using the applicable interest and mortality rates, because these assumptions are used to apply the benefit limits under IRC §415.

**(Note to reviewer: The first blank above should be filled in with the plan section number corresponding to LRM #40.)**

\* \* \*

**61. Document Provision:**

**Statement of Requirement:**

**Optional vesting schedules must be at least as favorable as the applicable minimum vesting schedules, IRC §§ 411(a)(2), 411(a)(13)(B), and 416(b)(1); Notice 2007-6, 2007-1 C.B. 272.**

**(Note to reviewer: If the Plan provides vesting schedules other than those given in IRC § 411(a)(2) for regular schedules and IRC § 416(b)(1) for top-heavy schedules, the optional schedules must be at least as favorable as the statutory schedules.)**

**(Note to reviewer: For any participant for whom all or a portion of the benefit is determined under a cash balance formula, the vesting schedule must at all times be at least as favorable as three-year cliff vesting at all points in a Participant's vesting computation. This rule applies to the entire benefit of such a Participant, even if a portion of the benefit is not determined under the cash balance formula.)**

\* \* \*

**66. Document Provision:**

**Statement of Requirement:**

**Amendments affecting accrued benefits, IRC § 411(d)(6); Reg. §§ 1.411(d)-3 and 1.411(d)-4; Rev. Rul. 81-12, 1981-1 C.B. 228.**

**Sample Plan Language:**

No amendment to the plan (including a change in the actuarial basis for determining optional or early retirement benefits) shall be effective to the extent that it has the effect of decreasing a participant's Accrued Benefit. For purposes

of this paragraph, a plan amendment that has the effect of (1) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (2) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the pre-amendment conditions for the subsidy. Notwithstanding the preceding sentences, a participant's Accrued Benefit, early retirement benefit, retirement-type subsidy, or optional form of benefit may be reduced to the extent permitted under IRC § 412(c)(8) (for plan years beginning on or before December 31, 2007) or IRC § 412(d)(2) (for plan years beginning after December 31, 2007), or to the extent permitted under Reg. §§ 1.411(d)-3 and 1.411(d)-4.

**(Note to reviewer: A retirement-type subsidy is the excess, if any, of the actuarial present value of a retirement-type benefit over the actuarial present value of the Accrued Benefit commencing at normal retirement age or at actual commencement date, if later, with both such actuarial present values determined as of the date the retirement-type benefit commences. Examples of retirement-type subsidies include a subsidized early retirement benefit and a subsidized qualified joint and survivor annuity. See Reg. § 1.411(d)-3(g)(6)(iv).)**

**(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 IRC § 401(a)(31), such transfer will be accomplished as a direct rollover under IRC § 401(a)(31). See LRM #54 and Reg. § 1.411(d)-4, Q&A-3(a)(4) & (c)(1)(ii).)**

**(Note to reviewer: For benefits based on a cash balance formula, the right to Interest Credits in the future that are not conditioned on future service constitutes an IRC § 411(d)(6) protected benefit. Unless otherwise specifically provided by law, an amendment to the plan to change the Interest Crediting Rate must satisfy IRC § 411(d)(6), if the revised rate could result in Interest Credits that are smaller as of any date after the applicable amendment date. See Reg. § 1.411(b)(5)-1(e)(3).)**

\* \* \*

## 71. Document Provision:

**Statement of Requirement:                      Adjustment for benefit form other than**

**life annuity at normal retirement age, IRC § 416.**

**Sample Plan Language:**

If the form of benefit is other than a straight life annuity, the employee must receive an amount that is the actuarial equivalent of the minimum straight life annuity benefit. If the benefit commences at a date other than at normal retirement age, the employee must receive at least an amount that is the actuarial equivalent of the minimum straight life annuity benefit commencing at normal retirement age.

If the form of benefit is subject to IRC § 417(e)(3), the employee must receive at least an amount that is the Actuarial Equivalent of the minimum straight life annuity benefit commencing at Normal Retirement Age using the applicable interest rate and applicable mortality table specified in section \_\_\_\_ of the Plan and section \_\_\_\_ of the Adoption Agreement.

**(Note to reviewer: The first blank above should be filled in with the section number of the Adoption Agreement corresponding to the sample adoption agreement in LRM #42CB, and the second blank should be filled in with the section number of the Adoption Agreement corresponding to the sample adoption agreement language in LRM #42.)**

\* \* \*

**73. Document Provision:**

**Statement of Requirement:**

**Minimum vesting schedules, IRC §§ 411(a)(13)(B) and 416(b); Notice 2007-6, 2007-1 C.B. 272**

**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 accrued benefits within the meaning of IRC § 411(a)(7) except those attributable to employee contributions, including benefits accrued before the effective date of IRC § 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 Accrued Benefit 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 participant in his or her Accrued Benefit 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 plan shifts in and out of the above schedule for any plan year because of the plan's top-heavy status, such shift is an amendment of 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 #65.)**

**(Note to reviewer: Notwithstanding the above, for any participant for whom all or a portion of the benefit is determined under a cash balance formula, the vesting schedule must at all times be at least as favorable as three-year cliff vesting at all points in a Participant's vesting computation. This rule applies to the entire benefit of such a Participant, even if a portion of the benefit is not determined under the cash balance formula.)**

\* \* \*

**102. Document Provision:**

**Statement of Requirement:** Employee mandatory contributions, IRC § 411(c)(2)(C); Reg. § 1.401(a)(4)-6; Rev. Proc. 2015-36, § 6.03(10).

**(Note to reviewer: A defined benefit M&P plan may not provide for mandatory employee contributions. A plan provision requiring such contributions must be deleted, effective no later than for plan years beginning after the date of restatement of the plan for EGTRRA, or the date that the Plan is first restated as an M&P plan, if later.)**

**Sample Plan Language:**

The plan administrator will not accept mandatory employee contributions for plan years beginning after the date the plan is restated for the Economic Growth and Tax Relief Reconciliation Act of 2001 or the date the Plan is first restated as a master and prototype Plan, as indicated in the adoption agreement.

\* \* \*

**109. Document Provision:**

**Statement of Requirement:**

**Repetitive Amendment  
Reg. §1.401-1(b)(1)**

**(Note to reviewer: A defined benefit plan as designed must be a definite written program primarily providing for systematic payment of definitely determinable retirement benefits. The purpose of a plan is not meant to encourage a pattern of repeated amendments to any particular element of the plan which would undermine this principle. In the event such a pattern of repeated amendments occurs, reliance on an opinion letter may be jeopardized.)**