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

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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 as amended through the Taxpayer Relief Act of 1997 (P.L. 105-34, that are effective no later than plan years beginning in 1998. 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: **( ) Flat Benefit**
( ) Unit Credit
( ) Other (Specify) _____

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

_____

Underlined material reflects changes to the May, 1994, version of this LRM.

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1. Document Provision:

Statement of Requirement: **Definition of year of service, IRC §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 #18, #19 and #58.)

2. Definition of break in service
2. Document Provision:

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

Sample Plan Language: Break in service means 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 #18, #19 and #58.)

3. Definition of hour of service
3. Document Provision:

Statement of Requirement: **Definition of hour of service, DOL Regs. §2530.200b-2, §2530.200b-3; IRC §410(a)(5)(E), §411(a)(6)(E); Rev. Proc. 89-9, §5.10.**

Sample Plan Language:

Hour of service means:

(l) 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 section 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 (l) 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 section 414(m)), a controlled group of corporations (under section 414(b)), or a group of trades or businesses under common control (under section 414(c)), of which the adopting employer is a member, and any other entity required to be aggregated with the employer pursuant to section 414(o).

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

(Note to reviewer: The blank should be filled in with the plan section number corresponding to LRM #2.)

(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 (l) 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. Elapsed Time
4. Document Provision:

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

(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 that utilize the rule of parity. See LRMs #18 and #55.)

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 section 414(m)), a controlled group of corporations (under section 414(b)), or a group of trades or businesses under common control (under section 414(c)), or any other entity required to be aggregated with the employer pursuant to section 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 section 414(n) or section 414(o) to be considered an employee of any employer aggregated under section 414(b), (c), or (m).

5. Definition of plan year
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. Definition of compensation
6. Document Provision:

Statement of Requirement: **Definition of compensation, IRC §414(s), §401(a)(17); Regs. §1.401(a)(4)-12, §1.401(a)(17)-1,§1.414(s)-1; Rev. Proc. 89-9, §3.084, §9.0311, §9.0312.**

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. Compensation shall include only that compensation which is actually paid to the participant during the determination period. Except as provided elsewhere in this plan, 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 the sample adoption agreement language at the end of LRM #40.)

(Note to reviewer: Under certain circumstances other definitions of compensation may be used. However, compensation used in determining top-heavy minimums and compensation in standardized plan, plans that provide for permitted disparity, (other than any CODA portion of these plans), and target benefit plans must be one of the definitions provided in section 4.3 of LRM #40. For purposes of the preceding sentence, the safe harbor alternative definition of compensation contained in section 1.414(s)-1(c)(3) of the regulations may also be used. All plans must permit the employer to elect one of the definitions of compensation provided in section 4.3 of LRM #40 in the adoption agreement. See also LRMs #70 and #107.)

Notwithstanding the above, if elected by the employer in the adoption agreement, compensation shall 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 sections 125, 402(e)(3), 402(h) or 403(b) of the Internal Revenue Code.

For years beginning on or after January 1, 1989, and before January 1, 1994, the annual compensation of each participant taken into account for determining all benefits provided under the plan for any plan year shall not exceed $200,000. This limitation shall be adjusted by the Secretary at the same time and in the same manner as under section 415(d) of the Internal Revenue Code, except that the dollar increase in effect on January 1 of any calendar year is effective for plan years beginning in such calendar year and the first adjustment to the $200,000 limitation is effective on January 1, 1990.

For years beginning on or after January 1, 1994, the annual compensation limit of each participant taken into account for determining all benefits provided under the plan for any determination period shall not exceed $150,000, as adjusted for the cost-of-living in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to any determination period beginning in 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 benefits 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. For this purpose, in determining benefits inplan years beginning on or after January 1, 1989, the annual compensation limit in effect for determination periods beginning before that date is $200,000. In addition, in determining benefits in plan years beginning on or after January 1, 1994, the annual compensation limit in effect for determination periods beginning before that date is $150,000.

(Note to reviewer: Effective for years beginning after December 31, 1996, the aggregation rules under section 414(q)(6) and section 401(a)(17) have been repealed. In determining the limits on compensation under section 401(a)(17) for years after December 31, 1996, the repeal of these aggregation rules are treated as having been in effect for earlier years that are relevant in determining the applicable limit on compensation.)

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 for in section 1.401(a)(4)-12 of the regulations (see definition of "plan year compensation").)

Compensation

[ ] shall include

[ ] shall not include

employer contributions made pursuant to a salary reduction agreement which are not includible in the gross income of the employee under sections 125, 402(e)(3), 402(h)(1)(B) or 403(b) of the Internal Revenue Code.

7. Compensation formulas
7. Document Provision:

Statement of Requirement: **Compensation Formulas, Regs. §1.401(a)(4)-3(e)(2).**

Sample Plan Language:

Average annual compensation. 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 a participant’s entire period of service for the employer is less than three consecutive years, compensation is averaged on an annual basis over the participant’s entire period of service.

(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 an averaging period that consists of morethan three years, or may permit the employer to select an alternative an alternate period (not less than three years).(Note to reviewer: In an accumulation plan (a plan providing that the participant's total retirement benefit consists of the sum of the participant'sbenefits separately calculated for each plan year using compensation earned for the year),a participant's retirement benefit may be determined using a participant's annual compensation (as defined in LRM #6) in place of average annual compensation.)

(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 consecutive year period that 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 section 1.401(a)(4)-3(e)(2)(ii)(B).)

8. Definition of earned income
8. Document Provision:

Statement of Requirement: **Definition of earned income, IRC §401(c)(2), §414(s); Regs. §1.414(s)-1(b)(3).**

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 section 404 of the Internal Revenue Code.

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

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

9. Definition of employee
9. Document Provision:

Statement of Requirement: **Definition of employee, IRC §414(b), (c), (m), (n) & (o); Rev. Proc. 89-9, §5.09.**

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 sections 414(b), (c), (m) or (o) of the Internal Revenue 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 sections 414(n) or (o) of the Internal Revenue Code.

10. Definition of leased employee
10. Document Provision:

Statement of Requirement: **Definition of leased employee, IRC §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 section 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 section 415(c)(3) of the Internal Revenue Code, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under section 125, section 402(e)(3), section 402(h)(1)(B) or section 403(b) of the Internal Revenue 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 workforce.

11. Definition of highly compensated employee

11. Document Provision:

Statement of Requirement: **Definition of highly compensated employee, IRC 414(q); Regs. 1.414(q)-1T, Notice 97-45, 1997-33 I.R.B. 7.**

Sample Plan Language:

Effective for years beginning after December 31, 1996, 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 section 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 section 1.414(q)-1T, A-4 of the temporary Income Tax Regulations and Notice 97-75.

In determining whether an employee is a highly compensated employee for years beginning in 1997, the amendments to section 414(q) stated above are treated as having been in effect for years beginning in 1996.

(Note to reviewer: The regulations under section 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 section 414(q) under the SBJPA.

Notice 97-45 provides for additional elections under the amended section 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, except that the consistency requirement will not apply to determination years beginning with or within the 1997 calendar year, and for determination years beginning on or after January 1, 1998 and before January 1, 2000, satisfaction of the consistency requirement is determined without regard to any nonretirement 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, a plan must reflect the choices made. Any retroactive amendments must reflect the choices made in the operation of the plan for each determination year.

Certain other transitional rules apply with respect to the consistency requirement. See Notice 97-45. For a plan year beginning on or after January 1, 1997 and before January 1, 1998 an employer may make a calendar year calculation election under section 1.414(q)-1T, A-14(b) of the temporary

Income Tax Regulations and provided for in Notice 97-45 taking into account the statutory amendments made by the Small Business Job Protection Act of 1996 to section 414(q).)

Sample adoption agreement language providing for options:

(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. Definition of owner-employee
12. Document Provision:

Statement of Requirement: **Definition of owner-employee, IRC §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 that precludes participation by owner-employees.)

13. Definition of self-employed individual
13. Document Provision:

Statement of Requirement: **Definition of self-employed individual, IRC §401(c)(l).**

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 that precludes participation by self-employed individuals.)

14. Definition of normal retirement age
14. Document Provision:

Statement of Requirement: **Definition of normal retirement age, IRC §411(a)(8); Mandatory retirement age restrictions, Regs. §1.411(a)-7(b)(l).**

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.

15. Definition of straight life annuity
15. 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.

MINIMUM PARTICIPATION STANDARDS

16. Maximum age restrictions not permitted
16. Document Provision:

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

(Note to reviewer: The sponsor must delete any provision that excludes from participation based on the attainment of a specified age employees who perform one hour of service in any plan year beginning on or after January 1, 1988.)

17. Provisions for entry into participation
17. Document Provision:

Statement of Requirement: **Provisions for entry intoparticipation, IRC §410(a)(4); Regs. §1.410(a)-4(b).**

Sample Plan Language: The employee will participate on the earlier of: (l) 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.)

18. Eligibility computation periods
18. 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 that 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.)**

19. Use of computation periods
19. 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.

20. All years of service counted toward eligibility except after certain breaks in service
20. Document Provision:
Statement of Requirement: **All years of service counted toward eligibility except after certain breaks in service, IRC §410(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 l-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 IRC 410(a)(l)(B)(i) eligibility requirements. See IRC 410(a)(5)(B).)

In the case of a participant who does not have any nonforfeitable right to the accrued benefit 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 (IRC 410(a)(5)(C)), see LRM #21).

21. Eligibility Break in service - 1-year hold-out
21. Document Provision:

Statement of Requirement: **Eligibility break in service, One year hold-out rule, DOL Regs. §2530.200b-4(b)(l); IRC §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 that 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.

22. Participation upon return to eligible class
22. Document Provision:

Statement of Requirement: **Participation upon return to eligible class, IRC §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.

PLAN BENEFITS

(Note to reviewer: All standardized defined benefit plans and all nonstandardized safe harbor plans must, by their terms, satisfy the uniformity requirements in section 1.401(a)(4)-3(b)(2) of the regulations and one of the design-based safe harbors in section 1.401(a)(4)-3(b). Nonstandardized plans must either provide plan language that automatically satisfies these regulations or provide a mechanism in the adoption agreement for the employer to select plan language that does. (See section 3.08 and 5 of Rev. Proc. 89-9, as modified by section 8 of Rev. Proc. 91-66, 1991-2 C.B. 870, 876, and Rev. Proc. 93-10, 1993-1 C.B. 476.) LRM #26 provides sample benefit formulas that satisfy the design-based safe harbors of the regulations for plans that do not provide for permitted disparity. LRM #27 provides sample formulas that satisfy the design-based safe

harbors of the regulations for plans that provide for permitted disparity.

A plan that changes its benefit formula or accrual method must, in order to satisfy the design-based safe harbors in the regulations, satisfy the fresh-start rules in §1.401(a)(4)-13(c) with regard to such change. LRM ##23-25 provide sample plan language that satisfies these rules. All standardized plans and nonstandardized safe harbor plans must comply with LRM ##23-25; all other nonstandardized plans must provide these LRM provisions either automatically or by option. In addition, because plans that satisfy the permitted disparity rules of §401(l) are required to satisfy the design-based safe harbors in the regulations under §401(a)(4), and because all M&P plans that provide for disparity in contributions or benefits are required to satisfy the permitted disparity limitations of section 401(l) of the Code in form (see Rev. Proc. 89-9, §9.039), all M&P plans that provide for permitted disparity, whether standardized or nonstandardized, must comply with LRM ##23-27.)

23. Determination of benefit accruals
23. Document Provision:

Statement of Requirement: Fresh-start rules, Reg. §1.401(a)(4)-13(c).

Sample Adoption Agreement Language:

The formula with wear-away and formula with extended wear-away fresh-start rulesbelow take into account an employee’s past service in determining the employee’s benefit accruals under the plan; either of these rulesmay cause the plan to fail to satisfy the safe harbor for past service in section 1.401(a)(4)-5(a)(3) of the Income Tax Regulations. In the case of a plan that is exempt from section 412 of the Internal Revenue Code pursuant to section 412(i) (section 412(i) plan), the words "projected benefit" and "frozen projected benefit" will be substituted for "accrued benefit" and "frozen accrued benefit" respectively, wherever they appear in this section _____. The projected benefit is the participant’s normal (or late, if the participant has previously attained normal retirement age) retirement benefit determined on the basis of current average annual compensation and all years of credited service plus years of

credited service projected through the later of the plan year in which the participant attains normal retirement age or the current plan year.

(Note to reviewer: The blank should be filled in with the section number corresponding to LRM #23.)

The accrued benefit of each participantin the fresh-start group will be equal to:

1. [ ] Formula with wear-away -- the greater of:

    (a) the participant's frozen accrued benefit, if any, and

    (b) the participant's accrued benefit determined with respect to the current benefit formula as applied to the participant's total years of credited service under the plan.

2. [ ] Formula without wear-away -- the sum of:

    (a) the participant's frozen accrued benefit, if any, and

    (b) the participant's accrued benefit determined with respect to the current benefit formula as applied to the participant's years of credited service beginning after the fresh-start date. If, however, the participant's benefit under the plan is accrued under the fractional accrual rule in section ____ of the plan or the 3 percent accrual rule in section _____ of the plan, or if this plan satisfies the safe harbor for insurance contract plans in Income Tax Regulations section 1.401(a)(4)-3(b)(5), this formula without wear-away will not apply, and the participant's accrued benefit will be determined in accordance with the formula with wear-away above.

3. [ ] Formula with extended wear-away -- the greater of the accrued benefit determined for the participant under the formula with wear-away or the formula without wear-away above.

If, however, the participant's benefit under the plan is accrued under the 3 percent accrual rule in section _____ of the plan, or if this plan satisfies the safe harbor for insurance contract plans in Income Tax Regulations section 1.401(a)(4)-3(b)(5), the formula with extended wear-away will not apply, and the participant's accrued benefit will be determined in accordance with the formula with wear-away above.

Definition of fresh-start group. The fresh-start group consists of all participants who have accrued benefits as of the fresh-start date and have at least one hour of service with the employer after that date. However, if designated below, the fresh-start group shall be limited to:

( ) Section 401(a)(17) participants (may be elected only with respect to a Tax Reform Act of 1986 (TRA '86) fresh-start date and with respect to an Omnibus Budget Reconciliation Act of 1993 (OBRA '93) fresh-start date). A TRA '86 fresh-start date means a fresh-start date that is not earlier than the last day of the last plan year beginning before the first plan year beginning on or after January 1, 1989 (the statutory effective date), and not later than the last day of the last plan year beginning before the first plan year beginning on or after January 1, 1994 (the regulatory effective date). An OBRA '93 fresh-start date means the last day of the last plan year beginning before the first plan year beginning on or after January 1, 1994.

( ) Members of an acquired group of employees

An acquired group of employees means employees of a prior employer who become employed by the employer in a transaction between the employer and the prior employer that is a stock or asset acquisition, merger, or other similar transaction involving a change in the employer of the employees of the trade or business on or before MM _____ DD _____ YY _____ (enter a date no later than the end of the transition period defined in section 410(b)(6)(C)(ii) of the Internal Revenue Code, if the date selected is after February 10, 1993). The date in the preceding sentence will be the fresh-start date with respect to members of the acquired group described below.

The acquired group consists of:

_____

_____

( ) Employees with a frozen accrued benefit that is attributable to assets and liabilities transferred to the plan as of a fresh start date in connection with the transfer and for whom the current formula is different from the formula used to determine the frozen accrued benefit.

The fresh start date in connection with the transfer is: DD _____ MM _____ YY _____ (must be the date as of which the employees begin accruing benefits under the plan).

The group of employees with a frozen accrued benefit that is attributable to assets and liabilities transferred to the plan is:

_____

_____

Definition of fresh-start date. Fresh-start date generally means the last day of a plan year preceding a plan year for which any amendment of the plan that directly or indirectly affects the amount of a participant's benefit determined under the current benefit formula (such as an amendment to the definition of compensation used in the current benefit formula or a change in the normal retirement age of the plan) is made effective. However, if under the adoption agreement the fresh-start group is limited to an acquired group of employees, or a group of employees with a frozen accrued benefit attributable to assets and liabilities transferred to the plan, the fresh start date will be the date designated in the adoption agreement. If this plan has had a fresh-start for all participants, and in a subsequent plan year is aggregated for purposes of section 401(a)(4) with another plan that did not make the same fresh-start, this plan will have a fresh-start on the last day of the plan year preceding the plan year during which the plans are first aggregated.

24. Determination of frozen accrued benefit
24. Document Provision:

Statement of Requirement: **Determination of frozen accrued benefit, Regs. §1.401(a)(4)-13(c).**

(Note to reviewer: This LRM #24 does not apply to §412(i) plans. See LRM #32 for the definition of frozen projected benefit.)

Sample Plan Language:

A participant's frozen accrued benefit is the amount of the participant's accrued benefit determined in accordance with the provisions of the plan applicable in the year containing the latest fresh-start date, determined as if the participant terminated employment with the employer as of the latest fresh-start date, (or the date the participant actually terminated employment with the employer, if earlier), without regard to any amendment made to the plan after that date other than amendments recognized as effective as of or before the date under section 401(b) of the Internal Revenue Code or section 1.401(a)(4)-11(g) of the regulations. If the participant has not had a fresh-start, the participant's frozen accrued benefit will be zero.

If, as of the participant's latest fresh-start date, the amount of a participant's frozen accrued benefit was limited by the application of section 415 of the Internal Revenue Code, the participant's frozen accrued benefit will be increased for years after the latest fresh-start date to the extent permitted under section 415(d)(1) of the Internal Revenue Code. In addition, the frozen accrued benefit of a participant whose frozen accrued benefit includes the top-heavy minimum benefits provided in section ____ of the plan, will be increased to the extent necessary to comply with the average compensation requirement of section 416(c)(1)(D)(i).

(Note to reviewer: The blank should be filled in with the plan section number corresponding to LRM #70.)

If: (1) the plan's normal form of benefit in effect on the participant's latest fresh-start date is not the same as the normal form under the plan after suchfresh-start date and/or (2) the normal retirement age for any participant on that

date was greater than the normal retirement age for that participant under the plan aftersuch fresh-start date, the frozen accrued benefit will be expressed as an actuarial equivalent benefit in the normal form under the plan after the participant's latest fresh-start date, commencing at the participant's normal retirement age under the plan in effect after such latest fresh-start date.

If the plan provides a new optional form of benefit with respect to a participant's frozen accrued benefit, such new optional form of benefit will be provided with respect to each participant's entire accrued benefit (i.e., accrued both before and after the fresh-start date). In addition, if this plan is a unit credit plan, with respect to plan years beginning after the latest fresh-start date, the current benefit formula will provide each participant in the fresh-start group a benefit of not less than .5% of the participant's average annual compensation times the participant's years of service after the latest fresh-start date. If this is a flat benefit plan, then, with respect to plan years beginning after the plan's latest fresh-start date, the current benefit formula will provide each participant a benefit of not less than 25% of the participant's average annual compensation. If a participant will have less than 50 years of service after the latest fresh-start date through the year the participant attains normal retirement age (or current age, if later), then such minimum percentage will be reduced by multiplying it by the following ratio:

$$\frac{\text{participant's years of service after the latest fresh-start date}}{50}$$

25. Adjustments to frozen accrued benefit
25. Document Provision:

Statement of Requirement: **Adjustments to frozen accrued benefit, Regs. §1.401(a)(4)-13(c)(5), §1.401(a)(4)-13(d), §1.401(a)(17)-1(e).**

(Note to reviewer: In accordance with Regulations section 1.401(a)(4)-13(d), if as of the latest fresh-start date, the plan contained a benefit formula under which benefits of each participant in the fresh-start group that are accrued

as of the fresh-start date and are attributable to service before the fresh-start date would be affected by compensation earned by the participant in years beginning after the latest fresh-start date (where, for example, the benefit formula as of the fresh-start date bases benefits on a participant's highest average pay), an employer may elect to provide that the frozen accrued benefit of participants in the fresh-start groupwill be increased afterthe fresh-start date to reflect any increases insuchparticipants' compensation after that date. If the employer so elects, Regulations section 1.401(a)(4)-13(d)(4)through 1.401(a)(4)-13(d)(7) provide that if the plan provides for a minimum benefit adjustment (if applicable) and provides benefits after the latest fresh-start date that are meaningful with respect to benefits provided during plan years beginning before the fresh-start date, the frozen accrued benefit of participants in the fresh-start group may be increased to the extent permitted by the methods provided in Regulations section 1.401(a)(4)-13(d)(8), and that such post-fresh-start date increases to the participants' frozen accrued benefits will be disregarded in determining whether a plan meets one of the safe harbors under section 1.401(a)(4)-3(b) of the regulations. This LRM provision is optional.)

Sample Plan Language:

Section 1. If elected by the employer in section _____ of the adoption agreement, the provisions of sections 1.1 through 5 below will apply to adjust the frozen accrued benefit of each participant in the fresh-start group determined as of the latest fresh-start date under the plan, if, as of that date, the plan contained a benefit formula under which the participant's accrued benefit could be determined with reference to compensation earned by the participant in years beginning after the latest fresh-start date occurring before the first plan year beginning on or after January 1, 1994. In the case of a section 412(i) plan, the words "projected benefit" and "frozen projected benefit" will be substituted for "accrued benefit" and "frozen accrued benefit" respectively, wherever they appear in this section _____.

(Note to reviewer: The first blank should be filled in with the plan section number corresponding to the adoption agreement language at the end of this LRM 25.)

(Note to reviewer: The second blank should be filled in with the plan section number corresponding to this LRM 25.)

Section 1.1 If a fresh-start group fails to satisfy the minimum coverage requirements of section 410(b) of the Internal Revenue Code for any plan year, the provisions of sections 1.1 through 5 will not apply for that year or any subsequent year.

A fresh-start group is deemed to satisfy the minimum coverage requirements of section 410(b) of the Internal Revenue Code for any plan year if any one of the following requirements is satisfied:

(a) the fresh-start group satisfied the minimum coverage requirements of section 410(b) for the first five plan years beginning after the fresh-start date;

(b) the fresh-start group satisfied the ratio percentage test of section 1.410(b)-2(b)(2) of the regulations as of the fresh-start date;

(c) the fresh-start group consists of an acquired group of employees that satisfied the minimum coverage requirements of section 410(b) (determined without regard to any of the special rules pertaining to certain dispositions or acquisitions provided in section 410(b)(6)(C)) as of the fresh-start date; or

(d) the fresh-start date with respect to the fresh-start group occurs before the first day of the first plan year beginning on or after January 1, 1994.

Section 1.2. Unit Credit Plans -- With respect to plan years beginning after the latest fresh-start date, the current benefit formula will provide each participant in the fresh-start group a benefit of not less than .5% of the participant's average annual compensation times the participant's years of service after the latest fresh-start date.

Section 1.3. Flat Benefit Plans -- With respect to plan years beginning after the plan's latest fresh-start date, the current benefit formula will provide each participant a benefit of not less than 25% of the participant's average annual compensation. If a participant will have less than 50 years of service under the plan after the latest fresh-start date through the year the participant attains normal

retirement age (or current age, if later), then such minimum percentage will be reduced by multiplying it by the following ratio:

$$\frac{\text{participant's years of service after the latest fresh-start date}}{50}$$

Section 2. The minimum benefit in sections 2.1 through 2.3 below take into account an employee's past service in determining the participant's accrued benefit under the plan and may cause the plan to fail to satisfy the safe harbor for past service in section 1.401(a)(4)-5(a)(3) of the Income Tax Regulations.

Section 2.1 If this plan was a defined benefit excess plan as of the latest fresh-start date, the frozen accrued benefit of each participant in the fresh-start group will be increased, to the extent necessary, if any, so that the base benefit percentage, determined with reference to all of the participant's years of credited service as of the latest fresh-start date, is not less than 50 percent of the excess benefit percentage as of the latest fresh-start date, determined with reference to all of the participant's years of credited service as of the latest fresh-start date. For this purpose, a defined benefit excess plan is a defined benefit plan under which the rate at which employer-provided benefits are determined with respect to average annual compensation above the integration level under the plan is greater than the rate at which employer-provided benefits are determined with respect to average annual compensation at or below the integration level.

Section 2.2 If this plan was a PIA offset plan as of the latest fresh-start date,the offset applied to determine the frozen accrued benefit of each participant in the fresh-start group will be decreased, to the extent necessary, if any, so that it does not exceed 50 percent of the benefit determined without applying the offset, taking into account all the participant's years of credited service as of the latest fresh-start date. For this purpose, a PIA offset plan is a plan that applies the plan's benefit rates uniformly regardless of a participant's compensation, but that reduces a participant's benefit by a stated percentage of the participant's primary insurance amount under the Social Security Act.

Section 2.3. In the case of a plan other than a plan described in sections 2.1 and 2.2 above, the frozen accrued benefit of each participant in the fresh-start group will be increased, to the extent necessary, if any, in a manner that is economically equivalent to the adjustment required under sections 2.1 and 2.2.

Section 3. If elected by the employer in the adoption agreement, the frozen accrued benefit (as adjusted under sections 2.1 through 2.3 above, as applicable) of each participant other than section 401(a)(17) participants in the fresh-start group will be adjusted in accordance with one of the methods set forth in section 4 below. The frozen accrued benefit of all section 401(a)(17) participants will be determined in accordance with the special adjustment applicable to section 401(a)(17) participants in section 5 below.

3.1. A section 401(a)(17) participant includes a Tax Reform Act of 1986 (TRA ’86) section 401(a)(17) participant as well as an Omnibus Budget Reconciliation Act of 1993 (OBRA ’93) section 401(a)(17) participant. A TRA ’86 section 401(a)(17) participant means a participant whose accrued benefit as of a date on or after the first day of the first plan year beginning on or after January 1, 1989, is based on compensation for a year beginning prior to the TRA ’86 statutory effective date that exceeded $200,000. An OBRA ’93 section 401(a)(17) participant means a participant whose accrued benefit as of a date on or after the first day of the first plan year beginning on or after January 1, 1994, is based on compensation for a year beginning prior to the first day of the first plan year beginning on or after January 1, 1994, that exceeded $150,000.

Section 4. The frozen accrued benefit of each participant in the fresh-start group other than section 401(a)(17) participants will be adjusted in accordance with one the following methods, as elected by the employer in the adoption agreement:

(a) Old compensation fraction

Thefrozen accrued benefit of each participant in the fresh-start group, as adjusted in sections 2.1 through 2.3 above, as applicable, will be multiplied by a fraction (not less than 1), the numerator of which is the participant’s compensation for the current plan year, using the same definition and compensation formula used in determining the

participant’s frozen accrued benefit, and the denominator of which is the participant’s compensation as of the fresh-start date, determined in the same manner as the numerator.

(b) New compensation fraction

Thefrozen accrued benefit of each participant in the fresh-start group, as adjusted in sections 2.1 through 2.3 above, as applicable, will be multiplied by a fraction (not less than 1), the numerator of which is the participant’s average annual compensation, as defined in section _____ of the plan, for the current plan year, and the denominator is the participant’s average annual compensation as of the fresh-start date, determined in the same manner as the numerator.

(Note to reviewer: The blank should be filled in with the adoption agreement section number corresponding to LRM 7.)

(c) Reconstructed compensation fraction

The frozen accrued benefit of each participant in the fresh-start group, as adjusted in sections 2.1 through 2.3 above, as applicable, will be multiplied by a fraction (not less than 1), the numerator of which is the participant’s average annual compensation, as defined in section _____ of the plan, for the current plan year, and the denominator of which is the participant’s reconstructed average annual compensation as of the fresh-start date.

(Note to reviewer: The blank should be filled in with the adoption agreement section number corresponding to LRM 7.)

A participant’s "reconstructed compensation" will be equal to the participant’s average annual compensation, as defined in section ____ of the plan, for the plan year elected by the employer in the adoption agreement multiplied by a fraction, the numerator of which is the participant’s compensation for the plan year ending on the latest fresh-start date determined using the same compensation definition and compensation formula used to determine the participant’s frozen accrued benefit, and the denominator of which is the participant’s compensation for the selected year, determined in the same manner as the numerator.

(Note to reviewer: The blank should be filled in with the adoption agreement section number corresponding to LRM 7.)

For purposes of calculating a participant's "reconstructed compensation", the selected year will be the plan year elected by the employer in the adoption agreement.

(d) Alternative adjustment

In lieu of applying the fractions in paragraphs 3(a) and 3(b) above, if the employer elects, a participant's adjusted accrued benefit will be determined by substituting the participant's compensation (as defined in section _____ of the plan) for the current plan year determined under the same compensation formula and underlying definition of compensation used to determine the frozen accrued benefit of each participant in the fresh-start group.

Section 5. If elected by the employer in the adoption agreement, the frozen accrued benefit of each section 401(a)(17) participant in the fresh-start group will be adjusted in accordance with the following method:

Section 401(a)(17) participants who are OBRA '93 section 401(a)(17) participants only:

(1) Determine the frozen accrued benefit of each OBRA '93 section 401(a)(17) participant as of the last day of the plan year beginning before January 1, 1994.

(2) Adjust the amount in step 1 by multiplying it by the following fraction (not less than 1). The numerator of the fraction is the average compensation of the OBRA '93 section 401(a)(17) employee determined for the current year (as limited by section 401(a)(17)), using the same definition and compensation formula in effect as of the last day of the last plan year beginning before January 1, 1994. The denominator of the fraction is the participant's average compensation for the last day of the last plan year beginning before January 1, 1994, using the definition and compensation formula in effect as of the last day of the last plan year beginning before January 1, 1994.

Section 401(a)(17) participants who are both TRA '86 section 401(a)(17) participants and OBRA '93 section 401(a)(17) participants:

(1) Determine each TRA '86 section 401(a)(17) participant's frozen accrued benefit as of the last day of the last plan year beginning before January 1, 1989.

(2) Adjust the amount in step 1 up through the last day of the last plan year beginning before the first plan year beginning on or after January 1, 1994, by multiplying it by the following fraction (not less than 1). The numerator of the fraction is the TRA '86 section 401(a)(17) participant's average compensation determined for the current year (as limited by section 401(a)(17)), using the same definition and compensation formula in effect as of the last day of the last plan year beginning before January 1, 1989. The denominator of the fraction is the participant's average compensation for the last day of the plan year beginning before January 1, 1989, using the definition and compensation formula in effect as of the last day of the last plan year beginning before January 1, 1989.

(3) Determine the TRA '86 section 401(a)(17) participant's frozen accrued benefit as of the last day of the last plan year beginning before January 1, 1994.

(4) Subtract the amount determined in step 2 from the amount determined in step 3.

(5) Adjust the amount in step 4 by multiplying it by the following fraction (not less than 1). The numerator of the fraction is the TRA '86 section 401(a)(17) participant's average compensation determined for the current year (as limited by section 401(a)(17)), using the same definition and compensation formula in effect as of the last day of the last plan year beginning before January 1, 1994. The denominator of the fraction is the participant's average compensation for the last day of the plan year beginning before January 1, 1994, using the definition and compensation formula in effect as of the last day of the last plan year beginning before January 1, 1994.

(6) Adjust the amount in step 1 by multiplying it by the following fraction (not less than 1). The numerator of the fraction is the TRA '86 section 401(a)(17) participant's average compensation for the current year (as limited by section 401(a)(17)), using the same definition of compensation and compensation formula in effect as of the last day of the last plan year beginning before January 1, 1989. The denominator of the fraction is the participant's average compensation for the last day of the last plan year beginning before January 1, 1989, using the definition and compensation formula in effect as of the last day of the last plan year beginning before January 1, 1989.

(7) Add the amounts determined in step 5, and the greater of steps 6 or 2.

Sample Adoption Agreement Language:

If elected by the employer below, each participant's frozen accrued benefit will be adjusted in accordance with the following fraction:

[ ] Old compensation fraction

[ ] New compensation fraction

[ ] Reconstructed compensation fraction (may be selected only if the latest fresh-start date is before the first day of the first plan year beginning on or after January 1, 1994)

For purposes of calculating a participant's "reconstructed compensation", the selected year will be the plan year beginning in (the selected year must begin after the latest fresh-start date):

( ) 1989

( ) 1990

( ) 1991

( ) 1992

( ) 1993

( ) 1994

[ ] Alternative adjustment

[ ] Special adjustment for section 401(a)(17) participants

26. Current benefit formulas - plans not providing for permitted disparity

26. Document Provision.

Statement of Requirement: Current benefit formulas -- Plans not providing for

permitted disparity and using the fractional accrual rule, IRC 401(a)(4); Regs. 1.401(a)(4)-3(b)(4).

(Note to reviewer: LRM 26 contains language that satisfies the requirements of the safe harbor contained in Regulations section 1.401(a)(4)-3(b)(4) (safe harbor for plans using the fractional accrual rule).) For a sample current benefit formula for unit credit plans that do not use the fractional accrual rule, see Provision #1 of LRM #31.)

Unit Credit Plans

Sample Adoption Agreement Language:

Each participant will receive a benefit payable at normal retirement age equal to _____% of average annual compensation for each year of credited service up to a maximum of _____(no less than 25) years of credited service. This benefit is accrued under the fractional accrual rule in section _____ of the plan (other than plans that satisfy section 411(b)(1)(F) of the Internal Revenue Code).

(Note to reviewer: The last blank above should be filled in with the plan section that corresponds to the fractional accrual rule in LRM 31.)

(Note to reviewer: The following language satisfies the requirements of the safe harbor for plans using the fractional accrual rule contained section 1.401(a)(4)-3(b)(4)(i)(C)(1) for a plan that provides for a step in its benefit formula; i.e., that provides a rate of benefit that changes after a certain specified number of years of credited service.)

Sample Adoption Agreement Language:

Each participant shall receive a benefit payable at normal retirement age equal to _____ percent of average annual compensation (R1) per year for the first _____ years of credited service (y) and _____ percent of average annual compensation (R2) per year for the next _____ years of credited service (such that the total years of credited

service 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 $\frac{(R1)(44 - y)}{33-y}$.

This benefit is accrued under the fractional method in section _____ of the plan (other than plans that satisfy section 411(b)(1)(F) of the Internal Revenue Code).

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

Flat Benefit Plans:

Each participant will receive a benefit payable at normal retirement age equal to _____% of average annual compensation (reduced pro rata for the participant's years of credited service less than 25). This benefit is accrued under the fractional method in section _____ of the plan.

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

27. Current benefit formulas - plans providing for permitted disparity

27. Document Provision.

Statement of Requirement: Current benefit formulas -- plans providing for permitted disparity, IRC §401(a)(4), §401(a)(5), §401(l), §411(b)(1); Regs. §1.401(a)(4)-3, §1.401(l).

Sample Adoption Agreement Language:

EXCESS BENEFIT PLANS

A. Subject to the overall permitted disparity limit below, the current benefit formula under the plan will provide a benefit payable at normal retirement age equal to:

(1) ( ) Unit credit:

The sum of (a) and (b) below:

(a)(i) _____% (base benefit percentage) times average annual compensation up to the integration level times each year of credited service 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 times each year of credited service. The maximum number of years of credited service during which permitted disparity is taken into account under this paragraph will be _____ (may not exceed 35, and, if benefits after the latest fresh-start date are determined under the fractional accrual rule in section _____ of the plan or the plan satisfies section 411(b)(1)(F) of the Internal Revenue Code, may not be less than 25).

(a)(ii) The number of years of credited service taken into account under paragraph (a)(i) for any participant will not exceed the participant's cumulative permitted disparity limit. The participant's cumulative permitted disparity limit is equal to 35 minus the number of years credited to the participant for purposes of the benefit formula or the accrual method under the plan under one or more qualified plans or simplified employee pensions (whether or not terminated) ever maintained by the employer, other than years for which a participant earned a year of credited service under the benefit formula in paragraph (a)(i). 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's cumulative permitted disparity limit is less than the period of years specified in paragraph (a)(i), then for years after the participant reaches the cumulative permitted disparity limit and through the end of the period specified in paragraph (a)(i), the participant's benefit will be equal to the excess benefit percentage, or, if the participant's benefit after the latest fresh-start date is not accrued under the fractional accrual rule and the plan does not satisfy section 411(b)(1)(F) of the Code, 133 1/3 percent of the base benefit percentage, if lesser, times average annual compensation.

(b)_____ (not to exceed the lesser of: (1) the excess benefit percentage, and (2) 133 1/3 percentof the base benefit percentage, times average annual compensation for each year of credited service after the number of years of credited service taken into account in paragraph (a). If, however, benefits after the latest fresh-start date are accrued under the fractional accrual rule or the plan satisfies section 411(b)(1)(F) of the Internal Revenue Code, then for each year of credited service after the years of credited service taken into account in paragraph (a), this percentage will be equal to the excess benefit percentage. The maximum number of years of credited service taken into account under this paragraph (b) will be _____ (if benefits after the latest fresh-start date are accrued under the fractional accrual rule or the plan satisfies section 411(b)(1)(F) of the Code, the number of years entered must be no less than 35 minus the number of years of credited service taken into account in paragraph (a)).

For purposes of the preceding paragraph(s), the maximum excess allowance is, with respect to benefits under the plan for any year of credited service, the lesser of (1) the base benefit percentage or (2) the applicable factor determined from Table I or II in section B below.

If a participant begins receiving benefits at an age other than normal retirement age, the participant's benefit will be determined in accordance with section _____ of the plan.

(Note to reviewer: The blank in the previous sentence should be filled in with the section number of the plan that corresponds to LRM 27B.)

Overall permitted disparity limit: 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 benefit for each participant under this plan will be equal to the base benefit percentage times the participant's average annual compensation. If this paragraph is applicable, this plan will have a fresh-start date on the last day of the plan year preceding the plan year in which this paragraph is first applicable. In addition, if in any subsequent plan year this plan no longer benefits any participant who also benefits under another qualified plan or simplified employee pension maintained by the employer that provides for permitted disparity (or imputes permitted disparity), this

plan will have a fresh-start date on the last day of the plan year preceding the plan year in which this paragraph is no longer applicable. For purposes of determining the participant's overall permitted disparity limit, all years ending in the same calendar year are treated as the same year.

(2) ( ) Flat Benefit

_____% (base benefit percentage) times average annual compensation up to the integration level 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.

For purposes of the preceding paragraph(s), the maximum excess allowance is equal to the lesser of: (1) the base benefit percentage or (2) the applicable factor determined from Table I or II in section B below, multiplied by 35.

If a participant begins receiving benefits at an age other than normal retirement age, the participant's benefit will be determined in accordance with section _____ of the plan.

(Note to reviewer: The blank in the preceding paragraph should be filled in with the plan section number that corresponds to LRM 27B.)

For participants who are projected to have earned less than 35 years of credited service under this plan as of the end of the plan year in which they attain normal retirement age (or current age, if later), the base benefit percentage and the excess benefit percentage will be reduced by multiplying them by a fraction, the numerator of which is the number of years of credited service the participant is projected to have earned under this plan as of the end of the plan year in which the participant attains normal retirement age (or current age, if later), and the denominator of which is 35.

Cumulative permitted disparity adjustment: If the number of the participant's cumulative permitted disparity years exceeds 35, the participant's benefit will be further adjusted as provided below. A participant's cumulative disparity years consist of the sum of: (1) the total years of credited service a participant is projected to have earned under this plan by the end of the plan year

containing the participant's normal retirement age, and subsequent years of credited service, if any, (the total not to exceed 35), and (2) the number of years credited to the participant for purposes of the benefit formula or the accrual method under the plan under one or more other qualified plans or simplified employee pensions (whether or not terminated) ever maintained by the employer (other than years counted in (1)), and not including any years credited to the participant under such other qualified plans or simplified employee pensions after the participant has earned 35 years of credited service under this plan). 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 this cumulative disparity adjustment is applicable, the participant's benefit will be increased as follows:

(A) Subtract the participant's base benefit percentage from the participant's excess benefit percentage (after modification in accordance with the paragraphs preceding this cumulative disparity adjustment).

(B) Divide the result in (A) by the participant's years of credited service under the plan projected to the later of normal retirement age or current age, not to exceed 35 years of credited service.

(C) Multiply the result in (B) by the number of years by which the participant's cumulative disparity years exceed 35.

(D) Add the result in (C) to the participant's base benefit percentage determined prior to this cumulative disparity adjustment.

Overall permitted disparity limit: 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 benefit for each participant under this plan will be equal to the base benefit percentage times the participant's average annual compensation. For participants who are projected to have earned less than 35 years of credited service under this plan as of the end of the plan year in which they attain normal retirement age, (or current age, if later), the percentage in the preceding sentence will be multiplied by a

fraction (not more than one), the numerator of which is the number of the participant's years of credited service the participant is projected to have earned under this plan as of the end of the plan year in which the participant attains normal retirement age (or current age, if later), and the denominator of which is 35. If this paragraph is applicable, this plan will have a fresh-start date on the last day of the plan year preceding the plan year in which this paragraph is first applicable. In addition, if in any subsequent plan year this plan no longer benefits any participant who also benefits under another qualified plan or simplified employee pension maintained by the employer that provides for permitted disparity (or imputes permitted disparity), this plan will have a fresh-start date on the last day of the plan year preceding the plan year in which this paragraph is no longer applicable. For purposes of determining the participant's overall permitted disparity limit, all years ending in the same calendar year are treated as the same year.

OFFSET PLANS

(1) ( ) Unit benefit:

The sum of (a) and (b) below:

(a)(i) _____% (gross benefit percentage) times average annual compensation for the plan year times each year of credited service offset by _____% (offset percentage -- not to exceed the maximum offset allowance) times final average annual compensation up to the offset level times each year of credited service. The offset percentage for any participant shall not exceed 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. The maximum number of years of credited service taken into account under this paragraph will be ____ (may not exceed35, and, if benefits after the latest fresh-start date are determined under the fractional accrual rule in section _____ of the plan or the plan satisfies section 411(b)(1)(F) of the Internal Revenue Code, may not be less than 25).

(a)(ii) The number of years of credited service taken into account under paragraph (a)(i) 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 the number of years credited to the participant for purposes of the benefit formula or the accrual method under the plan under one or more qualified plans or simplified employee pensions (whether or not terminated) ever maintained by the employer, other than years for which a participant earned a year of credited service under the benefit formula in paragraph (a)(i). 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's cumulative disparity limit is less than the period of years specified in paragraph (a)(i), then for years after the participant reaches the cumulative permitted disparity limit and through the end of the period specified in paragraph (a)(i), the participant's benefit will be equal to the gross benefit percentage, or, if the participant's benefit after the latest fresh-start date is not accrued under the fractional accrual rule and the plan does not satisfy section 411(b)(1)(F) of the Code, 133 1/3 percent of the gross benefit percentage reduced by the offset percentage, if lesser, times average annual compensation.

(b) _____% (not to exceed the lesser of: (1) the gross benefit percentage, and (2) 133 1/3 percent of the gross benefit percentage reduced by the offset percentage, times average annual compensation for each year of credited service after the number of years of credited service taken into account in paragraph (a). If however, benefits after the latest fresh-start date are accrued under the fractional accrual rule or the plan satisfies section 411(b)(1)(F) of the Code,then for each year of credited service after the years of credited service taken into account in paragraph (a), this percentage will be equal to the gross benefit percentage. The maximum number of years of credited service taken into account under this paragraph (b) will be _____ (if benefits after the latest fresh-start date are accrued under the fractional accrual rule or the plan satisfies section 411(b)(1)(F) of the Code, the number of years entered must be no less than 35 minus the number of years of credited service taken into account in paragraph (a)).

For purposes of the preceding paragraph(s), the maximum offset allowance will not exceed the lesser of (1) the applicable factor from Table I or II in section B below, and (2) one-half of the gross benefit percentage.

If a participant begins receiving benefits at an age other than normal retirement age, the participant's benefit will be determined in accordance with section _____ of the plan.

(Note to reviewer: The blank in the previous sentence should be filled in with the section number of the plan that corresponds to LRM 27B.)

Overall permitted disparity limit: 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 benefit for all participants under this plan will be equal to the gross benefit percentage minus the offset percentage, times the participant's total average annual compensation. If this paragraph is applicable, this plan will have a fresh-start date on the last day of the plan year preceding the plan year in which this paragraph is first applicable. In addition, if in any subsequent plan year this plan no longer benefits any participant who also benefits under another qualified plan or simplified employee pension maintained by the employer that provides for permitted disparity (or imputes permitted disparity), this plan will have a fresh-start date on the last day of the plan year preceding the plan year in which this paragraph is no longer applicable. For purposes of determining the participant's overall permitted disparity limit, all years ending in the same calendar year are treated as the same year.

(2) ( ) Flat Benefit

_____% (gross benefit percentage) times average annual compensation offset by _____% (offset percentage -- not to exceed the maximum offset allowance) times final average compensation up to the offset level. The offset percentage for any participant shall not exceed 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.

The maximum offset allowance will not exceed the lesser of (1) the applicable factor from Table I or II in section B. below, multiplied by 35, and (2) one-half of the gross benefit percentage.

If a participant begins receiving benefits at an age other than normal retirement age, the participant's benefit will be determined in accordance with section _____ of the plan.

(Note to reviewer: The blank in the preceding paragraph should be filled in with the plan section number which corresponds to LRM 27B.)

For participants who are projected to have earned less than 35 years of credited service under this plan as of the end of the plan year in which they attain normal retirement age (or the current age, if later), both the gross benefit percentage and the offset percentage will be reduced by multiplying them by a fraction, the numerator of which is the number of years of credited service the participant is projected to have earned under this plan as of the end of the plan year in which the participant attains normal retirement age (or the current age, if later), and the denominator of which is 35.

Cumulative permitted disparity adjustment: If the number of the participant's cumulative permitted disparity years exceeds 35, the offset percentage will be further adjusted as provided below. A participants cumulative disparity years consist of the sum of: (1) the total years of credited service a participant is projected to have earned under this plan by the end of the plan year containing the participant's normal retirement age and subsequent years of credited service, if any, (the total not to exceed 35), and (2) the number of years credited to the participant for purposes of the benefit formula or the accrual method under the plan under one or more other qualified plans or simplified employee pensions maintained by the employer (other than years counted in (1), and not including any years credited to the participant under such other qualified plans or simplified employee pension after the participant has earned 35 years of credited service under this plan). 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 this cumulative disparity adjustment is applicable, the offset percentage will be further adjusted as follows:

(A) Divide the offset percentage (after modification in accordance with the paragraphs preceding this cumulative disparity adjustment) by the participant's years of credited service under this plan projected to

the later of normal retirement age or current age, not to exceed 35 years of credited service.

(B) Multiply the result in (A) by the number of years by which the participant's cumulative disparity years exceed 35.

(C) Subtract the result in (B) from the offset percentage determined prior to this cumulative disparity adjustment.

Overall permitted disparity limit: 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 benefit for all participants under this plan will be equal to a percentage that is equal to the gross benefit percentage minus the offset percentage, times the participant's average annual compensation. For participants who are projected to have earned less than 35 years of credited service under this plan as of the end of the plan year in which they attain normal retirement age, (or current age, if later), the percentage in the preceding sentence will be multiplied by a fraction (not more than one), the numerator of which is the number of the participant's years of credited service the participant is projected to have earned under this plan as of the end of the plan year in which the participant attains normal retirement age (or current age, if later), and the denominator of which is 35. If this paragraph is applicable, this plan will have a fresh-start date on the last day of the plan year preceding the plan year in which this paragraph is first applicable. In addition, if in any subsequent plan year this plan no longer benefits any participant who also benefits under another qualified plan or simplified employee pension maintained by the employer that provides for permitted disparity (or imputes permitted disparity), this plan will have a fresh-start date on the last day of the plan year preceding the plan year in which this paragraph is no longer applicable. For purposes of determining the participant's overall permitted disparity limit, all years ending in the same calendar year are treated as the same year.

B. The applicable factor is the factor derived from the applicable table(s) below based on the normal retirement age under the plan, as specified in section _____ of the adoption agreement (determined without regard to any years of participation requirement), and the plan's normal form of

benefit, as specified in section _____ of the adoption agreement. If the employer elects as an integration level in the adoption agreement option _____ or _____, Table II shall apply. Otherwise, Table I shall apply.

(Note to reviewer: The first two blanks in the preceding paragraph should be filled in with the adoption agreement section numbers that correspond to LRMs #14 and #41, respectively. The last two blanks should be filled in with the adoption agreement section numbers that correspond to options 4 and 5 of section C of this LRM 27.)

(Note to reviewer: Section 1.401(l)-3(e) of the regulations requires an adjustmentin 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 benefit formula. Table I below contains the reduction factors from Table IV of Regulations section 1.401(l)-3(e)(3) with respect to benefits commencing before a participant's normal retirement age. 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 (or offset) level.)

Table I

	Normal Form of Benefit				
	Life annuity	Life annuity + 5 year certain	Life annuity + 10 year certain	Life annuity + 15 year certain	Life annuity + 20 year certain
Adjustment	1.00	0.97	0.91	0.84	0.78
NRA					
65	0.650	0.631	0.592	0.546	0.507
64	0.607	0.589	0.552	0.510	0.473
63	0.563	0.546	0.512	0.473	0.439
62	0.520	0.504	0.473	0.437	0.406
61	0.477	0.463	0.434	0.401	0.372
60	0.433	0.420	0.394	0.364	0.338
59	0.412	0.400	0.375	0.346	0.321
58	0.390	0.378	0.355	0.328	0.304
57	0.368	0.357	0.335	0.309	0.287
56	0.347	0.337	0.316	0.291	0.271
55	0.325	0.315	0.296	0.273	0.254

Table II
Normal Form of Benefit

	Life annuity	Life annuity + 5 year certain	Life annuity + 10 year certain	Life annuity + 15 year certain	Life annuity + 20 year certain
Adjustment	1.00	0.97	0.91	0.84	0.78
NRA					
65	0.520	0.504	0.473	0.437	0.406
64	0.486	0.471	0.442	0.408	0.379
63	0.450	0.437	0.410	0.378	0.351
62	0.416	0.404	0.379	0.349	0.324
61	0.382	0.370	0.347	0.321	0.298
60	0.346	0.336	0.315	0.291	0.270
59	0.330	0.320	0.300	0.277	0.257
58	0.312	0.303	0.284	0.262	0.243
57	0.294	0.286	0.268	0.247	0.230
56	0.278	0.269	0.253	0.233	0.217
55	0.260	0.252	0.237	0.218	0.203

(Note to reviewer: The tables above apply the factors derived from the simplified table contained in section 1.401(l)-3(e)(3) of the regulations, as applicable to all

individuals, regardless of their social security retirement age. As an alternative, the plan could apply the three separate sets of factors derived from Table I, II or III in Regulations section 1.401(l)-3(e)(3) to participants with social security retirement ages of 67, 66 and 65, as applicable.)

(Note to reviewer: In the case of an excess plan, all optional forms of benefit, ancillary benefits, actuarial factors and other rights, benefits or features provided with respect to employer-provided benefits attributable to compensation at or below the integration level must be provided on the same terms as, or on terms at least as favorable as, those provided with respect to employer-provided benefits attributable to compensation above the integration level. In the case of an offset plan, employer-provided benefits before application of the offset must be provided on the same terms as, or on terms at least as favorable as those used to determine the offset.)

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 person 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 person 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 person 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 [for excess plans], or final average compensation. [for offset plans]

(Note to reviewer: If options 4 or 5 above are selected, the maximum excess allowance (or maximum offset allowance, if applicable) must be determined from Table II above. If options 2 or 3 above are selected, in the case of a calendar year in which no individual could attain social security retirement age (the year 2003, for example), the rules are applied using covered compensation of an individual attaining social security retirement age in the preceding year.)

(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. Because M&P plans that provide for disparity must meet the permitted disparity requirements of section 401(l) in form (see section 9.039 of Rev. Proc. 89-9), these plans may not allow the employer to elect the intermediate amount integration level (or offset level) under section 1.401(l)-3(d)(5), as that option requires the employer to demonstrate compliance with the demographic requirements of section 1.401(l)-3(d)(8).)

(optional provision:)

D. Accruals under the current benefit formula after the latest fresh-start date will be increased by the following cost-of living adjustment. The cost-of-living adjustment applies to former employees and will commence at the later of attainment of age 62 or commencement of benefits.

The cost-of-living adjustment will be equal to the lesser of:

(a) _____ % per year, or

(b) the percentage adjustment to social security benefits for the year under section 215(i)(2)(A) of the Social Security Act.

27A. Definitions - plans providing for permitted disparity
27A. Document Provision:

Statement of Requirement: **Definitions -- plans providing for permitted disparity, Regs. §1.401(l)-1(c), §1.401(a)(4)-13(c).**

Sample Plan Language:

1. 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. No increase in covered compensation shall decrease a participant's accrued benefit under the plan.

In determining a participant's covered compensation for a plan year, the taxable wage base for all calendar years beginning after the first day of the plan year is 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 of LRM #27A.)

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.)

Sample Adoption Agreement Language:

Covered compensation will be determined based on the following year:

[ ] current plan year

[ ] _____ plan 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 employees 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 year five years prior to the current plan year.)

Sample Plan Language:

2. 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 3-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 shall 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 year in which a participant terminates employment may be disregarded, as long as such year is disregarded in determining final average compensation for all participants.)

3. 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.

27B. Adjustments for benefits beginning at a time other than normal retirement age

27B. Document Provision:

Statement of Requirement: Adjustments for benefits beginning at a time other than normal retirement age, Regs. §1.401(l)-3(e).

Section 1.

If benefits commence to a participant at a time other than normal retirement age, the participant's accrued benefit will be multiplied by a fraction, the numerator of which is the annual factor that corresponds to the age at which benefits commence to the participant in the plan's normal form of benefit, and the denominator of which is the annual factor that corresponds to the normal retirement age under the plan in the normal form of benefit.

If benefits commence to the participant in a form other than the normal form of benefit, the product in the preceding paragraph will be actuarially adjusted in accordance with the provisions of section _____ of the plan.

If this plan has had a fresh-start, the limitations in the preceding paragraphs will be applied only to the participant's accruals for years for which the plan provides for the disparity permitted under section 401(l) of the Code. All benefit accruals for years for which the plan does not provide for the disparity permitted under section 401(l) of the Code will be actuarially adjusted in accordance with the provisions of section ____ of the plan.

(Note to reviewer: The blanks in the preceding two paragraphs should be filled in with the plan section number that corresponds to LRM #42. See LRM #51 for actuarial increases after age 70½.)

The annual factor is the factor derived from the applicable table(s) below based on the normal retirement age under the plan, as specified in section _____ of the adoption agreement (determined without regard to any years of participation requirement), and the plan's normal form of benefit, as specified in section _____ of the adoption agreement. If the employer elects as an integration level in the adoption agreement option _____ or _____, Table II shall apply. Otherwise, Table I shall apply.

(Note to reviewer: The first two blanks in the preceding paragraph should be filled in with the adoption agreement section numbers that correspond to LRMs #14 and #41, respectively. The last two blanks should be filled in with the adoption agreement section numbers that correspond to options 4 and 5 of section C of LRM #27.)

(Note to reviewer: Section 1.401(l)-3(e) of the regulations requires a reduction in 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.)

Table I

	Normal Form of Benefit				
	Life annuity	Life annuity + 5 year certain	Life annuity + 10 year certain	Life annuity + 15 year certain	Life annuity + 20 year certain
Adjustment	1.00	0.97	0.91	0.84	0.78
Age at which benefits commence					
70	1.048	1.017	0.954	0.880	0.817
69	0.950	0.922	0.865	0.798	0.741
68	0.863	0.837	0.785	0.725	0.673
67	0.784	0.760	0.713	0.659	0.612
66	0.714	0.693	0.650	0.600	0.557
65	0.650	0.631	0.592	0.546	0.507
64	0.607	0.589	0.552	0.510	0.473
63	0.563	0.546	0.512	0.473	0.439
62	0.520	0.504	0.473	0.437	0.406
61	0.477	0.463	0.434	0.401	0.372
60	0.433	0.420	0.394	0.364	0.338
59	0.412	0.400	0.375	0.346	0.321
58	0.390	0.378	0.355	0.328	0.304
57	0.368	0.357	0.335	0.309	0.287
56	0.347	0.337	0.316	0.291	0.271
55	0.325	0.315	0.296	0.273	0.254

Table II

	Normal Form of Benefit				
	Life annuity	Life annuity + 5 year certain	Life annuity + 10 year certain	Life annuity + 15 year certain	Life annuity + 20 year certain
Adjustment	1.00	0.97	0.91	0.84	0.78
Age at which benefits commence					
70	0.838	0.813	0.763	0.704	0.654
69	0.760	0.737	0.692	0.638	0.593
68	0.690	0.670	0.628	0.580	0.539
67	0.627	0.608	0.571	0.527	0.489
66	0.571	0.554	0.520	0.480	0.446
65	0.520	0.504	0.473	0.437	0.406
64	0.486	0.471	0.442	0.408	0.379
63	0.450	0.437	0.410	0.378	0.351
62	0.416	0.404	0.379	0.349	0.324
61	0.382	0.370	0.347	0.321	0.298
60	0.346	0.336	0.315	0.291	0.270
59	0.330	0.320	0.300	0.277	0.257
58	0.312	0.303	0.284	0.262	0.243
57	0.294	0.286	0.268	0.247	0.230
56	0.278	0.269	0.253	0.233	0.217
55	0.260	0.252	0.237	0.218	0.203

(Note to reviewer: The tables above apply the factors derived from the simplified table contained in section 1.401(l)-3(e)(3) of the regulations, as applicable to all

individuals, regardless of their social security retirement age. As an alternative, the plan could apply the three separate sets of factors derived from Table I, II or III in Regulations section 1.401(l)-3(e)(3) to participants with social security retirement ages of 67, 66 and 65, as applicable.)

Section 1.1. Benefits beginning on or after age 55 and on or before age 70. If benefit payments commence in a month other than the month in which the participant attains the age specified in the foregoing table, the annual factor will be determined by straight line interpolation in the applicable table above.

Section 1.2. Benefits beginning before age 55. If benefit payments begin before the first day of the month in which the participant attains age 55, the annual factor will be the actuarial equivalent of the annual factor contained in the applicable table above for a benefit commencing in the month in which the participant attains age 55.

Section 1.3. Benefits beginning after age 70. If benefit payments begin after the first day of the month in which the participant attains age 70, the annual factor will be the actuarial equivalent of the annual factor contained in the applicable table above for a benefit commencing in the month in which the participant attains age 70.

Section 1.4. A disability benefit, other than a qualified disability benefit, commencing before a participant’s normal retirement age will be treated as a benefit subject to the limitations of this section. A disability benefit is a qualified disability benefit only if the benefit: (i) is payable under the plan solely on account of a participant’s disability, as determined by the Social Security Administration, (ii) terminates no later than the participant’s normal retirement age, (iii) is not in excess of the amount of the benefit that would be payable if the participant had separated from service at normal retirement age, and (iv) upon attainment of early or normal retirement age, the participant receives a benefit that satisfies the accrual and vesting rules of section 411 (and the Income Tax Regulations thereunder) without taking into account the disability benefits made up to that age.

27C. Employee contributions - plans providing for permitted disparity

27C. Document Provision.

Statement of Requirement: **Employee contributions -- plans providing for permitted disparity, Regs §1.401(l)-3(h); §1.401(a)(4)-6.**

(Note to reviewer: An M&P plan that provides for permitted disparity may not provide for mandatory employee contributions that are not allocated to a separate account.)

27D. Permitted disparity with respect to employer provided benefits - Fully insured plans
27D. Document Provision.

Statement of Requirement: **Permitted disparity with respect to employer-provided benefits - Fully insured §412(i) plans, Regs. §1.401(a)(4)-3(b)(5).**

(Note to reviewer: If a defined benefit plan is a fully insured plan within the meaning of IRC sections 411(b)(1)(F) and 412(i) (LRM #32), the plan satisfies the permitted disparity rules of section 401(l) if each participant's benefit under the plan's benefit formula satisfies the permitted disparity rules applicable to defined benefit plans, including any required reductions to the maximum excess allowance, or, if applicable, the maximum offset allowance. However, the applicable factor as determined from Tables I or II in section B of LRM #27 must be further reduced by multiplying it by a factor of 0.80. Note that no further adjustments for benefits beginning at a time other than normal retirement age (see LRM #27B) are required for §412(i) plans.

27E. Integration with Social Security
27E. Document Provision.

Statement of Requirement: **Integration with Social Security. IRC §401(a)(5)(D); Regs. §1.401(a)(5)-1(e).**

Sample Plan Language:

Section 1. The participant's employer-provided accrued retirement benefit under the plan shall be limited to the excess (if any) of:

(i) The participant's final pay from the employer, over

(ii) the product of (a) 50 percent of the participant's projected primary insurance amount, multiplied by (b) a fraction, not to exceed 1, the numerator of which is the participant's number of complete years of covered service for the employer under the Social Security Act and the denominator of which is 35.

Section 2. As of a plan year, the final pay limitation will not be applied to the extent that its application would result in a decrease in a participant's accrued benefit as of the close of the immediately preceding plan year, or to the extent that its application would provide a participant with an employer-provided accrued retirement benefit that is lower than the section 416 minimum benefit required to be provided under the plan with respect to top heavy plan years and accrued by the participant as of the current plan year.

Section 3. Definitions

3.1 Employer-provided accrued retirement benefit. For purposes of this section, the employer-provided accrued retirement benefit as of a plan year is the participant's accrued retirement benefit under the plan (determined on an actual basis and not a projected basis) attributable to employer contributions under the plan.

3.2. Final pay. For purposes of this section, a participant's final pay from the employer as of a plan year is the participant's compensation during the twelve consecutive month period (ending with or within the 5-plan year period ending with the plan year in which the participant terminates employment with the employer) in which the participant receives the highest compensation from the employer. Compensation means compensation as defined in section _____ of the plan, including amounts contributed by the employer pursuant to a salary reduction agreement which are excludable from the participant's gross income under section 125, section 402(e)(3), section 402(h), or section 403(b) of the Internal Revenue Code.

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

3.3. Projected primary insurance amount. As of a plan year, a participant's projected primary insurance amount is the primary insurance amount (determined as of the close of the plan year) payable to the participant upon attainment of the participant's social security retirement age, assuming the participant's annual compensation from the employer treated as wages for purposes of the Social Security Act remains the same from the plan year until the participant's attainment of social security retirement age.

The actual compensation paid to the participant by the employer during all periods of service of the participant for the employer during which the participant was covered by the Social Security Act shall be used in determining the participant's projected primary insurance amount. With respect to years before the participant's commencement of service for the employer, it will be assumed that the participant received compensation for such service in an amount computed by using a six percent salary scale projected backwards from the determination date to the participant's twenty first birthday. However, if the participant provides the employer with satisfactory evidence of the participant's actual past compensation for the prior years treated as wages under the Social Security Act at the time the compensation was earned and the actual past compensation results in a smaller projected primary insurance amount, the plan must use the actual past compensation.

Each participant shall be provided with written notice of the participant's right to supply actual compensation history, and of the financial consequences of failing to supply such history. The notice shall be given each time the summary plan description is provided to the participant and will also be given upon the participant's separation from service. The notice shall also state that the participant can obtain the actual compensation history from the Social Security Administration.

If distribution of a participant's accrued benefit begins before the participant's attainment of social security retirement age (including a benefit commencing at normal retirement age) the projected primary insurance amount (as determined under section 3.3) will be reduced by 1/15 for each of the first five years and 1/30 for each of the next five years by which the starting date of such benefit precedes the social security retirement age of the

participant, and reduced actuarial for each additional year thereafter.

3.4. Social security retirement age. Social security retirement age means age 65 if the participant attains age 62 before January 1, 2000 (i.e., born before January 1, 1938), age 66 if the participant attains age 62 after December 31, 1999, but before January 1, 2017 (i.e., born after December 31, 1937, but before January 1, 1955), and age 67 if the participant attains age 62 after December 31, 2016 (i.e., born after December 31, 1954).

27F. Retroactive amendment to comply with amendments made by the Social Security Amendments Act of 1993

27F. Document Provision.

Statement of Requirement: **Retroactive amendment to comply with amendments made by the Social Security Amendments Act of 1983, Pub. L. 98-21, 1983-2 C.B. 309. Rev. Rul. 86-74, 1986-1 C.B. 205.**

(Note to reviewer: The following sample plan language must be included in M&P plans that provide for permitted disparity under an offset benefit formula. Such plans must be amended effective for plan years beginning after May 27, 1986 (or, in the case of a plan in existence on May 27, 1986, effective for plan years beginning after December 31, 1986) and before January 1, 1989, to comply with section 11 (and 10.02) of Rev. Rul. 71-446, 1971-2 C.B. 187, as modified by Rev. Rul. 86-74, because of increases by the Social Security Act of 1983 in the age at which unreduced old-age insurance benefits commence for individuals born after January 1, 1938 (social security retirement age). The following sample plan language provides for adjustments to the maximum amount of a benefit offset based on the old age insurance benefit payable under the Social Security Act if a participant retires or terminates service before attaining social security retirement age. These adjustments are in addition to (on a cumulative basis) any other adjustments required by Rev. Rul. 71-446 (as subsequently modified) with respect to the offset under the plan as in effect during the plan years for which the amendment applies.

The service adjustment under paragraph (1) is required only if the plan (before amendment) assumed that the participant would continue to receive, after retirement or severance, income which would be treated as wages for purposes of the Social Security Act. Paragraph (2) is required in all plans.)

Sample Plan Language:

(1) The amount of the offset shall not exceed the maximum offset otherwise allowable prior to plan years beginning in 1989 multiplied by a fraction (not to exceed 1):

$$\frac{\text{Actual years of service at retirement or severance}}{\text{Total years of service at social security retirement age}}$$

(2) The amount of the offset shall not exceed the maximum offset otherwise allowable prior to plan years beginning in 1989 (determined in accordance with paragraph (1), if applicable), reduced by 1/15 for each of the first five years and 1/30 for each of the next five years by which the starting date of such benefit precedes the social security retirement age of the participant, and reduced actuarial for each additional year thereafter.

Social security retirement age means age 65 if the participant attains age 62 before January 1, 2000 (i.e., born before January 1, 1938), age 66 if the participant attains age 62 after December 31, 1999, but before January 1, 2017 (i.e., born after December 31, 1937, but before January 1, 1955), and age 67 if the participant attains age 62 after December 31, 2016 (i.e., born after December 31, 1954).

28. Benefit increase - fully insured plans
28. Document Provision:

Statement of Requirement: **Benefit increase - Fully insured plans, Rev. Rul. 69-251; Insured pre-retirement death benefits, IRC §401(a)(4).**

(Note to reviewer: A fully insured plan may provide that the amount of retirement benefit provided by insurance or annuity contracts will not be provided or increased until the participant's compensation is large enough to provide or increase the retirement benefit by a specified minimum

amount. This minimum amount can be no greater than $120 per year or $10 per month. It can also be expressed in terms of an increase in the face amount of the pre-retirement death benefit under a contract, if the minimum increase in face amount does not exceed $1,000. These minimums are also applicable to insured pre-retirement death benefits (but not retirement benefits) under nonfully insured plans. Such a plan may require a minimum, not exceeding $1,000, before it will provide or increase an insured pre-retirement death benefit. For example, if the pre-retirement death benefit is 100 times the anticipated monthly pension, no more than $10 per month anticipated monthly pension can be required as a pre-condition for insuring that death benefit.)

29. Definition of year of participation
29. Document Provision:

Statement of Requirement: Definition of year of participation (accrual computation period), DOL Regs. §2530.204-2; Regs. §1.401(a)(26)-6(b)(7), §1.410(b)-6(f).

Year of Participation - Either one of the following provisions may be used to define this term.

Sample Plan Language:

Provision #1

Year of participation shall mean a plan year during which a participant either completes more than 500 hours of service during the plan year or is employed on the last day of the plan year.

Provision #2

Year of participation shall mean a plan year during which the participant completes 2,000 hours of service. If the participant either completes more than 500 hours of service during the plan year or is employed on the last day of the plan year but has less than 2,000 hours of service during the plan year, such participant shall receive an accrual for such year which bears the same ratio to a full accrual as the number of hours the participant actually completes bears

to 2,000. Such participant's benefit for such partial year shall be based upon the compensation the participant would have earned if the participant had completed 2,000 hours of service.

(Note to reviewer: A participant with more than 500 hours of service must receive at least a partial accrual, regardless of whether service has terminated.)

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

(Note to reviewer: The sample plan language above provides that years of participation are determined based on the plan year. A plan may permit employers to elect in the adoption agreement to determine years of participation on the basis of any 12-month period ending within the plan year.)

(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.)

30. Definition of year of credited service
30. Document Provision:

Statement of Requirement: Definition of year of credited service, IRC §401(a)(4) & §401(l).

Sample Plan Language:

A participant's years of credited service shall mean (subject to any maximum limitation on the number of years of credited service specified in the adoption agreement) the sum of: (1) the participant's years of participation pursuant to section _____ of the plan, and (2) other years with the employer specified in the adoption agreement taken into account under the plan benefit formula.

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

31. Formula to determine accrued benefit
31. Document Provision:

Statement of Requirement: **Formula to determine accrued benefit, IRC §411(b); Regs. §1.411(b)-1.**

(Note to reviewer: The following provisions, when used with the definitions of year of credited service, compensation, and normal retirement benefit will satisfy the requirements of section 411(b) of the Code. Only one method need be used; however, the choice of accrual rule may be limited by the fresh-start rule elected by the employer.)

Sample Plan Language

Provision #1

- 133 1/3% Rule:

Each participant will accrue a benefit of _____% of compensation per year of credited service. The normal retirement benefit is the total benefit accrued at normal retirement age.

(Note to reviewer: The plan can provide a step in its benefit formula as long as the annual rate at which any individual who is or could be a participant may accrue retirement benefits payable at normal retirement age is not more than 133 1/3% of the annual rate at which he or she could accrue benefits for any prior plan year.)

Provision #2

- 3% Rule: (may not be used in plans that provide for permitted disparity; or with fresh-start options 2 or 3 in section _____ of the plan).

(Note to reviewer: The blank should be filled in with the section number of the plan that corresponds to LRM #23.)

A participant's accrued benefit at any time shall equal 3 percent of the normal retirement benefit, multiplied by the number of years of participation (not in excess of 33-l/3), including years after normal retirement age. For purposes of determining accrued benefits, the normal retirement benefit is the benefit to which the participant would be entitled if participation commenced at the earliest possible

entry age for any individual who is or could be a participant under the plan and if the participant served continuously until the earlier of age 65 or the normal retirement age under this plan. The normal retirement benefit to which a participant would be entitled shall be determined as if the participant continued to earn annually the average rate of compensation earned during the five (5) consecutive years of service for which such participant's compensation was the highest.

(Note to reviewer: The last sentence of the sample language above would be used in a plan with a normal retirement benefit based on compensation averaged over a five-year period. Any plan that bases the normal retirement benefit on a period of compensation must use, for this accrual rule, the same period of service (but not to exceed 10 years) which produces the highest average.)

Provision #3

- Fractional rule: (may not be used with formula without wear-away fresh-start rule in section _____ of the plan)

(Note to reviewer: The blank should be filled in with the section number of the plan that corresponds to LRM #23.)

A participant's accrued benefit at any time equals the product of the normal retirement benefit multiplied by a fraction, the numerator of which is the number of years of credited service at such time, and the denominator of which is the number of years of credited service the participant would have at the later of the year containing the participant's normal retirement age or the current year. However, if this plan has had a fresh-start, and after the latest fresh-start date, the fresh-start rule used under the plan is the formula with wear-away, the amount in the preceding sentence will not be less than the participant's frozen accrued benefit. If this plan has had a fresh-start, and after the latest fresh-start date, the fresh-start rule used under the plan is the formula with extended wear-away, in determining the participant's accrued benefit with respect to years of credited service after the latest fresh-start date under the formula without wear-away, the numerator in the fraction above will be limited to the participant's years of credited service after the latest fresh-start date.

When determining the accrued benefit, the normal retirement benefit is the annual benefit to which the participant would be entitled if the participant continues to earn annually until the later of the year containing the participant's normal retirement age or the current year, the participant's current average annual compensation. This rate of compensation is computed on the basis of average annual compensation taken into account under the plan (but not to exceed the ten years of service immediately preceding the determination).

(Note to reviewer: The parenthetical phrase in the sample language is required when the normal retirement benefit in the plan uses a period of compensation that may exceed ten years, e.g., career average.)

Fully-Insured Section 412(i) Plans

(Note to reviewer: Because of the potential for discrimination, fully-insured section 412(i) plans in the M&P program must satisfy the safe harbor for section 412(i) plans contained in section 1.401(a)(4)-3(b)(5) of the regulations. In general, to be eligible for this safe harbor, a section 412(i) plan must:

1) **satisfy the accrual rule of Code section 411(b)(1)(F) (see LRM #32);**

2) **constitute an insurance contract plan within the meaning of Code section 412(i) (see LRM #32);**

3) **incorporate the section 412(i) fresh-start rule in LRM #23 and the definition of frozen projected benefit in LRM #32.**

4) **contain a benefit formula that would satisfy the requirements of either Regulations section 1.401(a)(4)-3(b)(4)(i)(C)(1) (safe harbor for unit credit plans using fractional accrual rule) or (C)(2) (safe harbor for flat benefit plans) if the participant's stated normal retirement benefit accrued ratably over each employee's period of plan participation through normal retirement age.**

5) provide that the scheduled premium payments under an individual or group insurance contract used to fund an employee's normal retirement benefit are level annual payments to normal retirement age (see LRM #32);

6) provide that the premium payments for an employee who continues benefiting after normal retirement age are equal to the amount necessary to fund additional benefits that accrued under the plan's benefit formula for the plan year (see LRM #32);

7) apply experience gains, dividends, forfeitures, and similar items solely to reduce future premiums (see LRM #87);

8) provide that all benefits are funded through contracts of the same series which, among other requirements, must have cash values based on the same terms (including interest and mortality assumptions) and the same conversion rights. A plan does not fail to satisfy this requirement, however, if any prospective change in the contract series or insurer applies on the same terms to all employees in the plan (see LRM #32); and

9) provide that if permitted disparity is taken into account, the normal retirement benefit formula satisfies the requirements of section 1.401(l)-3 of the regulations, and the 0.75-percent maximum excess or offset allowance is reduced by multiplying the factor by an additional 0.80 (see LRM #27D).)

32. Fully-insured - section 412(i) plan rules

32. Document Provision:

Statement of Requirement: **Fully-insured section 412(i) plan rules IRC § 401(a)(4), 404(a)(2), 403(a), 411(b)(l)(F), §412(i); Regs. §1.401(a)(4)-3(b)(5).**

Sample Plan Language:

(Note to reviewer: This LRM #32 contains miscellaneous definitions and rules applicable to fully-insured §412(i) plans.

Section A provides the definition of frozen projected benefit. This definition must be contained in all fully-insured §412(i) plans, and must be provided in lieu of LRM #24 (definition of frozen accrued benefit). Sponsors that wish to provide employers the option of adjusting the frozen projected benefit in accordance with Reg. §1.401(a)(4)-13(d) should also include LRM #25 in their plans.

Section B provides the restriction on past service contained in the safe harbor for insurance contract plans in Reg. §1.401(a)(4)-3(b)(5) (see number 4 in note to reviewer preceding this LRM #32).

Section C provides the special accrual rules in §1.411(b)(1)(F) for fully-insured §412(i) plans, and should be used instead of the accrual rules in LRM #31.)

Sample Plan Language:

[A. DEFINITION OF FROZEN PROJECTED BENEFIT]:

The participant's frozen projected benefit is equal to the participant's projected benefit under the plan on the latest fresh-start date (or the date the participant terminated service, if earlier) multiplied by a fraction, the numerator of which is the number of years of credited service as of the latest fresh-start date, and the denominator of which is the total number of years of credited service plus years of service projected through the later of the year the participant attains normal retirement age or the current plan year.

If, as of the participant's latest fresh-start date, the amount of a participant's frozen projected benefit was limited by the application of section 415 of the Internal Revenue Code, the participant's frozen projected benefit will be increased for years after the latest fresh-start date to the extent permitted under section 415(d)(1) of the Internal Revenue Code. In addition, the frozen projected benefit of a participant whose frozen projected benefit includes the top-heavy minimum benefits provided in section ____ of the plan will be increased to the extent necessary

to comply with the average compensation requirement of section 416(c)(1)(D)(i).

(Note to reviewer: The blank should be filled in with the plan section number corresponding to LRM #70.)

If: (1) the plan's normal form of benefit in effect on the participant's latest fresh-start date is not the same as the normal form under the plan after such fresh-start date and/or (2) the normal retirement age for any participant on that date was greater than the normal retirement age for that participant under the plan after such fresh-start date, the frozen projected benefit will be expressed as an actuarially equivalent benefit in the normal form under the plan after the participant's latest fresh-start date, commencing at the participant's normal retirement age under the plan in effect after such latest fresh-start date.

If the plan provides a new optional form of benefit with respect to a participant's frozen projected benefit, such new optional form of benefit will be provided with respect to each participant's entire projected benefit, and the participant's projected benefit minus the participant's frozen projected benefit will be equal to at least .5% times the participant's years of service after the fresh-start date, up to and including the year the participant attains normal retirement age (or current age, if later).

[B. RESTRICTIONS ON PAST SERVICE IN BENEFIT FORMULA]:

The current benefit formula may not recognize years of service before an employee commences participation in the plan. Notwithstanding the foregoing, a plan with a current benefit formula that was adopted and in effect on September 19, 1991, may continue to recognize years of service prior to an employee's participation in the plan to the extent provided in the plan on such date. The preceding sentence does not apply with respect to an employee who first becomes a participant in the plan after that date.

[C. SECTION 412(i) PLAN ACCRUAL RULES]:

This plan is funded exclusively by the purchase of individual insurance contracts, except for any top-heavy sidefund trust maintained for purposes of meeting the minimum benefit requirements of Internal Revenue Code section 416(c). Contacts will be purchased to provide all benefits under the plan.

All contracts will provide for level annual premium payments to be paid for the period commencing with the date that each individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective) and extending to the normal retirement age for each such individual.

Benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a state to do business with the plan) to the extent premiums have been paid.

The premium payments for a participant who continues benefiting after normal retirement age are equal to the amount necessary to fund additional benefits that accrued under the plan's benefit formula for the plan year.

All benefits are funded through contracts of the same series which must have cash values based on the same terms (including interest and mortality assumptions) and the same conversion rights. A plan does not fail to satisfy this requirement, however, if any prospective change in the contract series or insurer applies on the same terms to all participants in the plan.

No rights under any contracts will be subject to a security interest at any time, and no policy loans, including loans to participants, will be made at any time.

Each participant's accrued benefit as of any applicable date is the cash surrender value of the participant's insurance contracts, or, if greater, the cash surrender value the participant's insurance contracts would have had on such applicable date if (A) premiums payable for such participant's years of participation for the current plan year and all prior plan years under such contracts had been paid before lapse and (B) no rights under such contracts had been subject to a security interest at any time, and (C) no policy loans were outstanding at any time.

(Note to reviewer: Additional benefits may have to be provided when the plan is top-heavy. These benefits may be funded as fully insured or by a sidefund trust without affecting the plan's status as satisfying the above described fully insured requirement. See Regulations section 1.416-1 Q&A M-17 and LRM #70.)

33. Pre-ERISA accruals
33. Document Provision:

Statement of Requirement: **Pre-ERISA accruals,IRC §411(b)(l)(D); Regs. §1.411(b)-1(c).**

For plan years beginning before section 411 of the Internal Revenue Code is applicable hereto, the participant's accrued benefit shall be the greater of that provided by the plan, or ½ of the benefit which would have accrued had the provisions of article _____ been in effect. In the event the accrued benefit as of the effective date of section 411 of the Internal Revenue Code is less than that provided by article _____ such difference shall be accrued in accordance with article _____.

(Note to reviewer: The sponsor should insert the article number that corresponds to the plan section that provides for benefit accrual rates.)

34. Definition of normal retirement benefit
34. Document Provision:

Statement of Requirement: **Definition of normal retirement benefit, IRC §411(a)(9); Regs. §1.411(a)-7(c).**

Sample Plan Language:

The normal retirement benefit of each participant shall not be less than the largest periodic benefit that would have been payable to the participant upon separation from service at or prior to normal retirement age under the plan exclusive of social security supplements, premiums on disability or term insurance, and the value of disability benefits not in excess of the normal retirement benefit. For purposes of comparing periodic benefits in the same form, commencing prior to and at normal retirement age, the greater benefit is determined by converting the benefit payable prior to normal retirement age into the same form of annuity benefit payable at normal retirement age and comparing the amount of such annuity payments. In the case of a top-heavy plan, the normal retirement benefit shall not be smaller than the minimum benefit to which the participant is entitled under section _____.

(Note to reviewer: The sponsor should insert the section number of the plan that corresponds to LRM #70.)

35. Accrual limitations based upon age not permitted
35. Document Provision:

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

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

EMPLOYEE CONTRIBUTIONS

(Note to reviewer: Pursuant to Revenue Procedures 89-9, section 9.0315, and 90-21, section 5.06, plans may provide for contributions that are subject to the special nondiscrimination requirements of section 401(m) only if the plan includes a qualified CODA under section 401(k) or if the plan either designates the sponsoring organization as plan administrator or obligates the sponsoring organization to (1) maintain records that enable it to monitor adopting employer's compliance with the requirements of section 401(m); (2) perform the section 401(m) actual contribution percentage test for adopting employers on an annual basis; and (3) notify adopting employers if they are required to correct excess aggregate contributions. The following LRM #36 applies to plans precluded from providing employee contributions pursuant to the above, that nonetheless permitted employee contributions for plan years beginning after December 31, 1986, or which may be adopted as amendments to plans which permitted such contributions. LRM ##37 and 38 are required for plans which have ever permitted such employee contributions. LRM #39 is required if the plan permitted deductible employee contributions prior to January 1, 1987.

36. Employee contributions - ACP test
36. Document Provision:

Statement of Requirement: **Contributions subject to ACP test, IRC §401(m); Rev. Proc. 89-9, §9.0315, §9.0318, §10.0712.**

(Note to reviewer: This provision must be included if the plan permitted employee contributions that are allocated to a separate account for any plan year beginning after December 31, 1986.)

Sample Plan Language:

Beginning with the plan year in which this plan is adopted by the employer, this plan will no longer accept employee contributions which are allocated to a separate account. Employee contributions for plan years beginning after December 31, 1986, together with any matching contributions as defined in section 401(m) of the Internal Revenue Code, will be limited so as to meet the nondiscrimination test of section 401(m).

(Note to reviewer: The following LRM provisions ##37 and 38 are required if the plan permitted nondeductible voluntary employee contributions prior to the first plan year after the plan year in which the employer adopts this plan.)

37. Separate account - employee contributions
37. Document Provision:

Statement of Requirement: **Separate account-Employee contributions, IRC §411(d)(5); Regs. §1.411(c)-1(b); Rev. Rul. 80-155.**

Sample Plan Language:

A separate account shall be maintained for the nondeductible voluntary employee contributions of each participant. 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 attributable to the accumulated nondeductible voluntary contributions will be allocated to each participant’s nondeductible voluntary contributions account in the ratio that such account balance bears to all such account balances.

38. Nonforfeitability of employee contributions
38. Document Provision:

Statement of Requirement: Nonforfeitability of employee contributions, IRC §411(a)(l).

Sample Plan Language: Employee voluntary contributions (as adjusted for investment experience) shall be nonforfeitable at all times.

39. Deductible voluntary employee contributions
39. Document Provision:

Statement of Requirement: Deductible voluntary employee contributions, IRC §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 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 attributable to the accumulated deductible voluntary contribution will be allocated to each participant's deductible voluntary contributions account in the ratio that such account balance bears to all such account balances. 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.

SECTION 415 LIMITATIONS

40. Limitations on benefits
40. Document Provision:

Statement of Requirement: Limitation on benefits, IRC §415, IRC §419A(d); Regs. §1.415-1; Rev. Proc. 89-9, §9.0317; Notice 83-10, 1983-1 C.B. 536; Notice 87-21, 1987-1 C.B. 458; Rev. Rul. 98-1, 1998-2 I.R.B. 5.

Sample Plan Language:

Article _____: Limitation on Benefits

Section l. This section, except for section 1.3, applies regardless of whether any participant is or has ever been a participant in another qualified plan maintained by the adopting employer. If any participant is or has ever been a participant in another qualified plan maintained by the employer, or a welfare benefit fund, as defined in section 419(e) of the Internal Revenue Code, maintained by the employer, or an individual medical account, as defined in section 415(l)(2) of the Internal Revenue Code, maintained by the employer, or a simplified employee pension, as defined in section 408(k) of the Internal Revenue Code, maintained by the employer, that provides an annual addition as defined in section 5.1, section 2 is also applicable to that participant's benefits.

Section 1.1. The annual benefit otherwise payable to a participant at any time will not exceed the maximum permissible amount. If the benefit the participant would otherwise accrue in a limitation year would produce an annual benefit in excess of the maximum permissible amount, the rate of accrual will be reduced so that the annual benefit will equal the maximum permissible amount.

Section 1.2. If a participant has made nondeductible employee contributions, or mandatory employee contributions as defined in § 411(c)(2)(C) of the Internal Revenue Code, under the terms of this plan, the amount of such contributions is treated as an annual addition to a qualified defined contribution plan, for purposes of sections 1.1 and 2.2 of this article.

Section 2. This section applies if any participant is covered, or has ever been covered, by another plan maintained by the employer, including a qualified plan, a welfare benefit fund, or an individual medical account, or a simplified employee pension that provides an annual addition as described in section 4.1.

Section 2.1. If a participant is, or has ever been, covered under more than one defined benefit plan maintained by the employer, the sum of the participant's annual benefits from all such plans may not exceed the maximum permissible amount. The employer will choose in section _____ of the adoption agreement the method by which the plans will meet this limitation.

Section 2.2. If the employer maintains, or at any time maintained, one or more qualified defined contribution plans covering any participant in this plan, a welfare benefit fund, an individual medical account, or a simplified employee pension, the sum of the participant's defined contribution fraction and defined benefit fraction will not exceed 1.0 in any limitation year, and the annual benefit otherwise payable to the participant under this plan will be limited in accordance with section _____ of the adoption agreement.

Section 3. In the case of an individual who was a participant in one or more defined benefit plans of the employer as of the first day of the first limitation year beginning after December 31, 1986, the application of the limitations of this article shall not cause the maximum permissible amount for such individual under all such defined benefit plans to be less than the individual's Tax Reform Act of 1986 (TRA '86) accrued benefit. The preceding sentence applies only if such defined benefit plans met the requirements of section 415 of the Internal Revenue Code, for all limitation years beginning before January 1, 1987.

Section 4. In the case of an individual who was a participant in one or more defined benefit plans of the employer as of the first day of the first limitation year beginning after December 31, 1994, the application of the limitations of this article shall not cause the maximum permissible amount for such individual under all such defined benefit plans to be less than the individual's Retirement Protection Act of 1994 (RPA '94) old law benefit. The preceding sentence applies only if such defined benefit plans met the requirements of § 415 of the Internal Revenue Code on December 7, 1994.

Section 5. Definitions.

Section 5.1. Annual additions: The sum of the following amounts credited to a participant's account for the limitation year:

(i) employer contributions;

(ii) employee contributions,

(iii) forfeitures,

(iv) amounts allocated after March 31, 1984, to an individual medical account that 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 after December 31, 1985, in taxable years ending after such date, that are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in section 419A(d)(3) of the Internal Revenue Code) under a welfare benefit fund are treated as annual additions to a defined contribution plan; and

(v) allocations under a simplified employee pension.

Section 5.2. Annual benefit: A retirement benefit under the plan which is payable annually in the form of a straight life annuity. Except as provided below, a benefit payable in a form other than a straight life annuity must be adjusted to an actuarial equivalent straight life annuity before applying the limitations of this article. For limitation years beginning before January 1, 1995, such actuarially equivalent straight life annuity is equal to the greater of the annuity benefit computed using the interest rate specified in the plan for adjusting benefits in the same form or 5 percent. For limitation years beginning after December 31, 1994, the actuarially equivalent straight life annuity is equal to the greater of the annuity benefit computed using the interest rate and mortality table (or other tabular factor) specified in the plan for adjusting benefits in the same form, and the annuity benefit computed using a 5 percent interest rate assumption and the applicable mortality table defined in section _____ of the plan. In determining the actuarially equivalent straight life annuity for a benefit form other than a nondecreasing annuity payable for a period of not less than the life of the participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or decreases during the life of the participant merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the annual benefit payable before the death of the survivor annuitant),

or (b) the cessation or reduction of Social Security supplements of qualified disability payments (as defined in § 401(a)(11), "the applicable interest rate", as defined in section of the plan, will be substituted for "a 5 percent interest rate assumption" in the preceding sentence. No actuarial adjustment to the benefit is required for (a) the value of a qualified joint and survivor annuity, (b) benefits that are not directly related to retirement benefits (such as the qualified disability benefit, pre-retirement death benefits, and post-retirement medical benefits), and (c) the value of post-retirement cost-of-living increases made in accordance with section 415(d) of the Internal Revenue Code and section 1.415-3(c)(2)(iii) of the Income Tax Regulations. The annual benefit does not include any benefits attributable to employee contributions or rollover contributions, or the assets transferred from a qualified plan that was not maintained by the employer.

(Note to reviewer: The blanks above should be filled in with the sections of the plan that specify applicable mortality table and applicable interest rate and that correspond to sections 3 and 2 of LRM #42.)

Section 5.3. Compensation: As elected by the employer in the adoption agreement, compensation shall mean one of the following:

(1) Information required to be reported under sections 6041, 6051, and 6052 of the Internal Revenue Code (wages, tips, and other compensation as reported onForm W-2). Compensation is defined as wages, within the meaning of section 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 sections 6041(d), and 6051(a)(3), and 6052. Compensation must be determined without regard to any rules under section 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 section 3401(a)(2)).

(2) Section 3401(a) wages. Compensation is defined as wages within the meaning of section 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 section 3401(a)(2)).

(3) 415 safe-harbor compensation. Compensation is defined as wages, salaries, 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 includable in gross income (including, but not limited to, commissions paid salesmen, 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)), and excluding the following:

(a) Employer contributions to a plan of deferred compensation which are not includible in the employee's gross income for the taxable year in which contributed, or employer contributions under a simplified employee pension to the extent such contributions are deductible by the employee, or any distributions from a plan of deferred compensation;

(b) Amounts realized from the exercise of a non-qualified stock option, 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;

(c) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and

(d) other amounts which received special tax benefits, or contributions made by the employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in section 403(b) of the Internal Revenue Code (whether or not the contributions are actually excludable from the gross income of the employee).

For any self-employed individual compensation will mean earned income.

For limitation years beginning after December 31, 1991, for purposes of applying the limitations of this article, compensation for a limitation year is the compensation actually paid or made available during such limitation year.

For limitation years beginning after December 31, 1997, for purposes of applying the limitations of this article, compensation paid or made available during such limitation year shall include any elective deferral (as defined in Code § 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 § 125 or 457.

Section 5.4. Defined benefit dollar limitation: $90,000. Effective on January 1 of each year the $90,000 limitation above will be automatically adjusted under section 415(d) of the Internal Revenue Code in such manner as the Secretary shall prescribe. The new limitation will apply to limitation years ending within the calendar year of the date of the adjustment.

Section 5.5. Defined benefit fraction: A fraction, the numerator of which is the sum of the participant's projected annual benefits under all the defined benefit plans (whether or not terminated) maintained by the employer, and the denominator of which is the lesser of 125 percent of the dollar limitation determined for the limitation year under sections 415(b)(1)(A) and (d) of the Internal Revenue Code or 140 percent of the highest average compensation, including any adjustments under section 415(b)(5) of the Internal Revenue Code, both in accordance with section 5.10 below.

Notwithstanding the above, if the participant was a participant as of the first day of the first limitation year beginning after December 31, 1986, in one or more defined benefit plans maintained by the employer which were in existence on May 6, 1986, the denominator of this fraction will not be less than 125 percent of the sum of the annual benefits under such plans which the participant had accrued as of the close of the last limitation year beginning before January l, 1987, disregarding any changes in the terms and conditions of the plans after May 5, 1986. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of section 415 for all limitation years beginning before January 1, 1987.

Section 5.6. Defined contribution fraction: A fraction, the numerator of which is the sum of the annual additions to the participant's account under all the defined contribution plans (whether or not terminated) maintained by the employer

for the current and all prior limitation years, (including the annual additions attributable to the participant's nondeductible employee contributions to this and all other defined benefit plans (whether or not terminated) maintained by the employer, and the annual additions attributable to all welfare benefit funds or individual medical accounts and simplified employee pensions maintained by the employer), and the denominator of which is the sum of the maximum aggregate amounts for the current and all prior limitation years of service with the employer (regardless of whether a defined contribution plan was maintained by the employer).

The maximum aggregate amount in any limitation year is the lesser of (1) 125 percent of the dollar limitation under § 415(c)(1)(A) of the Internal Revenue Code after adjustment under § 415(d), or (2) 35 percent of the participant's compensation for such year.

The annual addition for any limitation year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as annual additions.

If the employee was a participant as of the first day of the first limitation year beginning after December 31, 1986, in one or more defined contribution plans maintained by the employer which were in existence on May 6, 1986, the numerator of this fraction will be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0 under the terms of this plan. Under the adjustment, an amount equal to the product of (l) the excess of the sum of the fractions over 1.0 times (2) the denominator of this fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plans made after May 5, 1986, but using the section 415 limitation applicable to the first limitation year beginning on or after January 1, 1987.

Section 5.7. 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 section 414(b) of the Internal Revenue Code, as modified by section 415(h)), all commonly controlled trades or businesses (as defined in section 414(c) as modified by section 415(h)), or affiliated service groups (as defined in section 414(m)) of which the adopting employer is a part,

and any other entity required to be aggregated with the employer pursuant to section 414(o) of the Internal Revenue Code.

Section 5.8. Highest average compensation: The average compensation for the three consecutive years of service with the employer that produces the highest average. A year of service with the employer is the 12-consecutive month period defined in section _____ of the adoption agreement.

In the case of a participant who has separated from service, the participant's highest average compensation will be automatically adjusted by multiplying such compensation by the cost of living adjustment factor prescribed by the Secretary of the Treasury under § 415(d) of the Internal Revenue Code in such manner as the Secretary shall prescribe. The adjusted compensation amount will apply to limitation years ending within the calendar year of the date of the adjustment.

Section 5.9. 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.

Section 5.10. Maximum permissible amount: (a) The lesser of the defined benefit dollar limitation or 100 percent of the participant's highest average compensation.

(b) If the participant has less than 10 years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction -- (i) the numerator of which is the number of years (or part thereof) of participation in the plan, and (ii) the denominator of which is 10. In the case of aparticipant who has less than ten years of service with the employer, the compensation limitation shall be multiplied by a fraction -- (i) the numerator of which is the number of years (or part thereof) of service with the employer, and (ii) the denominator of which is 10. The adjustments of this section (b) shall be applied in the denominator of the defined benefit fraction based upon years of service. For purposes of computing the defined benefit fraction only, years of service shall include future years of service (or part thereof) commencing

before the participant's normal retirement age. Such future years of service shall include the year that contains the date the participant reaches normal retirement age, only if it can be reasonably anticipated that the participant will receive a year of service for such year, or the year in which the participant terminates employment, if earlier.

(c) If the annual benefit of the participant commences before the participant's social security retirement age, but on or after age 62, the defined benefit dollar limitation as reduced in (b) above, if necessary, shall be determined as follows:

(i) If a participant's social security retirement age is 65, the dollar limitation for benefits commencing on or after age 62 is determined by reducing the defined benefit dollar limitation by 5/9 of one percent for each month by which benefits commence before the month in which the participant attains age 65.

(ii) If a participant's social security retirement age is greater than 65, the dollar limitation for benefits commencing on or after age 62 is determined by reducing the defined benefit dollar limitation by 5/9 of one percent for each of the first 36 months and 5/12 of one percent for each of the additional months (up to 24 months) by which benefit commence before the month of the participant's social security retirement age.

(d) If the benefit of a participant commences prior to age 62, the defined benefit dollar limitation shall be an annual benefit that is the actuarial equivalent of the defined benefit dollar limitation for age 62, as determined above, reduced for each month by which benefits commence before the month in which the participant attains age 62. The annual benefit beginning prior to age 62 shall be determined as the lesser of the equivalent annual benefit computed using the interest rate and mortality table (or other tabular factor) equivalence for early retirement benefits, and the equivalent annual benefit computed using a 5 percent interest rate and the applicable mortality table as defined in section _____ of the plan. Any decrease in the adjusted defined benefit dollar limitation determined in accordance with this provision (d) shall not reflect any mortality decrement to the extent that benefits will not be forfeited upon the death of the participant.

(Note to reviewer: The blank should be filled in with the section number of the plan corresponding to section 3 of LRM #42.

(e) If the annual benefit of a participant commences after the participant's social security retirement age, the defined benefit dollar limitation as reduced in (b) above, if necessary, shall be adjusted so that it is the actuarial equivalent of an annual benefit of such dollar limitation beginning at the participant's social security retirement age. The equivalent annual benefit beginning after social security retirement age shall be determined as the lesser of the equivalent annual benefit computed using the interest rate and mortality table (or other tabular factor) specified in the plan for purposes of determining actuarial equivalence for delayed retirement benefits, and the equivalent annual benefit computed using a 5 percent interest rate assumption and the applicable mortality table as defined in section _____ of the plan.

(Note to reviewer: The blank should be filled in with the section number of the plan corresponding to section 3 of LRM #42.

(f) Notwithstanding anything else in this section to the contrary, the benefit otherwise accrued or payable to a participant under this plan shall be deemed not to exceed the defined benefit dollar limitation if:

(i) the retirement benefits payable for a plan year under any form of benefit with respect to such participant under this plan and under all other defined benefit plans (regardless of whether terminated) ever maintained by the employer do not exceed $1,000 multiplied by the participant's number of years of service or parts thereof (not to exceed 10) with the I employer; and

(ii) the employer has not at any time maintained a defined contribution plan, a welfare benefit plan, or an individual medical account in which the participant participated.

Section 5.11. Projected annual benefit: The annual benefit as defined in section 5.2 of this article, to which the participant would be entitled under the terms of the plan assuming:

(a) the participant will continue employment until normal retirement age under the plan (or current age, if later), and

(b) the participant's compensation for the current limitation year and all other relevant factors used to determine benefits under the plan will remain constant for all future limitation years.

Section 5.12. RPA '94 old law benefit: The participant's accrued benefit under the terms of the plan as of _____,(the RPA '94 freeze date), for the annuity starting date and optional form and taking into account the limitations of § 415, as in effect on December 7, 1994, including the participation requirements under § 415(b)(5). In determining the amount of a participant's RPA '94 old law benefit, the following shall be disregarded:

(i) any plan amendment increasing benefits adopted after the RPA '94 freeze date; and

(ii) any cost of living adjustments that become effective after such date.

A participant's RPA '94 old law benefit is not increased after the RPA '94 freeze date, but if the limitations of § 415, as in effect on December 7, 1994, are less than the limitations that were applied to determine the participant's RPA '94 old law benefit on the RPA '94 freeze date, then the participant's RPA '94 old law benefit will be reduced in accordance with such reduced limitation. If, at any date after the RPA '94 freeze date, the participant's total plan benefit, before the application of § 415, is less than the participant's RPA '94 old law benefit, the RPA '94 old law benefit will be reduced to the participant's total plan benefit.

The RPA '94 freeze date must be a date that is on or before the first day of the first limitation year beginning after December 31, 1999, and must be the same date that the § 417(e)3) changes are made effective for the plan.

(Note to reviewer: the blank above should be filled in with the date from the adoption agreement as of which the § 417(e)(3) changes are effective for the plan. See LRM #42, section 4. Accordingly, the § 417(e)(3) changes will not be applied to the RPA '94 old law benefit.)

Section 5.13. Social security retirement age: Age 65 in the case of a participant attaining age 62 before January 1, 2000 (i.e., born before January 1, 1938), age 66 for a participant attaining age 62 after December 31, 1999, and before January 1, 2017 (i.e., born after December 31, 1937, but before January 1, 1955), and age 67 for a participant attaining age 62 after December 31, 2016 (i.e., born after December 31, 1954).

Section 5.14. TRA ’86 accrued benefit: A participant’s accrued benefit under the plan, determined as if the participant had separated from service as of the close of the last limitation year beginning before January 1, 1987, when expressed as an annual benefit within the meaning of § 415(b)(2) of the Internal Revenue Code. In determining the amount of a participant's TRA '86 accrued benefit, the following shall be disregarded:

(i) any change in the terms and conditions of the plan after May 5, 1986; and

(ii) any cost of living adjustments occurring after May 5, 1986.

Section 5.15. Year of participation: The participant shall be credited with a year of participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met: (1) The participant is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the plan in order to accrue a benefit for the accrual computation period, and (2) the participant is included as a participant under the eligibility provisions of the plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the participant shall equal the amount of benefit accrual service credited to the participant for such accrual computation period. A participant who is permanently and totally disabled within the meaning of section 415(c)(3)(C)(i) of the Internal Revenue Code for an accrual computation period shall receive a year of participation with respect to that period. In addition, for a participant to receive a year of participation (or part thereof) for an accrual computation period, the plan must be established no later that the last day of such accrual computation period. In no event will

more than one year of participation be credited for any 12-month period.

Section 6. Transition Rule

Section 6.1. If the plan was adopted and in effect before December 8, 1994, determinations under Code § 415(b)(2)(E) that are made before the date that is the earlier of

(i) the later of the date a plan amendment applying the amendments made by sections _____ and _____ is adopted or made effective, and

(ii) the first day of the first limitation year beginning after December 31, 1999,

shall be made with respect to a participant's RPA '94 old law benefit on the basis of Code § 415(b)(2)(E) as in effect on December 7, 1994, and the provisions of the plan as in effect on December 7, 1994, but only if such provisions of the plan meet the requirements of Code § 415(b)(2)(E) as so in effect.

(Note to reviewer: The two blanks above should be filled in with the section number of the plan corresponding to sections 5.2, and 5.lO(d) and (e), above.)

(Note to reviewer: The employer will elect, in the adoption agreement section corresponding to section C of the LRM #42 adoption agreement language, the date after which the applicable interest rate and the applicable mortality table shall apply.)

(Note to reviewer: Sponsors who have already amended their plans for GATT are permitted within the remedial amendment period for the plan to amend the plan to reverse their amendment retroactively. The remedial amendment period for most plans ends on the last day of the first plan year beginning on or after January 1, 1999.)

Sample Adoption Agreement Language:

A. If you maintain or ever maintained another qualified plan other than paired plan # _____ in which any participant in this plan is (or was) a participant or could become a participant, the employer must complete this section. The employer must also complete this section if it

maintains a welfare benefit fund, as defined in section 419(e) of the Internal Revenue Code, or an individual medical account, as defined in section 415(l)(2) of the Internal Revenue Code, under which amounts are treated as annual additions with respect to any participant in this plan.

(Note to reviewer: The combined plan limit under Code § 415(e) is repealed effective with respect to limitation years beginning after December 31, 1999. For limitation years beginning before December 31, 1999, the sponsor should leave space for the adopting employer to provide language which will satisfy the 1.0 limitation of § 415(e) of the Code. Such language must preclude employer discretion as required under Regs. § 1.415-1(d).)

(Note to reviewer: If this plan is paired with another plan maintained by the employer, this plan must provide for the appropriate reductions under IRC 415(e) for limitation years beginning before December 31, 1999. See LRM #92 for appropriate language.)

(Note to reviewer: If the employer maintains or has ever maintained another defined benefit plan, such employer must provide language that will assure that the maximum permissible amount is never exceeded. In the alternative, the employer may identify the other plan which will provide suitable language so that the maximum permissible amount is never exceeded.)

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

C. For purposes of calculating the participant's highest average compensation, a year of service is the following 12-consecutive month period:

D. Compensation will 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

For limitation years beginning after December 31, 1997, for purposes of applying the limitations of this article, compensation paid or made available during such limitation year shall include any elective deferral (as defined in Code § 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 § 125 or 457.

DISTRIBUTION PROVISIONS

41. Defined benefit plans must state the normal form of benefit for the benefits to be definitely determinable
41. Document Provision:

Statement of Requirement:	**Defined benefit plans must state the normal form of benefit for the benefits to be definitely determinable, Regs. §1.401-1(b)(1)(i).**

Sample Plan Language:

The normal form of benefit shall be as selected in section _____ of the adoption agreement. The normal form of benefit will not be expressed in the form of a joint and survivor annuity.

(Note to reviewer: To assure that a participant whose benefit is at the 415 limitations does not violate those limitations when the participant elects an alternate form of distribution, the normal form of benefit may not be expressed in the form of a joint and survivor annuity.)

42. Definite benefit
42. Document Provision:

Statement of Requirement:	**Definite benefit, IRC §401(a)(25), §411(a)(11), §417(e)(3); Regs. §1.401-1(b)(l)(i),§1.411(a)-(11)(d), §1.417(e)-1(d); Rev. Rul. 79-90.**

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.

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

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 section 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.)

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 section 417(e), if it produces a benefit greater than that determined under the preceding paragraph.

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 #102.)

Section 2. 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. 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 month, one plan quarter, or one plan year, as specified in section _____ of the adoption agreement, that 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 commencing 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. The section 417 applicable mortality table is set forth in Rev. Rul. 95-6, 1995-1 C.B. 80.

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

Interest rate: _____% (must be between 7½% & 8½% if the plan provides for permitted disparity under section 401(l) of the Internal Revenue Code)

Mortality table: _____(must be standard mortality table as described in section 1.401(a)(4)-12 of the Income Tax Regulations if the plan provides for permitted disparity under section 401(l) of the Internal Revenue Code)

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

( ) one month

( ) one plan quarter

( ) one plan year

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.

C. The provisions of section _____ and section _____ relating to the applicable interest rate and applicable mortality table respectively, shall apply to distributions in plan years beginning after _____ (this date must be earlier than the first day of the first plan year beginning after December 31, 1999).

(Note to reviewer: The first two blanks should be filled in with the section numbers of the plan corresponding to sections 2 and 3, respectively, of LRM #42.)

43. Optional forms of benefit must be stated in plan
43. Document Provision:

Statement of Requirement: **Optional forms of benefit must be stated in the plan, IRC §401(a)(4) and §411(d)(6); Regs §1.401(a)(4)-4, §1.411(d)-4, Notice 97-75, 1997-51 I.R.B. 18.**

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 plan must be made available to all participants on a nondiscriminatory basis (i.e., they must not discriminate in favor of the highly compensated group.) 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: Section 411(d)(6) prevents a plan from retroactively reducing or eliminating optional forms of benefits and any other "section 411(d)(6) protected benefits".)

(Note to reviewer: An employer that decides to eliminate the availability of a preretirement optional form of benefit (defined in LRM #51) for a participant (other than a 5 percent owner) who attained 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.)

44. Cash-outs and plan repayment provisions
44. Document Provision:

Statement of Requirement: **Cash-outs and plan repayment provisions, IRC §411(a)(11),**

§417(e); Regs. §1.411(a)(7)-d(4), §1.417(e)-1(d).

(Note to reviewer: This sample provision applies to plans that provide for distributions of lump sum benefits prior to normal retirement age and disregard service attributable to such distributions upon subsequent reemployment.)

Sample Plan Language:

If an employee terminates service, and the present value of the employee's vested accrued benefit derived from employer and employee contributions is not greater than $5,000, the employee will receive a distribution of the present value of the entire vested portion of such accrued benefit and the nonvested portion will be treated as a forfeiture. For purposes of this section, if the present value of an employee's vested accrued benefit is zero, the employee shall be deemed to have received a distribution of such vested accrued benefit.

If an employee terminates service, and the present value of the employee's vested accrued benefit derived from employer and employee contributions exceeds $5,000, the employee may elect, in accordance with section _____ of the plan, to receive a distribution of the present value of the entire vested portion of such accrued benefit and the nonvested portion will be treated as a forfeiture.

A participant's vested accrued benefit shall not include accumulated deductible employee contributions within the meaning of section 72()(o)(5)(B) of the Internal Revenue Code for plan years beginning prior to January 1, 1989.

(Note to reviewer: The blank should be filled in with the plan section number that corresponds to LRM #45.)

For the purpose of the foregoing provisions, present value shall be determined in accordance with section _____ of the plan.

(Note to reviewer: The blank should be filled in with the section number that corresponds to the requirements of LRM #42.)

If an employee receives a distribution pursuant to this section and the employee resumes covered employment under the plan, he or she shall have the right to restore his or her employer-provided accrued benefit (including all optional forms of benefits and subsidies relating to such benefits) to the extent forfeited upon the repayment to the plan of the full amount of the distribution plus interest, compounded annually from the date of distribution at the rate determined for purposes of section 411(c)(2)(C) of the Internal Revenue Code. Such repayment must be made before the earlier of five years after the first date on which the participant is subsequently reemployed by the employer, or the date the participant incurs 5 consecutive 1-year breaks in service following the date of 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-provided accrued benefit will be restored to the amount of such accrued benefit on the date of the deemed distribution.

45. Restrictions on immediate distributions (411(a)(11))
45. Document Provision:

Statement of Requirement:	**Restrictions on immediate distributions, IRC §411(a)(11), §417(e)(2); Regs. §1.411(a)-11, §1.417(e)-1; 1.401(a)(20); Rev. Proc. 93-47.**

Sample Plan Language:

Section 1. If the present value of a participant's vested accrued benefit derived from employer and employee contributions exceeds (or at the time of any prior distribution <u>(1) in plan years beginning before August 6, 1997,</u> exceeded $3,500 <u>or (2) in plan years beginning after August 5, 1997, exceeded) $5,000</u>, and the accrued benefit is immediately distributable, the participant and the participant's spouse (or where either the participant or the spouse has died, the survivor) must consent to any distribution of such accrued benefit. The consent of the participant and the participant's spouse shall be obtained in writing within the 90-day period 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 accrued benefit is no longer immediately distributable. Such notification shall include a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the plan in a manner that would satisfy the notice requirements of section 417(a)(3), and shall be provided no less than 30 days and no more than 90 days 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 sections 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 accrued benefit 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 section 401(a)(9) or section 415 of the Internal Revenue Code.

Present value shall be determined in accordance with section _____ of the plan.

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

An accrued benefit is immediately distributable if any part of the accrued benefit 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 accrued benefit

shall not include amounts attributable to accumulated deductible employee contributions within the meaning of section 72(o)(5)(B) of the Internal Revenue Code.

46. Joint & survivor annuity and preretirement survivor annuity requirements

46. Document Provision:

Statement of Requirement: **Joint and survivor annuity and preretirement survivor annuity requirements, IRC §401(a)(11), §417; Regs. §1.401(a)-20, 1.417(e)-1T.**

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 6.

Section 2. Qualified Joint and Survivor Annuity. Unless an optional form of benefit is selected pursuant to a qualified election within the 90-day period ending on the annuity starting date, a married participant's vested accrued benefit will be paid in the form of a qualified joint and survivor annuity and an unmarried participant's vested accrued benefit will be paid in the normal form of an immediate life annuity. The participant may elect to have such annuity distributed upon attainment of the earliest retirement age under the plan.

Section 3. Qualified Preretirement Survivor Annuity.

3.1. Unless an optional form of benefit has been selected within the election period pursuant to a qualified election, if a participant dies after the earliest retirement age the participant's surviving spouse, if any, will receive the same benefit that would be payable if the participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death.

The surviving spouse may elect to commence payment under such annuity within a reasonable period after the participant's death. The actuarial value of benefits which commence later than the date on which payments would have

been made to the surviving spouse under a qualified joint and survivor annuity in accordance with this provision shall be adjusted to reflect the delayed payment.

3.2. Unless an optional form of benefit is selected within the election period pursuant to a qualified election, if a participant dies on or before the earliest retirement age, the participant's surviving spouse (if any) will receive the same benefit that would be payable if the participant had:

(i) separated from service on the date of death (or date of separation from service, if earlier),

(ii) survived to the earliest retirement age,

(iii) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

(iv) died on the day after the earliest retirement age.

3.3. For purposes of section 3.2, and subject to the provisions of section _____ of the plan, a surviving spouse will begin to receive payments at the earliest retirement age. Benefits commencing after the earliest retirement age will be the actuarial equivalent of the benefit to which the surviving spouse would have been entitled if benefits had commenced at the earliest retirement age under an immediate qualified joint and survivor annuity in accordance with section 3.2.

(Note to reviewer: The blank should be filled in with the plan section number which corresponds to LRM #45.)

3.4. For the purposes of this section 3, the benefit payable to the surviving spouse shall be attributable to employee contribution in the same proportion as the total accrued benefit derived from employee contributions is to the accrued benefit of the participant.

Section 4. Definitions.

4.1. 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

benefits accrued prior to 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 will 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 5.1. 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.

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

4.3. 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 alternate 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 will 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 such written consent may not be obtained because there is no spouse or 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 prior to 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 5 below.

4.4. 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 actuarial equivalent of the normal form of benefit, or, if greater, any optional form of benefit. 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).

4.5. 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 section 414(p) of the Internal Revenue Code.

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

The annuity starting date for disability benefits shall be the date such benefits commence if the disability benefit is not an auxiliary benefit. An auxiliary benefit is a disability benefit which does not reduce the benefit payable at normal retirement age.

(Note to reviewer: The following provision is required only if the plan provides for suspension of benefits in accordance with LRM #55. The blank should be filled in with the plan section number which corresponds to LRM #55.)

If benefit payments in any form are suspended pursuant to section _____ of the plan for an employee who continues in service without a separation and who does not receive a benefit payment, the recommencement of benefit payments shall be treated as a new annuity starting date.

4.7. Vested accrued benefit: The value of the participant's vested accrued benefit derived from employer and employee contributions (including rollovers). 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 5. Notice Requirements.

5.1. In the case of a qualified joint and survivor annuity as described in section 2 of this article, the plan administrator shall provide each participant no less than 30 days and no more than 90 days prior to the annuity starting date a written explanation of: (i) the terms and conditions of a qualified joint and 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; (iv) the right to make, and the effect of, a revocation of a previous election to waive the qualified joint and survivor annuity; and (v) the relative values of the various optional forms of benefit under the plan.

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.)

5.2. In the case of a qualified preretirement survivor annuity as described in section 3 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 a manner as would be comparable to the explanation provided for meeting the requirements of section 5.1 applicable to a qualified joint and survivor annuity.

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 5.3 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 of service in case of a participant who separates from service before attaining age 35.

For purposes of 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.

5.3. Notwithstanding the other requirements of this section 5, 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 5.3, a plan fully subsidizes the costs of a benefit if under the plan no increase in cost or decrease in benefits to the participant may result from the participant's failure to elect another benefit. Prior to the time the plan allows the participant to waive the qualified preretirement survivor annuity, the plan may not charge the participant for the cost of such benefit by reducing the participant's benefits under the plan or by any other method.

Section 6. Transitional Rules.

6.1. 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.

6.2. 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 6.4 of this article.

6.3. The respective opportunities to elect (as described in sections 6.1 and 6.2 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.

6.4. Any participant who has elected pursuant to section 6.2 of this article and any participant who does not elect under section 6.1 or who meets the requirements of section 6.1 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 6.4:

(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 an survivor annuity for the life of the spouse as described in section 4.4 of this article.

47. Commencement of benefits -- 401(a)(14)
47. Document Provision:

Statement of Requirement: **Commencement of benefits, IRC §401(a)(14); Regs. §1.411(a)(11)-1(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 #45.)

48. Early retirement with age and service requirement
48. Document Provision:

Statement of Requirement: **Early retirement with age and service requirement, IRC §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.

49. Conflicts with annuity contracts
49. 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.

50. Nontransferability of annuities (401(g))
50. Document Provision:

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

Sample Plan Language: Any annuity contract distributed herefrom must be nontransferable.

51. Timing and modes of distribution (401(a)(9))
51. Document Provision:

Statement of Requirement: **Timing and modes of distribution, IRC §401(a)(9); Prop. Regs. §1.401(a)(9)-1, §1.401(a)(9)-2.**

Sample Plan Language:

Article _____. DISTRIBUTION REQUIREMENTS.

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. Unless otherwise specified, the provisions of this article apply to calendar years beginning after December 31, 1984.

1.2. All distributions required under this article shall be determined and made in accordance with the Proposed Income Tax Regulations under section 401(a)(9) of the Code, including the minimum distribution incidental benefit requirement of section 1.401(a)(9)-2 of the Proposed Income Tax Regulations.

Section 2. Required Beginning Date. The entire interest of a participant must be distributed or begin to be distributed no later than the participant's required beginning date.

Section 3. Limits on Distribution Periods. As of the first distribution calendar year, distributions, if not made in a single-sum, may only be made over one of the following periods (or a combination thereof):

(a) the life of the participant,

(b) the life 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 and last survivor expectancy of the participant and a designated beneficiary.

Section 4. Determination of amount to be distributed each year.

(a) If the participant's interest is to be paid in the form of annuity distributions under the plan, payments under the annuity shall satisfy the following requirements:

(1) the annuity distributions must be paid in periodic payments made at intervals not longer than one year;

(2) the distribution period must be over a life (or lives) or over a period certain not longer than a life expectancy (or joint life and last survivor expectancy) described in section 401(a)(9)(A)(ii) or section 401(a)(9)(B)(iii) of the Code, whichever is applicable;

(3) the life expectancy (or joint life and last survivor expectancy) for purposes of determining the period certain shall be determined without recalculation of life expectancy;

(4) once payments have begun over a period certain, the period certain may not be lengthened even if the period certain is shorter than the maximum permitted;

(5) payments must either be nonincreasing or increase only as follows:

(i) with any percentage increase in a specified and generally recognized cost-of-living index;

(ii) to the extent of the reduction to the amount of the participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in section 3 above dies and the payments continue otherwise in accordance with that section over the life of the participant;

(iii) to provide cash refunds of employee contributions upon the participant's death; or

(iv) because of an increase in benefits under the plan.

(6) If the annuity is a life annuity (or a life annuity with a period certain not exceeding 20 years), the amount which must be distributed on or before the participant's required beginning date (or, in the case of distributions after the death of the participant, the date distributions are required to begin pursuant to section 5 below) shall be the payment which is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bimonthly, monthly, semi-annually, or annually.

If the annuity is a period certain annuity without a life contingency (or is a life annuity with a period certain exceeding 20 years) periodic payments for each distribution calendar year shall be combined and treated as an annual amount. The amount which must be distributed by the participant's required beginning date (or, in the case of distributions after the death of the participant, the date distributions are required to begin pursuant to section 5 above) is the annual amount for the first distribution calendar year. The annual amount for other distribution calendar years, including the annual amount for the calendar year in which the participant's required beginning date (or the date distributions are required to begin pursuant to section 5 below) occurs, must be distributed on or before December 31 of the calendar year for which the distribution is required.

(b) Annuities purchased after December 31, 1988, are subject to the following additional conditions:

(1) Unless the participant's spouse is the designated beneficiary, if the participant's interest is being distributed in the form of a period certain annuity without a life contingency, the period certain as of the beginning of the first distribution calendar year may not exceed the applicable period determined using the table set forth in Q&A A-5 of section 1.401(a)(9)-2 of the Proposed Income Tax Regulations.

(2) If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspouse beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A A-6 of section 1.401(a)(9)-2 of the Proposed Income Tax Regulations.

(c) Transitional rule. If payments under an annuity which complies with section (a) above begin prior to January 1, 1989, the minimum distribution requirements in effect as of July 27, 1987, shall apply to distributions from this plan, regardless of whether the annuity form of payment is irrevocable. This transitional rule also applies to deferred annuity contracts distributed to or owned by the employee prior to January 1, 1989, unless additional contributions are made under the plan by the employer with respect to such contract.

(d) If the form of distribution is an annuity made in accordance with this section 4, any additional benefits accruing to the participant after his or her required beginning date shall be distributed as a separate and identifiable component of the annuity beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(e) Any part of the participant's interest which is in the form of an individual account shall be distributed in a manner satisfying the requirements of section 401(a)(9) of the Internal Revenue Code and the proposed regulations thereunder.

Section 5. Death Distribution Provisions.

5.1 Distribution beginning before death. If the participant dies after distribution of his or her interest has begun, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the participant's death.

5.2. Distribution beginning after death. If the participant dies before distribution of his or her interest begins, distribution of the participant’s entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the participant’s death except to the extent that an election is made to receive distributions in accordance with (a) or (b) below:

(a) if any portion of the participant’s interest is payable to a designated beneficiary, distributions may be made over the life or over a period certain not greater than the life expectancy of the designated beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the participant died;

(b) if the designated beneficiary is the participant’s surviving spouse, the date distributions are required to begin in accordance with (a) above shall not be earlier than the later of (1) December 31 of the calendar year immediately following the calendar year in which the participant died and (2) December 31 of the calendar year in which the participant would have attained age 70½.

If the participant has not made an election pursuant to this section 5.2 by the time of his or her death, the participant's designated beneficiary must elect the method of distribution no later than the earlier of (1) December 31 of the calendar year in which distributions would be required to begin under this section, or (2) December 31 of the calendar year which contains the fifth anniversary of the date of death of the participant. If the participant has no designated beneficiary, or if the designated beneficiary does not elect a method of distribution, distribution of the participant's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

5.3. For purposes of section 5.2 above, if the surviving spouse dies after the participant, but before payments to such spouse begin, the provisions of section 5.2, with the exception of paragraph (b) therein, shall be applied as if the surviving spouse were the participant.

5.4. For purposes of this section 5, any amount paid to a child of the participant will be treated as if it had been paid to the surviving spouse if the amount becomes payable

to the surviving spouse when the child reaches the age of majority.

5.5. For the purposes of this section 5, distribution of a participant's interest is considered to begin on the participant's required beginning date (or, if section 5.3 above is applicable, the date distribution is required to begin to the surviving spouse pursuant to section 5.2 above). If distribution in the form of an annuity described in section 4(a) above irrevocably commences to the participant before the required beginning date, the date distribution is considered to begin is the date distribution actually commences.

Section 6. Definitions

6.1. Designated beneficiary. The individual who is designated as the beneficiary under the plan in accordance with section 401(a)(9) of the Internal Revenue Code and the proposed regulations thereunder.

(Note to reviewer: In order to designate a beneficiary under the plan, the plan must by its terms designate the beneficiary or provide for an affirmative election by the participant (or the participant's surviving spouse) specifying such beneficiary. See Proposed Regulations section 1.401(a)(9)-1D.)

6.2. 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 pursuant to section 5 above.

6.3. Life expectancy. The life expectancy (or joint and last survivor expectancy) calculated using the attained age of the participant (or designated beneficiary) as of the participant's (or designated beneficiary's) birthday in the applicable calendar year. The applicable calendar year shall be the first distribution calendar year. If annuity payments commence before the required beginning date, the applicable calendar year is the year such payments commence. Life expectancy and joint and last survivor expectancy are

computed by use of the expected return multiples in Tables V and VI of section 1.72-9 of the Income Tax Regulations.

6.4 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 the 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 the 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 the amendment to the plan must commence by the later of the April 1 of the calendar year following the calendar year in which the participant attains age 70½ or retires.

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

(a) any participant 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 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 the 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)

(b) any participant attaining age 70½ in years prior to 1997 may elect to stop distributions and recommence by the April 1 of the calendar year

following the year in which the participant retires. There is either (as elected by the employer in section _____ of the adoption agreement)

(i) a new annuity starting date upon recommencement, or

(ii) no new annuity starting date upon recommencement.

(Note to reviewer: any plan amendments made with respect to (3) above must be retroactively effective and must be made in accordance with the preamendment operation of the plan.)

(Note to reviewer: The blank shall be filled in with the section of the adoption agreement that corresponds to section 3.(b) at the end of this LRM.)

(c) the preretirement age 70½ distribution option is only eliminated with respect to employees who reach age 70½ in or after a calendar year that begins after the later of December 31, 1998, or the adoption date of the amendment. The preretirement age 70½ distribution option is an optional form of benefit under which benefits payable in a particular distribution form (including any modifications that may be elected after benefit commencement) commence at a time during the period that begins on or after January 1 of the calendar year in which an employee attains age 70½ and ends April 1 of the immediately following calendar year.

(Note to reviewer: the provision allowing elimination of this distribution option with respect to certain employees is contained in section 1.411(d)-4 Q&A 10 of the proposed income tax regulations. The guidance is effective only after final regulations are adopted and will only apply to amendments adopted and effective after that date.)

6.5 5-percent owner. A participant is treated as a 5-percent owner for purposes of this section is such participant is a 5 percent owner as defined in section 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, they must continue to be distributed, even if the participant ceases to be a 5-percent owner in a subsequent year.

6.6 Actuarial Increase. Except with respect to all participants in a governmental or church plan, or a 5-percent owner in other plans, a participant's accrued benefit is actuarially increased to take into account the period after age 70½ in which the employee does not receive any benefits under the plan. The actuarial increase begins on the April 1 following the calendar year in which the employee attains age 70½ (January 1, 1997 in the case of an employee who attained age 70½ prior to 1996), and ends on the date on which benefits commence after retirement in an amount sufficient to satisfy section 401(a)(9).

The amount of actuarial increase payable as of the end of the period for actuarial increases must be no less than the actuarial equivalent of the employee's retirement benefits that would have been payable as of the date the actuarial increase must commence plus the actuarial equivalent of additional benefits accrued after that date, reduced by the actuarial equivalent of any distributions made after that date. The actuarial increase is generally the same as, and not in addition to, the actuarial increase required for that same period under section 411 to reflect the delay in payments after normal retirement, except that the actuarial increase required under section 401(a)(9)(C) must be provided even during the period during which an employee is in section 203(a)(3)(B) service.

For purposes of section 411(b)(1)(H), the actuarial increase will be treated as an adjustment attributable to the delay in distribution of benefits after the attainment of normal retirement age. Accordingly, to the extent permitted under section 411(b)(1)(H), the actuarial increase required under section 401(a)(9)(C)(iii) may reduce the benefit accrual otherwise required under section 411(b)(1)(H)(i), except that the rules on the suspension of benefits are not applicable.

Sample Adoption Agreement Language:

A. The required beginning date of a participant with respect to a plan is (select one):

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

2. ( ) the 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 the amendment to the plan must commence by the later of the April 1 of the calendar year following the calendar year in which the participant attains age 70½ or retires.

3. ( ) the later of the April 1 of the calendar year following the calendar year in which the participant attains age 70½ or retires except that benefit distributions to a 5-percent owner must commence by the April 1 of the calendar year following the calendar year in which the participant attains age 70½. (also select a, b, and/or c, whichever is applicable. (c) must be selected to the extent that there would otherwise be an elimination of a preretirement age 70½ distribution option for employees older than those listed above.)

(a) ( ) any participant 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 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 the 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)

b) ( ) any participant attaining age 70½ in years prior to 1997 may elect to stop distributions and recommence by the April 1 of the calendar year following the year in which the participant retires. There is either (select one)

(i) ( ) a new annuity starting date upon recommencement, or

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

(c) ( ) the preretirement age 70½ distribution option is only eliminated with respect to employees who reach age 70½ in or after a calendar year that begins after the later of December 31, 1998, or the adoption date of the amendment. The preretirement age 70½ distribution option is an optional form of benefit under which benefits payable in a particular distribution form (including any modifications that may be elected after benefit commencement) commence at a time during the period that begins on or after January 1 of the calendar year in which an employee attains age 70½ and ends April 1 of the immediately following calendar year.

(4) ( ) A participant's accrued benefit is actuarially increased to take into account the period after age 70½ in which the employee does not receive any benefits under the plan. The actuarial increase begins on the April 1 following the calendar year in which the employee attains age 70½ (January 1, 1997 in the case of an employee who attained age 70½ prior to 1996), and ends on the date on which benefits commence after retirement in an amount sufficient to satisfy section 401(a)(9), as described in LRM #51. (this is not required if (1) a plan continues to retain the requirement that distributions commence by the April 1 of the calendar year following the calendar year in which the participant attains age 70½. This is also not applicable to 5-percent owners in any plans).

Section 7. Transitional Rule

7.1. 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, 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 section 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.

7.2. 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.

7.3. 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 7.1(a) and (e).

7.4. If a designation is revoked any subsequent distribution must satisfy the requirements of section 401(a)(9) of the Internal Revenue Code and the proposed 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 section 401(a)(9) of the Internal Revenue Code and the proposed 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 in section 1.401(a)(9)-2 of the Proposed Income Tax Regulations. 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). In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Q&A J-2 and Q&A J-3 of section 1.401(a)(9)-1 of the Proposed Income Tax Regulations shall apply.

52. Incidental insurance provisions and definitely determinable retirement benefits

52. Document Provision:

Statement of Requirement: **Incidental insurance provisions and definitely determinable retirement benefits, Rev. Rul. 60-83, Rev. Rul, 74-307, Rev. Rul. 83-53, and Rev. Rul. 85-15.**

(Note to reviewer: The following sample language is an example of an incidental pre-retirement death benefit which is definitely determinable. A pre-retirement death benefit paid in the form of a qualified preretirement survivor annuity is deemed incidental and is, therefore, always permitted; however, if death benefits are paid in a form other than or in addition to the qualified preretirement survivor annuity, such benefits must be incidental to the retirement purpose of the plan, See Rev. Rul. 85-15.)

Sample Plan Language:

The death benefit payable under this plan will be a qualified preretirement survivor annuity and, if applicable, any other additional incidental death benefit as selected by the employer in the adoption agreement.

Sample Adoption Agreement Language:

The pre-retirement death benefit payable under this plan is (select one of the following options):

( ) A. None, other than the qualified preretirement survivor annuity.

( ) B. The qualified preretirement survivor annuity plus the proceeds of insurance policies purchased on the participant's life; provided that any death benefit in addition to the qualified preretirement survivor annuity shall be reduced to the extent necessary so that the sum of such additional benefit and the present value of the qualified preretirement survivor annuity does not exceed 100 times the participant's anticipated monthly benefit. For purpose of this requirement, the total face amount of policies purchased will be ____ (fill in the amount but not in excess of 100) times the participant's anticipated monthly benefit.

( ) C. The qualified preretirement survivor annuity plus the excess, if any, of the present value of the participant's accrued benefit minus the present value of the qualified preretirement survivor annuity.

( ) D. The qualified preretirement survivor annuity plus, if a positive amount, the incidental reserve. The incidental reserve equals the proceeds of insurance policies purchased on a participant's life plus the theoretical ILP reserve minus the sum of the present value of the qualified preretirement survivor annuity and the cash value of the policies purchased. For purpose of this requirement, the face amount of the insurance policies will be that purchasable by _____ (fill in the amount but not greater than 66 if whole life and not greater than 33 if term and/or universal life) percent of the theoretical contribution.

For purposes of D above, the following definitions apply:

Theoretical ILP reserve is the reserve that would be available at the time of death if for each year of plan participation a contribution had been made on behalf of the participant in an amount equal to the theoretical contribution.

Theoretical contribution is the contribution that would be made on behalf of the participant, using the individual level premium funding method from the age at which participation commenced to normal retirement age, to fund the participant's entire retirement benefit without regard to pre-retirement ancillary benefits. The entire retirement benefit for this purpose is based upon a straight life annuity and assumes continuation of current salary (no salary scale) and the current defined benefit fraction under section 415(e) of the Internal Revenue Code.

For purposes of B, C, and D above, the calculations for present value of any benefit shall be determined in accordance with section _____ of the plan.

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

53. Payment of benefits
53. Document Provision:

Statement of Requirement: Payment of benefits, Regs. §1.401-1(b)(l)(i).

Sample Plan Language: Benefits will be paid only on death, disability, termination of employment, plan termination, or at normal retirement age.

54. Direct Rollovers (IRC 401(a)(31))
54. Document Provision:

Statement of Requirement: Direct Rollovers, IRC §401(a)(31); Rev. Proc. 93-12; Regs. 1.401(a)(31)-1T.

Sample Plan Language:

Article ____: Direct Rollovers

Section 1. This Article applies to distributions made on or after January 1, 1993. 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 that is equal to at least $500 paid directly to

an eligible retirement plan specified by the distributee in a direct rollover.

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 section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution(s) that is reasonably expected to total less than $200 during a year.

Section 2.2. Eligible retirement plan: An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified plan described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

Section 2.3. Distributee: A distributee includes an employee or former employee. In addition, 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 section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

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

55. Suspension of benefits
55. Document Provision:

Statement of Requirement: **Suspension of benefits, IRC §411(a)(3)(B), DOL Regs. §2530.203-3.**

Sample Plan Language:

(Note to reviewer: an employee's accrued benefit in a defined benefit plan must be actuarially increased to take into account the period after age 70½ in which the employee does not receive any benefits under the plan (other than 5-percent owners in other defined benefit plans. No suspension of benefits is allowed with respect to this actuarial increase. See LRM #51)

Section _____: Suspension of Benefits.

(l) As elected by the employer in the adoption agreement, normal or early retirement benefits will be suspended for each calendar month during which the employee completes at least 40 hours of service with the employer in section 203(a)(3)(B) service. Consequently, the amount of benefits which are paid later than normal retirement age will be computed as if the employee had been receiving benefits since normal retirement age.

(2) Resumption of payment. If benefit payments have been suspended payments shall resume no later than the first day of the third calendar month after the calendar month in which the employee ceases to be employed in section 203(a)(3)(B) service. The initial payment upon resumption shall include the payment scheduled to occur in the calendar month when payments resume and any amounts withheld during the period between the cessation of section 203(a)(3)(B) service and the resumption of payments.

(3) Notification. No payment shall be withheld by the plan pursuant to this section unless the plan notifies the employee by personal delivery or first class mail during the first calendar month or payroll period in which the plan withholds payments that his or her benefits are suspended. Such notifications shall contain a description of the specific reasons why benefit payments are being suspended, a description of the plan provision relating to the suspension of payments, a copy of such provisions, and a statement to the effect that applicable Department of Labor regulations

may be found in section 2530.203-3 of the Code of Federal Regulations.

In addition, the notice shall inform the employee of the plan's procedures for affording a review of the suspension of benefits. Requests for such reviews may be considered in accordance with the claims procedure adopted by the plan pursuant to section 503 of ERISA and applicable regulations.

(4) Amount suspended.

(a) Life annuity. In the case of benefits payable periodically on a monthly basis for as long as a life (or lives) continues, such as a straight life annuity or a qualified joint and survivor annuity, an amount equal to the portion of a monthly benefit payment derived from employer contributions.

(b) Other benefit forms. In the case of a benefit payable in a form other than the form described in subsection (a) above, an amount of the employer-provided portion of benefit payments for a calendar month in which the employee is employed in section 203(a)(3)(B) service, equal to the lesser of

(i) The amount of benefits which would have been payable to the employee if he had been receiving monthly benefits under the plan since actual retirement based on a straight life annuity commencing at actual retirement age; or

(ii) The actual amount paid or scheduled to be paid to the employee for such month. Payments which are scheduled to be paid less frequently than monthly may be converted to monthly payments for purposes of the above sentence.

(5) This section does not apply to the minimum benefit to which the participant is entitled under the top-heavy rules of Article _____.

(Note to reviewer: Provisions may be added to the plan to provide for the benefit offset authorized by DOL Regs. 2530.203-3, however; these additional provisions must be in strict compliance with the said regulation.)

Sample Adoption Agreement Language:

The suspension of benefit rules in section _____ of the plan will apply to:

( ) all participants in the plan.

( ) only those participants described in section _____ of the plan whose benefits, if actuarial increased, would exceed the limitations of section 415 of the Code.

(Note to reviewer: The first blank in the sample adoption agreement language above should be filled in with the section number of the plan corresponding to LRM 55. The second blank in the sample adoption agreement language above should be filled in with the section number of the plan corresponding to LRM #42.)

56. Early plan termination provision
56. Document Provision:

Statement of Requirement: **Early plan termination provision, Regs. §1.401-4(c); Rev. Rul. 80-229, Rev. Rul. 81-135, Rev. Rul. 67-114.**

Sample Plan Language:

(1) Prior to the date the pre-termination restrictions in section ____ of the plan are effective, employer contributions on behalf of any of the 25 highest paid employees at the time the plan is established and whose anticipated annual benefit exceeds $1,500 will be restricted as provided in paragraph (2) upon the occurrence of the following conditions:

(a) The plan is terminated within 10 years after its establishment,

(b) The benefits of such highest paid employee become payable within 10 years after the establishment of the plan, or

(c) If section 412 of the Internal Revenue Code (without regard to section 412(h)(2)) does not apply to this plan, the benefits of such employee become payable after the plan has been in effect for 10 years, and the

full current costs of the plan for the first 10 years have not been funded.

(Note to reviewer: The blank should be filled in with the plan section number corresponding to LRM 57.)

(2) Employer contributions which may be used for the benefit of an employee described in paragraph (1) shall not exceed the greater of $20,000, or 20% of the first $50,000 of the employee's compensation multiplied by the number of years between the date of the establishment of the plan and:

(a) If 1(a) applies, the date of the termination of the plan,

(b) If 1(b) applies, the date the benefits become payable, or

(c) If 1(c) applies, the date of the failure to meet the full current costs.

(3) If the plan is amended so as to increase the benefit actually payable in the event of the subsequent termination of the plan, or the subsequent discontinuance of contributions thereunder, then the provisions of the above paragraphs shall be applied to the plan as so changed as if it were a new plan established on the date of the change. The original group of 25 employees (as described in (1) above) will continue to have the limitations in (2) apply as if the plan had not been changed. The restrictions relating to the change of plan should apply to benefits or funds for each of the 25 highest paid employees on the effective date of the change except that such restrictions need not apply with respect to any employee in this group for whom the normal annual pension or annuity provided by employer contributions prior to that date and during the ensuing ten years, based on his rate of compensation on that date, could not exceed $1,500.

The employer contributions which may be used for the benefit of the new group of 25 employees will be limited to the greater of:

(a) The employer contributions (or funds attributable thereto) which would have been applied to provide the benefits for the employee if the previous plan had been continued without change;

(b) $20,000; or

(c) The sum of (i) the employer contributions (or funds attributable thereto) which would have been applied to provide benefits for the employee under the previous plan if it had been terminated the day before the effective date of change, and (ii) an amount computed by multiplying the number of years for which the current costs of the plan after that date are met by (A) 20 percent of his annual compensation, or (B) $10,000, whichever is smaller.

(4) Notwithstanding the above limitations, the following limitations will apply if they would result in a greater amount of employer contributions to be used for the benefit of the restricted employee:

(a) In the case of a substantial owner (as defined in section 4022(b)(5) of ERISA), a dollar amount which equals the present value of the benefit guaranteed for such employee under section 4022 of ERISA, or if the plan has not terminated, the present value of the benefit that would be guaranteed if the plan terminated on the date the benefit commences, determined in accordance with regulations of the Pension Benefit Guaranty Corporation (PBGC); and

(b) In the case of the other restricted employees, a dollar amount which equals the present value of the maximum benefit described in section 4022(b)(3)(B) of ERISA (determined on the earlier of the date the plan terminates or the date benefits commence, and determined in accordance with regulations of PBGC) without regard to any other limitations in section 4022 of ERISA.

(Note to reviewer: The following is an optional provision that allows distributions to participants made incident to plan termination when the value of plan assets is not less than the present value of accrued benefits of all participants. This provision may be used whether or not the early termination restrictions are otherwise applicable.)

Sample Plan Language:

If, as of the date this plan terminates, the value of plan assets is not less than the present value of all accrued benefits (whether or not nonforfeitable) distributions of

assets to each participant equal to the present value of that participant's accrued benefit will not be discriminatory if the formula for computing benefits as of the date of termination is not discriminatory.

All present values and the value of plan assets will be computed using assumptions satisfying section 4044 of ERISA.

Upon the occurrence of the above situation the amount by which the value of plan assets exceeds the present value of accrued benefits (whether or not nonforfeitable) will revert to the employer.

(Note to reviewer: The following is an optional provision that allows distributions to be made to restricted participants in the event a restricted benefit becomes payable.)

Sample Plan Language:

Notwithstanding the otherwise applicable restrictions on distributions of benefits incident to early plan termination, a participant's otherwise restricted benefit may be distributed in full upon depositing with an acceptable depository property having a fair market value equal to 125% of the amount which would be repayable had the plan terminated on the date of the distribution. If the market value of the property held by the depository falls below 110% of the amount which would be repayable if the plan were then to terminate, additional property necessary to bring the value of the property held by the depository up to 125% of such amount will be deposited.

57. Pre-termination restrictions

57. Document Provision:

Statement of Requirement: **Pre-termination restrictions, Regs. §1.401(a)(4)-5(b); Rev. Rul. 92-76.**

Sample Plan Language:

In the event of plan termination, the benefit of any highly compensated active or former employee is limited to a benefit that is nondiscriminatory under section 401(a)(4).

For plan years beginning on or after the date set forth in section ____ of the Adoption Agreement, benefits distributed to any of the 25 most highly compensated active and highly compensated former employees with the greatest compensation in the current or any prior year are restricted such that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the employee under a straight life annuity that is the actuarial equivalent of the sum of the employee's accrued benefit, the employee's other benefits under the plan (other than a social security supplement, within the meaning of section 1.411(a)-7(c)(4)(ii) of the Income Tax Regulations), and the amount the employee is entitled to receive under a social security supplement.

(Note to reviewer: The blank should be filled in with the section number of the plan's Adoption Agreement corresponding to the Adoption Agreement language provided below.)

The preceding paragraph shall not apply if: (1) after payment of the benefit to an employee described in the preceding paragraph, the value of plan assets equals or exceeds 110% of the value of current liabilities, as defined in section 412(l)(7) of the Internal Revenue Code, (2) the value of the benefits for an employee described above is less than 1% of the value of current liabilities before distribution, or (3) the value of the benefits payable under the plan to an employee described above does not exceed $3,500.

For purposes of this section, benefit includes loans in excess of the amount set forth in section 72(p)(2)(A) of the Internal Revenue Code, any periodic income, any withdrawal values payable to a living employee, and any death benefits not provided for by insurance on the employee's life.

Sample Adoption Agreement Language:

The pre-termination restrictions in section _____ of the plan will be effective _____ (no later than the first day of the 1994 plan year).

(Note to reviewer: The blank should be filled in with the plan section number corresponding to LRM 57.)

(Note to reviewer: The following sample plan language contains optional provisions that allow distribution of restricted amounts to the 25 most highly compensated active and most highly compensated former employees.)

Sample Plan Language:

An employee's otherwise restricted benefit may be distributed in full to the affected employee if prior to receipt of the restricted amount, the employee enters into a written agreement with the plan administrator to secure repayment to the plan of the restricted amount. The restricted amount is the excess of the amounts distributed to the employee (accumulated with reasonable interest) over the amounts that could have been distributed to the employee under the straight life annuity described in section _____ of the plan (accumulated with reasonable interest). The employee may secure repayment of the restricted amount upon distribution by: (1) entering into an agreement for promptly depositing in escrow with an acceptable depository property having a fair market value equal to at least 125 percent of the restricted amount, (2) providing a bank letter of credit in an amount equal to at least 100 percent of the restricted amount, or (3) posting a bond equal to at least 100 percent of the restricted amount. If the employee elects to post bond, the bond will be furnished by an insurance company, bonding company or other surety for federal bonds.

(Note to reviewer: The blank should be filled in with the plan section number corresponding to LRM 57.)

The escrow arrangement may provide that an employee may withdraw amounts in excess of 125 percent of the restricted amount. If the market value of the property in an escrow account falls below 110 percent of the remaining restricted amount, the employee must deposit additional property to bring the value of the property held by the depository up to 125 percent of the restricted amount. The escrow arrangement may provide that employee may have the right to receive any income from the property placed in escrow, subject to the employee's obligation to deposit additional property, as set forth in the preceding sentence.

A surety or bank may release any liability on a bond or letter of credit in excess of 100 percent of the restricted amount.

If the plan administrator certifies to the depository, surety or bank that the employee (or the employee's estate) is no longer obligated to repay any restricted amount, a depository may redeliver to the employee any property held under an escrow agreement, and a surety or bank may release any liability on an employee's bond or letter of credit.

VESTING PROVISIONS

58. Designation of vesting computation period
58. Document Provision:

Statement of Requirement: **Designation of vesting computation period, IRC §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 accrued benefit derived from employer contributions, years of service and breaks in service shall be measured by reference to the plan year.

Provision #2

For purposes of computing an employee's nonforfeitable right to the accrued benefit derived from employer contributions, years of service and breaks in service shall be measured by reference to the 12-month period commencing on the date the employee first performs an hour of service and each subsequent 12-month period will commence on the anniversary of such date.

59. BIS and YOS must be measured on the same computation period
59. Document Provision:

Statement of Requirement: **Breaks in service and years of service must be measured on the same computation period, DOL Regs. §2530.200b-4(a)(3).**

Sample Plan Language:

For purposes of computing an employee's right to the employee's accrued benefit, years of service and breaks in service shall be measured on the same computation period.

60. Full vesting upon Normal retirement age
60. Document Provision:

Statement of Requirement: **Full vesting upon attainment of normal retirement age, IRC §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 normal retirement benefit must be nonforfeitable upon the attainment of normal retirement age.

(Note to reviewer: The blank should be filled in with the adoption agreement section number corresponding to LRM #61.)

61. Option vesting schedules must be at least as liberal as the applicable minimum vesting schedules

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) and §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)(l) for top-heavy schedules, See LRM 64), the optional schedules must be at least as favorable as the statutory schedules.

62. Crediting years of service -- vesting (411(a)(4))
62. Document Provision:

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

Sample Adoption Agreement Language:

All of an employee’s years of service with the employer shall be counted to determine the nonforfeitable percentage in such employee’s employer-provided accrued benefit 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 l, 1971, unless the employee has at least 3 years of service after December 31, 1970, and

( ) 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 deny an employee’s eligibility to participate by reason of separation or failure to complete a required period of service within a specified period of time.

63. Vesting Break in service -- one year hold-out
63. Document Provision:

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

Sample Plan Language:

In the case of any 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.

(Note to reviewer: A fully insured plan that satisfies the requirements of section 411(b)(1)(F) may use the break in service rule of section 411(a)(6)(C) and disregard years of service after 5 consecutive 1-year breaks in service for purposes of determining the participant's nonforfeitable percentage in his or her accrued benefit derived from employer contributions that accrued before such breaks in

service. However, the participant's years of service before the breaks in service must be counted in vesting the post-break accrued benefit unless the plan uses the rule of parity and the pre-break years of service for nonvested participants could be disregarded pursuant to such rule. See LRM 64.)

64. Vesting Break in service -- Rule of parity
64. Document Provision

Statement of Requirement: **Vesting break in service - rule of parity, IRC §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-provided 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.

65. Amendment of vesting schedule (411(a)(10))
65. Document Provision:

Statement of Requirement: **Amendment of vesting schedule, IRC §411(a)(10); Regs. §1.411(a)-8(c)(l), §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 a 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 his nonforfeitable percentage computed under

the plan without regard to such amendment or change. For participants who do not have at least one 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:

(l) 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.

66. Amendments affecting vested and/or accrued benefits
66. Document Provision:

Statement of Requirement: **Amendments affecting vested and/or accrued benefits, IRC §411(a)(10)(A) and §411(d)(6); Rev. Rul. 81-12.**

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. Notwithstanding the preceding sentence, a participant's accrued benefit may be reduced to the extent permitted under section 412(c)(8) of the Internal Revenue Code. 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 preamendment conditions for the subsidy. In general, a retirement-type subsidy is a subsidy that continues after retirement, but does not include a qualified disability benefit, a medical benefit, a social security supplement, a death benefit (including life

insurance). 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-provided accrued benefit will not be less than the percentage computed under the plan without regard to such amendment.

67. Forfeitures -- withdrawal of employee contributions
67. Document Provision

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

Sample Plan Language:

If a participant has a nonforfeitable right to at least 50 percent of his/her employer-provided accrued benefit, then no forfeitures will occur solely as a result of a participant's withdrawal of employee contributions. Regardless of a participant's nonforfeitable percentage, a withdrawal of employee contributions will not result in a forfeiture of the minimum benefit, if any, provided under section _____.

(Note to reviewer: The blank should be filled in with the section number that corresponds to the requirements of LRM #70.)

68. Reinstatement of benefit
68. 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.

TOP-HEAVY PROVISIONS

(Note to reviewer: 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 60. A deemed top-heavy plan contains a single benefit structure that satisfies the requirements of sections 416(b) and (c) of the Code for each plan year without regard to whether the plan is top-heavy. Sample Plan Language:

If the plan is or becomes top-heavy in any plan year beginning after December 31, 1983, the provisions of section(s) _____ will supersede any conflicting provisions in the plan or adoption agreement.

(Note to reviewer: The blank should be filled in with the section number that corresponds to the requirements of LRMs #69-73.)

69. Top-heavy definitions
69. Document Provision:

Statement of Requirement: **Top-heavy definitions, IRC §416.**

Sample Plan Language:

(i) Key employee: Any employee or former employee (and the beneficiaries of such employee) who at any time during the determination period was an officer of the employer if such individual's annual compensation exceeds 50 percent of the dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, an owner (or considered an owner under section 318 of the Code) of one of the ten largest interests in the employer if such individual's compensation exceeds 100 percent of the dollar limitation under section 415(c)(1)(A) of the Internal Revenue Code, 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. Annual compensation means compensation as defined in section _____ of the adoption agreement, but including amounts contributed by the employer pursuant to a salary reduction agreement which are excludable from the employee's gross income under section 125, section 402(e)(3), section 402(h)(1)(B), or section 403(b) of the Internal Revenue Code. The determination period is the plan year containing the determination date and the 4 preceding plan years. The determination of who is a key employee will be made in

accordance with section 416(i)(1) of the Internal Revenue Code and the regulations thereunder.

(Note to reviewer: The blank should be filled in with the section of the plan's adoption agreement that corresponds to the sample adoption agreement language at the end of LRM 40.)

(ii) Top-heavy plan: For any plan year beginning after December 31, 1983, 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 benefit plans and the employer has not maintained any defined contribution plan (including any simplified employee pension, as defined in section 408(k) of the Internal Revenue Code) which during the 5-year period ending on the determination date(s) has or has had account balances, 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 present value of accrued benefits of all key employees as of the determination date(s) (including any part of any accrued benefit distributed in the 5-year period ending on the determination date(s)), and the denominator of which is the sum of the present value of accrued benefits (including any part of any accrued benefits distributed in the 5-year period ending on the determination date(s)), determined in accordance with section 416 of

the Internal Revenue Code and the regulations thereunder.

(b) If the employer maintains one or more defined benefit plans and the employer maintains or has maintained one or more defined contribution plans (including any simplified employee pension) which during the 5-year period ending on the determination date(s) has or has had any account balances, the top-heavy ratio for any required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the present value of accrued benefits under the aggregated defined benefit plan or plans for all key employees, determined in accordance with (a) above, and the sum of account balances under the aggregated defined contribution plan or plans for all key employees as of the determination date(s), and the denominator of which is the sum of the present value of accrued benefits under the defined benefit plan or plans for all participants, determined in accordance with (a) above, and the account balances under the aggregated defined contribution plan or plans for all participants as of the determination date(s), all determined in accordance with section 416 of the Internal Revenue Code and the regulations thereunder. The account balances under a defined contribution in both the numerator and denominator of the top-heavy ratio are increased for any distribution of an account balance made in the five-year period ending on the determination date.

(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 section 416 of the Internal Revenue 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 5-year period 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 section

416 of the Internal Revenue 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 section 411(b)(1)(C) of the Internal Revenue 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 sections 401(a)(4) and 410 of the Internal Revenue Code.

(v) Required aggregation group: (l) Each qualified plan of the employer in which at least one key employee participates or participated at any time during the determination period (regardless of whether the plan has terminated), and (2) any other qualified plan of the employer which enables a plan described in (l) to meet the requirements of sections 401(a)(4) or 410 of the Internal Revenue 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.

(viii) Present value: Present value shall be based only on the interest and mortality rates specified in adoption agreement.

Sample Adoption Agreement Language:

Present value: For purposes of establishing present value to compute the top-heavy ratio, any benefit shall be discounted only for mortality and interest based on the following:

Interest rate: _____ %

Mortality table: _____

Valuation date: For purposes of computing the top-heavy ratio, the valuation date shall be _____ of each year.

70. Minimum accrued benefit

70. Document Provision:

Statement of Requirement: **Minimum accrued benefit, IRC §416(c).**

Sample Plan Language:

(1) Notwithstanding any other provision in this plan except (3), (4), and (5) below, for any plan year in which this plan is top-heavy, each participant who is not a key employee and has completed 1,000 hours of service will accrue a benefit (to be provided solely by employer contributions and expressed as a life annuity commencing at normal retirement age) of not less than two percent of his or her highest average compensation for the five consecutive years for which the participant had the highest compensation. The aggregate compensation for the years during such five-year period in which the participant was credited with a year of service will be divided by the number of such years in order to determine average annual compensation. The minimum accrual is determined without regard to any Social Security contribution. The minimum accrual applies even though under other plan provisions the participant would not otherwise be entitled to receive an accrual, or would have received a lesser accrual for the year because (i) the non-key employee fails to make mandatory contributions to the plan, (ii) the non-key employee’s compensation is less than a stated amount, (iii) the non-key employee is not employed on the last day of the accrual computation period, or (iv) the plan is integrated with Social Security.

(2) For purposes of computing the minimum accrued benefit, compensation shall mean compensation as defined in section

_____ of the adoption agreement, as limited by section 401(a)(17) of the Code.

(Note to reviewer: The blank should be filled in with the section of the adoption agreement that corresponds to section D of the sample adoption agreement language at the end of LRM 40.)

(3) No additional benefit accruals shall be provided pursuant to (1) above to the extent that the total accruals on behalf of the participant attributable to employer contributions will provide a benefit expressed as a life annuity commencing at normal retirement age that equals or exceeds 20 percent of the participant's highest average compensation for the five consecutive years for which the participant had the highest compensation.

(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 and 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.

(5) All accruals of employer-derived benefits, whether or not attributable to years for which the plan is top-heavy, may be used in computing whether the minimum accrual requirements of paragraph (3) above are satisfied.

(Note to reviewer: The first blank should be filled in with the plan section number corresponding to the sample adoption agreement language at the end of LRM #40)

(Note to reviewer: Provision (4) above may cause the plan to fail to satisfy the uniformity requirement under section 1.401(a)(4)-3(b)(2) of the regulations, even though all other requirements applicable to the regulatory safe harbors are met.)

Sample Adoption Agreement Language:

For purposes of minimum top-heavy accruals, each non-key employee will accrue a minimum benefit of _____% of compensation for each year the plan is top-heavy.

71. Adjustment for benefit form other than life annuity at normal retirement age

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.

72. Nonforfeitability of minimum accrued benefit
72. Document Provision:

Statement of Requirement: **Nonforfeitability of minimum accrued benefit, IRC §416(c).**

Sample Plan Language:

The minimum accrued benefit required (to the extent required to be nonforfeitable under section 416(b)) of the Internal Revenue Code may not be forfeited under section 411(a)(3)(B) or 411(a)(3)(D) of the Internal Revenue Code.

73. Minimum vesting schedules
73. Document Provision:

Statement of Requirement: **Minimum vesting schedules, IRC §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 section 411(a)(7) of the Internal Revenue Code except those attributable to employee contributions, including benefits accrued before the effective date of section 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.)

AMENDMENT AND TERMINATION

74. Power to amend (sponsor)
74. Document Provision:

Statement of Requirement: **Sponsor's power to amend, Rev. Proc. 89-9, §5.01, §18.04.**

Sample Plan Language: The sponsoring organization may amend any part of the plan. For purposes of sponsoring organization amendments, the mass submitter shall be recognized as the agent of the sponsoring organization. If the sponsoring organization 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.

75. Amendment by adopting employer
75. Document Provision:

Statement of Requirement: **Amendment by adopting employer, Rev. Proc. 89-9, §5.02.**

Sample Plan Language:

The employer may (1) change the choice of options in the adoption agreement, (2) add overriding language in the adoption agreement when such language is necessary to satisfy section 415 or section 416 of the Internal Revenue Code because of the required aggregation of multiple plans, and (3) add certain model amendments published by the Internal Revenue Service which specifically 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 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 #66). Such a list would not be considered an amendment to the plan.)

76. Vesting -- plan termination
76. Document Provision:

Statement of Requirement: **Vesting - Plan termination, IRC §411(d)(3), Regs. §1.411(a)-4(a).**

Sample Plan Language:

In the event of the termination or partial termination of this plan, the rights of all affected employees to benefits accrued to the date of such termination or partial termination (to the extent funded as of such date) shall be nonforfeitable.

(Note to reviewer: A plan will not violate the nonforfeitability requirement of 411 of the Code merely because in the event of termination an employee does not have any recourse toward satisfaction of his nonforfeitable benefits from other than plan assets or the Pension Benefit Guaranty Corporation.)

77. Plan merger -- maintenance of benefit
77. Document Provision:

Statement of Requirement: **Plan merger - Maintenance of benefit, IRC §401(a)(12), §414(l); Regs. §1.414(l).**

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

78. Inalienability of benefits
78. Document Provision:

Statement of Requirement: **Inalienability of benefits, IRC §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 section 414(p) of the Internal Revenue 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 section 414(p).)

79. Loans to participants

79. Document Provision:

Statement of Requirement: **Loans to participants, IRC §401(a)(13), §417(f)(5), §4975(d)(1); DOL Regs. §2550.408(b)-1; Regs. §1.401(a)-20, Q&A-24.**

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

Sample Plan Language:

(1) Loans shall be made available to all participants and beneficiaries on a reasonably equivalent basis. Notwithstanding the preceding sentence, if this plan is a fully insured section 412(i) plan, no loans shall be made under this plan.

(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. However, if the participant is an affected employee under the pre-termination restrictions in section _____ of the plan, the total of all the affected employee's outstanding loans will not exceed the amount that such affected employee would be entitled to under the pre-termination restrictions.

(Note to reviewer: The blank should be filled in with the section number of the plan corresponding to LRM #57.)

(5) A participant must obtain the consent of his or her spouse, if any, to use of the accrued benefit as security for the loan. Spousal consent shall be obtained no earlier than the beginning of the 90-day period 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 accrued benefit 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) 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 section 318(a)(1) of the Internal Revenue Code), on any day during the taxable year of such corporation, more than 5% of the outstanding stock of the corporation.

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 accrued benefit 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 accrued benefit 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 accrued benefit (determined without regard to the preceding sentence) is payable to the surviving spouse, then the accrued benefit shall be adjusted by first reducing the vested accrued benefit 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: Section 72(p) of the Code provides that certain plan loans are treated as distributions. Compliance with section 72(p) is not required for plan qualification. Therefore, any plan provision dealing with section 72(p) will not be considered with respect to the issuance of a favorable opinion letter. However, in order to assist sponsors in drafting provisions to comply with section 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 sections 414(b), 414(c), and 414(m) and (o) of the Internal Revenue 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.

80. Exclusive benefit

80. Document Provision:

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

Sample Plan Language: The corpus or income of the trust or custodial account may not be diverted to or used for other than the exclusive benefit of the participants or their beneficiaries.

If plan benefits are provided through the distribution of annuity or insurance contracts, any refunds or credits in excess of plan benefits (on account of dividends, earnings, or other experience rating credits, or surrender or cancellation credits) will be paid to the trust or custodial account.

If upon plan termination all plan liabilities are satisfied, any excess assets arising from erroneous actuarial computation will revert to the employer.

(Note to reviewer: All plans that have trusts (including top-heavy sidefund trusts) or custodial accounts (whether fully-insured section 412(i) plans or other plans funded only with insurance contracts) must include the above language. Trusteed plans that are designated as fully insured must also include LRM #87. Fully insured nontrusteed plans must use LRM #87 in lieu of this LRM #80. Section 412(i) plans with top-heavy sidefund trusts must include LRM #80 and #87.)

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 section 404 of the Internal Revenue 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.

81. Failure of qualification
81. Document Provision:

Statement of Requirement: **Failure of qualification, Rev. Proc. 89-9.**

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.

82. Master trust or custodial account
82. Document Provision:

Statement of Requirement: **Master trust or custodial account, Rev. Proc. 89-9, §3.01.**

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

83. Master trust - disqualification of plan
83. Document Provision:

Statement of Requirement: **Master trust - disqualification of plan.**

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.

84. Crediting service with predecessor employer
84. Document Provision:

Statement of Requirement: **Crediting service with predecessor employer, IRC §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.

85. Control of trades or businesses by owner-employee
85. Document Provision:

Statement of Requirement: **Control of trades or businesses by owner-employees, Prior IRC §401(d).**

(Note to reviewer: Language dealing with the special aggregation rules of eliminated IRC §401(d) should be deleted.)

86. Conflicts with insurance contracts
86. Document Provision:

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

Sample Plan Language:

In the event of any conflict between the terms of this plan and the terms of any insurance contract issued hereunder the plan provisions shall control.

(Note to reviewer: Alternatively, the plan may provide that only contracts that conform to the terms of the plan will be issued.)

87. Treatment of insurance dividends - fully-insured plans
87. Document Provision:

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

(Note to reviewer: All section 412(i) plans (whether trusteed or nontrusteed) must include this provision. In addition, all nontrusteed plans funded only with insurance contracts must include this provision.)

Sample Plan Language:

No contract will be purchased under the plan unless such contract or a separate definite written agreement between the employer (or trustee, if any) and the insurer provides that:

(1) no value under contracts providing benefits under the plan or credits (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 providing plan benefits for the exclusive benefit of employees or their beneficiaries;

(2) any contribution made by the employer because of a mistake of fact must be returned to the employer within one year of the contribution;

(3) any credits on account of dividends, earnings or other experience rating credits, or surrender or cancellation credits with respect to contracts under the plan shall be applied by the insurer toward each premium next due for contracts under the plan before any further contributions made by the employer are so applied by the insurer, and not later than the due date for such premiums;

(4) any credits on account of dividends, earnings or other experience rating credits, or surrender or cancellation credits in excess of plan benefits with respect to contracts distributed to provide plan benefits, will be applied as provided in 3;

(5) if upon the cessation of benefit accruals or upon plan termination, all benefits provided under the plan with respect to service before cessation of accruals or termination have been purchased, any credits on account of dividends, earnings or other experience rating credits, or surrender or cancellation credits with respect to contracts under the plan will revert to the employer; and,

(6) where credits are applied by the insurer before employer contributions are made that are sufficient in addition to the credits to pay each premium next due, such credits will be applied proportionately toward each premium next due so that the same percentage of each premium next due is paid.

88. Additional adoption agreement requirements
88. Document Provision:

Statement of Requirement: **Additional adoption agreement requirements, Rev. Proc. 89-9 §5.08; §4.06.**

(Note to reviewer: Each adoption agreement must contain language which complies with the following requirements: (1) The adoption agreement must contain a statement that failure to properly fill out the adoption agreement may result in disqualification of the plan.

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

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

Part II - STANDARDIZED PLANS

(Note to reviewer: All standardized defined benefit plans and all nonstandardized safe harbor plans must, by their terms, satisfy the uniformity requirements in section 1.401(a)(4)-3(b)(2) of the regulations and one of the design-based safe harbors in section 1.401(a)(4)-3(b). Nonstandardized plans must either provide plan language that automatically satisfies these regulations or provide a mechanism in the adoption agreement for the employer to select plan language that does. (See section 3.08 and 5 of Rev. Proc. 89-9, as modified by section 8 of Rev. Proc. 91-66, 1991-2 C.B. 870, 876, and Rev. Proc. 93-10, 1993-1 C.B. 476.) LRM #26 provides sample benefit formulas that satisfy the design-based safe harbors of the regulations for plans that do not provide for permitted disparity. LRM #27 provides sample formulas that satisfy the design-based safe harbors of the regulations for plans that provide for permitted disparity.

89. Coverage
89. Document Provision:

Statement of Requirement: **Coverage, IRC §410(b); Rev. Proc. 89-9, §3.081.**

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 of the employer who are covered pursuant to that agreement are professionals as defined in section 1.410(b)-9 of the regulations. 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 Internal Revenue Code section 7701(b)(1)(B)) and who receive no earned income (within the meaning of Internal Revenue Code section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of Internal Revenue Code section 861(a)(3)).

(Note to reviewer: The first blank should be filled in with the section number that corresponds to LRM #17.) 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.)

90. Eligibility requirement not more favorable for highly compensated employees

90. Document Provision:

Statement of Requirement: **Eligibility requirements not more favorable for highly compensated, Regs. §1.401(a)(4)-4; Rev. Proc. 89-9, §3.082.**

(Note to reviewer: Delete or restate any provision that permits highly compensated employees to become participants under more favorable terms than other employees.)

(Note to reviewer: All optional forms of benefit, ancillary benefits, and other rights and features (as defined in Regulations section 1.401(a)(4)-4) provided under the plan must be made available to all participants.)

91. Reliance on opinion letter

91. Document Provision:

Statement of Requirement: **Reliance on opinion letter, Rev. Proc. 89-9, §5.08.**

Sample Adoption Agreement Language:

An employer who has ever maintained or who later adopts any plan (including a welfare benefit fund, as defined in section 419(e) of the Internal Revenue Code, which provides post-retirement medical benefits allocated to separate accounts for key employees, as defined in section 419A(d)(3) of the Internal Revenue Code, or an individual medical account, as defined in section 415(l)(2) of the Internal Revenue Code) in addition to this plan (other than paired plan #_____) may not rely on the opinion letter issued by the National Office of the Internal Revenue Service as evidence that this plan is qualified under section 401 of the Internal Revenue Code. If the employer who adopts or maintains multiple plans wishes to obtain reliance that its plan(s) are qualified, application for a determination letter should be made to the appropriate Key District Director of Internal Revenue.

In addition, the employer may rely upon the opinion letter issued by the National Office of the Internal Revenue

Service only if the plan adopted by the employer satisfies section 401(a)(26) of the Internal Revenue Code with respect to its prior benefit structure. If the employer wishes to obtain reliance that its plan is qualified, the employer may request a determination from the appropriate Key District Director with regard to its prior benefit structure.

The employer may not be entitled to rely on the opinion letter issued by the National Office in certain other circumstances, which are specified in the opinion letter issued with respect to the plan or in section 6 of Revenue Procedure 89-9, as amended.

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

(Note to reviewer: The preceding paragraphs must be included in close proximity to the employer's signature line of the adoption agreement.)

PART III - PAIRED PLAN PROVISIONS

General Instructions **(Rev. Proc. 89-9, §3.09, §4.05(2), and (3), and §7.)**

Paired plans are either a combination of two defined contribution standardized form plans or a combination of one or two defined contribution standardized form plans and one defined benefit standardized form plan, (for example, a money purchase pension plan, a profit-sharing plan and a unit benefit or flat benefit pension plan), so designed that if any single plan, or combination of plans, is adopted by an employer, each plan by itself, or the plans together, will meet the nondiscrimination rules set forth in section 401(a)(4) of the Code, the contribution and benefit limitations set forth in section 415, and the top-heavy provisions set forth in section 416. Paired plans must have the same sponsoring organization. While a sponsor is not limited in the number of sets of paired plans it may adopt, each set must be limited to two different basic plan documents (one for defined contribution plans and one for a defined benefit plan). In addition, only one of the paired plans that an employer adopts may allow for permitted disparity. If one of the paired plans is a defined benefit plan that includes a final pay limitation as described in section 401(a)(5)(D), then the paired defined contribution

plans may not provide for disparity in contributions. (See Rev. Proc. 89-9, sections 3.09 and 7.)

If you are pairing a defined benefit plan with one or two defined contribution plans, refer to the Defined Benefit Specific Instructions which begin immediately below.

Defined Benefit - Specific Instructions:

A. Section 415 Requirements:

(Note to reviewer: The combined plan limit under Code § 415(e) is repealed for limitation years beginning after December 31, 1999. For limitation years beginning before December 31, 1999, the benefits under a defined benefit plan in a combination of paired plans are limited by the requirements of section 415(e) of the Code relating to the aggregation of defined benefit and defined contribution plans. Adjustments to satisfy the requirements of section 415(e) may only be provided in the defined benefit plan with respect to benefits thereunder. (See Rev. Proc. 89-9, section 7.01.) The sample language below can be used to satisfy this requirement.)

92. Benefit reduction resulting from aggregation
92. Document Provision:

Statement of Requirement: Benefit reduction resulting from aggregation, IRC §415(e).

Sample Defined Benefit Plan Language:

Notwithstanding any other provision to the contrary, no participant shall accrue an annual benefit (as defined in section _____ of the plan) in excess of the adjusted maximum permissible amount. For purposes of this provision, the adjusted maximum permissible amount is the lesser of the maximum permissible amount defined in section _____, or the 415(e) aggregated limitation. For purposes of this section, the 415(e) aggregated limitation is the product of (a) one minus the defined contribution fraction (as defined in section _____ of the plan); and (b) the lesser of 125% of the adjusted dollar limitation (as defined in section _____ of the plan), or 140% of the participant's highest average compensation.

(Note to reviewer: The first blank should be filled in with the section number of the plan corresponding to section 5.2 of LRM #40. The second blank should be filled in with the section number of the plan corresponding to section 5.10 of LRM #40. The third blank should be filled in with the section number of the plan corresponding to section 5.6 of LRM #40. The fourth blank should be filled in with the section number of the plan corresponding to section 5.8 of LRM #40.

(a) The adjusted dollar limitation is $90,000 payable in the form of a life annuity commencing at the participant's social security retirement age, as defined in section _____ of the plan.

(Note to reviewer: The blank should be filled in with the plan section number corresponding to section 5.13 of LRM #40.)

(b) In the case of a participant who has less than 10 years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction -- (i) the numerator of which is the number of years (or part thereof) of participation in the plan, and (ii) the denominator of which is 10. In the case of aparticipant who has less than ten years of service with the employer, the compensation limitation shall be multiplied by a fraction -- (i) the numerator of which is the number of years (or part thereof) of service with the employer, and (ii) the denominator of which is 10. The adjustments of this section (b) shall be applied in the denominator of the defined benefit fraction based upon years of service. For purposes of computing the defined benefit fraction only, years of service shall include future years of service (or part thereof) before the participant's normal retirement age. Such future years of service shall include the year that contains the date the participant reaches normal retirement age, or the year in which the participant terminates employment, if earlier.

(c) If the annual benefit of the participant commences before the participant's social security retirement age, but on or after age 62, the adjusted dollar limitation as reduced above, if necessary, shall be determined as follows:

(i) If a participant's social security retirement age is 65, the dollar limitation for benefits commencing on

or after age 62 is determined by reducing the adjusted dollar limitation by 5/9 of one percent for each month by which benefits commence before the month in which the participant attains age 65.

(ii) If a participant's social security retirement age is greater than 65, the dollar limitation for benefits commencing on or after age 62 is determined by reducing the adjusted dollar limitation by 5/9 of one percent for each of the first 36 months and 5/12 of one percent for each of the additional months (up to 24 months) by which benefits commence before the month of the participant's social security retirement age.

(d) If the benefit of a participant commences prior to age 62, the defined benefit dollar limitation shall be an annual benefit that is the actuarial equivalent of the defined benefit dollar limitation for age 62, as determined above, reduced for each month by which benefits commence before the month in which the participant attains age 62. The annual benefit beginning prior to age 62 shall be determined as the lesser of the equivalent annual benefit computed using the interest rate and mortality table (or other tabular factor) equivalence for early retirement benefits, and the equivalent annual benefit computed using a 5 percent interest rate and the applicable mortality table as defined in section _____ of the plan. Any decrease in the adjusted defined benefit dollar limitation determined in accordance with this provision (d) shall not reflect any mortality decrement to the extent that benefits will not be forfeited upon the death of the participant.

(Note to reviewer: The blank should be filled in with the plan's section number corresponding to section 3 of LRM #42.)

(e) If the annual benefit of a participant commences after the participant's social security retirement age, the defined benefit dollar limitation as reduced in (b) above, if necessary, shall be adjusted so that it is the actuarial equivalent of an annual benefit of such dollar limitation beginning at the participant's social security retirement age. The equivalent annual benefit beginning after social security retirement age shall be determined as the lesser of the equivalent annual benefit computed using the interest rate and mortality table (or other tabular factor) specified in the plan for purposes of determining actuarial equivalence for delayed retirement benefits, and the

equivalent annual benefit computed using a 5 percent interest rate assumption and the applicable mortality table as defined in section _____ of the plan.

(Note to reviewer: Sponsors should enter, in the blank above, the section number of the plan corresponding to section 3 of LRM #42.

(f) Notwithstanding anything else in this section to the contrary, the benefit otherwise accrued or payable to a participant under this plan shall be deemed not to exceed the defined benefit dollar limitation if:

(i) the retirement benefits payable for a plan year under any form of benefit with respect to such participant under this plan and under all other defined benefit plans (regardless of whether terminated) ever maintained by the employer do not exceed $1,000 multiplied by the participant's number of years of service or parts thereof (not to exceed 10) with the I employer; and

(ii) the employer has not at any time maintained a defined contribution plan, a welfare benefit plan, or an individual medical account in which the participant participated.

Notwithstanding the above, in the case of an individual who was a participant in one or more defined benefit plans of the employer as of the first day of the first limitation year beginning after December 31, 1986, the adjusted maximum permissible amount shall not be less than a participant's Tax Reform Act of 1986 (TRA '86) accrued benefit. A participant's (TRA '86) accrued benefit is a participant's accrued benefit under the plan, determined as if the participant had separated from service as of the close of the last limitation year beginning before January 1, 1987, when expressed as an annual benefit within the meaning of 415(b)(2) of the Internal Revenue Code. In determining the amount of a participant's current accrued benefit, the following shall be disregarded:

(i) any change in the terms and conditions of the plan after May 5, 1986; and

(ii) any cost of living adjustments occurring after May 5, 1986.

Notwithstanding the above, in the case of an individual who was a participant in one or more defined benefit plans of the employer as of the first limitation year beginning after December 31, 1994, the adjusted maximum permissible amount shall not be less than the participant's Retirement Protection Act of 1994 (RPA '94) old law benefit. The participants RPA '94 old law benefit is the participant's accrued benefit under the terms of the plan as of the close of the last limitation year beginning before January 1, 1995 (the RPA '94 freeze date), determined as if the participant had separated from service as of that date. In determining the amount of a participant's RPA '94 old law benefit, the following shall be disregarded:

(i) any plan amendment increasing benefits adopted after the RPA '94 freeze date; and

(ii) any cost of living adjustments that become effective after such date.

A participant's RPA '94 old law benefit is not increased after the RPA '94 freeze date, but if the limitations of § 415, as in effect on December 7, 1994, are less than the limitations that were applied to determine the participant's RPA '94 old law benefit on the RPA '94 freeze date, then the participant's RPA '94 old law benefit will be reduced in accordance with such reduced limitation. If, at any date after the RPA '94 freeze date, the participant's total plan benefit, before the application of § 415, is less than the participant's RPA '94 old law benefit, the RPA '94 old law benefit will be reduced to the participant's total plan benefit.

(g) Effective on January 1, 1988, and each January 1 thereafter, the $90,000 limitation above will be automatically adjusted to the new dollar limitation determined by the Commissioner of Internal Revenue for that calendar year. The new limitation will apply to limitation years ending within the calendar year of the date of the adjustment.

In the case of a participant who has separated from service, the participant's highest average compensation will be automatically adjusted by multiplying such compensation by the cost of living adjustment factor prescribed by the Secretary of the Treasury under § 415(d) of the Internal Revenue Code in such manner as the Secretary shall prescribe. The adjusted compensation amount will apply to

limitation years ending within the calendar year of the date of the adjustment.

B. Uniformity Requirement

The design based safe harbors under Regulations Sections 1.401(a)(4)-2 and -3 require that defined contribution plans provide a uniform allocation formula and that defined benefit plans provide a uniform benefit formula. In order to assure that paired plans will continue to provide uniform allocation or benefit formulas when they become top-heavy, paired plans must include language that will comply with one of the following two options: (Option A or Option B). Plan language complying with one of the following options may be included in the basic plan document. Alternatively, the plan may allow the employer to elect in the adoption agreement which of the two options will apply to the employer's plan.

Option A -- A plan can provide the full top-heavy minimum in each of the paired plans. If the sponsor wishes to preserve the employer's ability to use the higher section 415(e) limits when the plan is top-heavy (i.e., to use 1.25 as opposed to 1.0 in computing the denominators of the defined benefit and defined contribution fractions under section 415(e)), then the plan must retain a mechanism that will allow the employer to provide the higher top-heavy minimums required by section 416(h) under each of the paired plans.

Option B -- A plan can include language requiring that each of the paired plans benefit the same participants and that one of the paired plans will provide the top-heavy minimum. Pursuant to Regulations section 1.410(b)-3, a participant benefits under a plan for the plan year if the participant receives an allocation or an accrual for that plan year, or in the case of a plan subject to section 401(k) or 401(m), a participant is eligible to make elective deferrals or to make employee contributions. Therefore, to ensure that the same participants benefit under each paired plan adopted by the employer, the employer must make identical minimum participation requirement elections (i.e. minimum age and service, and entry date) and coverage elections (i.e., the exclusion of employees under Regulations section 1.410(b)-6 who are not employed on the last day of the plan year or who have not completed more than 500 hours of service) in all

paired plans. Furthermore, the sponsor must have restrictive language in the adoption agreement to ensure that the employer makes identical elections in all paired plans. If Option B is provided in the adoption agreement or basic plan document, Option A must also be provided as a default in the event that the paired plans do not cover the same participants.

Options A and B each contain two methods for coordinating the requirements of section 416(h) with the provisions of 415(e). Since these methods are inconsistent with each other, the employer can elect only one method in a single plan. Method (1) applies when the plan uses a 1.0 factor instead of a 1.25 factor times the dollar limitation in the section 415(e) defined benefit and defined contribution fraction denominators for any year that the plan is top-heavy. Method (2) provides the higher top-heavy minimums required by section 416(h) of the Code if the plan uses the 1.25 factor times the dollar limitation in the defined benefit and defined contribution fraction denominators of section 415(e) for any year the plan is top-heavy but not super top-heavy. (If the plan is super top-heavy, additional top-heavy minimums are not required, but the plan could continue to provide the additional benefits.)

OPTION A. (FULL TOP HEAVY MINIMUM PROVIDED IN EACH PAIRED PLAN)

Method 1. -- (Section 415(e) limit is reduced to 1.0 when the plans are top-heavy (i.e., the top-heavy ratio exceeds 60%).)

93. Adjustments in defined contribution and defined benefit fractions when the top-heavy ration exceeds 60%
93. Document Provision:

Statement of Requirement: **Adjustments in defined contribution and defined benefit fractions when the top-heavy ratio exceeds 60%, IRC §416(h).**

Sample Defined Benefit and Defined Contribution Plan Language:

In any plan year in which the paired plans are top heavy, i.e., the top-heavy ratio exceeds 60%, the denominators of the defined benefit fraction and defined contribution fraction (as defined in section _____ of the plan) shall be computed using 100 percent of the dollar limitation instead of 125 percent.

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

(Note to reviewer: If Option A, Method 1 has been selected, both the following Sample Defined Benefit Plan Language and the Sample Defined Contribution Plan Language is required in the respective DB or DC plan(s).

94. Minimum top-heavy contributions and benefits for defined contribution plan(s) paired with a defined benefit plan

94. Document Provision:

Statement of Requirement: **Minimum top-heavy contributions and benefits for defined contribution plan(s) paired with a defined benefit plan, IRC §416(h)(1); Rev. Proc. 89-9, §7.032.**

Sample Defined Contribution Plan Language:

When the paired plans are top-heavy, the top heavy requirements set forth in sections _____ of this plan shall apply.

(Note to reviewer: The blank should be filled in with the plan section numbers corresponding to DC LRMs #61-#64.)

Sample Defined Benefit Plan Language:

When the paired plans are top-heavy, the top heavy requirements set forth in sections _____ of this plan shall apply.

(Note to reviewer: The blank should be filled in with the plan section numbers corresponding to DB LRMs #69-#73.)

Method 2. -- (Section 415(e) limit is reduced to 1.0 only when the plans are super top-heavy (i.e., the top-heavy ratio exceeds 90%).)

95. Adjustments in defined contribution and defined benefit fractions when the top-heavy ration exceeds 90%
95. Document Provision:

Statement of Requirement:	**Adjustments in defined contribution and defined benefit fractions when the top- heavy ratio exceeds 90%, IRC §416(h).**

Sample Defined Benefit and Defined Contribution Plan Language:

In any plan year in which the top-heavy ratio exceeds 90% (i.e., becomes super top-heavy) the denominators of the defined benefit fraction (as defined in section _____ of the plan) and defined contribution fraction (as defined in section _____ of the plan) shall be computed using 100 percent of the dollar limitation instead of 125 percent.

(Note to reviewer: The blank should be filled in with the plan section number corresponding to LRM 34.)

(Note to reviewer: If Option A, Method 2 has been selected, both the following Sample Defined Benefit Plan Language and the Sample Defined Contribution Plan Language is required in the respective DB and DC plan(s).

96. Minimum top-heavy contributions and benefits for defined contribution plan(s) paired with a defined benefit plan
96. Document Provision:

Statement of Requirement:	**Minimum top-heavy contributions and benefits for defined contribution plan(s) paired with a defined benefit plan, IRC §416(h)(1); Rev. Proc. 89-9, §7.032.**

Sample Defined Contribution Plan Language:

When the paired plans are top-heavy, but are not super top-heavy, the employer will provide each non-key employee who participates in this plan a minimum contribution of 4% of compensation.

When the paired plans are super top-heavy, the top heavy requirements set forth in section _____ of the plan shall apply.

(Note to reviewer: The blank should be filled in with the plan section numbers corresponding to DC LRMs #61-#64.)

Sample Defined Benefit Plan Language:

When the paired plans are top-heavy, but are not super top-heavy, the top-heavy minimum contribution requirement set forth in section ____ of this plan shall apply except that the minimum accrued benefit shall be 3% of the highest 5-consecutive year average compensation for each non-key employee who participates in this plan, not to exceed a cumulative accrued benefit of 30%.

When the paired plans are super top-heavy, the top heavy requirements set forth in section _____ of this plan shall apply.

(Note to reviewer: The blank should be filled in with the plan section numbers corresponding to DB LRMs #69-#73.)

OPTION B. (PAIRED PLANS BENEFIT THE SAME PARTICIPANTS; ONE PAIRED PLAN IS DESIGNATED TO PROVIDE THE TOP-HEAVY MINIMUM.)

(Note to reviewer: If Option B is provided in the adoption agreement or basic plan document, Option A must also be provided as a default. The following adoption agreement language satisfies this requirement.)

Sample Adoption Agreement Language:

If the employees who benefit in this plan are identical to the employees who benefit in each plan paired with this plan, section ____ of the plan applies; otherwise, section _____ of the plan applies.

(Note to reviewer: The first blank should be filled in with the plan section number corresponding to the appropriate Option B section. The second blank should be filled in with the plan section number corresponding to the appropriate Option A section.)

Method 1. -- (Section 415(e) limit is reduced to 1.0 when the plans are top-heavy (i.e., the top-heavy ratio exceeds 60%).)

97. Adjustments in defined contribution and defined benefit fractions when the top-heavy ration exceeds 60%
97. Document Provision:

Statement of Requirement: **Adjustments in defined contribution and defined benefit fractions when the top-heavy ratio exceeds 60%, IRC §416(h).**

Sample Defined Benefit and Defined Contribution Plan Language:

In any plan year in which the paired plans are top heavy, i.e., the top-heavy ratio exceeds 60%, the denominators of the defined benefit fraction (as defined in section _____ of the plan) and defined contribution fraction (as defined in section _____ of the plan) shall be computed using 100 percent of the dollar limitation instead of 125 percent.

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

(Note to reviewer: If Option B, Method 1 has been selected, the following Sample Defined Benefit Plan Language or the Sample Defined Contribution Plan Language is required in either the DB or DC plan(s), or the sponsor may include both provisions in the respective Adoption Agreements and permit the employer to select in which plan will provide the minimum.

98. Minimum top-heavy contributions and benefits for defined contribution plan(s) paired with a defined benefit plan
98. Document Provision:

Statement of Requirement: **Minimum top-heavy contributionsand benefits for defined contribution plan(s) paired with a defined benefit plan, IRC §416(h)(1); Rev. Proc. 89-9, §7.032.**

Sample Defined Contribution Plan Language:

When the paired plans are top-heavy, the top heavy requirements set forth in sections _____ of this plan shall apply, except that each non-key employee shall receive a minimum contribution of 5% of such employee's compensation.

(Note to reviewer: The blank should be filled in with the plan section numbers corresponding to DC LRMs #61-#64.)

Sample Defined Benefit Plan Language:

When the paired plans are top-heavy, the top heavy requirements set forth in sections _____ of this plan shall apply.

(Note to reviewer: The blank should be filled in with the plan section numbers corresponding to DB LRMs #69-#73.)

Method 2. -- (Section 415(e) limit is reduced to 1.0 only when the plans are super top-heavy (i.e., the top-heavy ratio exceeds 90%).)

99. Adjustments in defined contribution and defined benefit fractions when the top-heavy ration exceeds 90%
99. Document Provision:

Statement of Requirement: **Adjustments in defined contribution and defined benefit fractions when the top-heavy ratio exceeds 90%, IRC §416(h).**

Sample Defined Benefit and Defined Contribution Plan Language:

In any plan year in which the top-heavy ratio exceeds 90% (i.e., becomes super top-heavy) the denominators of the defined benefit fraction (as defined in section _____ of the

plan) and defined contribution fraction (as defined in section _____ of the plan) shall be computed using 100 percent of the dollar limitation instead of 125 percent.

(Note to reviewer: The blank should be filled in with the plan section number corresponding to LRM 34.)

(Note to reviewer: If Option B, Method 2 has been selected, the following Sample Defined Benefit Plan Language or the Sample Defined Contribution Plan Language is required in either the DB or DC plan(s), or the sponsor may include both provisions in the respective Adoption Agreements and permit the employer to select in which plan will provide the minimum.

100. Minimum top-heavy contributions and benefits for defined contribution plan(s) paired with a defined benefit plan

100. Document Provision:

Statement of Requirement: **Minimum top-heavy contributions and benefits for defined contribution plan(s) paired with a defined benefit plan, IRC §416(h)(1); Rev. Proc. 89-9, §7.032.**

Sample Defined Contribution Plan Language:

When the paired plans are top-heavy, but not super top-heavy, the employer will provide each non-key employee a minimum contribution of 7 ½% of compensation.

When the paired plans are super top-heavy, the top-heavy requirements set forth in section _____ of the plan shall apply, except that each non-key employee shall receive a minimum contribution of 5% of each employee's compensation.

(Note to reviewer: The blank should be filled in with the plan section numbers corresponding to DC LRMs #61-#64.)

Sample Defined Benefit Plan Language:

When the paired plans are top-heavy, but not super top-heavy, the top-heavy requirements set forth in section ____

of the plan shall apply, except that the minimum accrued benefit shall be 3% of the highest 5-consecutive year average compensation for each non-key employee, not to exceed a cumulative accrued benefit of 30%.

When the paired plans are super top-heavy, the top-heavy requirements set forth in sections _____ of this plan shall apply.

(Note to reviewer: The blank should be filled in with the plan section numbers corresponding to DB LRMs #69-#73.)

PART IV - NONSTANDARDIZED PLAN PROVISIONS

101. Employee mandatory contributions
101. Document Provision:

Statement of Requirement: **Employee mandatory contributions, Rev. Rul. 80-307.**

(Note to reviewer: The following provision may not be used by a plan that provides for permitted disparity.)

Sample Adoption Agreement Language:

As a condition of participation in this plan, the employee must contribute ____% of his or her compensation each year.

(Note to reviewer: Although a plan may provide for any rate of employee mandatory contributions, that rate may operate either to deny participation to nonhighly compensated employees or to deprive nonhighly compensated employees of benefits at least as high in proportion to compensation as are provided for highly compensated employees. Thus, mandatory employee contributions may result in discrimination within the meaning of 410(b)(l) or 401(a)(4) of the Code. The level of such contributions must be specified by the employer in the adoption agreement.)

102. Accrued benefit derived from mandatory employee contributions
102. Document Provision:

Statement of Requirement: **Accrued benefit derived from mandatory employee**

contributions, IRC §401(a)(4), §411(c)(2); Regs. §1.401(a)(4)-6, §1.411(c)-1(C); Rev. Rul. 76-47, Rev. Rul. 78-202.

Sample Plan Language:

The employee purchased benefit shall be computed as follows:

1) STEP ONE - Determine the total amount of contributions made by a participant as a condition of participation in the plan and, where applicable, the prior plan;

(2) STEP TWO - Add to the amount in step one interest, if any, required by the terms of the prior plan to be paid on such contributions up to the ERISA compliance date;

(3) STEP THREE - Add to the sum of the amounts determined in steps one and two interest compounded annually at the rate of 5% from the ERISA compliance date or the date the participant began participation in the plan, whichever is later, to the end of the last plan year beginning before January 1, 1988 or the participant's normal retirement age whichever is earlier.

(4) STEP FOUR - Add to the sum of the amounts determined in steps one, two and three interest compounded annually -

(I) at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code for the first month of the plan year) from the beginning of the first plan year beginning after December 31, 1987, and ending with the date on which the determination is being made, and

(II) at the interest rate which would be used under the plan under section 417(e)(3) of the Internal Revenue Code (as of the determination date) for the period beginning with the determination date and ending on the date on which the employee attains normal retirement age.

(5) STEP FIVE - The amount in step 4 will be converted into the normal form of benefit using the interest rate that would be used under the plan under section 417(e)(3).

The employer-provided accrued benefit in all years shall equal the excess, if any, of the accrued benefit over the employee-provided accrued benefit. A participant shall be 100% vested in his or her employee-provided accrued benefit.

With respect to benefits accrued during plan years beginning after December 31, _____, each participant's benefit under this plan shall not be less than the sum of (a) the accrued benefit calculated in accordance with steps one through five above with respect to contributions made by a participant during plan years beginning after December 31, _____, and (b) 50% of the total benefit accrued in plan years beginning after December 31, _____.

(Note to reviewer: The blanks should be filled in with a year no later than 1994.)

Where the terms of the plan, or prior plan, at any time required that an employee make contributions to it in order to be a participant, and the plan or prior plan has been amended so as to no longer require such contributions, the participant's employee-provided accrued benefit and employer-provided accrued benefit shall be determined as if the plan required contributions of the employee as a condition of participation at the time of termination of employment. This section, however, shall not apply to the extent the contributions the participant has made to the plan (or prior plan) have been refunded to him or her.

(Note to reviewer: Plans that cease mandatory employee contributions for plan years beginning after the year provided by the sponsor above, may treat all benefits under the plan as employer-provided under section 1.401(a)(4)-6(b)(5) of the regulations. The following optional language is available for plan sponsors that wish to cease mandatory employee contributions for plan years beginning after such year.)

Sample Adoption Agreement Language:

(____) The plan administrator will not accept mandatory employee contributions not allocated to a separate account for plan years beginning after December 31, _____.

(Note to reviewer: The blank should be filled in with the same year provided by the sponsor in the preceding paragraphs.)

103. Nonforfeitability of mandatory employee contributions
103. Document Provision:

Statement of Requirement: **Nonforfeitability of mandatory employee contributions, IRC §411(a)(l).**

Sample Plan Language:

A participant's accrued benefit derived from mandatory employee contributions shall be nonforfeitable at all times.

104. Minimum age and service
104. Document Provision:

Statement of Requirement: **Minimum age and service, IRC §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), the anti-discrimination tests of 401(a)(4) and the participation test of 401(a)(26).)

105. Election of Safe Harbor Nondiscrimination Rules
105. Document Provision:

Statement of Requirement: Election of Safe Harbor Nondiscrimination Rules,IRC §401(a)(4); Reg. §1.401(a)(4)-3(b).

(Note to reviewer: A nonstandardized plan may satisfy the general nondiscrimination test of section 1.401(a)(4)-3(c) of the regulations; however, the adoption agreement of a nonstandardized plan must clearly identify and contain provisions allowing an employer to elect the safe-harbor provisions and fresh-start rules contained in LRM ##23-27.)

106. Reliance on opinion letter
106. Document Provision:

Statement of Requirement: Reliance, Rev. Proc. 89-9, §5.08.

Sample Adoption Agreement Language:

The adopting employer may not rely on any opinion letter issued by the National Office of the Internal Revenue Service as evidence that the plan is qualified under section 401 of the Internal Revenue Code. In order to obtain reliance with respect to plan qualification, the employer must apply to the appropriate key district office for a determination letter. This adoption agreement may be used only in conjunction with basic plan document # _____.

(Note to reviewer: The above statement must be placed in close proximity to the signature blank of the adoption agreement.)

107. Election of total compensation
107. Document Provision:

Statement of Requirement: Election of total compensation.

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 5 for the acceptable definitions of compensation.)